

ABAC

ABAC Complaints Panel Determination No: 113/11

Complaint by McCusker Centre for Action on Alcohol and Youth Product: Peroni Nastro Azzuro beer Advertiser: Pacific Beverages

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

23 December 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Peroni Nastro Azzurro beer by Pacific Beverages (“the Advertiser”) and arises from a complaint received 14 December 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 14 December 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 [11085].

The Advertisement

9. The complaint refers to an advertisement in the West Weekend magazine in the Weekend West newspaper on 3 December 2011.
10. The advertisement is set against a white background and features a bottle of Peroni Nastro Azzuro beer on the lower portion of the page and the front part of a dark coloured Alfa Romeo convertible at the top of the page. A blue ribbon on the bottle is extended either side of the bottle and on the left side leads to the vehicle. The text "PERONI ITALY" is placed below the bottle.

The Complaint

11. The complainant argues that the advertisement is inappropriate given the harms involved in drink driving in that it tries to strengthen the association between a high powered sports car and an alcoholic product. Road safety is an important issue in Australia and significant work goes into preventing drink driving. This advertisement uses imagery to show a direct association between a motor vehicle and an alcoholic product.

The Code

12. The ABAC provides that advertisements for alcohol beverages must:
 - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices.

The Advertiser's Comments

13. The Advertiser responded to the questions posed by the Panel by letter received 22 December 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. As a responsible alcohol company we take any complaint or criticism of our advertising extremely seriously. Our own stringent internal controls on the production and placing of advertising reflect the ABAC Guidelines and responsible promotion policies. At the fore of are our aims of ensuring the responsible promotion and advertising of our products, including preventing underage appeal and not depicting alcohol consumption during activities (such as driving) which require a high degree of alertness.
 - b. We would like to set out some background to the imagery used in the specific print image as we judge this to be relevant to the challenges made and illustrates the context of our campaign which we believe is well known amongst consumers. Peroni Nastro Azzurro is Italy's number one premium beer and has been enjoyed by Australian consumers for over 20 years. In 2008 the brand was re-launched, emphasising the blue ribbon (which translates into Italian as "Nastro Azzurro") and focussing on what we consider to be the essential strengths of the brand - Italian style, design, quality and heritage. To do this we formed associations with other products and brands that epitomise in our view these qualities, particularly that of Italian style. In a nutshell, the theme has been "Italian style, applied to beer". Amongst the iconic brands, products and names with which Peroni has sought to associate itself with are chef Giorgio Locatelli, Alessi (makers of the Conico kettle and Starck lemon squeezer), Alfa Romeo, Piaggio (the maker of Vespa scooters) and fashion designer Antonio Berardi. All of the associated products have a distinct Italian heritage and embody a passion for craftsmanship, creative flair, the use of the finest materials and meticulous attention to detail. As well as particular initiatives with brand owners, several of the iconic images and brands in cinema and poster advertising have been used to help build the theme of Peroni as a quality, Italian, stylish brand. In the outdoor and print advertising the images of the Peroni bottle have always been used as combinations of Italian icons. These have included a stylish Italian boot and watch, stylised Italian sunglasses, the Fiat Cinquecento and repeated the image of the boot.

Recently we used the Castiglione Arco lamp, the Piaggio Vespa and repeated the image of the sunglasses.

- c. The vehicle was chosen for its recognisable status as one of a range of leading iconic Italian symbols - not because it is a motor vehicle. It is an attractively styled product with a classic Italian image, well known and associated with stylishly Italian city life.
- d. As the image shows an unopened bottle of Peroni Nastro Azzurro and no individual consuming the product or pouring it, we do not believe that the advertisement is in contravention of the code. The ribbon device appears to connect the premium style and imagery of the design of the vehicle (amongst a range of other designed icons), and not to suggest a link between drinking and subsequent driving.
- e. The poster shows an entirely static image of the vehicle – it is not in motion or about to be driven. It is also unoccupied with no driver shown behind the wheel.
- f. The only physical “association” between the two images is made by the blue ribbon, ‘the Nastro Azzurro’, which is part of our central advertising theme and is common to our overall linking of Italian design icons with Peroni Nastro Azzurro.

The Panel’s View

14. This complaint raises a concern about the ad promoting drink driving. Drink driving is a major public policy issue and the misuse of alcohol in this way causes untold personal hardship and extensive economic and social cost to the community. Accordingly, alcohol producers and advertisers must be very careful in advertising alcohol in a manner which can legitimately raise concerns that drink driving might be regarded in any way as acceptable behaviour.
15. In this case, the ad comprises a still shot of a motor vehicle and a separate still shot of a bottle of the product. The two separate shots are linked by a blue ribbon.
16. The relevant ABAC provision states that an ad must not depict a direct association between alcohol consumption and the operation of a motor vehicle. To breach the standard, the ad needs therefore to depict:
 - (a) A direct association between alcohol and motor vehicles;
 - (b) Alcohol consumption; and
 - (c) The “operation” of a motor vehicle.
17. The ABAC preamble provides guidance as to how the Code is to be applied. It refers to regard being taken to its “spirit and intent” and taking the content of the ad as a whole. For its part, the Panel endeavours to apply a common sense approach to interpretation and avoids legalistic or pedantic reading of provisions. It must however apply the provisions as they are written, and the personal opinions of the Panel members cannot override the natural meaning of the Code and how it would

be understood by a “reasonable person within the class of persons to whom the ad is directed”.

18. The complainant and the advertiser agree that the advertisement directly associates the product with a motor vehicle, but to breach Section (d) this association needs to involve alcohol “consumption” and the “operation” of a motor vehicle. The advertiser’s response to the complaint is that consumption is not portrayed and the featured motor vehicle is not being operated and no driver is shown behind the wheel.
19. While the Panel believes it is undesirable to depict motor vehicles and alcohol in a manner which could somewhat imply drink driving is acceptable, it is quite clear that the ad does not breach the terms of section (d). Firstly, showing an unopened bottle of the product cannot be said to be a representation of “consumption”, even accepting that consumption captures more than physical swallowing of the liquid. Secondly, a static car with no driver or other depictions suggesting the vehicle is in use in some way cannot be said to fall within the concept of the “operation” of a motor vehicle.
20. The Panel is obliged to dismiss the complaint.