

ABAC

ABAC Complaints Panel Determination No: 89/13

Complaint by Jamie-Lee Cavill Product: Carlton Draught Company: Carlton & United Brewers

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Louisa Jorm – Member

7 October 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns the placement of the Carlton Draught logo on jumpers of players in senior teams of the WA Amateur Football League (WAAFL). The determination arises from a complaint received 27 August 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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - The Outdoor Media Association Code of Ethics 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 that are in part under the ABAC and accordingly the Panel has jurisdiction to deal with those parts of the complaint.

The Complaint Timeline

6. The complaint was received by ABAC on 27 August 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. Carlton and United Brewers ("CUB") are of the view that the placement of the logo on the jumpers is not an 'advertisement' and hence pre-vetting approval was not sought in this case.

The Advertisement

9. The complaint refers to a requirement that WAAFL senior teams wear the Carlton Draught logo on their uniforms, arising from CUB's sponsorship agreement with the WAAFL.
10. The jumpers include the Carlton Draught logo on the top right side. The logo comprises of the words Carlton Draught in white against a red background and at the top of the logo is a picture of two Clydesdale horses in gold. The logo is 8cm wide. Other logos are also included on the jumpers.

The Complaint

11. The complainant argues that the requirement that WAAFL senior teams wear the Carlton Draught logo on their uniforms or risk a fine, arising from the company's sponsorship agreement with the WAAFL, is a breach of the ABAC by reason that:
 - The majority of the players are under 25 years of age and there are players that are 16-18 years of age that must wear the alcohol branding; and
 - Many young people watch local football games and would be exposed to the Carlton Draught promotions.

The Code

12. The ABAC provides that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages ...

- b) not have a strong or evident appeal to children or adolescents and, accordingly-
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;

The Advertiser's Comments

13. The company responded to the complaint and questions posed by the Panel by letter dated 16 September 2013. The points made by the company in relation to the complaint were:
- (a) Stakeholders, including major sporting codes, alcohol manufacturers and broadcasters, have invested significantly over the past three decades to ensure that the association between alcohol and sport is positive, responsible and in line with community standards. Whilst there are select lobby groups who aim to ban sports sponsorships, there are great numbers in the community and indeed in government who support companies like ours being able to invest in and be associated with sport. In the case of Carlton and United Breweries (CUB), over the years our business has made a huge investment in sport at both an elite and grass roots level. In the case of the WAAFL our sponsorship reduces fees for players to participate.
 - (b) The CUB business has long been committed to the responsible marketing of our products and ensuring our marketing is targeted to adults and our beers enjoyed in a responsible manner. To this end our sporting partners take steps to ensure they play their role too. In the case of the WAAFL they have a club alcohol management policy in place. The purpose of this Policy is to provide a basis for the responsible management of alcohol by all clubs fielding teams within the WAAFL. It clearly articulates a range of standards that include the Responsible Service of Alcohol (RSA), restrictions around alcohol service times (post 1pm and the conclusion of Colts matches) and promotion of alcohol (limited to the bar area and clubhouse foyer). The WAAFL runs a senior competition and a colts competition with the registered players overwhelmingly adult (players aged 16 to 17 comprise 1.7% of registered players). The Carlton Draught logo (text: Carlton Draught and image: Carlton Clydesdales) appears on the senior competition jumpers only (not the colts jumper) and is represented at a width of 8cm on one side of the jumper (breast pocket position) with the WAAFL logo on the other side.
 - (c) It is our understanding that a logo on a sponsored team jumper is not an advertisement within the remit of ABAC. Generally speaking, a sponsorship will likely involve a number of elements. Some of these elements will take the form of advertising and be in scope for ABAC (and potentially require approval via the Alcohol Advertising Prevetting Service) and others will not. This is our understanding from our work with the ABAC as a founding signatory and confirmed by ABAC complaints panel determination number 26/08. This

determination includes a number of statements on the topic of sponsorship including: "The ABAC is essentially aimed at individual executions of alcohol advertising and not sponsorship arrangements." There are also references to what is considered an advertisement versus a sponsorship arrangement. As stated above we do not believe the logo on the senior jumper qualifies as an advertisement by ABAC standards.

- (d) That said, you have requested a view on it regarding section a/ and b/ of the ABAC. To this end, we don't believe that the logo on the senior competition jumper could be said to have strong or evident appeal to children or adolescents when considered in the context of a senior game organised by the WAAFL. The logo on the senior competition jumper is there in recognition of the sponsorship and whilst proportioned to the jumper is small in size and contains no sales message or element that could be considered to specifically appeal to those under the legal drinking age. Senior games will have some spectators (they are not telecast) however it is fair to say they are mainly adults.
- (e) As stated we do not consider the logo on the senior competition jumper to be an advertisement. As such we do not believe that a player, in wearing the senior competition jumper as they play a game of senior footy organised by the WAAFL, is part of an alcohol advertisement.
- (f) We'd like to take the opportunity to reinforce we are committed to ensuring our sponsorship arrangements are brought to life in an appropriate and responsible way and targeted at adults. We have discussed this complaint with the Western Australian Football Commission and will continue to work with them to ensure that we deliver on this commitment.

The Panel's View

- 14. CUB is a sponsor of the WAAFL competition in Western Australia. Resulting from this sponsorship arrangement, players in the senior competition wear jumpers which have the Carlton Draught logo placed upon them.
- 15. In essence the complainant is concerned about the message the inclusion of the producers logo on the jumpers has for children and adolescents. This concern arises in two respects, namely:
 - It means that in some instances players under the age of 25, including junior players, wear jumpers with the logo; and
 - Many children and adolescents will watch games involving players wearing the jerseys with the logo.
- 16. The Panel recognises, as it has in past Determinations, that the sponsorship by alcohol companies of various Australian sports is a matter which raises important issues of public policy. These public policy issues, which would include the extent which sport sponsorship by alcohol companies should be allowed and on what terms, however, is a matter for Government and not for the Panel to determine. Rather, the Panel has a far more limited role and that is to apply the terms of the ABAC to the circumstances raised in a complaint.
- 17. The ABAC scheme creates a code of practice for advertising which alcohol beverage companies have committed themselves. The threshold issue which arises, therefore, is

whether the placement of a product logo on a football jumper can be fairly regarded as 'alcohol beverage advertising' consistent with the use of that term within the ABAC.

18. The ABAC scheme is limited to alcohol beverage advertising. It does not purport to cover all forms of alcohol marketing and the Panel has previously considered and determined that the terms of a sponsorship agreement between an alcohol company and a third party, such as a sports team or competition, cannot be described as 'advertising'. It is possible that as a result of a sponsorship arrangement that an alcohol advertisement will be created, but the actual sponsorship arrangement itself cannot be considered advertising.
19. While actions such as a competition being named after a sponsor and the placement of a product logo on a uniform or football jumper are designed to increase recognition of a product brand, the question is whether these acts of marketing and brand promotion are 'alcohol beverage advertising' which must meet the ABAC standards. The Panel has previously considered this question in Determination 52/10 in relation to sponsorship of the Australian Cricket Team and Determination 26/08 in relation to sponsorship of a motorcross team.
20. The Panel in these previous decisions noted:
 - The ABAC does not define 'advertising' in contrast to a range of other codes of practice applied to alcohol in other countries or other products in Australia
 - All of the alcohol codes internationally draw distinctions between broader marketing activities and 'advertising'
 - The structure of the ABAC reflects this by having Part 1 applying to alcohol beverage advertising, Part 2 applying to naming and packaging of alcohol beverages and a separate protocol applying to the promotion of alcohol at events
 - Overseas codes e.g. New Zealand often deal with sponsorship not as a form of advertising but as a separate type of broader marketing
 - Sponsorship incorporates the terms and conditions by which the sponsoring company provides financial and other support to the entity responsible for the competition team or activity
 - Matters such as naming rights and the placement of logos are a direct manifestation of the sponsoring arrangement and cannot be fairly characterised as advertising.
21. Accordingly, given that the concern expressed by the complainant in this case is not about any 'advertising' for instance, a television commercial, radio broadcast, print advertisement, internet or social media advertising, or a billboard but, rather, concerns only the actual logo placed on the jumper the Panel is unable to take a substantive view on the matter in terms of the provisions of the Code.
22. It is noted that the product logo is not included on the jumper of players in the Colts competition and that players under the age of eighteen (18) apparently comprise only a small percentage of registered players in the senior competition. It is the senior competition where players wear the jumpers containing the logo. Clearly, it is inconsistent with both the spirit of the substantive code provisions and the terms of the protocol

applying to the promotion of alcohol at events that players under the age of eighteen (18) would wear a jumper with the product logo. As explained, however, this does not amount to a breach of the ABAC Standards.

23. No doubt the complainant will be disappointed with this conclusion, but, as pointed out, the underlying question raised by the complaint is the role that alcohol companies should or should not play in sports sponsorship and this is a matter for Government and not the Panel.
24. Accordingly, the complaint is dismissed.