

ABAC

ABAC Complaints Panel Determination No: 01/08

IN THE COMPLAINT OF Mr Kim Laurie Product: Corona Beer Advertiser: Foster's Group Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Richard Mattick – Member
Professor Liz Danger - Member

8 February 2008

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 Kim Laurie (“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 an email received by the ABAC Panel on 26 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. Determination of this complaint has been impacted by the Christmas/New Year period and illness experienced by the Panel's Administration Officer.

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 which 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

10. The complainant argues that the advertisement raises a number of concerns, specifically that:
- a) The ad is offensive as it associates normally healthy outdoor activity with the consumption of alcohol;
 - b) The ad is suggesting excessive consumption of alcohol by depiction of a box of the product on the bicycle and the implication that the two characters shown will consume a large amount of the product;
 - c) A dangerous activity *i.e.* cycling, is being associated by alcohol consumption;
 - d) The ad shows behaviour, namely riding a bicycle “two up” and without the use of helmets, which contravenes traffic laws and regulations;
 - e) The ad suggests that the male character will be held in high esteem by the female character for his beer-drinking ability and disregard for safety;
 - f) The ad will be particularly attractive to adolescents through its beach setting and use at the time of year that “schoolies” activities are occurring.

The Code

11. The ABAC provides at Sections (a) (b) (c) and (d) 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;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - b) not have a strong or evident appeal to children or adolescents;
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - 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

12. In favour of the complaint it can be argued that the advertisement breaches multiple sections of the ABAC as follows:

- (a) Section (a) is breached by depicting an irresponsible approach to the consumption of alcohol through its association of alcohol with the activities of cycling and beach pursuits;
- (b) Section (a)(i) and (iii) are breached as the presence of the box bearing the product's logo on the bicycle implies that excessive alcohol consumption will or has taken place;
- (c) Section (b) has been breached through the ad having a strong or evident appeal to adolescents by its imagery and its likely audience, including a significant number of teenagers involved in "schoolies" activities;
- (d) Section (c)(i) is breached by the implication that the male will achieve social or sexual success with the female by displaying a disregard to danger and having the capacity to drink excessive amounts of alcohol;
- (e) Section (d) is breached by the portrayal of unsafe cycling practices in association with alcohol consumption.

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 25 January 2008. The advertiser's comments to an earlier complaint are also relevant. 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. Consumption would be depicted through behaviour, empty bottles or an open carton – and this is not the case with this advertisement. The complainant incorrectly states there is a "very large quantity of alcohol with them".
- (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) In relation to targeting young people, Fosters is a responsible marketer which abides by the regulatory codes (the Corona ad was pre-vetted and approved) and the alcohol advertising guidelines. We advertise throughout summer as it is the peak period for consumption and we use a number of mediums, but when doing so are always governed by the relevant restrictions that apply to alcohol advertising. In the case of Corona, the billboards selected contain a mix of high profile sites across the nation and available to advertisers.
- (d) The Gold Coast is specifically raised and as such we will provide some details about the advertising details for the region. Two Corona bicycle billboards appeared in what could be defined as the Gold Coast area (outdoor locations including the Gold Coast Highway and Pacific Fair Shopping Centre – Broadway) during the months of November and December. Whilst “schoolies” would represent a portion of visitors over that period of time, it’s important to note that the Gold Coast is a large area that attracts a significant number of local and international adult residents and holiday-makers. For these reasons, we strongly refute the suggestion that the sites were chosen to appeal to those under 18. In addition, cycling and surfing are popular adult activities and could not be said to exclusively target those under 18.
- (e) 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

14. This is the second determination made by the Panel in relation to this advertisement. The earlier determination – In the complaint of Normal Monshall No: 82/07 – dealt with Section (d) of the ABAC and the concern that the ad depicted a direct association between alcohol consumption and the engagement in any sport or hazardous activity. The Panel dismissed the complaint and will not re-visit the same specific issue raised under the current complaint. A copy of the earlier determination can be found at: www.abac.org.au under the “Publications” menu.
15. The complaint raises a series of different concerns about the ad which will be dealt with in turn. The first issue concerns Section (a) of the ABAC and the argument that the ad is irresponsible as it associates alcohol with healthy activities and suggests the two people shown will consume a very large quantity of alcohol. The complainant argues that this implication arises because of the presence of a box of the product being carried on the bike.

16. The advertiser's argument is that the ad does not depict alcohol consumption and there is nothing to suggest consumption has taken place prior to the bike ride. Further, it is stated that the box on the bike is not a carton of the product, but is rather an old box attached to the bike for carrying items of any kind, and not necessarily alcohol.
17. Section (a) of the Code provides both a "positive" and a "negative" set of standards which alcohol advertising is to satisfy. The positive standard is that ads are to present a "mature, balanced and responsible approach to the consumption of alcohol". The negative standards contained in sub-sections (i) to (iii) describe what ads must not do, which in general terms is promote excessive consumption, under-age drinking and offensive behaviour.
18. The ad does not depict alcohol consumption. While "consumption" is more than depictions of actual swallowing of liquid, there is nothing in the ad to give rise to the conclusion that consumption is occurring or has occurred. The Section (a) standard, however, uses the phrase "approach to the consumption of alcohol" which is a wider concept than "consumption". The first question is whether the ad can be taken to imply that excessive drinking is being suggested.
19. 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".
20. The advertiser argues that the bicycle is equipped with a Corona logo stamped storage box (which could be carrying anything), not a carton of beer. However, the panel concludes that this differentiation is not clear and that the general impression given by the billboard from, say, a passing car, would likely be that the bike is carrying a carton of beer. In this case, the Panel believes that a reasonable person would conclude that the couple is travelling to the beach to consume a significant quantity of beer.
21. The section (a) standard is about "a responsible approach" to alcohol consumption. It is not irresponsible *per se* to consume alcohol on a beach, but the ad portrays two people taking an entire carton of beer to the beach and a majority of the Panel believes that this suggests excessive consumption. A majority of the Panel concludes that the ad breaches Section (a) on this point.
22. The second Section (a) issue raised by the complainant is whether the depiction of healthy activities such as cycling and beach activities within an alcohol ad is offensive or irresponsible. The Panel is obliged to apply the ABAC Code as it is written and the Code does not prohibit appealing images to promote alcohol. While some may believe that alcohol should not be advertised in association with appealing or stylized or romantic images, the Panel is tasked with applying the Code as it is.
23. The ABAC prohibits particular messages and the use of specific imagery. Use of the expressions "irresponsible" and "offensive" within Section (a) have a meaning drawn from the context of the Section and Code as a whole. It is not sustainable to impart upon these expressions meaning which is entirely independent of their use within the notions of excessive consumption, under-age drinking, misuse and abuse of alcohol and moderate consumption, which

are the themes of the standard set by Section (a). This means that the ABAC notions of “irresponsible” and “offensive” are not breached by the mere association of alcohol with cycling and surfing.

24. The complaint raises the issue of whether the ad is attractive to young people through its placement at locations near the Gold Coast at the time of the annual “schoolies” activities, combined with its alleged appeal to a youth beach and surf culture. Section (b) of the ABAC provides that alcohol ads must not “have a strong or evident appeal to children or adolescents”.
25. The ABAC is not primarily a Code which deals with the placement of advertisements. This can be contrasted with the television industry code of practice which specifically provides that alcohol ads are not to be broadcast outside of certain time slots or with specified programs. The ABAC deals only indirectly with placement through the preamble references to “the class of persons to whom the advertisement is directed” or may be communicated.
26. The issue is whether the ad has “strong or evident” appeal to adolescents. The advertiser’s argument is that the billboard was displayed at two Gold Coast locations during the school holidays, but that the Gold Coast attracts visitors of all age groups, not particularly under 18 year olds. Further, and more importantly, the advertiser contends that cycling and beach activities are popular adult activities.
27. In the Panel’s view, the ad cannot be said to have a “strong or evident appeal” to adolescents. The two characters depicted are clearly older than teenagers or young adults and the overall scene invokes a romantic notion of escape from daily reality as reflected in the strapline “from where you’d rather be”. While inevitably an impression created by an advertisement is in the “eye of the beholder”, it is difficult to support the conclusion that the ad has a “strong or evident” appeal to younger viewers as opposed to the overall audience of the ad.
28. The next issue concerns Section (c) of the ABAC and the complainant’s argument that the ad suggests that the young male will be regarded in high esteem by the young female for his beer drinking ability and disregard for safety. Section (c) provides that an ad must not suggest the presence of alcohol contributes to a significant change in mood and be a cause of personal, social or sexual success.
29. The Panel does not believe the ad breaches the Section (c) standard. There is no change in mood caused by the presence of a carton of the product depicted in the ad and it does seem an untenable stretch to conclude that the male will achieve success with the female, as argued by the complainant.
30. For the reasons explained in paragraphs 15-21, the complaint is upheld.