

ABAC

**ABAC Complaints Panel
Determination No: 117/08**

**COMPLAINT by Mr David Hicks
Product: Carlton mid-strength beer
Advertiser: Foster's Group Limited**

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

23 December 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Carlton mid-strength beer by the Foster’s Group Limited (“the Advertiser”) and arises from a complaint by Mr David Hicks (“The Complainant”).

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 ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.
4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If

not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.

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 14 November 2008.
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.

The Advertisement

9. The complaint refers to a television advertisement which depicts a group of men talking and laughing in a pub holding stubbies and schooners of beer. A woman standing on the edge of the group addresses one of the men in the group and says "*Alright, time to go?*". The men stop laughing and look at each other as the man answers in a puzzled tone "*we just got here*". The woman responds "*Are you going to cause a scene, we're going*". The man raises his eyebrows and says quietly, "*yeah, sure*" as he hands his almost full schooner to a friend. The men all look downcast and the woman glares at the men as the man and woman leave together. As they are walking toward the door, a man who appears to be a 'cowboy' stands at the door blocking their exit. The patrons of the pub look upon this man in awe as one of them declares "*it's the woman whisperer*". The 'woman whisperer' raises his hands in front of the woman and quietly commands "*Shhh, easy girl, shhh!*" and as she tries to walk around him he moves in front of her and says "*Whoa, shhh*" followed by "*why don't you have a little chat with Rachel, let him stay for another beer*" as he waves his hands in front of the woman's face which she and the man follow with their eyes. The woman's eyes widen, she smiles and turns to the man and says "*why don't you stay and have another beer, I'm just going to go and talk to Rachel*" and with that, she turns and walks across to the other side of the bar. The husband returns to his mates who hand him back his unfinished beer. The song and strap line accompanying the closing frame is "Stay a Little Longer".

The Complaint

10. The complainant argues that the advertisement raises various concerns, specifically that:
 - a) the ad degrades women, equates woman with animal to be tamed, equates intellectual ability of woman with animal; and
 - b) trivializes family relationships and promotes alcohol over family responsibilities.

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

Arguments in Favour of the Complaint

12. In favour of the complaint it can be argued that the advertisement breaches section (a) of the ABAC by suggesting that it is preferable to stay at a pub drinking beer for longer rather than leaving the pub when asked to do so by a partner thereby promoting alcohol over family responsibilities and failing to present a mature, balanced and responsible approach to 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 24 November 2008. The points made by the Advertiser in relation to the advertisement were:
 - a) It is central to this response to emphasise that Carlton Mid is a midstrength beer with an ABV of 3.5% and 1 standard drink per 375mL stubby.
 - b) The Carlton Mid TVC depicts a couple, a husband and wife, just after they have arrived at their local pub. They are with a group of friends when the wife decides she wants to leave and tells her husband its time to go. Her husband says "*we just got here*", this is clearly denoted by the fact that the husband is holding onto an almost full schooner of beer. He agrees to leave and hands his beer to one of his mates. As they are about to leave, a man who appears to be a 'cowboy' stands at the door blocking their exit. The patrons of the pub look upon this man in awe as one of them declares "*it's the woman whisperer*". The 'woman whisperer' raises his hands in front of the wife and quietly commands "*Shhh, easy girl*" followed by "*let him stay for another beer*". The wife's eyes widen, she smiles and turns to her husband and says "*why don't you stay and have another beer, I'm just going to go and talk to Rachel*" and with that, she turns and walks across to the other side of the bar. The husband returns to his mates who hand him back his unfinished beer. The commercial finishes showing the man with his friends with the same schooner of beer.

- c) We contend that the TVC is not in breach of the code for the following reasons:
- The TVC shows responsible and moderate consumption. From the level of the beer glass a reasonable person would assume that the husband only has one beer which isn't finished during the timeframe – this equates to less than one standard drink.
 - The beer is a lower alcohol beer (3.5% ABV).
 - Although the wife makes the suggestion that her husband stay for another beer we see him return to the beer he had when he arrived. There is no suggestion he has another drink.
 - The commercial never at any time draws any conclusions about the value of staying at the pub versus any other activity.
 - The behaviour of the key characters and everyone else depicted in the advert is mature, balanced and, more importantly, responsibly consuming a moderate amount of alcohol. We firmly believe this to be in line with the ABAC.
 - There is no suggestion that the couple have a family or that they are choosing to be at the pub instead of with their family.

The Panel's View

14. This complaint concerns an advertisement that has already been the subject of Panel determination 98/08. In that determination the Panel considered a different issue, namely whether the ad promoted excessive alcohol consumption in breach of sections (a), (a) (i) & (iii) of the ABAC Code.
15. This complaint raises both the ABAC issue and also an issue of gender discrimination which triggers consideration under the AANA Code of Ethics and is dealt with by the ASB. This means that this determination does not deal with the question of whether the ad demeans women, as this aspect of the complaint has been decided by the ASB.
16. The ABAC issue raised by this complaint is that the ad promotes alcohol over family responsibilities. Section (a) of the ABAC provides that alcohol ads must present a mature, balanced and responsible approach to consumption of alcohol and paragraph (a)(iii) provides that alcohol ads must not promote offensive behaviour.
17. The Panel has on previous occasions examined the operation of section (a) and (a)(iii) including:
 - Determination 18/05;
 - Determination 40/05;
 - Determination 56/05 and 04/06;
 - Determination 55/06;

- Determination 43/07;
 - Determination 12/08;
 - Determination 15/08 and 24/08; and
 - Determination 65/08, 68/08, 72/08, 87/08 & 94/08.
18. From a review of these decisions, the following general observations can be made on how the Panel has interpreted section (a) and (a)(iii):
- the section is concerned with a ‘responsible approach’ to alcohol consumption which is a wider concept than consumption;
 - the expression ‘offensive behaviour’ used in section (a)(iii) must be understood within the context of the section and ABAC as a whole and is not a freestanding standard akin to section 2 of the AANA Code of Ethics;
 - within the context of ABAC, ‘offensive behaviour’ means unacceptable behaviour related to or influenced by the misuse of alcohol eg. Drunken loutish behaviour;
19. The advertisement essentially involves a man’s partner being convinced by “the woman whisperer” to allow her man to remain at a pub and drink another beer with his mates. The advertiser’s argument is that Carlton Mid is a midstrength beer at 3.5% ABV and therefore a beer drinker can enjoy more time with his mates by drinking Carlton Mid than he could if he was drinking a regular, full strength beer because he is consuming less alcohol per drink. Further, the advertiser argues that the commercial never at any time draws any conclusions about the value of staying at the pub versus any other activity and there is no suggestion that the couple have a family or that they are choosing to be at the pub instead of being with their family.
20. The preamble to the ABAC provides guidance as to how the Code provisions are to be interpreted. The preamble provides that “conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole”.
21. The Panel notes that the basic premise of the ad is that the intervention of the “women whisperer” enables the man to spend more time at the pub with the man’s mates than would have been the case had the intervention not occurred. That said, the Panel notes the ad suggests that the man and woman had only recently arrived at the pub when the woman tells the man it is time to leave. There is nothing depicted in the ad which shows that alcohol has an importance in either the male or female character’s life which demonstrates that alcohol is more valuable than family relationships. The Panel does not believe that it is a reasonable interpretation to draw the implication taken by the complainant.

22. Accordingly, the complaint is dismissed.