

ABAC

ABAC Complaints Panel Determination No: 82/07

IN THE COMPLAINT OF Mr Norman Monshall Product: Corona Beer Advertiser: Foster's Group Limited

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

21 December 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a billboard advertisement for Corona Beer by the Foster's Group Limited (“the Advertiser”) and arises from a complaint received from Mr Norman Monshall (“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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
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 two emails received by the ABAC Panel on 4 December 2007.
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 30 day 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 billboard advertisement sited at Manly Vale.
10. The advertisement features:
 - (a) a man riding a bicycle that looks reasonably old and has no bell;
 - (b) the man is smiling and wearing beach shorts, a T-shirt, sunglasses and a hat and appears to be barefooted;
 - (c) a wooden box bearing the Corona Extra logo is strapped to the back of the bicycle;
 - (d) a young woman, wearing a bikini and sunglasses and looking straight ahead over the man's right shoulder and laughing, is sitting on the box on the back of the bicycle with her right arm around the man's shoulders and her legs to the left side of the man;
 - (e) the woman and/or the man are carrying a surfboard on their left side;
 - (f) the man and the woman are not wearing bicycle helmets;
 - (g) the bicycle is traveling along a road that is next to a beach and the ocean and beach provide the backdrop for the advertisement;
 - (h) at the top right side of the page the Corona logo and the following text appears "Corona Extra From where you'd rather be".

The Complaint

11. The complainant argues that the advertisement is in breach of section (d) of the ABAC and in particular that:
 - a) Cycling is a sport;
 - b) It is potentially hazardous; and
 - c) 2 people on a solo bike without helmets does not constitute safe practices.

The Code

12. The ABAC provides at Sections d and d(i) 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.

Arguments in Favour of the Complaint

13. In favour of the complaint it can be argued that the advertisement breaches the standard in section (d) of the ABAC by depicting a direct association between the consumption of alcohol beverages and the engagement in any sport or hazardous activity by a combination of:
 - (a) a bicycle being operated in an illegal and unsafe manner, namely riders without helmets, riding "double up" and a bike without a bell, constituting a sport or potentially hazardous activity;
 - (b) a wooden box bearing the Corona Beer logo strapped to the back of the bicycle with a young woman sitting as a pillion passenger perched on the box; and
 - (c) the presence of the box of the product, implying that consumption has taken place prior to the couple riding the bicycle.

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 19 December 2007. Key points made by the Advertiser in relation to the advertisement were:
 - (a) There is no depiction of consumption of alcohol and no indication that the couple have been drinking. There are no empty bottles, open carton or evidence of alcohol, nor do the couple appear intoxicated.

- (b) The Corona box on the back of the bike is just a box. It is not an esky or a carton of beer and is not representative of current Corona packaging in either look or size. It is an old, slightly battered box that suggests it has been part of the guy's bike for some time. It is fixed to the bike and could contain a variety of things (personal effects, beach paraphernalia or nothing). It does not specifically suggest it contains beer. It represents a way of branding the ad in a cool way that has meaning and context to the scene.
- (c) We fully support and endorse the notion of bicycle safety however the advertisement is in no way representative of day to day life here in Australia. The imagery was photographed overseas. The advertising campaign "From where you'd rather be" depicts a mystical make believe place and as such is not representative of our 'real' world. This is made more credible by the brand itself – Corona, a well known Mexican beer – which is strongly associated with escape beyond Australian shores. The theme across the campaign suggests that it's a place we would all like to escape to, an idyllic place which is relaxed, carefree and a world away from our own. As such this fantasy world should not be taken literally.

The Panel's View.

- 15. The complaint raises an issue of the promotion of practices in the use of a bicycle which the complaint asserts are highly unsafe, namely the riding of the bike in tandem by riders who do not have helmets. The complaint is being considered by both this Panel under the ABAC and the ASB under Section 2.6 of the Advertisers Code of Ethics.
- 16. Section 2.6 of the Code of Ethics states that 'Advertisements shall not depict material contrary to prevailing community standards on health and safety'. It is a decision of the ASB as to whether the ad breaches this standard. For its part, the ABAC Adjudication Panel is to apply another standard contained in the ABAC dealing with the use of alcohol and the engagement in sport or potentially hazardous activity.
- 17. Section (d) of the ABAC provides that alcohol ads are not to depict any direct association between the consumption and the engagement in any sport or potentially hazardous activity. Any depiction of consumption must not be represented as having taken place before or during the activity in question and must in all cases portray safe practices.
- 18. The advertisement does associate cycling and alcohol. To breach the section, this association must:
 - 1. be direct;
 - 2. involve consumption of alcohol; and
 - 3. have the consumption take place before or during the engagement in the activity, in this case, cycling.
- 19. The ABAC uses different language in its sections when setting standards for advertising. Section (d) refers to depictions of "consumption" of alcohol.

Section (c) of the ABAC is more expansive and refers to both “consumption” and the “presence” of alcohol in advertising. Section (a) uses different language again of the “approach to consumption” while section (e) refers to “drink or sample”.

20. The Panel does not adopt a legalistic approach to interpreting the ABAC and a commonsense meaning to each of the ABAC standards needs to be applied. However, the Panel must apply the section as it is written and the standard in Section (d) requires more than the portrayal of unsafe practices to breach the standard. A breach requires the portrayal of unsafe practices to be associated with alcohol consumption.
21. The ad does not depict actual consumption of alcohol ie. drinking. The Panel has previously noted that the concept of ‘consumption’ embraces more than the actual swallowing of the liquid, but in this case nothing can reasonably be said to indicate consumption is depicted. A box situated on the bike bears the product’s name but nothing indicates that the riders have consumed the product.
22. Section (d) goes on to require that any consumption depicted must not be represented as having taken place ‘before or during’ the activity. Again there is nothing to indicate that consumption has taken place before the scene depicted in the ad and no consumption is depicted as occurring during the activity of riding the bike.
23. Finally, the advertiser argues that the scene used in the ad is ‘a mystical make believe place’ and would not be taken as a ‘real’ world scenario. This argument may have some merit, but is more important for the ASB in considering the Code of Ethics question which turns solely on the issue of health and safety and is not tied to depictions of alcohol consumption as required by the ABAC provision.
24. The Panel acknowledges that road safety is a vital issue of public safety and that the complainant’s concerns are genuinely held, but the ABAC is not breached by this ad.
25. Accordingly the complaint is dismissed.