

ABAC

ABAC Complaints Panel Determination No: 67/09 & 68/09

Confidential Complaints Product: VB Beer Advertiser: Fosters Group

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

24 August 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for VB Beer by the Fosters Group (“the Advertiser”) and arises from two confidential complaints received on 17 July 2009.

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 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.

4. 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.
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 ABAC on 17 July 2009.
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. These complaints have 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 this advertisement.

The Advertisements

9. The complaints refer to a television advertisement shown on Win 7 and SBS after 8.30pm. The advertiser has advised that the first complaint refers to a 60 second version and the second complaint refers to a 2 minute version of the same advertisement. The full 2 minute version of the advertisement is described below. The shorter 60 second version is a cut down version of the same ad with less groups depicted (10 groups) but includes the group "Men who should've read the instructions" and the description of this group in paragraph 11 is taken from the shorter 60 second version of the ad.
10. The advertisement opens with an aerial shot of a country town. We then see a closer aerial shot of a town with a parade marching through the streets where different groups march under different banners and crowds of people line the streets cheering. The parade is overlaid by uplifting music and a commentary describing the different groups marching. We see a number of different groups marching under banners including The Historical Re-enactions, Men who've had their arm in a cow, Meat Tray Winners, Men who won't eat quiche, Blokes built like a brick ...house, Men who should've read the instructions, Guys who peaked in high school, The Azzas, Miniature bat signers, Men punching above their weight, The Manscapers, The people who dream of chucking it all in, People who chucked a sickie to be here, The Brewers, The Streakers and Cashed up bogans.

11. The first complainant refers to a group of men marching under the banner, “Men who should’ve read the instructions”. This group of men are marching in ordinary casual clothing with bandaged injuries, some on crutches and one in a wheelchair as the commentator says “Guys that shut their eyes and go in window punching”
12. The second complainant refers to a group of men marching under the banner “Blokes punching above their weight”. We see a group of ordinary looking men that are, on appearances, mismatched with their very attractive partners by their, height, age or looks as the commentator says “Of course, some missing links, performing modern miracles”.
13. As the advertisement progresses we see that the parade is leading to a large two storey pub in the countryside.
14. At the conclusion of the advertisement we see large groups of people drinking VB in and around the pub at the conclusion of the parade as the day turns to dusk. The commentary concludes “And it all goes to prove, it doesn’t matter what banner you march under, it doesn’t matter who you are, VB, the drinking beer, that’s what it’s for Australia”. The text “The drinking beer” is overlaid on the final scene together with “vb.com.au” and “Enjoy Responsibly”.

The Complaint

15. The first complainant argues that the parade has striking similarities to an ANZAC parade, with groups of men with banners and some sporting injuries. The complainant’s father is a WW2 veteran and to have an ANZAC parade mimicked in a beer advertisement is disgusting to the complainant. The complainant argues that the ad should be removed and the company should apologise for the insult.
16. The second complainant argues that by depicting the flag bearer for the group marching under the banner “Blokes punching above their weight”, as overweight with red cheeks and a ruddy complexion (classic markings of an alcoholic), VB is telling chronic alcoholics that not only can they achieve sexual success through excess beer drinking but that they will be praised publicly for it too. The complainant notes that the joke with this group is unattractive blokes being publicly applauded for their attractive partners.

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 –
 - 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;
 - 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;

Arguments in Favour of the Complaint

18. In favour of the complaints it is alleged that:

- (a) The advertisement breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages through the depiction in a beer advertisement of a parade with striking similarities to an ANZAC parade (ie groups of men with banners, some sporting injuries) which might be insulting to war veterans.
- (b) The advertisement breaches section (a)(i) & (a)(iii) of the ABAC by encouraging excessive alcohol consumption through depicting regular VB beer drinkers, some of whom have the classic markings of an alcoholic (overweight with red cheeks and a ruddy complexion) as heroes in a parade and by depicting the parade leading to a pub where everyone drinks VB during the day and the festivities at the pub continuing after it gets dark.
- (c) The advertisement breaches section (c)(i) of the ABAC by suggesting the consumption or presence of the product is a cause of or contributor to the achievement of sexual success by depicting a group of average looking men (the flag bearer having the classic markings of an alcoholic, namely overweight with red cheeks and a ruddy complexion) marching with attractive women under the banner "Blokes Punching Above Their Weight", where all the marchers are depicted as VB regulars, thereby suggesting that beer consumption can lead to sexual success and public praise.

The Advertiser's Comments

19. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 31 July 2009 (attached as Annexure A). The principle points made by the Advertiser are:

- (a) In our society we are exposed to a large variety of parades including military, political, holiday celebration, entertainment, AFL Grand Final, Mardi Gras etc. The references used in creating the VB advertisement were the Olympic Opening ceremony and store parades. The parade depicted in the VB advertisement falls into the entertainment category and represents 'groups' of Aussies, who share pastimes, professions, a passion or some other left of field connection. The ANZAC march is a significant event and one that many Australians respectfully attend. We don't believe that parades in general, including the one in the VB ad, could be said however to be mimicking the ANZAC march or disrespectful to the ANZAC tradition simply by virtue of the fact of being a parade –

particularly given no one parade or event could be said to own the concept exclusively.

- (b) In relation to the reference to “some sporting injuries” this group is depicted as “Blokes who should have read the instructions” and are one group of many, so not the focal point of the parade or advertisement (4 seconds of a 2 minute ad). This group is a humorous take on the belief that there are some men who go it alone on home projects, with sometimes dire consequences. The group is clearly signed to this effect and all the blokes are dressed in everyday clothing. There are no depictions in the ad of the armed forces.
- (c) There is no beer consumption depicted during the parade by those marching or cheering on the sidelines and each character’s demeanor is sober and alert with no sense the participant has been drinking. Where consumption is depicted (the end scene), everyone is presented in a sober and alert way and beer is being enjoyed in a pub environment, where the responsible service of alcohol would apply.
- (d) In relation to the part of the ad (“Blokes who punch above their weight”), which represents 5 seconds out of the 2 minute ad, we refute the suggestion that the ‘talent’ have the “classic markings of an alcoholic”. The men represented are average Aussie blokes so they have different builds and looks, which also applies to the flag bearer (one of hundreds of people represented in the ad as a featured extra). The characteristics mentioned by the complainant could apply to any individual and we do not believe that a reasonable person would categorise the characters (or the flag bearer) as being alcoholics. Not one of the groups is being “heroed” for their drinking ability. Instead it is each group’s unique Australian quality that the crowd recognises and responds to. The ad is a representation of Aussies we know and love getting together at the end of the day for a beer at the pub. As such the advertisement is very clearly not depicting excessive consumption or the abuse of alcohol. Nor is it promoting offensive behaviour or abuse of alcohol beverages.
- (e) In relation to “Blokes who punch above their weight”, it’s a tip of the hat to men who have really attractive partners. We would strongly argue that people do not associate these types of blokes as having attractive partners due to alcohol consumption, in fact the often talked about high profile male examples (i.e. French President Nicolas Sarkozy) have their success attributed to things like wealth, talent or status or sometimes just plain old luck. As such it is not reasonable to extrapolate that we’re implying their relationship is the result of alcohol consumption. Responsible consumption is shown only in the final scenes after the groups have been introduced, so the sequence of events further supports the fact that alcohol is not shown to play a role in their having attractive partners.

The Panel's View

20. The two complaints raise three (3) distinct issues which will be addressed, namely:
- Does the ad breach section (a) by mimicking an ANZAC Day parade and hence being “offensive” or failing to present a mature, balanced and responsible approach to the consumption of alcohol?
 - Does the ad breach section (c) by encouraging or promoting excessive consumption of alcohol? and
 - Does the ad breach section (c) by suggesting alcohol is a cause of or contributor to the achievement of sexual success?
21. In assessing if an ad is consistent with the standards contained in the ABAC, the Code preamble provides that the test is the ad’s probable impact upon a reasonable person within the class of persons to whom the ad is directed, taking the ad’s content as a whole.

Is the ad “offensive” or does it fail to present a responsible approach to alcohol consumption?

22. The first complainant finds the ad offensive because it is alleged to resemble an ANZAC Day march. The Panel acknowledges the complainant’s concern; however it is not considered that the ad can fairly be said to breach the ABAC in this respect.
23. The use of the term “offensive” within the meaning of section (a) needs to be understood in the context of the section as a whole. This makes it clear that “offensive behaviour” relates to behaviour which is related to or influenced by alcohol use, such as drunken loutish behaviour. This contrasts with broader notions of bad taste contained within section (c) of the AANA Code of Ethics and which is assessed by the ASB, and not this Panel.
24. The ad is centred upon the depictions of different groups under various banners participating in a parade. The Panel does believe a reasonable person would take the parade to be a depiction of an ANZAC Day march and, even if it was taken to be a parody of ANZAC Day, this would not of itself make the ad inconsistent with the ABAC.

Does the ad promote or encourage excessive consumption and/or suggest alcohol contributes to sexual success?

25. The second complainant contends that the depiction of one group within the parade, namely “Blokes punching above their weight” promotes excessive alcohol consumption and suggests that heavy drinkers can achieve sexual or social success. This group depicts a number of “ordinary looking” men, some of them overweight, but each with a very attractive female partner.
26. The complainant’s argument is that the flag-bearers of the group are two overweight men, and one of them shows signs of being an alcoholic *e.g.* red cheeks and ruddy complexion. The implication taken by the complainant is that excessive consumption

of alcohol is no barrier to social and sexual success and indeed the crowd reaction to the group encourages the idea that alcohol misuse is acceptable.

27. For its part, the advertiser argues that the scene is one of a number within the ad and that it is not given particular prominence. Further, the advertiser refutes that the men depicted show signs of excessive alcohol use, but rather the group consists of “average Aussie blokes, so they have different builds and looks”. It is contended that no group is “heroed” because of alcohol use, and that a reasonable person would not take the success of the men in having attractive partners to be the result of alcohol use.
28. It does not appear that any participant in the parade and within the “Blokes punching above their weight” group is affected by alcohol. Certainly there is no depiction of alcohol consumption during the actual parade, with the ad showing consumption in the final scenes in the hotel which appears to be the end-point of the parade. The “flag bearers” of the group are overweight, but it is not possible to conclude that their appearance shows signs of either man being an alcoholic.
29. The section (c) standard provides that alcohol ads are not to suggest that alcohol use or the presence of alcohol causes or contributes to the achievement of social or sexual success. In other words, ads are not to imply a causal link between success and alcohol. In the current ad, attractive women are shown to be the partners of ordinary or even unattractive men. The ad does not show alcohol playing a part in the men having attractive partners. The ABAC does not prohibit the use of attractive people in alcohol ads and it is “too long a bow” to conclude that alcohol is the reason why the men shown have female partners.
30. The Panel believes the ad does not breach the ABAC and accordingly the complaints are dismissed.