

ABAC

ABAC Complaints Panel Determination No: 72/13

Confidential Complaint Product: Heineken Advertiser: Heineken Lion Australia

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards - Member
Professor Richard Mattick – Member

1 August 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Heineken by Heineken Lion Australia (“the Advertiser”) and arises from a complaint received 26 June 2013.

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 and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint 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 complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 26 June 2013.
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 was decided 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 this advertisement.

The Advertisement

9. The complaint refers to a television advertisement for Heineken, which is set in India and has an appearance similar to a 'Bollywood' musical.
10. The advertisement opens in a busy Indian street at night during a festive occasion. We see a man ("the traveler") alighting from the back of a truck carrying a goat in his arms and then putting the goat on the ground as a waiter carrying a tray with two 375ml bottles of Heineken walks toward him. The goat runs between the waiter's legs and the traveler takes the two bottles and leaves cash in its place and then places the bottles in a harness attached to the goat. The waiter calls out and then sees the money on his tray and laughs. While the traveler is distracted the goat runs away up a flight of steps carrying the beer and the traveler runs after it.
11. The traveler stops as a woman offers him a platter of food. He takes a chilli from the platter and eats it as his face goes bright red. He looks to the side of the woman and sees the goat with the two Heineken bottles and runs after it. He is then stopped by a man offering him a golf stick which he accepts and then hits a

golf ball into a target which lights up as everyone claps. The target falls over and the area behind the target is lit up and we see an elephant dressed in costume.

12. We then see the traveler being lifted by the elephant's trunk up onto a high wall and then a group of performers in costume in a choreographed routine that the traveler appears in as the goat runs past. The traveler jumps at the goat but misses it and falls on the ground in front of a woman who looks alarmed before smiling at him.
13. The man continues to chase the goat through the crowds as people dance and fireworks are let off. We then see powdered paint being thrown as the traveler picks up the goat and greets another man who he appears to be his friend. The traveller is covered in paint as the two men clink the bottles of Heineken together.
14. The final screen is the Heineken logo with the tagline "Legendary travelers wanted" which changes to "open your world" accompanied by the text "heineken.com/voyage" and an "Enjoy responsibly" logo.

The Complaint

15. The complainant argues that the advertisement exploits animals and is also offensive to the Hindu culture by setting the advertisement during the highly religious Holi festival and exploiting it to sell beer.

The Code

16. 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 –
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

The Advertiser's Comments

17. The Advertiser responded to the complaint and questions posed by the Panel by letter received 11 July 2013. The points made by the Advertiser in relation to the advertisement were:
 - a. We believe that the Heineken Voyage commercial presents a mature, balanced and responsible approach to the consumption of alcohol and does not encourage behaviour offensive to the Hindu community.
 - b. The Heineken Voyage TVC shows a Western traveller arriving in a busy village square, and making his way through a secular, night time celebration. In the various stages of the celebration we see:
 - Doormen at the entrance to the event
 - Waiters and waitresses serving food, soft drinks, and a moderate amount of Heineken beer in line with our commitment to the responsible consumption of alcohol

- A mini-golf game
 - A painted elephant
 - A dance troupe dressed in silver
 - People leaving the event by car, and a crowd of well-wishers seeing them depart and continuing to celebrate
- c. In the closing scene, the well-wishers are seen throwing coloured powder at the car that is departing. The main character moves through the crowd and is therefore "caught in the crossfire", however it is clear that the people in the crowd are not throwing coloured powder over each other (as is the case during Holi) – the Western traveller is the only person who has been hit by coloured powder.
- d. While coloured powder is commonly used in the Holi festival, it is not exclusively used for this purpose. It is used in other contexts, e.g. political celebrations such as the following:
- <http://www.demotix.com/news/2122777/howrah-ex-footballer-prasun-banerjee-wins-elections#media-2122772>
- e. Furthermore, the use of coloured powder at the Holi festival commonly happens during the day. In the Voyage TVC, set entirely at night, there are no other indications that the event is Holi, e.g. lighting of bonfires.
- f. The party depicted is an original, invented party. The areas within the party, e.g. the fortune teller, the golf game, and silver-costumed dancers, show that this is a bizarre, unique, and secular event and not a specific festival of any sort, whether religious or secular.
- g. While producing the TVC Heineken were very careful to ensure that there were no religious references. Heineken worked with a local Indian production company and consulted in detail with legal advisors of Hindu background, both at script stage and throughout production.
- h. Heineken is confident that the advertisement is compliant with the ABAC code.

The Panel's View

18. As mentioned in paragraph 2, alcohol advertising is subject to several codes of practice, including the AANA Advertisers' Code of Ethics administered by the Advertising Standards Board. The Code of Ethics applies to most advertising, irrespective of the kind of product or service being advertised. In contrast, the ABAC applies only to alcohol advertising. This means that an alcohol advertisement, such as the one being considered needs to be consistent against both the AANA Code as well as the ABAC.
19. In some respects, the concerns expressed by the complainant raised matters touched upon by the AANA Code of Ethics. Specifically, section 2.1 of the Ethics Code which requires that advertising not portray people or depict material which discriminates or vilifies a section of the community on account of race, ethnicity or religion. Some aspects of the complainant's concern, namely that the

advertisement is exploiting animals and is offensive to the Hindu culture by setting the advertisement during the religious Holi festival, would be present even if the advertisement was promoting soft drink as opposed to alcohol.

20. The Panel will not deal with the Code of Ethics issues as this is a matter for the ASB to consider. Rather, the Panel will deal with the concern raised under section (a)(iii) of the ABAC, namely that an alcohol advertisement must present a mature, balanced and responsible approach to alcohol consumption and not promote offensive behaviour.
21. The advertiser contends that the advertisement is not in breach of the ABAC and argues specifically:
 - That the advertisement is not set within the Holi festival as such and the use of coloured powder depicted in the advertisement, while occurring during the Holi festival, also is used in a range of contexts within Indian settings; and
 - There are no religious references in the advertisement and, apart from use of the coloured powder, no other scene within the advertisement would suggest the advertisement is set within the Holi festival.
22. In past determinations considering section (a)(iii) the Panel has pointed out that the expression “offensive behaviour” needs to be understood within the context of section (a) and the ABAC as a whole. Within this context, it is clear that the term relates to behaviour which is induced or influenced by alcohol use and is not a freestanding test concerning behaviour unrelated to alcohol use, but which might be regarded more generally as ‘offensive’.
23. The Panel does not believe the advertisement breaches the ABAC standard. Clearly, the advertisement is placed in a stylised setting which, because of its resemblance to a Bollywood movie, might be regarded as ‘Indian’. The behaviour depicted, however, does not appear to be effected by alcohol use and, indeed, actual use of alcohol is shown only in the final scene of the advertisement. The behaviour of the characters depicted cannot be seen to be offensive within the sense of section (a)(iii) in that their behaviour is not drunken or loutish or intemperate as a result of alcohol use.
24. Accordingly, the complaint is dismissed.