

ABAC

ABAC Complaints Panel Determination No: 75/11

Complaint by Miss Louise Fischer Product: Corona Advertiser: Fosters Group

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

30 September 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a cinema advertisement for Corona by the Fosters Group (“the Advertiser”) and arises from a complaint received 29 August 2011.

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 and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint 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 29 August 2011.
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 was decided within the 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 (10391).

The Advertisement

9. The complaint refers to a cinema advertisement for Corona. The ad was screened prior to the movie "Rise of the Planet of the Apes" which has an "M" classification.
10. The advertisement features two men sitting on a chair and table on a lawn adjacent to the beach. There is a small esky next to the table and a caravan nearby. It is dusk and the men are sipping 375ml bottles of Corona. A young woman walks out of the caravan wearing a bikini top and cut off jeans and carrying a white top that she puts on as she walks over to the table where the men are sitting. One of the men turns to the woman as she picks up a 375ml bottle of Corona from the table. They are watching the sunset and one of the men points in the direction of a couple with a surfboard walking toward them from the beach. The camera focuses on the bottle of Corona in the woman's hand as her top blows in the breeze and we see the couple walking from the beach with a surfboard. The Corona logo and tagline "From where you'd rather be" is superimposed on the last scene together with the Enjoy Responsibly logo.

The Complaint

11. The complainant argues that the advertisement should not be shown before an M rated movie at 6.55pm as it is rated for ages under 18.

The Code

12. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage underage drinking;
13. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children or adolescents ...

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel by letter received 9 September 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. Carlton United Brewers (CUB) is a long standing signatory to the Alcohol Beverages Advertising Code (ABAC) and takes these matters seriously. CUB has an excellent advertising compliance track record and is committed to the ABAC scheme. CUB contributes close to \$2 million annually towards responsible consumption initiatives.
 - b. The Corona Extra commercial in question is call "Changing". It is important to note that the advertisement in question is responsible and contains no elements that have appeal to children or adolescents. The ABAC was carefully considered during the development of the campaign. All talent in the film are over 25 years of age. Neither the complaint nor your letter raises any issue regarding the actual content of the "Changing" commercial; rather, the complaint is directed to the placement of the commercial in the M Rated Movie.
 - c. Placement of alcohol advertising is closely considered by CUB within the framework of existing codes and prevailing community standards. CUB, in line with the industry, applies the responsible practice that cinema advertising will only be purchased for films with predominantly adult audiences. This responsible placement policy is underpinned by the fact that all CUB alcohol advertising, regardless of placement (e.g. Outdoor/out of home, print media, radio), is produced with section (b) of the ABAC in mind. The Commonwealth Office of Classification (www.classification.gov.au) states that "M films are not recommended for people aged under 15 as a level of maturity is required." It is reasonable to assume that the majority of the audience watching M rated movies are adults and therefore the film is suitable for alcohol advertising. Moreover, the actual content of the commercial is clearly targeted at adults, in this instance Corona's target consumer of 25-35 years of age. Previous

decisions made in relation to the ABAC scheme (we refer to the *Three Kings* determination no 76/10) have recognised that the issue of where an advertisement is placed is indirectly relevant in terms of assessing the content of an ad, in that the audience of the ad is a relevant consideration. The *Three Kings* decision recognised that while an advertisement might have some residual or incidental appeal to children (although in the present case we contend that there is nothing in the “Changing” commercial that would have even a residual or incidental appeal to children), it is a “strong or evident” appeal which is prohibited. The *Three Kings* decision further identified that while placement may mean an ad will be viewed by children and adolescents, that does not mean that the advertisement, irrespective of its content, can automatically be said to have a “strong or evident” appeal to children or adolescents.

- d. While the complainant is entitled to their opinion, we strongly believe that an M rating on a film provides a sufficient safeguard to ensure that the vast majority of cinema audience members would be adults. Further, we contend that this Corona Extra commercial presents a mature, balanced and responsible approach to the consumption of alcohol, and contains no elements that have appeal to children or adolescents.

The Panel’s View

15. This complaint raises an issue of placement of an advertisement, rather than the actual content of an advertisement. The ABAC is principally concerned with the content of an ad and only indirectly refers to placement by reference in the ABAC preamble to assessments to conformity of an advertisement with the ABAC to be undertaken “in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated”.
16. Guidance as to the ABAC’s application invites consideration of the placement of the advertisement only where the issue of placement is material in assessing the class of persons to whom the advertisement “is directed” and “may be communicated”. Also relevant in this case is the Office of Film and Literature Classification (OFLC) rating of the film “Rise of the Planet Apes” and what this means as to the likely “class of persons” to whom the advertisement may have been communicated.
17. The OFLC is Australia’s censor. It is an independent body established by the Federal Government and it applies a classification system for films released in Australia by way of a cooperative agreement reached with each State and Territory government. The OFLC assigns each film a classification in accordance with published guidelines.
18. “Rise of the Planet Apes” was given an “M” classification. The OFLC guidelines provide that a film with the “M” classification “is not recommended for persons under 15 years of age”. There are, however, no legal restrictions on younger people viewing the film.
19. The advertiser argued that given its M rating the film would have a predominantly adult audience and that the content of the advertisement complies with the ABAC.

20. As mentioned earlier, the ABAC is a code about the content of alcohol advertisements and only indirectly refers to placement of advertisements as a guidance tool in assessing issues about content. The relevant operative provisions of the ABAC go to alcohol advertising not encouraging under-age drinking or having strong or evident appeal to children or adolescents.
21. The complaint does not argue that there was anything in particular within the content of the ad which encouraged under-age drinking or which exhibited a particular appeal to children or adolescents. The concern was that no alcohol ad, irrespective of its content, should be screened during films rated for an audience under 18 years.
22. The Panel does not believe it can find that the ad is in breach of the ABAC. The ABAC does not state alcohol ads should not be broadcast at particular times, or placed in particular styles of publication or shown with particular films. The placement of an ad only comes into play when assessing content issues and is not a free-standing standard of itself. In this case, no objection is raised about the ad other than its placement. The Panel does not believe the content of the ad is in breach of the relevant ABAC standards. Policy issues as to whether there should or should not be express regulation of the screening times of the alcohol ads within the cinema is beyond the scope of the Panel's role and is a matter for the industry, community and government to determine.
23. Accordingly, the complaint is dismissed.