

ABAC

**ABAC Complaints Panel
Determination No: 28/10**

**Complaint by Miss Becc Richey
Product: VB
Advertiser: Fosters Group**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Fran Baum – Member

28 May 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for VB beer by the Fosters Group (“the Advertiser”) and arises from a complaint by Miss Becc Richey received on 27 April 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 is in the form of an email received by the ABAC Panel on 27 April 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 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 the advertisement (ABAC10031).

The Advertisement

9. The complaint refers to a television advertisement for Victoria Bitter beer.
10. The advertisement begins with General Peter Cosgrove sitting at a bar with a glass of beer in hand and a second glass in front of the empty stool next to him and saying "There are many departed friends I'd love to be sharing a beer with at this time of memorial." Text is superimposed on the screen, "General Peter Cosgrove Former Chief of the Australian Defence Force". We then see several different scenes, namely, black and white photographs in a photo album held by an elderly man (Mr Payne, VC awarded veteran) sitting in a folding chair on a beach with a 375ml bottle of VB in his hands and a second bottle in the sand alongside an empty chair next to him, another man looking contemplative and a photograph of a young man in army uniform surrounded by family photographs. General Cosgrove continues "I reckon most of them would be hated to be remembered as anything other than regular Aussie men and women. Yet what they achieved was nothing short of extraordinary, so it's only fair that in turn we support the great work of the RSL and Legacy in honouring their sacrifice." The scene changes to an empty chair with the text "raiseaglass.com.au" superimposed as he continues "One simple way you can do this is to go to raiseaglass.com.au". The camera then returns to General Cosgrove sitting at the bar with a beer in hand superimposed with the text "Support the Appeal at Raiseaglass.com.au" and the logos for the Returned Soldiers League, Legacy and VB as he raises his glass and says "on behalf of all our fallen heroes and their families, cheers".

The Complaints

11. Miss Richey argues that the ad asks for support for the RSL by encouraging drinking and to encourage any age group to drink alcohol is inappropriate.

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 excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.

Arguments in Favour of the Complaints

12. In favour of the complaint, it can be argued that the advertisement breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol and breaches section (a) (i) & (iii) of the ABAC in encouraging or promoting excessive consumption or misuse or abuse of alcohol by its use of an appeal to raise funds for the RSL/Legacy to encourage the consumption of alcohol.

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 20 May 2010. The points made by the Advertiser in relation to the advertisement were:
 - (a) First some background on the campaign that this television commercial sits as part of. The "Raise A Glass Appeal" is a joint fund-raising initiative that aims to raise \$1.3 million for the welfare programs of the RSL and Legacy. The Appeal is in its second year. A series of commercials promote the Appeal, and those featured in the commercial are telling their own true stories after expressing a desire to pay tribute to their fallen loved one, and to toast their ultimate sacrifice. Each tribute is comprised of personal reflection including personality insights and information about their service and ends with a glass being raised and the product partially consumed.
 - (b) It's worth noting that in 2009 there were three ABAC rulings (31/09, 34/09 and 44/09) in relation to this series of commercials and section a) of ABAC. All these complaints were dismissed. This obviously was a consideration when the decision was made to run the commercials again in the second year of the appeal and this single complaint (28/10) constitutes the only complaint we have received in 2010 through the ABAC complaints system.
 - (c) The complaint relates to the commercial which shows General Cosgrove seated at the bar reflecting on those who have served and also the Raise a Glass Appeal. At the end of the commercial he is seen to lift his pot of beer

and take a sip as a toast to all those who have served. There is also other imagery that appears throughout the commercial which involves moderate consumption of one beer although it's fair to say it's not a focus. The most obvious consumption is when Cosgrove 'raises a glass' (toasts) at the end of the commercial. The ritual of toasting someone with a drink, alcoholic or otherwise, is a widespread cultural norm - it is part of many occasions; from birthdays to weddings, work functions to social events. However obviously the treatment, tone and context are important and to this end we strongly believe the portrayal of the product in this commercial is mature and balanced. It represents a small part of the broader tribute and all our 'talent' (in this case General Cosgrove) is represented as solemn, completely alert and sober (through their speech and ability to recall information) and the drink they only partially consume represents no more than 1.4 standard drinks. Neither can the commercial be seen as encouraging excessive consumption for the reasons already outlined, plus it is also clear the second beer is for the deceased person being discussed and hence a symbolic gesture. The commercial contains no call to action to purchase beer. Whilst we acknowledge the commercial clearly has a link to a beer brand (VB), the raising of funds for the Appeal is not actually linked to the purchase or consumption of beer. In fact the VB team is making a guaranteed \$1million contribution to the appeal, which is not dependant on or linked to sales. The general public and Carlton and United Breweries' customers are also encouraged to make a contribution.

- (d) As to the key point made by the complainant: "Encourage any age group to drink alcohol is not appropriate." Generally speaking, alcohol manufacturers are permitted to promote their products but ultimately they must ensure that it upholds the ABAC and is also pre-vetted, which was the case with this commercial and also abides by the broadcast guidelines in place. Whilst we acknowledge that the Appeal and commercials may not be to the complainant's personal taste, we firmly believe that the commercial upholds both ABAC and AANA Advertiser Code of Ethics. The program has been developed with the national executives of the RSL and Legacy and Appeal supporter General Peter Cosgrove. We're confident the campaign is respectful and appropriate, and that the monetary contribution will (again in this, the second year), have a significant impact for the wider ex-service community.

The Panel's View

14. The Panel made a determination (34 & 44/09) in relation to an almost identical version of this advertisement that was used in 2009 and also in relation to other advertisements used in this campaign in 2009 (31/09).
15. The complaint raises essentially two issues for decision. The first is whether the approach of the ad to encourage consumption of the product in order to raise funds for RSL/Legacy is inconsistent with the standard of maturity, balance and responsibility in alcohol advertising required by section (a) of the ABAC. The second issue which also relates to section (a) of the ABAC is whether it is a breach of the ABAC to encourage any age group to drink alcohol.

16. For its part, the advertiser argues that the campaign aims to raise \$1.3 million for the welfare programs of the RSL and Legacy and \$1 million of that contribution is made regardless of how much product is sold. The campaign was developed with and approved by the organizations. The advertiser goes on to claim that the ads are consistent with ABAC standards, in particular they are respectful and appropriate, the participants are clearly not affected by alcohol and the depiction of consumption is very moderate.
17. The ABAC standard in section (a) has both a positive and a negative dimension. Ads are to present a mature, balanced and responsible approach to the consumption of alcohol which is a positive obligation. The provision goes on to provide “negative” standards which ads are not to offend, namely encouraging excessive consumption, under-age drinking, offensive behaviour and misuse of alcohol. The ABAC preamble provides that conformity of an ad with the ABAC standards is to be assessed in terms of its probable impact upon a reasonable person taking the content of the ad as a whole.
18. As in determination 34-44/09 the Panel takes the view that it is not its proper role to decide if the RSL and Legacy should have or should not have agreed to join with the advertiser in the ‘raise a glass’ appeal. This decision, like the decision of a sporting team or a sports code to accept a sponsorship arrangement from an alcohol company raises important questions of public policy about the role of alcohol within Australian life. It is for government in conjunction with the public health sector and the alcohol industry amongst others to determine what the policy position should be on these weighty matters. This Panel cannot decide such issues.
19. Rather it is the Panel's role to accept the RSL and Legacy did agree to the ‘raise a glass’ campaign, and then examine the individual ad against the ABAC standards. In doing this it is the Panel's view that the ad does not breach the ABAC. There is nothing in the content of the ad itself which is irresponsible or unbalanced. While the Appeal could be said to encourage consumption of the product in order to support the RSL and Legacy this is not of itself a breach of the ABAC. The ad does not depict or encourage excessive consumption, or alcohol affected behaviour, or anything else which can be said to be inconsistent with the ABAC.
20. The complaint is dismissed.