

ABAC

**ABAC Complaints Panel
Determination No: 14, 20 & 21/11**

**Confidential Complainants & Mr Scott Kelly
Product: VB Beer
Advertiser: Fosters Group**

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

21 February 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for VB Beer by Fosters Group (“the Advertiser”) and arises from complaints received 17, 27 and 31 January 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 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by ABAC on 17, 27 and 31 January 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. These complaints were 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 [10532].

The Advertisement

9. The complaint refers to a television advertisement entitled "Slide" which is part of the VB "Real" series of television advertisements.
10. The advertisement opens with two men sitting at a table in a public bar one holding a partially consumed glass of beer and one holding an open stubby of VB as they look toward the other end of the bar with a concerned expression. We then see a man at the other end of the bar wearing a red jacket and sunglasses with a glass of beer in front of him and the barman pouring something into the beer.
11. A voiceover commences "Dear Tom". At this point everything is seen in slow motion as the man with the stubby places it heavily onto the table and gets up as the man next to him is seen shouting something. The voiceover continues "By the time this letter reaches you I will have crash tackled you to the ground". We then see that the substance being poured into the beer in front of the man at the other end of the bar is red in colour.

12. As the man with the stubby lifts himself up onto the bar and throws himself onto his stomach as he slides down the length of the bar toward the man with the coloured beer the voiceover continues “We thought it was just a phase so the guys let a lot of things slide like that labradoodle pup. But you crossed the line when you colour co-ordinated your outfit with your beer.”
13. As the man with the coloured beer looks in shock at the man sliding down the bar toward him the voiceover continues “Anyway, we’re still here for you mate. Stevo”
14. We then see a stubby of VB next to a full glass of beer and the tagline “Real” above a Drink Responsibly logo.

The Complaint

15. The first complainant argues that the ad is irresponsible in that it promotes:
 - (a) violence in bars;
 - (b) attitudes of intolerance of difference; and
 - (c) homophobia and homophobic violence.
16. The second complainant argues that the ad is irresponsible in that it promotes:
 - (a) violence and alcohol;
 - (b) shows an illegal activity of jumping on the bar of a licensed premises; and
 - (c) depicts behaviour unacceptable anywhere in Australia even between friends or for a joke.
17. The third complainant argues that the ad is irresponsible in that it promotes:
 - (a) Violence against gay men;
 - (b) Violence and alcohol/Australian drinking culture; and
 - (c) homophobia.

The Code

18. 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

19. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 7 February 2011. The points made by the Advertiser in relation to the advertisements were:
- (a) This advertisement brings to life the idea of saving your mates from superficial behaviour and sits as part of a campaign titled "Real". The VB "Real" campaign (which includes a number of different advertisements) was inspired by broad population research commissioned by Carlton & United Breweries on 'superficiality', which is most often evidenced as heightened vanity and puffery. The advertisements focus on this societal trend and are based on insights including the fact that people are increasingly presenting an image that is not true to who they are. As is often the case in advertising, the campaign brings this to life with much humour and some highly tongue in cheek and exaggerated scenarios. These are representative of the diverse behaviour found in the broader community and do not reference any one group. It was never the team's intention for the scenario presented in "Slide" to represent stereotypical homosexual behaviours. We believe the character and scenario are far removed from the stereotypical and one dimensional depictions of gay men, which are often very camp or sexualised. Supporting the fact that there is no existing bias, in 2011 VB will be the official beer of Australia's largest celebration of gay and lesbian culture in the Sydney Mardi Gras. The team here believe VB is most definitely a beer for everyone, which is supported by the fact that VB is the largest selling beer in Australia and one of the most popular in every state and territory. It's also important to note that one of the complainant's views of the ad targeting "the perceived manliness of their choices" is not what I believe is represented. This advertisement is about blokes staying true to who they are and not feeling the need to have flashy accessories, costly designer dogs or expensive, overly complicated drinks.
 - (b) In the case of "Slide", a man (Tom) is seen purchasing a drink at the bar – he's colour coordinated his outfit to match his beer. He is seen wearing sunglasses inside and is encouraging the bartender to pour red cordial into his beer in order for it to match his polo shirt. His friend (Stevo), upon witnessing this, leaps to 'save his mate' from this superficial (and over the top) behaviour. He jumps onto the bar and then leaps to his mate's aid. The intent is to stop Tom from removing the beer from the bar. A fellow patron steps back and takes his beer with him as Stevo ultimately slides along the bar. The action in the bar concludes with a final frame of Tom taking off his glasses and looking surprised and a little taken back by the turn of events. The actual feat of flying through the air, landing and then sliding along a bar is not realistic or even feasible in real life (made possible here only with the magic of TV) and appears more exaggerated still through the use of a slow motion film technique. The action takes place as a voiceover states the following: "Dear Tom. By the time this letter reaches you I will have crash tackled you to the ground. We thought it was just a phase. So the

guys let a lot of things slide, like that Labradoodle pup... but you crossed the line when you colour co-ordinated your outfit with your beer. Anyway, we're still here for you mate. Stevo." It's accompanied by low key orchestral music, which transitions into the VB theme song right at the end.

- (c) This advertisement has been viewed in excess of 2.6 million times within Australia post 8.30pm (or on weekends only during live sport). As such I don't believe it's reasonable to represent these three views/complaints as representative of its probable impact upon a reasonable person within the class of people to whom the advertisement is directed (or more broadly).
- (d) The advertisement in its entirety is incredibly tongue in cheek and light hearted from the tone/words of the letter (read as a voiceover) to the scenario represented (it's clearly exaggerated and theatrical). Whilst this is not an 'antidote' as such, the humour is obvious enough to seriously influence how the advertisement would be perceived.
- (e) Consumption throughout the advertisement is minimal and importantly there is no depiction of violence.
- (f) The demeanour of Stevo, combined with the voiceover (which is heartfelt in nature and articulates the motivation for his actions), clearly illustrates that his behaviour is motivated by what he thinks is best for his mate and his desire to save him from his superficial behaviour versus being driven by aggression or anger. It's clear that Stevo is a mate who is concerned about Tom and wants to stop him from taking his superficial behaviour too far - so in this instance his plan is to literally stop him from removing his beer (with extra colour added to match his outfit) from the bar. Stevo needs to make an impact (both on Tom and also the viewers) so he goes about the intervention in a dramatic and unexpected (but completely safe) fashion.
- (g) The crash tackle reference should not be taken out of context as the entire 'letter', the way it's spoken and the fact the letter ends with "we're here for you mate" completely neutralises (at the very least softens) the term. It's also worth flagging young adult males do use language that is sometimes exaggerated (but lacks malice) and should not be taken literally. Furthermore there is no depiction of violence. The advertisement ends before you see Stevo successfully grab the beer from his mate's hand plus there is no physical contact between Stevo or Tom nor are any of the patrons impacted. At the very start of the advertisement, the blokes are seen having a quiet beer (a stubby and pot respectively) and it's clear that 'saving his mate' has motivated his slide down the bar (rather than excessive alcohol consumption). In fact no alcohol is seen to be consumed by Stevo in the advertisement, and any consumption that may be perceived to have happened is minimal given his stubby is more than half full and he is clearly sober looking and sounding.

- (h) Within the scope of ABAC the use of the term “offensive behaviour” refers to bad behaviour which is influenced by alcohol misuse and results in, for example drunken, loutish behaviour. I’d argue that the behaviour is neither offensive nor violent (and not illegal as one complainant claims) for the reasons stated previously and the advertisement shows only “responsible and moderate consumption of alcohol beverages” as is required by section a) iv). It is very clear that the behaviour of Stevo is motivated by a desire to intervene in a situation where his mate is exhibiting extreme superficial behaviour (sunglasses inside and colour co-ordinating his beer to outfit) versus being motivated by aggressive/violent tendencies or alcohol misuse. His demeanour and physical actions (whilst dramatic) are controlled and his voice (represented in the voiceover) is calm and sober sounding. No-one in the advertisement is impacted, inconvenienced or troubled by his actions. As previously stated, Stevo does not engage in violence towards his mate Tom. It’s also worth reiterating that the advertisement in its entirety with all its elements in combination - the music, the voiceover, the slow motion film technique and the sequence of events – leave the impression of a light hearted advertisement as opposed to one that has any heavy, aggressive or violent feel. I’d also emphasise again that I don’t believe these three complaints should be seen to be representative of a ‘reasonable person’s view’.
- (i) The CUB team takes our responsible marketing responsibilities very seriously and both the Alcohol Beverages Advertising Code (ABAC) and the AANA Code of Ethics were carefully considered during the VB campaign development. This advertisement was also pre-vetted by the independent Alcohol Advertising Pre-vetting Service – the AAPS number is 10532.

The Panel’s View

20. The complaints raise issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to discrimination on the basis of sexual preference and intolerance of difference. As explained earlier, Code of Ethics matters are determined by the ASB and this determination will not deal with these concerns.
21. Rather, this determination deals with that part of the complaints which argue that the ad promotes violence in bars and homophobic violence. These concerns bring into play section (a)(iii) of the ABAC. This section requires that ads for alcohol beverages be mature, balanced and responsible in their presentation of the approach to the consumption of alcohol. This standard will not be satisfied if the ad encourages excessive alcohol consumption or abuse of alcohol, under-age drinking, offensive behaviour or the immoderate consumption of alcohol.
22. The argument of the complainants is essentially that the ad depicts one man (“Stevo”) consuming alcohol in a public bar who dramatically and violently intervenes to stop a friend (“Tom”) from proceeding to drink beer at the bar. The complainants each take this to be encouraging or at least associating

alcohol use and violence. Two of the complaints also believe the ad promotes violence against gay men.

23. For its part, the advertiser contends that the theme of the ad is about 'superficiality' and that the scenario depicted is clearly humorous and shows exaggerated behaviour and no actual physical contact is shown. It is argued that a reasonable person would not view the ad as promoting violent behaviour and the implication that violence against gays is expressly rejected by the advertiser.
24. It is without question that alcohol linked violence is a social and public welfare problem in Australia. There have been various public policy responses to the problem of public violence related to alcohol misuse including placing restrictions both on the hours of operation of hotels and clubs and the movement of patrons between licensed premises in particular areas. Clearly alcohol advertising that can be fairly said to promote or encourage violence is contrary to the public interest and the standards contained in ABAC.
25. The Panel has examined the issue of advertising and its association with violence in several previous decisions such as 65/08, 68/08, 87/08 and 94/08 concerning a television ad for Jim Beam. This ad featured a woman in a bar, consuming alcohol while relating her history of stalking a former boyfriend. The complaints against the ad were upheld with the Panel noting:
 - The term "offensive behaviour" used in section (a)(iii) needs to be understood within the context of the section and ABAC as a whole and in this context means unacceptable behaviour related to or influenced by the misuse of alcohol, e.g. drunken loutish behaviour.
 - Humour is a factor to be taken into account in assessing how a reasonable person would view the ad, but humour cannot excuse an ad which taken as a whole breaches the ABAC standard.
 - In the context of the ad, the positioning of the woman in a bar consuming alcohol, while communicating in a slightly irrational manner and relating her history of stalking was offensive behaviour that did not present a responsible approach to alcohol consumption.
26. The Panel accepts that the advertiser has been conscious of the requirements of section (a) and has endeavoured to comply with the standard. The ad was approved through the pre-vetting service. That said, an ad which uses a narrative device of an intervention by a man drinking alcohol aimed to bring another person to their senses by 'crash tackling' them in a public bar was always likely at best to be near the borderline of meeting the ABAC standard.
27. On balance, the Panel believes that the ad breaches the section (a)(iii) standard. In reaching this conclusion the Panel has noted:

- That the man “Stevo” is depicted consuming alcohol.
- The language of the narration and the expression “crash tackle” combined with the depiction of “Stevo” sliding along the bar to affect the tackle could be taken by a reasonable person as associating alcohol use with violence.

28. The complaints are upheld.