

ABAC

ABAC Complaints Panel Determination No: 15/08 & 24/08

In the COMPLAINTS of Mrs Maureen Morgan & Mr John Joseph
Product: VB Beer
Advertiser: Fosters Group Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Professor Elizabeth Dangar – Member

17 April 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for VB Beer by Fosters Group Limited (“the Advertiser”) and arises from a complaint by Mrs Maureen Morgan received 5 March 2008 and a further complaint by Mr John Joseph received 8 April 2008.

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

The Complaint Timeline

6. The complaint is in the form of an email by Mrs Maureen Morgan received by the ABAC Panel on 5 March 2008 and an email by Mr John Joseph received by the ABAC Panel on 9 April 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. The first complaint has not been determined within the 30 day timeframe due to a delay in receiving the advertiser's response and the decision to consider the two complaints together.

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 this advertisement (UL1/08).

The Advertisement

9. The complaints refer to a television advertisement. The advertisement begins in a room with a distinguished looking man in glasses, white tie and a suit standing looking up. He then looks down and sighs and walks through a door into a theatre in which an orchestra is waiting for him.
10. The man walks through an orchestra to the podium and then proceeds to conduct the orchestra in a performance of the VB theme song. The orchestra is using only VB bottles as instruments. The conductor and the orchestra are dressed in white tie and tails and carry on the performance with all the seriousness and professionalism of a concert performance. Toward the end of the performance three men place ladders next to large drums. At the conclusion of the performance the men drop an empty stubby on each of the three drums which then bounce off the drum and smash on the floor. The conductor then laughs and says "That's good" while holding a barely visible stubby of VB.

The Complaint

11. The first complainant argues that the advertisement:
 - (a) was placed during an India v Australia cricket match when older children and youths are watching cricket;
 - (b) features an orchestra playing the VB tune on beer bottles and at the end a bottle is dropped on a drum and smashes to smithereens;
 - (c) sport, beer and the smashed bottle, however loosely linked to the program it was highly irresponsible with binge and underage drinking at its highest level ever in this country.
12. The second complainant argues that the advertisement models bad behaviour to children and intoxicated persons, through the smashing of the bottles.

The Code

13. 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-
 - (ii) must not encourage under-age drinking;
 - (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...

Arguments in Favour of the Complaint

14. In favour of the first complaint it can be argued that the advertisement breaches section (a) of the ABAC Code by failing to represent a responsible approach to alcohol consumption, namely:
 - placing the advertisement during a cricket match that is watched by older children and youths; and
 - showing a beer bottle being smashed.
15. Further, it can be argued that the advertisement breaches section (b) of the ABAC Code by having a strong or evident appeal to children or adolescents including a novel and humorous way of creating music which may appeal to children and adolescents.
16. In favour of the second complaint it can be argued that the advertisement breaches section (a)(iii) of the ABAC Code in promoting offensive behaviour by “modeling bad behaviour to children and intoxicated persons” through the dropping and smashing of the beer bottle.

The Advertiser's Comments

17. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 9 April 2008. The principal points made by the advertiser are as follows:

- (a) The creative shows acclaimed film composer/musician Cezary Skubiszewski conducting members of a classically trained orchestra. The adults are in tuxedos and playing instruments that have been fashioned out of VB bottles (for instance some are inspired by a Xylophone, others by a flute). The tune they are playing is the VB theme song. It aims to engage consumers in a light-hearted and self-deprecating way, using a new and surprising theme/territory for VB. Stubby Symphony was filmed at Hamer Hall (Melbourne Concert Hall). No alcohol consumption is depicted.

Complaint 1

- (b) The ad has only screened post 8.30pm, except during live sport, in line with the current guidelines for alcohol advertising in Australia. We strongly refute that the advertisement takes an "irresponsible approach to the consumption of alcohol beverages" or breaches section (a) mainly because there is no implied or actual consumption of alcohol in the advertisement plus the overall tone of the advertisement (mature aged musicians playing bottles to create music) presents a mature and responsible attitude. We believe when viewed as a whole by a reasonable person - a dramatic stage performance featuring an orchestral piece for an advertisement - the smashing of the VB stubby as a visual representation of the music's percussive crescendo, is relevant, appropriate and in context.
- (c) We would argue that the combination of classical music and beer bottles as instruments is an adult concept, as inspired by the tradition of blowing a tune on an empty bottle at a BBQ or party for instance. We believe it's a long bow to draw to suggest that underage persons would be encouraged to consume the product given the content and context of the advertisement as a whole. Plus it is worth noting that the instruments have been crafted to replicate real musical instruments and at no time is it implied that consumption has or will be taking place.
- (d) The advertisement was designed specifically to target male beer drinkers aged 25 plus. We don't believe that the combination of classical music and beer bottles as instruments has strong or evident appeal to children or adolescents. Importantly the execution of the VB Symphony advertisement further reinforces this – depicted is a mature aged orchestra led by Skubiszewski (a man in his sixties), staged in a traditional orchestra layout with all members in formal attire. The tone on the whole is serious but adults will get the intended irony of VB, historically seen as a working class beer, being associated with high brow classical music. Furthermore, in line with the current guidelines

for alcohol advertising in Australia the ad has only screened post 8.30pm, except during live sport.

Complaint 2

- (e) We refute that the advertisement promotes “offensive behaviour” as when viewed by a reasonable person in context – a dramatic stage performance featuring an orchestral piece for an advertisement - the smashing of the VB stubby as a visual representation of the music’s percussive crescendo, is relevant, appropriate and in context. Given this, we believe the smashing of the bottle will be viewed in this way and not as a prescription for behaviour. Also the overall tone of the advertisement is mature and serious (Skubiszewski, a man in his sixties, leads a mature aged classical orchestra) however adults will get the intended irony of VB, historically seen as a working class beer, being associated with ‘high brow’ classical music. The ad has only screened post 8.30pm, except during live sport, in line with the current guidelines for alcohol advertising in Australia.
- (f) Based on the above we believe that the VB Symphony advertisement upholds both the ABAC Code and AANA Code of Ethics for alcohol beverage advertising in Australia. The advertisement was also pre-vetted and approved.

The Panel’s View

- 18. The two complaints raise collectively two essential points. Firstly, does the broadcast of the ad during a cricket match, combined with the smashing of bottles at the conclusion of the ad, amount to a scenario which has appeal to children or adolescents? Secondly, does the smashing of the bottles raise the issue of inappropriate behaviour, if considered in conjunction with alcohol promotion? The relevant sections of the ABAC brought into play by the nature of the complaint are sections (a) and (b).
- 19. The first matter to be dealt with is the screening of the ad during a cricket match which concerned the first complainant. The ABAC is a code which deals with the content of ads, as opposed to where ads are placed. While the code preamble refers to the class of persons to whom the ad is directed, and hence indirectly raises the question of the placement of an ad, this is an incidental rather than primary matter for the code’s operation.
- 20. In contrast, the Commercial Television Industry Code of Practice (CTICP) deals expressly with the timeslots in which alcohol ads may be broadcast. This code provides that alcohol ads are restricted to certain timeslots *i.e.* after 8.30 pm, unless shown with sporting events broadcast on weekends. In this case, the ad was broadcast during an international cricket match shown on a weekend.
- 21. This means that the ad was shown during a time which is approved by the CTICP. The Panel accepts children and adolescents will form part of the audience of the ad; however, this is consistent with the operation of the CTICP and is not inconsistent with the terms of the ABAC.

22. The second point is whether the smashing of the bottles has a particular appeal to children or adolescents or would encourage under-age drinking, contrary to the intent of sections (a) and (b) of the ABAC. In assessing the conformity of the ad with the ABAC, the code preamble provides that the ad is to be assessed in terms of its probable impact upon a reasonable person, taking its contents as a whole.
23. In this case, the ad viewed as a whole cannot be reasonably said to have strong or evident appeal to children or adolescents. The ad depicts an orchestra playing classical music albeit using empty beer bottles. The orchestra is conducted by an older man and the orchestra members themselves are on the whole mature adults or older. The Panel does not consider that an ad of this type is likely to have particular appeal to children as such and, on this point, the Panel accepts the argument of the advertiser that the ad is targeted at an audience over the age of 25. The Panel does not believe that the broken bottles scene, when viewed as part of the whole ad, can be said to be appealing to children.
24. The second complaint raises the issue of whether the ad breaches section (a) (iii) by promoting offensive behaviour through the scene featuring the breaking of the beer bottles. The Panel does not believe that the ad breaches the ABAC on this point as, viewing it as a whole, the breaking of the bottles is part of the entire ad and represents the crescendo of the orchestra's performance. Like the firing of cannons at the crescendo of the *1812 Overture*, the bottles break as a consequence of the percussion effect at the end of the performance. The Panel considers it to be a "long bow" to think that viewers would take from this scene that offensive behaviour relating to intoxication or other alcohol misuse was being promoted.
25. Accordingly, the complaints are dismissed.