

ABAC

ABAC Complaints Panel
Determination No: 34/09 and 44/09

Complaint of Mr Luke Taylor and a Confidential Complaint
Product: Victoria Bitter
Advertiser: Foster's Group Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Elizabeth Dangar – Member
Professor Fran Baum - Member
Professor Richard Mattick – Member

May 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns two television advertisements for Victoria Bitter beer by the Foster’s Group Limited (“the Advertiser”) and arises from a complaint by Mr Luke Taylor received on 15 April 2009 and a confidential complaint received on 28 April 2009 (“The Complainants”).

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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints are in the form of emails received by the ABAC Panel on 15 April 2009 and 28 April 2009 respectively.
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 advertisements (UL45/09 & UL 53/09).

The Advertisement

9. The complaints refer to two (2) television advertisements for Victoria Bitter beer.
10. The first advertisement begins with the camera focusing on an elderly man (Vietnam war VC awardee Keith Payne) wearing a suit and cradling a 375ml bottle of VB, sitting in a folding chair on a beach at dawn. There is an empty folding chair next to the man. The man says "Jack was a fellow that you could get to like very easy, he was a mild mannered sort of a man, in a lot of ways. He was always helpful and I dare say that had he have lived long enough he would have been a good commander in the field." The camera focuses on the beer in the man's hands and the empty chair. He continues "But that didn't come, the old sands of time didn't play in Jack's favour. Its never easy, but Jack was a little bit harder because he was the first and a good friend. He was just one of a hell of a fine bloke. Yeah, first little memory on Anzac day belongs to Jack. Yeah" The camera then moves and widens as we see the man looking at the empty chair and we see another 375ml bottle of VB sitting next to the empty chair. Text appears on the screen "Wherever you are, whatever you're drinking, raise a glass for our fallen mates." The man raises his beer to the empty chair and has a sip of beer and the text is replaced with "Raiseaglass.com.au" and the logos for the Returned Soldiers League, Legacy and VB appear at the bottom of the screen.
11. The second advertisement begins with General Peter Cosgrove sitting at a bar with a glass of beer in hand and a second glass in front of the empty stool next to him and saying "There are many departed friends I'd love to be sharing a beer with at this time of memorial." Text is superimposed on the screen, "General Peter Cosgrove Former Chief of the Australian Defence Force". The screen then changes to different scenes of a black and white photographs in a photo album held by an elderly man (Mr Payne from the first ad), a man sitting in a folding chair on a beach with a 375ml bottle of VB in his hands and in the sand next to the

empty chair next to him, another man looking contemplative and a photograph of a young man in army uniform surrounded by family photographs as he continues “I reckon most of them would be hated to be remembered as anything other than regular Aussie men and women. Yet what they achieved was nothing short of extraordinary, so its only fair that in turn we support the great work of the RSL and Legacy in honouring their sacrifice.” The scene changes to an empty chair with the text “raiseaglass.com.au” superimposed as he continues “One simple way you can do this is to go to raiseaglass.com.au”. The camera then returns to General Cosgrove sitting at the bar with a beer in hand and superimposed with the text “Raiseaglass.com.au” and the logos for the Returned Soldiers League, Legacy and VB as he raises his glass and says “on behalf of all our fallen heroes and their families, cheers”.

The Complaints

12. Mr Taylor argues that the advertisements raise two concerns, specifically that:
 - a) Using the memories of successive generations of Australian diggers in war to sell a product is highly offensive. It trivialises their sacrifice and that of their families to a commercial product; and
 - b) Alcohol use and addiction amongst the veteran population is a significant problem for which Legacy has been very active in combating. Their involvement in a campaign which seeks to link commemorating fallen Diggers with alcohol consumption is in very poor taste.
13. The confidential complaint makes a similar point, arguing as follows:

“I object to exploiting the memory of military gallantry to encourage people to drink beer. It debases and trivializes a significant issue. It thinly disguises a straight-forward commercial attempt to sell alcohol as a tribute to fallen “mates”.

The Code

14. The ABAC provides at Section (a) 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.

Arguments in Favour of the Complaints

15. In favour of the complaints, it can be argued that the advertisement:
 - (a) breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol by using the memories of “Australian Diggers” in war to sell an alcohol product in circumstances where alcohol use and addiction among the veteran population is a significant problem; and

- (b) breaches section (a)(i) & (iii) of the ABAC by giving people another excuse to have a beer and suggesting that it is patriotic to drink beer thereby encouraging and promoting excessive consumption of alcohol.
- (c) It is offensive to sell alcohol under a thinly-disguised appeal to assist war veterans and their families.

The Advertiser's Comments

16. The Advertiser responded to the first complaint and questions posed by the Panel by way of letter dated 27 April 2009. The points made by the Advertiser in relation to the advertisement were:

- (a) The "Raise A Glass Appeal" is a joint fund-raising initiative that as of April 27th has raised more than \$1.2 million for the welfare programs of the RSL and Legacy. This entire campaign has been developed in full collaboration with the national bodies of both organisations over a 12 month period. At every stage, both partners have reviewed and approved every element of this campaign, including the awareness-driving commercials. Raising public awareness of the welfare work done by the RSL and Legacy was important to both organisations and a key driver of the campaign. To this end a series of commercials promote the Appeal, and those featured are telling their own true stories after expressing a desire to participate (the complainant specifically refers to Keith Payne and General Peter Cosgrove) and pay tribute to their fallen loved one, and to toast their ultimate sacrifice. Each tribute is comprised of personal reflection including personality insights and information about their service and ends with a glass being raised and the product partially consumed. The commercial was designed first and foremost to promote the appeal and any product and branding plays a secondary role – there is no overt sales message in any form. For your reference, we have not sold additional beer throughout this campaign nor was that our intention. The primary contribution of VB to the appeal was based on donating \$1 from every carton (based on sales from the same period the year prior) and helping to raise the profile of organizations like Legacy.
- (b) It is pertinent to note that we acknowledge alcohol is a problem with some members of the community, and this includes members of the ex-service community; just as there are large numbers within the community that enjoy alcohol responsibly, as within the ex-service community. Importantly any alcohol advertising, not just these ads, must uphold the relevant codes - in this case both ABAC and AANA.
- (c) Whilst we acknowledge that the Appeal and commercials may not be to everyone's personal taste, we firmly believe that the commercials uphold ABAC including section (a). Both Keith and General Cosgrove are depicted in a solemn, completely alert and sober manner (through their speech and ability to recall information) as they pay tribute and the drink they each partially consumes represents no more than 1.4 standard drinks. As always, the treatment, tone and context are important and to this end we strongly believe the portrayal of the product in this commercial is mature and balanced.
- (d) The ritual of toasting someone with a drink, alcoholic or otherwise, is a widespread cultural norm - it is part of many occasions; from birthdays to

weddings, work functions to social events. In the commercials, whilst we depict a pot of beer in one commercial and a stubby in the other, it is the concept of reflection and the tribute itself that are key, as supported by the end statement in the commercial: "Wherever you are, whatever you are drinking, raise a glass for our fallen mates."

- (e) The concept of toasting with an alcoholic product does not unto itself equate to or imply alcoholic misuse or excessive consumption. However again the treatment, tone and context are important and to this end we strongly believe the portrayal of the product in this commercial is mature and balanced. It represents a small part of the broader tribute and both Keith and General Cosgrove are represented as solemn, completely alert and sober (through their speech and ability to recall information) and the drink partially consumed represents no more than 1.4 standard drinks. Neither can the commercial be seen as encouraging excessive consumption for the reasons already outlined.
- (f) We also do not believe the commercial asserts that "it is patriotic to drink beer". There is no text, dialogue or pictorial links to any patriotic symbol or Australian iconography. We feel an average person would not deduce the consumption of beer is being portrayed as patriotic in a bid to encourage excessive consumption but more importantly we believe the actual depiction of the product and the commercial in its entirety upholds ABAC including section (a).

17. The Advertiser responded to the second complaint and questions posed by the Panel by way of letter dated 13 May 2009. The additional points made by the Advertiser in relation to the advertisement were:

- (a) The complainant does not actually detail a specific advertisement from the series or actually reference any specific elements such as language or imagery that are featured in the commercials. Much of the response given to complaint 34/09 is repeated in respect of this complaint.
- (b) Treatment, tone and context were always going to be key in these commercials and to this end we sought extensive counsel from the RSL and Legacy and it was also pre-vetted against ABAC. We believe the resulting commercials are respectful and appropriate in their treatment. Both the VB team and Legacy and the RSL have been delighted by the positive response from many within the ex-service community and the public. We have also received the same positive feedback from people like Keith and Betty, who feature in the commercials.
- (c) To the specific question raised in relation to section (a) of ABAC - the concept of toasting with an alcoholic product does not unto itself equate to or imply alcoholic misuse or excessive consumption. However obviously the treatment, tone and context are important and to this end we strongly believe the portrayal of the product in this commercial is mature and balanced. It represents a small part of the broader tribute and all our 'talent' are represented as solemn, completely alert and sober (through their speech and ability to recall information) and the drink they only partially consume represents no more than 1.4 standard drinks (based on either a stubby or pot of VB). Neither can the commercial be seen as encouraging excessive consumption for the reasons already outlined, plus

it is also clear the second beer (seen in some commercials) is for the deceased person being discussed and hence a symbolic gesture.

- (d) Whilst we acknowledge that the Appeal and commercials may not be to the complainant's personal taste, we firmly believe that the commercial upholds both ABAC and AANA Advertiser Code of Ethics. The program has been developed with the national executives of the RSL and Legacy and Appeal supporter General Peter Cosgrove. We're confident the campaign is respectful and appropriate, and that the monetary contribution will have a significant impact for the wider ex-service community.

The Panel's View

18. The Panel received a number of complaints about the series of television advertisements within the "Raise a Glass" campaign developed by the advertiser and broadcast in the period leading up to the ANZAC Day 2009. A second Determination, 31/09, also relates to this advertising campaign. The confidential complaint considered in this Determination did not raise a point on an individual ad as such, but to the campaign as a whole. The Panel resolved to deal with the confidential complaint in this Determination as the concern raised about the entire campaign is similar to Mr Taylor's concern on the individual ads dealt with in this decision.
19. The complaints raise essentially two issues for decision. The first is whether the approach of the individual ads and the campaign as a whole to associate the product with the reflections of war veterans in the prelude to ANZAC Day is inconsistent with the standard of maturity, balance and responsibility in alcohol advertising required by section (a) of the ABAC. A sub-point of this consideration is whether the ads are "offensive" within the meaning of section (a) (iii).
20. The two ads feature two of Australia's best known and respected living soldiers. Mr Keith Payne is one of three living awardees of the Victoria Cross and is a veteran of the Vietnam War. While he is not identified in the ad and might not have instant "household recognition" status, he is very well known across a wide segment of the community and presumably particularly so within military and veteran communities. General Cosgrove would likely have a very high public recognition as a former head of the Australian Defence Forces and through various roles he has played. The ad also identified him.
21. The advice from the advertiser is that the "Raise a Glass" campaign was developed with the RSL and Legacy as a fundraising initiative for the welfare programs of both organisations. The Cosgrove ad specifically refers to both organisations and both ads featured the logos of both bodies. The RSL and Legacy are organisations which advocate for the interests of the war veteran community and operate a range of support programs for veterans and their families.
22. The essence of the complaints is that it is highly inappropriate that the memory of war veterans should be associated with an alcohol product. In part, this is an objection of the "commercialisation" of the sacrifice of those who died in conflicts and presumably the complainants would be concerned on this point irrespective of the product being sold. However, the fact the product is alcohol, and the trauma of serving in armed conflicts may have led some veterans into abusing alcohol is seen as particularly distasteful and inappropriate.

23. For its part, the advertiser argues that the campaign successfully raised (as at 27 April 2009) \$1.2 million for the welfare programs of the RSL and Legacy. The campaign was developed with and approved by the organisations. It is argued that the campaign's primary aim was to support the fundraising appeal and "any product and branding plays a secondary role - there is no overt sales message in any form." The advertiser goes on to claim that the ads are consistent with ABAC standards, in particular they are restrained and somber in mood, the participants are clearly not affected by alcohol and the depiction of consumption is very moderate.
24. The ABAC standard in section (a) has both a positive and a negative dimension. Ads are to present a mature, balanced and responsible approach to the consumption of alcohol which is a positive obligation. The provision goes on to provide "negative" standards which ads are not to offend, namely encouraging excessive consumption, under-age drinking, offensive behaviour and misuse of alcohol. The ABAC preamble provides that conformity of an ad with the ABAC standards is to be assessed in terms of its probable impact upon a reasonable person taking the content of the ad as a whole.
25. The decision of the two service organisations to join with the advertiser has attracted a degree of public debate and resulted in some mixed views in the RSL. It is reported that the Queensland branch of the RSL has objected to the association of the organisation with an alcohol producer. The RSL at a national level however resolved that the campaign 'was for a good cause'.
26. The Panel takes the view that it is not its proper role to decide if the RSL and Legacy should have or should not have agreed to join with the advertiser in the 'raise a glass' appeal. This decision, like the decision of a sporting team or a sports code to accept a sponsorship arrangement from an alcohol company raises important questions of public policy about the role of alcohol within Australian life. It is for government in conjunction with the public health sector and the alcohol industry amongst others to determine what the policy position should be on these weighty matters. This Panel cannot decide such issues.
27. Rather it is the Panel's role to accept the RSL and Legacy did agree to the 'raise a glass' campaign, and then examine the individual executions of the ads against the ABAC standards. In doing this it is the Panel's view that the ads do not breach the ABAC. There is nothing in the content of the ads themselves which is irresponsible or unbalanced. The ads do not depict or encourage excessive consumption, or alcohol affected behaviour, or anything else which can be said to be inconsistent with the ABAC. The objection to the ads is that they were made at all, and this is not an ABAC issue.
28. The complaints are dismissed.