

ABAC

**ABAC Complaints Panel
Determination No: 71/11**

**Confidential Complainant
Product: West End Beer
Advertiser: Lion Nathan**

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

16 September 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for West End Beer by Lion Nathan (“the Advertiser”) and arises from a complaint received 22 August 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 22 August 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 this advertisement.

The Advertisement

9. The complaint refers to a television advertisement.
10. The advertisement opens with two men sitting at a public bar with partially consumed glasses of beer. One man says "Did you hear the theory about 'beer karma'?" The other man responds "Beer karma?" The first man says "They reckon for every one of these a Victorian cops it". The other man smiles and both men take a sip of beer.
11. We then see a dream sequence accompanied by harp music where a woman in a dress is holding onto a string and looking around happily as stylishly dressed men and women at a café look on. We then see a giant ball of string roll into the table to the horror of the people at the café and one of the patrons gets coffee all over his clothes. The scene is reminiscent of a Victorian Tourism Commission advertisement.
12. We then return to the bar where the men are both laughing. The second man says "That is awesome" and the first man says "Well, they did nick the grand

prix". The second man nods and smiles and they clink their glasses together and take another sip of beer.

13. The final scene is a group of people sitting on a lush green lawn at tables under "West End Draught" umbrellas on the bank of the River Murray as a paddle-steamer passes by. The West End Draught logo and the tagline "It pays to be a local" is superimposed on the scene.

The Complaint

14. The complainant argues that the ad is offensive and discriminatory against Victorians.

The Code

15. 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

16. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 6 September 2011. The points made by the Advertiser in relation to the advertisement was:
 - (a) The advertisement was pre-vetted internally at Lion and by AAPS, receiving approval from both, before it aired. In introduction, I would first like to address the concept of 'Beer Karma'. The 'Beer Karma' campaign – which the 'Red Ball' advertisement in question forms part of – taps into South Australian pride by perpetuating the long standing rivalry between South Australians and Victorians. West End Draught has a long and proud history in South Australia, and just like local residents, it champions the benefits of the South Australian lifestyle. As such, the brand has a history of light hearted marketing campaigns that play on the rivalry between South Australians and Victorians. In Australia, many of our states enjoy such rivalries – the same can be said for New South Wales and Queensland, who bring this to life each year through the State of Origin. This kind of banter between states is widely accepted within the community as playful and humorous, and is certainly not intended to be offensive.
 - (b) The brand has been using the 'Beer Karma' creative concept for almost five years now and the overwhelmingly positive feedback we have received to date gives us confidence that the campaign is in line with community standards.

- (c) The creative is based on the premise that every time a South Australian drinks a West End Draught, a Victorian coincidentally falls into a bit of bad luck or “cops it” based on the theory of ‘Beer Karma’. In the ‘Red Ball’ TVC a scenario is depicted in which ‘Beer Karma’ comes to life while two mates enjoy a West End Draught in a pub in SA. Meanwhile in VIC, a group of clearly exaggerated Victorians are sipping coffee in a café when a giant red ball of wool (made famous through the Tourism Victoria advertisements) tumbles into the area, knocking into the people and spilling their coffee. The TVC then crosses back to the two mates in SA, who are contemplating the theory of ‘Beer Karma’ as they continue to enjoy their West End Draught. Whilst a fictional connection is made between West End Draught and the Victorians’ bad luck, this experience is clearly comical hyperbole and is positioned as such. It is not expected a reasonable person would assume this to be the actual result of consuming a West End Draught. Furthermore, at no stage do the two men drinking the West End Draught actually ever witness the Victorians “copping it” – to them ‘Beer Karma’ remains little more than a myth. They are both drinking one beer each, and are not shown to be consuming alcohol in an irresponsible manner or in contrary to Australian drinking guidelines. Lastly, the Victorians who experience the bad luck are not drinking or in the presence of alcohol at all. The ‘Red Ball’ TVC is a parody of a well-known Tourism Victoria advertisement, and plays on the existing rivalry between SA and VIC. It does not promote any offensive behaviour – the treatment is light-hearted, and the bad luck the Victorians experience is little more than some spilt coffee.

The Panel’s View

17. As explained in paragraphs 2-4, alcohol advertising is subject to a range of codes, the most important in scope being the AANA Code of Ethics and the ABAC. This determination is an example of the ABAC scheme adopting a “safety net” jurisdiction to ensure that public complaints receive appropriate consideration, even if the issue raised in the complaint does not squarely raise ABAC standard issues.
18. In this case, the complainant is concerned that the ad is offensive to and discriminates against Victorians. The ABAC does not go to broad issues of discrimination as such, but rather the AANA Code of Ethics in section 2.1 provides that advertising shall not portray people...in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.
19. The ASB, which determines issues under the Code of Ethics, assessed however that the complaint did not raise a matter on which it could decide and declined to consider the complaint. Accordingly the Panel is obliged to deal with the complaint, even though it does not raise an issue about the promotion of alcohol as a product. In other words, the complainant would presumably be concerned about an ad advertising any product if the premise of the ad was to portray Victorians in a way which the complainant considered to be offensive or

discriminatory. This means that there would have been a complaint if the product being advertised, for example, was milk, shoes or motor vehicles, as opposed to alcohol.

20. The most applicable ABAC provision in relation the complainant's concern is section (a) which provides that alcohol beverage advertising must present a mature, balanced and responsible approach to alcohol consumption and must not, in section (a) (iii) promote "offensive behaviour".
21. While the ad is clearly offensive to the complainant, the Panel has previously established that the expression "offensive behaviour" in section (a) (iii) needs to be understood in the context of the section and the ABAC as a whole. In this context, the term is referring to behaviour which is influenced by or related to alcohol use e.g. drunken loutish behaviour, as opposed to a general standard as contained in section 2.1 of the Code of Ethics.
22. The Panel does not believe the ad is in breach of the ABAC. In reaching this conclusion, the Panel has noted:
 - The ad is not portraying, nor can it be said to be promoting, "offensive behaviour" within the meaning of section (a) (iii) *i.e.* there is no suggestion of alcohol-related bad behaviour.
 - The ad is a parody of the well-known Victorian tourism advertisement featuring a large red ball of knitting thread and would be viewed by a reasonable person as a lighthearted and generally tongue-in-cheek reflection on the rivalry between Victorians and South Australians.
 - There is no suggestion of excessive or irresponsible alcohol consumption occurring within the ad.
23. The Panel recognizes that the complainant is quite genuine in their concern about the ad. It would have been preferable for the ASB to have considered the ad under the Code of Ethics but this has not occurred. However, the ad cannot be said to breach the ABAC standards and accordingly the complaint is dismissed.