

ABAC

ABAC Complaints Panel Determination No: 96/09, 101/09 & 104/09

Complaints of Mr Mark Williams, Mr Neal Quillinan & a confidential complainant Product: Pure Blonde Beer Advertiser: Fosters Group

Professor The Hon Michael Lavarch – Chief Adjudicator
Elizabeth Dangar – Member
Professor Richard Mattick – Member

16 November 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for the product Pure Blonde Beer by the Fosters Group (“the Advertiser”).
2. The determination results from three (3) complaints. The first dated 6 October 2009 is from a confidential complainant. The second complaint dated 13 October 2009 is from Mr Mark Williams. The third complaint dated 13 October 2009 is from Mr Neal Quillinan.

The Quasi-Regulatory System

3. 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.

4. The complaints 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.
5. 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.
6. The complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints are in the form of emails received by ABAC on 7 October 2009 and 14 October 2009.
8. 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. These complaints have been determined within the timeframe.

Pre-vetting Clearance

9. 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 television advertisement [BH262/09].

The Advertisement

10. The advertisement begins with a man strolling along a city lane who notices a dove with a blue marking on his head. He squats down to look at the bird and says "What's going on here?" He reaches down and gently picks up the dove and strokes it with a look of concern. As he looks into the dove's eye he sees a vision of white snow covered mountains and an idyllic field accompanied by heavenly music. The man shakes his head and says "Come on fella" as he holds the bird closer.
11. The next scene is set in the man's city apartment accompanied by "Homeward Bound" by Simon & Garfunkel. We see the man caring for the dove in his apartment. He makes it a bed in a shoebox, makes dove noises, wipes the blue mark off its head, feeds it water through an eyedropper, examines its wings, tries to communicate with it through a bird statue and wears beak/goggles, shows a film of birds flying and pretends to fly. He is then seen waking up to find the dove trying to fly and says "Look at you". In the next scene he is standing on a balcony, kissing the dove on the head

and launching it in the air and it is seen flying away. He then takes a long sip of Pure Blonde beer as he has a vision of snow covered mountains.

12. We then see the dove flying toward a scene of beautiful blonde people in a field. As the dove gets closer we see that the scene is painted on a brick wall and the dove flies straight into the scene on the brick wall which is being painted by a man on scaffolding and the music stops. The bird lands on the suspended scaffolding where a painter is working on the scene. The painter looks at the bird and pushes it off the scaffolding with his foot. The painting is an advertisement for Pure Blonde beer with the slogan "From a place much more pure than yours".
13. The bird is then seen back on the footpath, alive, but unable to fly, before being discovered by another man who comes across a dove with a mysterious blue marking on his head.

The Complaint

14. The first complainant argues that the advertisement:
 - (a) devalues the bird's life and makes out it is not as important as beer; and
 - (b) encourages poor or violent behaviour towards animals.
15. The second complainant argues that:
 - (a) kicking an animal in an alcohol advertisement is offensive behaviour in breach of section (a) of the ABAC; and
 - (b) the advertisement depicts animal cruelty.
16. The third complainant argues that the advertisement:
 - (a) depicts animal cruelty; and
 - (b) is irresponsible in a society where alcohol related violence is on the rise, noting that violence towards animals often leads to 'higher' forms of violence such as domestic violence and attacks on women.

The Code

17. 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

18. The Advertiser responded to each of the complaints and questions posed by the Panel by letter dated 29 October 2009. The principle points made by the Advertiser are:
- (a) It is our strong belief that the advertisement upholds the ABAC. To provide some background, this is the second TV commercial for Pure Blonde. The commercial has been on air for just over a month and to date, based on data from our media buying agency, has had roughly 13 million impressions. It is designed to promote Pure Blonde, a low carbohydrate beer, to its target audience of males aged 25 to 35 years of age. It is only on air post 8.30pm except during live weekend sports broadcasts.
 - (b) It tells a story about an everyday hero who stumbles across a dove with a mysterious blue marking on his head. Connecting the dove to Brewtopia he scoops the bird up and takes him home. The protagonist goes to extreme lengths to care for the bird in order to assist it to fly again, including donning a beak/goggles to attempt to communicate with the bird to feeding him water through an eyedropper. Finally the big day arrives; the dove is released and begins the long journey home. His arrival at his spectacular and very peaceful home is anticipated as images of beautiful mountain ranges and glimpses of Brewtopia are shown. The dove then hits a brick wall having flown straight into a freshly painted Pure Blonde outdoor billboard (explains the blue paint), which features a large image of Brewtopia. The bird lands on the suspended scaffolding where a painter is adding the finishing touches to an outdoor Pure Blonde billboard. The painter then pushes the bird off the scaffolding and the bird is back on the footpath, alive, if a little stunned by the experience, before being discovered by another bloke who comes across a dove with a mysterious blue marking on his head. Connecting the dove to Brewtopia he scoops the bird up and takes him home... and the viewer is left with the strong impression that history will repeat itself and the dove will be nursed back to robust health again.
 - (c) Irony and black humour is used in the commercial to contrast the differences between each world – the idyllic and peaceful Brewtopia world and the 'real' world, and for this reason we acknowledge (and respect) the fact that this advertisement will not be to everyone's personal taste. All characters, their actions and the settings in the TVC are humorous and exaggerated and so the intention, as is often the case with advertisements, is to tell a story that is not intended to be taken literally or be seen as representing real life. To answer your specific question, we contend that the TVC upholds section a) of ABAC. All the characters and action depicted, so the advertisement in its entirety, present a mature, balanced and responsible approach to the consumption of alcohol beverages. The protagonist consumes only a small part of one Pure Blonde stubby towards the end of the commercial when he toasts the fact that the bird he has carefully nurtured over a period of time has flown free. Throughout the entire commercial, only a moderate amount of

alcohol is consumed and this quantity, including the way we show it being consumed, uphold the ABAC.

- (d) Furthermore it is our belief based on our reading of the code and various rulings inc. Determination No: 52/09 that section (a) (iii) relates to “alcohol-influenced or related behaviour, such as drunken loutish behaviour, and is not a freestanding standard such as those contained in the AANA Code of Ethics.” Given the character who pushes the bird off the scaffolding is seen in a work situation and does not consume any alcohol in the ad nor is there any sense whatsoever that he consumed alcohol prior to being on the job, we believe the ad upholds section a). It is our belief that the advertisement upholds the ABAC. The advertisement has recently been reviewed by the Advertising Standards Board and all complaints have been dismissed against section 2.2 which relates to violence. As such the advertisement has been deemed to uphold the AANA Code of Ethics.
- (e) That said, we would still like to share our view on the subject as we think it provides useful background. As a result of its actions, the dove flies into the billboard and has the wind knocked out of it. It is commonplace for birds to fly into things and when it lands on the suspended scaffolding it is clear the bird is alive. The painter does push the bird off his work area however we believe the painter’s actions are a reflection of him being so caught up in his work/disinterested in his surroundings that he does so under the impression it will fly away and be fine. Most importantly, at the end of the commercial the dove is seen unharmed and calmly sitting in a laneway. The majority of viewers, although surprised by the twist (thus successfully contrasting the two worlds as was the aim), would be left with the impression that the bird is fine and after some TLC (given it wined itself by mistakenly flying into a brick wall) will fly again. None of the characters in the advertisement are presented in an aggressive, threatening, intense, malicious or extreme manner - all factors that would have needed to apply in order for it to be considered violent (section 2.2 of AANA Code of Ethics).
- (f) In response to some of the specific concerns raised by the complainants that relate to alcohol, we don’t believe it’s reasonable to conclude we are suggesting beer is more important than the bird’s life. The majority of the ad is dedicated to showing how the dove is cared for and there is no doubt at the conclusion of the ad that the dove lives. And it’s extreme to claim the advertisement makes light of “higher forms of violence” – this is one person’s interpretation and we believe it’s an unreasonable extrapolation given the types of violence they reference are absent from the advertisement. Also on the whole the ad depicts a protagonist who demonstrates much care and empathy for the dove. Furthermore as stated earlier it is our understanding that alcohol must influence the behaviour in question for it to be considered as contravening ABAC. The issues raised are a consideration under the AANA Code of Ethics and as stated earlier, it has been ruled that the advertisement upholds the code in its entirety.

- (g) It is also worth noting that no animals were harmed during the filming of the advertisement. A professional animal trainer was employed and on set to ensure the animal's welfare was a priority at all times. The scenes where the dove hits the wall and is pushed off the scaffolding are entirely computer generated. The live doves were not used in these scenes. Whilst it is disappointing to receive even three complaints, overall the consumer and industry response to the TVC has been extremely positive.

The Panel's View

19. The complaints each raise similar concerns about the advertisement in terms of the depiction of the painter kicking the stunned dove from the scaffold to the ground. This action is argued to be offensive, showing cruelty to an animal, making light of violence towards the animal and irresponsible in associating alcohol with a violent and cruel act.
20. As explained in paragraph 3, alcohol advertising is subject to a number of codes of practice, including the AANA Code of Ethics and the ABAC. The AANA Code of Ethics applies to advertising, irrespective of the product being advertised, and includes provisions dealing with taste, decency and violence. The ABAC is an alcohol advertising specific code and relates to the depictions of the characteristics of alcohol as a product.
21. The underlying concern of the complaints relates principally to the treatment of the bird. This concern would presumably be present, irrespective of the type of product being advertised *i.e.* if the ad was for milk or for shoes, the complainants would remain concerned about the depiction of the painter kicking the bird.
22. The Management Committee of the ABAC has agreed with the ASB, that alcohol ads which attract public complaints raising matters under the AANA Code of Ethics will have those aspects of the complaint determined by the ASB. This means that the ad will be subject to two distinct adjudication processes – one undertaken by the ASB applying the Code of Ethics; and the separate determination by this Panel applying the ABAC provisions.
23. The ABAC provision raised by the complaints is section (a). This section requires that ads for alcohol beverages be mature, balanced and responsible in their presentation of the approach to the consumption of alcohol. This standard will not be satisfied if the ad encourages excessive alcohol consumption or abuse of alcohol, under-age drinking, offensive behaviour or the immoderate consumption of alcohol.
24. The use of the term “offensive behaviour” needs to be understood in context. It is clear that it is referring to behaviour which is influenced by alcohol use or misuse *e.g.* drunken, loutish behaviour. In past determinations the Panel has found ads in breach of the provision where alcohol use has been associated with stalking and baring of a backside. In these and similar cases, the ad depicted alcohol use with the behaviour.
25. In this case the painter is not shown using alcohol, nor is there any indication that his behaviour is influenced by alcohol. The only alcohol beverage seen in the ad is with the “good Samaritan” who nurses the bird back to health.

26. The Panel does not believe the ad breaches section (a) (iii) of the ABAC. In reaching this view, the Panel is not saying that the complainants' concerns are not entirely genuine and heartfelt. Rather the decision as to whether the actions depicted are cruel or violent or in poor taste, is a matter under the Code of Ethics to be decided by the ASB, and not this Panel.
27. The second issue raised under section (a) is whether the actions depicted in the ad fail to present a responsible approach to the consumption of alcohol. This is the argument of the third complainant in terms of the alleged association of alcohol with violence.
28. For its part, the advertiser argues that the ad uses black humour and irony and that a reasonable viewer would not take it as advocating cruelty to animals or violent behaviour. In assessing if an ad is consistent with an ABAC standard, the code preamble provides that the ad is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the ad is directed, taking its content as a whole.
29. While the complainants have not found the ad to be amusing, there is little doubt that the intent of the ad is to create a fanciful scenario. Exaggerated whimsy is a factor to be taken into account in assessing how an ad would impact on a person, but it does not provide an antidote to an ad which, taken as a whole, breaches a code standard.
30. The Panel does not believe that the ad is presenting an irresponsible approach to alcohol consumption. Alcohol consumption is depicted in a moderate way and is not shown in conjunction with the actions of the painter. While the ad may be thought by some to be in poor taste, this does not breach section (a) of the ABAC.
31. The complaints are dismissed.