

ABAC

ABAC Complaints Panel Determination No: 41/11

Complaint by Mrs Dawn Wallis Product: Carlton Draught Advertiser: Fosters Group

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

5 July 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television segment relating to Carlton Draught by the Fosters Group (“the Advertiser”) and Network 10 and arises from a complaint received 30 May 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 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 30 May 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 the audio and billboard components of this advertisement [10312 & 10709].

The Advertisement

9. The complaint refers to a television segment featured during the half-time intermission of an AFL football broadcast on Network 10.
10. The television advertisement commences with a billboard advertisement for Carlton Draught prior and subsequent to the broadcast of first-half highlights of the AFL football game accompanied by an audio version of Puccini's Nessun Dorma with altered lyrics.
11. The billboard featured prior to the highlights features a picture of a glass of Carlton Draught with the text "Made from Beer" above the text "Proud Sponsor". The billboard is accompanied by a voiceover "Carlton Draught, Made from Beer".
12. The script for the audio version of Puccini's Nessun Dorma that accompanies the game highlights is:

"Footy looks better in slow motion
It makes me want to hug a stranger"

Now
I've hugged a fat man and I'm being chased
I'm getting thirsty
I want a beer
Fresh beer
Where is my beer?"

13. The beginning of the game highlights are superimposed with the Carlton Draught logo and the text "Half Time". The billboard at the end of the highlights features a picture of a glass of Carlton Draught with the text "Made from Beer".

The Complaint

14. The complainant argues that the advertisement is a classic example of linking beer consumption with sporting prowess.

The Code

15. The ABAC provides at Section (c) that advertisements for alcohol beverages must:
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
16. The ABAC provides at Section (d) 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

17. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 15 June 2011. The points made by the Advertiser in relation to the advertisement were:
- (a) Carlton & United Breweries has an excellent advertising compliance track record and is an original and long standing signatory to the ABAC.

CUB contributes more than \$2 million annually towards responsible consumption initiatives. The complaint refers to Carlton Draught's sponsorship of the AFL broadcast on Channel Ten (28th May 2011). The Channel Ten partnership is built from the brand's sponsorship of the AFL. It includes opportunities for "integrated sponsorship content" separate from the brand's television commercials, which appear in the standard ad breaks. For background, the TVC campaign is called "Slow Mo" and portrays everyday pub scenes in slow motion. "Slow Mo" stays true to Carlton Draught's tradition of parody, which has been evident in the beer's advertising for close to a decade. The TVCs have aired since launched last year with a total audience of 16 million, and the integrated sponsorship content have been seen 5.3 million times as part of Channel Ten's AFL broadcast since the start of the 2011 season. It's important to note our sponsorship principles with Channel Ten, consistent with all advertisers. Content placed in ad breaks is the responsibility of CUB, the advertiser. Content within any program televised by Channel Ten is their editorial responsibility. We work closely with Channel Ten on how our brands are represented in broadcast, but we do not have the same authority or sign off rights as we have with traditional commercial placements. CUB had input and approval rights of only certain "brand elements" of the package referenced in the complaint: the music (Puccini's *Nessun Dorma* with altered lyrics) and the final billboard graphic. It's important to note that both these brand elements were pre-vetted (music AAPS number 10709 and vision AAPS number 10312 as part of "SlowMo" campaign approval). The accompanying vision was selected by Channel Ten. The nature of their editorial sovereignty and live sport means CUB could not be part of selecting the vision nor approve it. However, CUB counselled Channel Ten on the Code and provided guidelines on how to select compliant vision.

- (b) Channel Ten's understanding of the Code is evident in their selection. The vision is predominantly of the previous passage of play, and they focus on a fan that is clearly over 25 years old and in a natural spectator setting. While CUB doesn't believe integrated sponsorship content can be adjudicated in the same manner as traditional advertising, we maintain the combination of our "brand elements" and Channel Ten's vision does not breach the ABAC. Regarding questions two and three, there is no vision of players consuming alcohol. Neither do the brand elements directly suggest alcohol consumption by the players. And neither component implies consumption. As the professional standards of AFL are widely known, merely the combination of the brand elements and the vision would not lead to the average viewer assuming alcohol was consumed by the players prior to or whilst playing the game. Furthermore, there is no narrative connection between the two parts; the only common link is slow motion. As the vision is of live highlights selected each week and the brand elements are produced in advance, it would be impossible to create a narrative link.
- (c) There is reference in the lyrics to consumption by a spectator. The first line "footy looks better in slow motion" clearly refers to a viewer. The

elation of seeing your team kick a goal is evident in the next line “it makes me want to hug a stranger”. Next the lyrics tell of the spectator, having hugged a stranger, being chased away by that stranger (“Now, I’ve hugged a fat man and I’m being chased.”) The remaining lyrics tell of the spectator being thirsty, wanting a beer and enjoying a beer: “I’m getting thirsty, I want a beer, fresh beer, where is my beer.” No alcohol consumption has been portrayed nor implied with those playing the sport. Not only is no consumption shown, there is no transformation that could imply any type of success. Neither the vision, brand elements nor their combination take the audience from a starting point to a conclusion with mood-altered or “more successful” players or characters.

The Panel’s View

Is the half-time segment an “alcohol beverage advertisement”?

18. The complaint raises a threshold issue for the Panel given the advertiser’s position that the television segment referred to in the complaint is not an advertisement but flows from its sponsorship of AFL football. The ABAC scheme does not extend to sponsorship arrangements by alcohol companies of sports or other cultural or community activity. As a result, the Panel has no role in assessing such arrangements. The ABAC scheme can however intersect with sponsorship arrangements in two respects, namely
 - An individual ‘alcohol beverage advertisement’ which flows from the sponsorship arrangement may be subject to the ABAC code and processes; and
 - The scheme protocol relating to the promotion of alcohol at events may apply to some activities which take place as a consequence of a sponsorship arrangement.
19. Accordingly, the Panel’s starting point is to assess the television segment identified by the complaint and to determine:
 - Is it ‘alcohol beverage advertising’ to which the ABAC scheme applies? and if so
 - are ABAC standards breached as argued by the complainant?
20. The advertiser argues that it is a sponsor of the Network 10s AFL coverage and that the sponsorship arrangement includes opportunities for “integrated sponsorship content” which is separate and apart from the advertiser’s television commercials which are broadcast during standard ad breaks. The distinctions between “integrated sponsorship content” and an advertisement appear to be as follows:
 - An ad appears during a recognized ad break from the actual programmed broadcast material e.g. the AFL game, while integrated sponsorship content appears during the actual broadcast program.

- The advertiser has responsibility for the ads appearing within ad breaks, while the television network has responsibility for the content of its broadcast program.
 - The advertiser sets guidelines for, and has some control over, integrated sponsorship content in terms of:
 - Use and representation of its brand
 - Use of “brand elements” such as the music selection and lyrics and the final billboard.
 - The television network, and not the advertiser, selects the vision from the game to be used in the integrated sponsorship content.
21. The advertiser goes on to argue that Network 10 has “editorial sovereignty” over the vision and its ultimate production as a complete package; but the advertiser “counselled” and provided guidelines to Network 10 on the ABAC and on how to select “compliant” vision. Taken as a whole, the advertiser contends the segment complained about is not “an advertisement” and cannot be “adjudicated in the same manner as traditional advertising”.
22. As stated, the ABAC scheme is designed upon a model of the assessment of an individual execution of an ad for a specific alcohol beverage against ABAC standards. The scheme does not go to sponsorship arrangements and hence the Panel has no authority to assess the desirability of particular sponsorship arrangements. In other words, it is a matter for industry, health advocates and ultimately government to set the public policy framework which should apply to the various means, such as sponsorship, by which alcohol is or could be promoted and marketed.
23. That said, a sponsorship arrangement might result in an ad being created which does fall within the ambit of the ABAC scheme and in the Panel’s view the “integrated sponsorship content” which was shown at the half-time interval of the broadcast AFL game is “an alcohol beverage advertisement” within the intended scope of the ABAC scheme. In reaching this conclusion, the Panel has noted:
- The advertiser exercised a large measure of influence over the “look and feel” of the segment in terms of use of brand, music, lyrics and the general type of vision which would be suitable for use in the segment.
 - The use of the product’s brand and “brand elements” give the segment a strong connection to the advertiser’s marketing approach used in its “traditional advertising”.
 - A reasonable viewer might distinguish the segment from a standard advertisement appearing in an ad break, but would be in no doubt that the segment is directly promoting the alcohol product brand.

- The music lyrics, which are a “brand element”, directly go to the consumption of alcohol.

Does the ad breach the ABAC Code?

24. The complainant is concerned that the advertisement links beer consumption with sporting prowess. This concern brings into play two provisions of the ABAC, namely
 - (a) Section c(i) which prevents the depiction of the consumption or presence of the product as a cause or contributor to sporting success; and
 - (b) Section (d) which prevents the depiction of any direct association between the consumption of the product and the engagement in sport.
25. The advertiser responds to this argument by stating:
 - There is no depiction or suggestion of consumption of alcohol by the football players;
 - The audio script is referring to a spectator at an AFL game and not a player and this is supported by the vision selected by Network 10.
26. The Preamble to the Code provides that in assessing the consistency of an ad against Code standards, the Panel is to have regard to the probable impact of the ad upon a reasonable person taking its content as a whole.
27. Section (c) of the Code is framed in wide terms. Its essential point is that an advertisement is not to imply that the consumption or presence of alcohol is a cause or contributor to achieving success. The key issue being the casual link between alcohol and success.
28. The ad certainly is associating the product with sport; however, this is not the test contained in the section. A majority of the Panel does not believe a reasonable viewer would take the ad as implying that sporting or other success is caused, or contributed by, the use of the product. When the segment is viewed as a whole, the reference to “I’m getting thirsty” and “I want a beer” in the lyrics clearly relate to a spectator observing the game, rather than a player in the game. In any event, it does not appear that a suggestion is raised that alcohol leads to sporting success.
29. Section (d) of the Code provides that an alcohol advertisement must not depict a direct association between the consumption of alcohol and the engagement in sport and accordingly any depiction of the consumption of alcohol in connection with the engagement in sport must not be represented as having taken place before or during engagement of the activity. The provision has several elements namely:
 - A direct association between alcohol and sport

- Alcohol consumption and
- The engagement in sport

30. While the segment does raise a direct association between alcohol and sport, there is no consumption of alcohol depicted in the ad. The lyrics imply consumption; however it is clear from the segment as a whole that the players engaged in the sporting activity are not the subject of the desire to consume alcohol, but rather it is a spectator of the game who is associated with potential alcohol use. This means that section (d) is not breached.
31. Accordingly, the Complaint is dismissed.