

ABAC

**ABAC Complaints Panel
Determination No: 41/12**

**Confidential Complainant
Product: Carlton Draught
Advertiser: Foster's Australia Limited**

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

1 May 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an in stadium player substitution announcement at an AFL game for Carlton Draught and arises from a complaint received 16 April 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 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 16 April 2012.
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. Fosters Group did not obtain pre-vetting approval for the announcement as they considered it a responsibility announcement and not an advertisement.

The Advertisement

9. The complaint relates to a large screen notice and accompanying loudspeaker announcement which took place at the stadium hosting the AFL football game between Carlton and Collingwood on 13th April 2012.
10. There is no recording of the announcement but the script for the announcement was:

Pre-Game Announcement:

VO: The Carlton Draught substitutes for today's match are (PLAYER) for (TEAM) & for (TEAM) it's (PLAYER). When the sub gets activated, you might want to substitute beer for water...

On rotation

...and those tracksuit pants for a smart slack.

....and those acid wash jeans for a functional cargo pant.

...and that frozen lasagne and chips for a lukewarm lasagne and chips.

...and that poorly spelled banner for a slightly less poorly spelled banner.

In-Game Announcement:

VO: (TEAM) has activated their Carlton Draught substitute. (PLAYER) has replaced (PLAYER). Now might be the time to substitute a beer for a water.

Three Quarter Time Announcement:

VO: And let's check the Carlton Draught substitutes for today's match. Both teams haven't / have activated their subs and the players available /off the field are PLAYER & PLAYER. TEAM has activated their substitute and PLAYER will no longer take part in today's match. TEAM still have PLAYER on the bench who can be activated in the final quarter.

To be at your best, substitute beer for water...

On rotation

...and those tracksuit pants for a smart slack.
...and those acid wash jeans for a functional cargo pant.
...and that frozen lasagne and chips for a lukewarm lasagne and chips.
...and that poorly spelled banner for a slightly less poorly spelled banner.

The Complaint

11. The complainant argues that the advertisement:
 - (a) advocates replacing your glass of water for beer in a stadium attended by children and teens and where a huge number of people drive to the football;
 - (b) offends standards of taste and decency; and
 - (c) Is an undisguised attempt at getting people to consume more units of alcohol.

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;
 - ii) must not encourage underage drinking;

- iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages
13. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
- b) Not have a strong or evident appeal to children and adolescents....
14. The ABAC provides at Section (d) that advertisements for alcohol beverages must:
- d) Not depict any direct association between the consumption of 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

15. The Advertiser responded to the complaint and questions posed by the Panel by letter received 26 April 2012. The points made by the Advertiser in relation to the advertisement were:
- a. CUB is strongly committed to upholding community standards in relation to our advertising and marketing. CUB applies the Code to all of our advertising and marketing.
 - b. Over the past 6 months, the Carlton Draught brand team and CUB corporate affairs have been in discussions with the AFL regarding opportunities to undertake responsible consumption activities at the grounds. As a result of this, an agreement has been reached to utilise the new "substitute rule" as a vehicle to drive responsible consumption, with the campaign reminding adult AFL crowds to 'sub in a water' during the match.
 - c. The name of the rule is the "Carlton Draught Substitute" and this is verbally included in the responsibility message. While the message is being read out, the screen at the ground shows the names of the players being substituted, as well as the Carlton Draught logo. This was done with the knowledge of CUB. CUB, in conjunction with the AFL controls the portrayal of the brand in the announcement. CUB has an ongoing sponsorship relationship with the AFL. The responsibility message is a key part of that agreement.
 - d. The statements cannot be interpreted as suggesting that beer should replace water. This is a responsibility message that has been designed to play on the "substitute rule" that now forms part of AFL matches. These messages unambiguously encourage spectators at the AFL to consider switching away from beer to water in order to reduce any risk of excessive consumption at AFL games. This message which runs throughout the game, provides regular updates to spectators to consider their beer consumption.

- e. The announcement is a responsibility message, encouraging patrons at a football match to consume in moderation and responsibly. It has no appeal to children and there is no plausible association between the announcement and the operation of a motor vehicle.

The Panel's View

Is the announcement an "alcohol beverage advertisement"?

16. The complaint raises a threshold issue namely whether the announcement, that is part of CUB's sponsorship arrangement with the AFL, is an "alcohol beverage advertisement" for the purposes of the ABAC. 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.
17. Accordingly, the Panel's starting point is to assess the announcement 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?
18. The Panel notes that the announcement was used to convey match information about players substitution and a "drink responsibly" message but believes it is an alcohol beverage advertisement for the following reasons:
 - the announcement included the Carlton Draught brand and logo and referred to beer
 - the advertiser exercised a large measure of control over the "look and feel" of the announcement in terms of use of brand name and logo and the script.
 - a reasonable patron might distinguish the segment from a standard advertisement, but would be in no doubt that the purpose of the announcement is the promotion of the alcohol product brand.

Does the ad breach the ABAC Code?

19. The essence of the complaint is the interpretation of the voice over message taken by the complainant and whether this interpretation is a fair conclusion of what the message actually was. The complainant took the message as "replace water with

beer". The Advertiser states that the intention and actual wording used was in fact the opposite ie. "replace beer with water".

20. There is no recording of the actual announcement for the Panel to review and as a result the Panel has little option but to accept that the written script supplied to the ground announcer was in fact the wording used. In this case, either the complainant's recall or interpretation are incorrect or the message itself is unclear.
21. The Panel believes the context of the announcement within the normal manner which player substitutions are announced establish that the meaning is that water is replacing beer. This is because the player who is coming off the field is named first and his replacement onto the field is named second. ie. Substitute beer for water. Equally the other "tongue in cheek" examples broadcast eg. "and those tracksuit pants for a smart slack" list first the item being replaced with the preferred item.
22. The Panel accepts the intention of the announcement as reflected in the written script and must assume the actual announcement followed the script. In this case, there is no breach of ABAC standards. The advertiser should however be mindful that confusion is possible and the language used needs to be clear.
23. The complaint is dismissed.