

ABAC

ABAC Complaints Panel Determination No: 75/10

Complaint by Mr Martin Payne Product: VB Beer Advertiser: Fosters Group

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

17 December 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a radio advertisement for VB Beer by Fosters Group (“the Advertiser”) and arises from a complaint by Mr Martin Payne received on 23 November 2010.

The Quasi-Regulatory System

2. Alcohol advertising in Australia is subject to an amalgam of laws and codes of practice which regulates and guides the content and, to some extent, the placement of advertisements. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising as quasi-regulation. The most important provisions applying to alcohol advertising are found in:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - (d) The Outdoor Media Association Code of Ethics which includes provisions about Billboard advertising.
3. The complaints systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.

4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 23 November 2010.
7. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. This complaint has been determined within the 30 day timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this advertisement [10496].

The Advertisement

9. The complaint refers to a radio advertisement for VB Beer. The script for the advertisement is as follows.
10. Host: I'm out here with Watto, Clarkey and Dougy, now today Shane, Australia's expecting from you two fours and a single.

Shane: What in the first over?

Host: Could be any over, could be a six and a three, three threes, nine singles, whatever you like.

Shane: Nine, but I want to give the team the best chance.

Host: Nah keep it to nine. Its not the Shane show.

Shane: But nine?

Host: What have you got against nine. If they get the score you get the cash with VB this summer. Buy a promotional VB or VB Gold and enter to get your player scorecard see vb.com.au."

The Complaint

11. The complainant argues that the advertisement glorifies or at least normalises the idea of match fixing by giving “everyman” moral permission to do such a thing, by portraying it as a mates agreement. Recent events in cricket, as well as the general principle of cheating in sport is offensive to the community, and as supporters of the game it is highly irresponsible to encourage or normalise this kind of behaviour.

The Code

12. The ABAC provides that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

The Advertiser’s Comments

13. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 16 December 2010. The principal points made by the Advertiser are:
 - (a) The radio advertisement promotes the Score Cash promotion which gives VB drinkers the chance to win cash based on the real time batting performances and team scores in the Vodafone Ashes Series. Using a game code supplied with the VB carton or at the point of purchase with a VB or VB Gold, fans can enter the promotion to receive a game scenario (comes with a designated cash prize) for the current Ashes Test. This scenario will be directly related to the current state-of-play in the match, adding even more excitement for fans watching the Aussies battle the Poms. If that score occurs, then the fan will win the cash amount attached to their game scenario. An example of a Score Cash scenario is: If Michael Clarke’s final score is 30-39 runs in the 1st innings of the Gabba Test, VB will shout you \$50. The prizes awarded will range from \$5 to \$1000. This national promotion is a game of chance and has terms and conditions (including permits, where required) that comply with all promotions and lotteries laws. This promotion (and its advertising) was also reviewed and approved by Cricket Australia and so too by the individual player managers (for those players involved in the advertisements).
 - (b) The very light hearted and tongue in cheek Score Cash radio advertisement in question aims to create awareness for the promotion. Listeners hear a commentator talking to Shane Watson about scoring a nine in his innings. Shane shows confusion and then disbelief although there is no indication that he agrees to do this. A voiceover then shares that this relates to a VB promotion. The discussion between commentator and cricketer is a way of bringing the promotion to life and capturing the attention of listeners. Basically whilst everyone will want the Aussies to win, depending on the game scenario received (upon registering for the promotion) you’ll also be hoping your game scenario occurs without in any way being able to influence this scenario.
 - (c) The complainant is concerned by their belief that this encourages match fixing but does not raise any concerns about the way alcohol is depicted in the advertisement. First up, it’s important to state that this VB promotion is completely removed from the concept of match fixing. Match fixing is an activity in breach of the laws of a game and possibly illegal. It is conducted covertly, involves an agreement on the part of at least two parties to unduly influence the outcome of a game and is for monetary or other gain. And neither

do I believe that the average person upon listening to the advertisement in its entirety would believe this is encouraging match fixing or cheating. This is further supported by the fact that this is the only complaint of this nature we have received.

- (d) Importantly we also believe the radio advertisement is ABAC compliant. Whilst the radio advertisement is branded VB and encourages the purchase of a promotional VB or VB Gold to enter the promotion (as indicated by the voiceover at the end), the focus on alcohol is limited to these aforementioned elements. Whilst the call to purchase VB to enter the promotion may be considered by the Complaints Adjudication Panel to equate to an "Approach to the consumption of alcohol beverages" (which is what section a) is concerned about), we'd still argue that the advertisement abides by both the positive and negative standards outlined. There is no encouragement of excessive consumption or of under age drinking and neither is there any promotion of offensive behaviour, which within the scope of section a) relates to bad or anti-social behaviour influenced by alcohol.

The Panel's View

14. The complainant is concerned that the advertisement glorifies or at least normalises match fixing, which he finds offensive.
15. In this case, the relevant provision of the ABAC Code is section (a) and (a)(iii) of the Code that states that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and must not promote offensive behaviour.
16. Section (a) is a combination of both 'positive' and 'negative' standards. Ads must be positive in terms of being balanced, mature and responsible and must not be negative in terms of promoting offensive behaviour. In assessing if an ad meets this standard, the ABAC preamble provides that an ad is to be assessed with regard to its probable impact upon a reasonable viewer taking its content as a whole.
17. The Panel has on previous occasions examined the operation of section (a) and (a)(iii) including:
 - Determination 18/05;
 - Determination 40/05;
 - Determination 56/05 and 04/06;
 - Determination 55/06;
 - Determination 43/07;
 - Determination 12/08;
 - Determination 15/08 and 24/08;
 - Determination 65/08, 68/08, 72/08, 87/08 & 94/08; and
 - Determination 127/08, 129/08, 140/08, 144/08 & 154/08.

18. From a review of these decisions, the following general observations can be made on how the Panel has interpreted section (a) and (a)(iii):
- the section is concerned with a 'responsible approach' to alcohol consumption which is a wider concept than consumption;
 - the expression 'offensive behaviour' used in section (a)(iii) must be understood within the context of the section and ABAC as a whole and is not a freestanding standard akin to section 2 of the AANA Code of Ethics;
 - within the context of ABAC, 'offensive behaviour' means unacceptable behaviour related to or influenced by the misuse of alcohol eg. Drunken loutish behaviour;
19. That said an ad must be assessed on its own merits against the relevant standards of the ABAC. The complainants' concern is the encouragement or normalisation of match fixing.
20. The advertiser contends that:
- (a) the radio advertisement promotes a game of chance for VB purchasers that in no way influences the outcome of particular cricket games;
 - (b) The radio advertisement is light hearted and tongue in cheek and at no time does the player agree to the commentator's suggestion; and
 - (c) There is no depiction of consumption of alcohol beverages in the advertisement only the encouragement to purchase the product to enter the promotion during the voiceover at the end.
21. The Panel does not believe the ad breaches the ABAC standard. The "match fixing" reference is not suggested to have been caused or contributed by alcohol use. It is rather the backdrop for the promotional event being conducted by the advertiser. Accordingly the complainant's concern is not a matter which is dealt with by the ABAC.
22. The complaint is dismissed.