

ABAC

ABAC Complaints Panel Determination No: 96/12

Complaint by Lisa Leake Product: VB Advertiser: Carlton United Brewers Limited

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

11 February 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a promotion for VB, a product of Carlton United Brewers Limited (“CUB”) (“the Advertiser”), within commentary during a cricket broadcast by the Channel Nine Network and arises from a complaint received 17 December 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 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 17 December 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 not decided within the timeframe due to the Christmas/ New Year break.

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 script of a message to be broadcast however the commentators did not strictly follow the approved script and provided ad lib comments.

The Advertisement

9. The complaint refers to a segment sponsored by CUB for VB featuring comments by Mark Taylor during a cricket broadcast commentary. Mr Taylor is one of the commentators on cricket games broadcast on the Channel Nine Network. The advertiser has supplied a video of the commentary during the time referred to in the complaint and the following statements were made by the commentators. The commentary was broadcast with vision of the Australian cricketer Michael Hussey batting during the day's play and drew attention to Mr Hussey's achievement scoring a test century:
 - (a) Mark Taylor: Here is Mr Cricket. VB hard earned player of the day. On a test match hundred. Dropped on 96. Went on to make his 19th hundred. Here it is. Should have been out. Well done Michael Hussey. ["Hussey", "VB Hard Earned Play of the Day" and the VB logo was superimposed on the screen. The VB theme song was also played for a short period].
 - (b) Other commentators: Well read Mark Taylor. Hasn't he got some feeling for that VB... He's the best, he's the only one who should read that.
 - (c) Mark Taylor: I had real trouble I thought that I might win the award for the VB hard earned player of the day.
 - (d) Other commentator: It's alright mate you've only got an hour to go.

The Complaint

10. The complainant argues that the advertisement:

- (a) Subjected her children to the promotion of an alcoholic beverage by a man who is a role model to them. Children look up to Mark Taylor because he is a former Australian cricket captain and a current cricket commentator.
- (b) The comment was not overtly an advertisement as it was made during the cricket commentary and advertorials like these are a disturbing form of advertising, particularly in this instance as it advertised alcohol during a television transmission likely to be watched by children.

The Code

- 11. The ABAC provides at Section (a) that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - ii) must not encourage under-age drinking
- 12. The ABAC provides at Section (b) that advertisements for alcohol beverages must not have a strong or evident appeal to children and adolescents....

The Advertiser's Comments

- 13. CUB responded to the complaint and questions posed by the Panel by letter dated 10 January 2013. The points made by CUB in relation to the advertisement were:
 - (a) As a sponsor of the Australian Cricket team we have access to advertising space during the cricket telecast and are also able to purchase content integration spots. The advertisement in question is an example of the latter. The questions you have requested we respond to regarding the complaint are below.
 - (b) Mark Taylor is a much-celebrated Australian cricketer whose career spanned the 80s and 90s. As flagged yes he was Australian Captain from 1994 to 1999 (source: Wikipedia). Whilst a genuinely popular sportsman, those familiar with him from his actual playing days would have to be almost wholly adults. And whilst his profile has extended beyond the 90s through sporting history, his role as a cricket commentator and ambassador for Fujitsu air conditioners, to classify Taylor as having strong or evident appeal to children is arguably incorrect. That said, from an ABAC perspective most importantly it is about how we portray and present Taylor (aged 48) in the advertisement itself and in this case, when you combine his profile with the 'content' he delivered, we definitely feel it has an adult tone.
 - (c) The actual spot in question relates directly to the state of play and contains some very limited banter with his fellow commentators plus a super that states: "VB Hard Earned Play of the Day". The spot does not contain any particular 'bells and whistles' or even core elements that are commonly used to strongly engage children. Neither does it contain the hallmarks of advertising/packageing previously flagged as watch outs through ABAC panel determinations, which include the use of certain characters/personalities, colours and music.
 - (d) Cricket viewer data confirms the demographic is overwhelmingly adult. On average, cricket TV viewership generally comprises 92% adults (test cricket has a similar viewership), with a very strong skew towards adult males. The

latter is VB's core demographic and why the brand has long been associated with both the Australian Cricket team and the television broadcast of international cricket.

- (e) Carlton and United Breweries has long been an ABAC signatory and takes our commitment to responsible marketing very seriously.

The Panel's View

14. Cricket is one of Australia's national and most highly followed sports. Played in each State and Territory and by Australian representative teams internationally, people of all ages watch and listen to games broadcast on television and over the radio. For international cricket involving the Australian male team, the principal television broadcaster is the Channel Nine Network.
15. On Saturday, 15 December 2012 the complainant was watching a test cricket match with her children when at approximately 6pm a promotion featuring the alcohol product VB took place. The promotion was incorporated into the live commentary of the match and was delivered principally by the commentator, Mark Taylor. The promotion referred to a segment sponsored by CUB, which acknowledged the hard working efforts of a particular player during the day's play. On this occasion the featured player was Michael Hussey, who had secured a century during the day's play. The commentary was accompanied by footage of Michael Hussey batting.
16. The promotion concerned the complainant for several reasons. Firstly, the promotion was not in the form of a 'standard' advertisement, which is clearly separate from the program in which the advertisement appears. Rather, the promotion was incorporated into the live cricket commentary. Secondly, the promotion was delivered by Mark Taylor, one of the Channel Nine commentators and a former Australian cricket captain. The complainant contends that Mr Taylor is a role model for children. Finally, all of this occurred during a time which, in the complainant's opinion, was likely to have been watched by children.
17. While each of the concerns raised by the complainant are genuine, the role of the Panel is to assess "alcohol advertisements" against the standards contained in the ABAC. To some extent, these standards and the reach of the ABAC scheme does not go to all of the matters raised by the complainant.
18. For instance, the ABAC scheme does not restrict the time of day which an advertisement might be broadcast, nor does the ABAC purport to cover all forms of marketing and, hence, the desirability or otherwise of the sponsorship of Australian cricket by an alcohol company is not a matter on which the Panel can express an opinion.
19. In contrast, the CTICP does place restrictions on when alcohol advertisements can appear on free television. Essentially, alcohol advertisements can only be broadcast after 8:30 pm, but there is an express provision within the terms of the television code which allow alcohol advertisements to be shown in conjunction with live sporting events. Accordingly, the fact that the advertisement was broadcast at 6pm on a Saturday in conjunction with the live telecast of the cricket match means that there is no breach of the CTICP, nor is this a breach of any ABAC standard.
20. While the CUB sponsorship of cricket is not an issue for the Panel to review, an advertisement for an alcohol beverage which flows from a sponsorship arrangement is subject to the ABAC standards. This means if the segment in the Channel Nine commentary is an 'advertisement', then the Panel can assess this advertisement against the ABAC. In this regard, CUB has regarded the segment as an advertisement in the

form of a 'content integration spot' (an "advertorial" in the complainant's language) and accordingly the Panel accepts the advertiser's description of the segment as an alcohol beverage advertisement.

21. The issue then turns on the advertisement's consistency with sections (a)(ii) and (b) of the Code and this relates to Mr Taylor's role in the advertisement and his commentary broadcast over footage of the popular Australian cricketer Michael Hussey batting during the day. It should be noted that the complainant does not argue that the content of Mr Taylor's statements during the segment was appealing to children or adolescents. The appeal is argued to arise from the personal standing of Mr Taylor as a 'role model' and how children will relate to him and the segment, rather than the actual statements made.
22. The ABAC does not contain provisions which expressly deal with the identity of persons who are featured in alcohol advertising. This can be contrasted with other codes such as the Code for Advertising Liquor in New Zealand. This New Zealand code is broadly equivalent to the ABAC and provides that, "Liquor advertisements shall not be directed at minors nor have strong or evident appeal to minors in particular". This is similar to section (b) of the ABAC, but the New Zealand code goes on to provide that, "...advertisements shall not use or refer to identifiable heroes or heroines of the young". This is defined as meaning "individuals or groups of people who have achieved particular celebrity status with minors and includes cartoon and other imaginative characters".
23. Under the New Zealand system, the Advertising Standards Authority has ruled that alcohol advertisements which allude to the All Blacks are in breach of 'heroes or heroines of the young' provision. Similar findings have been made about Super 14 Rugby Teams and the New Zealand Olympic team. It should be noted that the New Zealand code deals separately with 'sponsorship advertisements' and different provisions apply in these cases. It is quite possible that the current advertisement would fall within that category if the broadcast had occurred in that country and the 'heroes or heroines' provision would not apply as a result.
24. In any event, while it is sometimes insightful to compare other systems, the Panel must apply the ABAC as it is framed and the Australian Code does not contain a 'heroes or heroines of the young' provision. The question is whether the advertisement has a strong or evident appeal to children or adolescents.
25. For its part, CUB argue that while Mr Taylor might be a respected figure and a 'much celebrated Australian cricketer', he and the segment in question would not have a strong or evident appeal to children given:
 - anyone familiar with him from his playing days (1994 to 1999 as Australian captain) would now be adults;
 - the segment itself was adult in tone and had no content elements which would be attractive to children; and
 - the demographic data for test cricket television viewers indicates a predominantly adult male audience.
26. In assessing consistency of an advertisement with an ABAC standard, the Panel is to have regard to the probable impact of the advertisement on a reasonable person taking the content of the advertisement as a whole. In previous Determinations on sections (a)(ii) and (b) the Panel has noted that:
 - (a) each advertisement has to be assessed on its merits;

- (b) the intention of the advertiser as to its target audience is not material,; rather it is the 'probable impact' of the advertisement which is important;
 - (c) an advertisement might have some residual or incidental appeal to children or adolescents, but it is a "strong or evident" appeal which is prohibited;
 - (d) overall context of the advertisement is critical and in this respect the use of imagery, colour and use of the characters, amongst other elements, need to be assessed.
27. A majority of the Panel concluded that the advertisement did not breach the section (a)(ii) or (b) standard. In reaching this view, the majority noted:
- (a) The public policy intent behind the relevant ABAC standards was that alcohol consumption was not promoted to persons under the age of 18.
 - (b) The section b standard used the language of "strong or evident" appeal to children or adolescents, rather than simply "no appeal" or simply "appeal". This had been interpreted by the Panel as meaning:
 - Alcohol advertisements could not target children or adolescents (i.e., persons under the age of 18 years); and
 - Alcohol advertisements, while not targeting children or adolescents, could not have appeal to under 18 year olds which went beyond incidental or residual appeal which was present for all age groups, including children or adolescents;
 - An alcohol advertisement might have some appeal to children or adolescents, but this appeal cannot be assessed as being strong or evident to these groups.
 - (c) Cricket, as a game, and its well-known players, does have popular appeal across the community including, but by no means limited, to those under 18 years of age.
 - (d) The style, tone, language, footage and individuals featured in the advertisement taken as a whole is not considered to have strong or evident appeal to children or adolescents, but rather would have a broad appeal to the community as a whole. This broad appeal could not be said to be targeting under 18 year olds or have strong or evident appeal to these groups in particular.
28. A minority of the Panel believe that the advertisement did breach the section (b) ABAC standard. In reaching this view, the minority concluded:
- (a) The section (b) standard goes to advertisements having strong or evident appeal to children or adolescents (i.e. persons under the age of 18).
 - (b) The advertisement as a whole with its featuring of the popular and well known Australian cricketer Michael Hussey and the reporting of a current Australian cricket game does have strong and evident appeal to under

18 year olds, particularly (but not limited to) adolescent males (especially 14-17 years).

- (c) The fact that the advertisement may have evident appeal to age groups more generally does not mean that it does not breach the standard of having strong or evident appeal to under 18 year olds. The standard does not require an advertisement to have strong appeal only to under 18 year olds in order for a breach to be determined.
 - (d) The test of the *reasonable person* (ABAC Guidance Note 2, ABAC Guidance Notes) specifically relates to the context in which alcohol was presented in this VB advertisement and that test/public opinion would determine the ad did have a strong appeal to many people under 18 years, and alerted them to the VB brand being associated with a favoured sport. Additionally, Guidance Note 4 requires that “advertisements should always be directed at adults”.
 - (e) The style, tone, language, footage and individuals featured in the advertisement taken as a whole is considered to have strong or evident appeal to adolescents, as well as a broad appeal to the community as a whole. This broad appeal could be said to be targeting under 18 year olds and to have strong or evident appeal to these groups in particular, applying the *reasonable person* test.
29. While dismissing the complaint, the Panel recognises that it is a legitimate policy question to consider if the ABAC should contain a ‘heroes and heroines’ style provision. The Panel does not write the ABAC but applies the Code it is given. The scheme’s Management Committee and those involved in assessing the public policy basis of the Code (i.e. Government, industry, public health professionals, etc) could very properly consider the merits of including a ‘heroes and heroines’ section when reviewing the Code. Further the adequacy of sections a (ii) and (b) to meet the policy objectives of the ABAC scheme that alcohol products not be marketed in a manner that attracts persons under 18 should also be considered in the current review of the Scheme.
30. The complaint is dismissed.