

ABAC

ABAC Complaints Panel Determination No: 119/11, 8/12, 9/12 & 12/12

Complaint by Mr David Fagg, Miss Pixie Stardust and Confidential complainants
Product: Carlton Dry
Advertiser: Foster's Group Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

16 February 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns outdoor and internet advertisements for Carlton Dry by Foster's Group Limited (“the Advertiser”) and arises from complaints received on 23 December 2011, 13 January 2012, 16 January 2012 and 19 January 2012.

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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

- 6 The complaints were received by the ABAC Panel on 23 December 2011, 13 January 2012, 16 January 2012 and 19 January 2012.
- 7 The Panel endeavour 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. The first of these complaints was not considered within 30 business days due to the Christmas period and the receipt of subsequent complaints that it was convenient to combine in a single determination. The other three complaints have all been determined within 30 business days.

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. This advertiser obtained pre-vetting approval for this advertisement [11154].

The Advertisements

- 9 The billboard advertisement features the tagline "Destiny is calling but beer is on the other line". The shadow of the text features a picture of a group of young people smiling and laughing, some of whom are holding 375ml bottles of Carlton Dry. The picture as a whole gives the impression that the people are at a party or celebration. To the right is an image of a 375ml bottle of Carlton Dry next to the message "Hello Beer". On the bottom left side of the page is a Drink responsibly logo.
- 10 The Carlton Dry Facebook page has changed since the complaint was made. At the time of the complaint, within the section "Info", it featured a picture of a 375ml bottle of Carlton Dry with the text "Hello Beer" on the label. Under the heading "Basic Information" the following text was included "Welcome to the Official Carlton DRY Facebook Page. Where we try to get you to drink our beer, by telling you how awesome it is. Things like how we take longer to brew it, so it tastes better and you get the chance to win stuff in our non-lame promos. Carlton Dry. The crisp dry taste you demand, with all the wetness you'd expect for a liquid. A beer for people who know who they are, where they are going, and that they are thirsty. Thirsty for Carlton Dry."

The Complaints

- 11 The first complainant argues that the advertisement:
 - a) implies that drinking beer is a viable alternative to pursuing other life goals as the ad explicitly says that a person's destiny should be put off for the sake of drinking beer; and
 - b) taps into a young person's desire not to be left out of the crowd by displaying images of young people who are drinking and having fun using a young

person's insecurities about relationships and life goals to encourage them to drink.

12 The second complainant argues that the advertisement:

- a) has the message that, instead of working towards the future, young people should drink with buddies in the here and now which is highly irresponsible and the antithesis of responsible drinking; and
- b) encourages underage drinking, drink driving and the idea that young people should not strive to fulfill their aspirations but instead take to drinking.

13 The third complainant argues that the advertisements:

- a) have the message that "Fate is calling, however on the contrary beer is on the other line...hello beer", namely that young people should not strive to fulfill their aspirations, but instead their destiny is to take to drinking;
- b) young adults should choose drinking over their fate, future and any dreams or aspirations, alcohol is the great inhibitor and who cares when you have had a few drinks with your mates;
- c) has a message to their target market that contradicts or confuses CSA messages from the Police Force or Department of Health about the effects and statistics surrounding drink driving; and
- d) by the statements on the Carlton Dry website that the campaign is about "saying hello to beer and goodbye to the mundane" are saying that consumers should drink to excess to avoid the mundane.

14 The fourth complainant argues that the advertisement:

- a) has a message that you should give up your hopes and dreams and instead just get drunk which is inappropriate particularly as it is targeting young people;
- b) having an image of happy young people who are choosing beer rather than destiny presents a negative stereotype and message that drinking beer is the most important thing for young people to do; and
- c) the implication to choose beer over life is an unfortunate message to be promoting.

The Code

15 The ABAC provides at Part 1 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 excessive consumption or abuse of alcohol;
 - ii) must not encourage underage drinking;
- b) Not have a strong or evident appeal to children or adolescents...

- d) Not depict any direct association between the consumption of alcohol beverages, and the operation of a motor vehicle.....

The Advertiser's Comments

18 The Advertiser responded to all four complaints and questions posed by the Panel by way of letter dated 23 January 2012. The principal points made by the Advertiser were as follows:

- a) Carlton United Brewers (**CUB**) has an excellent advertising compliance track record and is an original and long-standing signatory to the Alcohol Beverages Advertising Code (**ABAC**). We take our obligations in relation to responsible consumption seriously and believe that the Carlton Dry advertisement in question does not breach the ABAC.
- b) The billboard advertisement is a picture of a gathering of adults facing the camera, with one member of the crowd lifted up by his friends in an act of well-spirited fun. The accompanying tagline is "destiny is calling but beer is on the other line." Also included is a single bottle shot of Carlton Dry (the bottle is closed), and the campaign slogan "hello beer". A few members of the group have one open beer, of which only a portion has been consumed. All group members are over the age of 25 years and appear mature. None has clothing or other elements inconsistent with their age, and there is no facial expression or behaviour that can reasonably be argued to indicate intoxication. The campaign is aligned to a time of summer socialising, when reflection and fun with friends and family is occurring throughout Australia. We are confident that a reasonable person's perception of the word "beer" is one of refreshment and responsible consumption, as is common in social situations across all adult age groups. The presence of "beer" or product cannot alone be interpreted to mean excessive or irresponsible consumption without other supporting cues or information, none of which is present in the advertisement in question.
- c) We argue the advertisement is not in breach of Section (a) the ABAC, as the advertisement contains no portrayed or implied consumption (via the image, text or their combination) that is irresponsible or in excess of the NHMRC guidelines. The tagline taps into the often clichéd use of "Destiny", it makes no reference to life goals or actual concepts linked to adult obligation or responsibility. Destiny implies a predetermination of events by a higher power, a concept we found via research to be incongruous with the independent spirit of Carlton Dry's consumers. The advertisement does not use words like "career", "responsibility" or "life goals". Further, we argue the tagline does not preclude Destiny in place of beer, rather provides balance to the concept with cues of refreshment and socialising with friends. The text "beer is on the other line" is light-hearted and humorous in spirit. That this text is an instruction to deviate from one's day-to-day responsibilities for the sake of drinking beer is not the dominant outcome or a reasonable person's view.
- d) The brand's Facebook page includes the text "(Carlton Dry) is a beer for people who know who they are, where they are going and that they are thirsty, thirsty for Carlton Dry." We are confident that this text does not breach section (a), as it speaks to the refreshment and taste of the product. A brand communication that speaks to thirst quenching properties and taste is compliant with the ABAC.
- e) Regarding alleged comments made on the CUB website, the complainant is referencing quotations made by a CUB representative in a press release distributed to marketing industry publications. This press release is not on the CUB website.

Press releases are not considered advertisements in terms of the definitions included in the ABAC Scheme. The comments are in the context of a news item on the topic of brand marketing and we consider them to be ABAC compliant.

- f) We argue that the advertisement does not breach Section (a) (ii) or (b) of the ABAC, as no elements of the advertisement can be argued to have strong and evident appeal to persons under the age of 18 years. All talent in the commercial are over the age of 25 years (and importantly look mature) and the team was careful in selecting clothing to strengthen the image's portrayal of mature adults. Images of people happily socialising or dancing are commonplace in many advertisements; to say that in the case of alcohol advertisements such imagery presents strong appeal to "young people" is not in line with community standards. The brand's target audience is 18-30 year olds and as such adults aged between 25-30 years feature in the campaign. This is compliant with the ABAC.
- g) We argue there is no strong appeal to children or adolescents' social desires. We would argue the tagline's core concept of Destiny is essentially an adult one, with minor relevance (if any) or meaning to persons under the age of 18 years. Section (b) of the ABAC is explicit in excluding strong appeal to children and adolescents.
- h) The wording of section (d) and past ABAC adjudications prohibit any link between the consumption or the presence of alcohol and the operation of any vehicle or dangerous activity. As there is no vehicle in the advertisement, or any suggestion that the persons in the advertisement have been or are about to drive/operate a vehicle, we argue that it is compliant with section (d) of the Code.
- i) Carlton Dry is a fun, irreverent brand with broad consumer appeal. In essence this campaign balances the earnest concept of "Destiny" in a light-hearted and positive manner that is in line with community expectations on alcohol marketing. The billboard is a simple communication, there is not enough content in the advertisement to uphold the complaints. We respect the complainants' views; however feel that they are subjective extrapolations of the content and not representative of the broad community view.

The Panel's View

- 19 Each of the complaints concern an outdoor advertisement for Carlton Dry. The outdoor advertisement features the taglines "Destiny is calling but beer is on the other line" and "Hello Beer" with a picture of a group of happy young people drinking. One of the complaints also refers to a Facebook advertisement for Carlton Dry that features the statement "A beer for people who know who they are, where they are going, and that they are thirsty. Thirsty for Carlton Dry."
- 20 The complainants are all concerned that the advertisements appeal to young people and encourage them to put off life goals and destiny in favour of consuming beer. Several of the complainants are also concerned that the advertisements encourage excessive consumption and drink driving by counteracting police billboards and public health messages surrounding drink driving.
- 21 These complaints raise issues concerning a number of ABAC provisions and each provision will be considered in turn.
- 22 The first and primary concern common to each of the complainants is that the message is irresponsible in breach of section (a) of the ABAC in that it conveys a message that young people should choose beer over their destiny, which is variously described as

aspirations, dreams and life. The relevant ABAC provision is section (a) that provides that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages.

23 The advertiser responded to this concern by stating that:

- a) The tagline taps into the often clichéd use of “Destiny”, it makes no reference to life goals or actual concepts linked to adult obligation or responsibility. Destiny implies a predetermination of events by a higher power, a concept we found via research to be incongruous with the independent spirit of Carlton Dry’s consumers.
- b) The tagline does not preclude Destiny in place of beer, rather provides balance to such a concept with cues of refreshment and socialising with friends. The text “beer is on the other line” is light-hearted and humorous in spirit. That this text implies an instruction to deviate from one’s day-to-day responsibilities for the sake of drinking beer is not a reasonable person’s view.

24 The Preamble to the Code provides guidance in how the Panel is to assess an ad against ABAC standards. The Panel is to have regard to the probable impact of the ad upon a reasonable person, taking its content as a whole.

25 In this case, there is no doubt that the complainants are all making genuine points about the ad and that they individually feel the ad is sending an irresponsible message about choosing alcohol use over important life decisions; in other words, that people should drink and not act in a mature and responsible fashion. The critical issue for the Panel is whether this is a view which a “reasonable person” would take from the ad as a whole.

26 The concept of the “reasonable person” is borrowed from the traditions of the Australian common law system. Essentially, it means that an “objective” as opposed to a “subjective” test is to be applied. This means that what is important is not that a complainant personally formed a view about the ad, but whether a person who held the ideas, perceptions and attitudes common within the clear majority of the community would hold the same view.

27 This is a case where people might quite understandably and in good faith reach different conclusions. If the ad is suggesting that people should elevate alcohol use over everyday responsibilities, then it would not be presenting a “mature, balanced and responsible approach to the consumption of alcohol beverages” and will breach the section (a) standard. If it is a call to enjoy times with friends away from the day-to-day grind by socialising and having a glass of beer, then it will not breach the Code.

28 The Panel, on balance, believes that the section (a) standard is not breached. In reaching this conclusion, the Panel has noted:

- The ad as a whole is not likely to be taken as advocating the abandonment of life’s goals and responsibilities to consume alcohol. Rather, it would be seen as lighthearted and somewhat irreverent.
- The term “Destiny” and the notion of a “calling” have a predetermined focus e.g. “she was destined for greatness” or “he was called to religious service”, which indicates that it would happen, irrespective of choice. In this context, the message is a humorous play on the concept and is saying “well destiny will happen but have a beer on the way”.

- 29 The second concern raised by the complainants is that the advertisement encourages underage consumption and has strong or evident appeal to adolescents in breach of sections (a) (ii) and (b) of the ABAC. The Panel believes that the advertisement would appeal to a young adult demographic, most likely in the early to mid 20s. The concept of destiny is one that is not likely to have strong or evident appeal to children or adolescents and the people pictured in the advertisements are all young adults that appear to be in their mid 20s. It seems to be pitched at people reaching the post-University, ongoing job and relationship stage of life, as opposed to the late teen period.
- 30 The third concern is that the advertisement encourages excessive consumption in breach of section (a) (i) of the ABAC. The Panel does not believe that this ABAC standard is breached. The advertisement depicts a group of young adults socialising some of whom are responsibly consuming an alcohol beverage and none of whom appear intoxicated. The tagline similarly does not suggest excessive consumption.
- 31 The final concern is that the advertisement encourages drink driving as it counteracts the police and public health messages surrounding drink driving in breach of section (a) or (d) of the ABAC. There is no reference or suggestion in the advertisement of driving and therefore the Panel does not accept that the advertisement breaches either of the relevant standards on this basis.
- 32 Accordingly the complaints are dismissed.