

ABAC

ABAC Complaints Panel Determination No: 90/13

Complaint by Catherine Matheson Product: Tap King Advertiser: Lion

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Louisa Jorm – Member

1 October 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Tap King by Lion (“the Advertiser”) and arises from a complaint received on 5 September 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 under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 5 September 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. The complaint was determined within that 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 advertisement.

The Advertisement

9. The advertisement opens with a man in casual clothing standing in front of an open fridge looking into it. The fridge is full of various foodstuffs and at least one bottle of wine. The man appears as if he has found nothing in the fridge that interests him.
10. In the next scene we see the same man but this time wearing business clothing, bending over and reaching into and looking through the same fridge.
11. The scene changes so we are viewing from inside the fridge the same man this time wearing a T-shirt looking in the fridge and then shutting the door. Again, he appears slightly disappointed as he leaves the fridge without having removed any items.
12. In the next scene we see the man, now in business clothing looking into the fridge at night. His facial expression indicates something unexpected has caught his eye. He starts pushing items off the shelf and we see and hear Lionel Richie in the back of the fridge playing on a white grand piano. Lionel

Richie sings "Hello" as the man stares at him with an expression of awe and drops to his knees in front of the fridge.

13. We then see a larger view of Lionel Richie with the Tap King product on top of the piano and a chandelier over his head as he continues to sing the lyrics of the song and the line "Is it me you're looking for". The scene then shows a close up of a pair of hands, presumably those of Lionel Richie, as he pours a glass of beer from the Tap King product as he continues to sing to the man "I can see it in your eyes, I can see it in your smile" and the man continues to watch him appreciatively.
14. Lionel Richie then hands the man a glass of beer from inside the fridge which the man receives and looks at with the same expression of awe as Lionel Richie continues to sing "You're all I've ever wanted".
15. In the last scene we see the product in front of the Tap King logo with the line "Refreshing Draught". The product then turns 90 degrees and alongside appear the logos for Tooheys New, XXXX Gold, Tooheys Extra Dry, Hahn Super Dry, James Boag's and James Squire beers.

The Complaint

16. The complainant is concerned that:
 - The advertisement exerts mind control as Lionel Richie sings words about wanting the product while looking into the man's eyes as the man is looking into the fridge deciding whether he really wants a beer.
 - It goads an alcoholic to actually have the beer.

The Code

17. 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.....

The Advertiser's Comments

18. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 17 September 2013. The points made by the Advertiser in relation to the advertisement was:
 - (a) The television advertisement questioned is part of the launch campaign for the new innovation, Tap King. It shows a middle-aged man (Kevin) discovering Lionel Richie at the back of his fridge playing the piano and singing his famous hit song "Hello" (originally released in 1984), and later offering him a beer poured from the Tap King. The Advertisement begins with a montage of scenes showing Kevin visiting

his fridge on several different occasions. His various states of dress and the time of the day (in a suit after work; in casual weekend clothing) is intended to show these evening and weekend occasions when this audience generally enjoys a responsible drinking occasion at home. The Tap King system is built to sit within and operate from a medium sized fridge, which is the reason for the central importance of the fridge in the Advertisement. The final time Kevin opens his fridge door in the Advertisement he hears music playing and reveals a room behind the fridge with Lionel Richie playing a grand piano. Kevin drops to his knees in shock and amazement at seeing Lionel Richie. Lionel then looks up at Kevin as he begins singing his famous song, *Hello is it me you're looking for?* The Advertisement continues with Lionel and Kevin in dialogue, clearly shown through eye contact and body language, while Lionel plays the piano and also demonstrates to the viewer how the Tap King system functions (by pouring the beer). Lionel tilts the glass under the Tap King and presses the button. We progress through a series of shots demonstrating the beer pouring into the glass. Lionel continues passionately singing his song during the entire product demonstration. Kevin, still in his kitchen remains transfixed at the events unfolding in front of him. It concludes with Kevin receiving a poured Tap King beer from Lionel's hand that extends out from the fridge.

- (b) Lion does not consider that the Advertisement breaches any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code. As noted in further detail below:
 - (i) Lion takes its advertising responsibilities extremely seriously and has a strong compliance track record in this regard; and
 - (ii) Lion has a number of strict internal and external processes against which any proposed advertisement is considered;
 - (iii) the Advertisement was put through each of these processes prior to Lion's decision to broadcast it.
- (c) The Advertisement does not depict content that is contrary to section (a) of the Code: it does not encourage excessive consumption or abuse of alcohol, under-age drinking, offensive behaviour; nor does it depict any irresponsible consumption practices.
- (d) The intention of the Advertisement is to introduce the new premium beer system, Tap King, to its target audience in an entertaining way that also demonstrates how and when it is reasonably intended to be consumed responsibly. Tap King is targeted at people over the age of 30 who enjoy drinking draught beer but their life commitments mean they spend more time relaxing at home – our research (Lion, 2011) shows 69 per cent of drinking occasions take place at home. The use of Lionel Richie in the Advertisement as a well-accomplished and respected figure internationally is in line with promoting these aspects of the product to the target market. There is nothing within the Advertisement that suggests his presence is to promote irresponsible consumption. It concludes with Kevin receiving a poured Tap King beer

from Lionel's hand that extends out from the fridge. The interaction and eye contact between Lionel and Kevin is completely in line with and fitted to the humorous theme of the Advertisement – Kevin is in shock and awe of finding Lionel in his fridge, and Lionel sings his famous song to his audience. The suggestion that the simple action of Lionel demonstrating the product by pouring from it and offering Kevin a beer in this segment amounts to enticement is not founded.

- (e) The Complainant asserts that the actions and words sung by Lionel Richie in the Advertisement act to “goad” Kevin to have a beer and attempt “mind control”. This is an unreasonable conclusion from the content of the Advertisement, and information imparted during the course of the Advertisement. The song choice of “Hello” is fitting to the events shown. It is one of Lionel Richie's most identifiable and recognisable songs and the words fit the surprise encounter between Lionel and Kevin inside the fridge with “Hello, is it me you're looking for?” The lyrics “you're all I've ever wanted” featured as part of the song in the context of this Advertisement do not encourage excessive consumption or abuse of alcohol. During the pre-vetting process the scenes over-laid with these words were specifically discussed and several changes were made by Lion to ensure this was fully compliant.
- (f) The surprise Kevin has when he opens the fridge to find Lionel Richie playing his piano is intended as a humorous moment for viewers of the Advertisement, and also parallels the idea behind the Tap King innovation – that it is something out of the ordinary to find Lionel Richie inside your fridge. Importantly, Kevin's surprised and happy look takes place when he lays his eyes on Lionel before any beer is introduced in the Advertisement. The Tap King is in view on top of the piano however at this point Kevin and viewers would not know what this object is. As mentioned above, throughout the Advertisement it is repeatedly demonstrated that the dialogue and engagement is between Lionel and Kevin, and not Kevin and the product. There is no basis within the Advertisement to assume, as was stated by the Complainant, that Kevin is an alcoholic or that he is searching for beer and that Lionel by his action of pouring a beer convinces him to change his mind and actually have a beer.
- (g) As a responsible advertiser, Lion has demonstrated a long-standing commitment to supporting and adhering to the Alcohol Beverages Advertising Code (ABAC) and Advertising Standards Bureau. In acknowledgment of Lion's position of support for ABAC and ASB, Lion maintains strict internal and external processes. As well as upholding the standards outlined within these advertising codes, Lion maintains internal best practices which often exceed these requirements. As part of Lion's marketing approvals process, this television advertisement for Tap King was subject to:
 - Review and advice from external creative agencies well-versed and experienced with ABAC and ASB requirements.

- Independent legal review and advice from an external legal team specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation.
- Review by Lion's internal marketing compliance team to ensure it's adherence to Lion's internal best practice policies.
- Review and approval through the AAPs pre-vetting service at both concept and final stages to ensure its compliance with community standards and relevant advertising codes.

The Panel's View

19. The complainant contends that the advertisement is irresponsible as it influences a viewer to want the product through a combination of imagery and the lyrics of the song. In particular, the complainant contends the advertisement "goads an alcoholic to actually have the beer".
20. It is understandable that a person viewing an alcohol advertisement mindful of the problems confronting a person with alcohol dependency issues may well have a heightened sense of the message contained within the advertisement. The Panel, however, when assessing the consistency of the advertisement with the ABAC standards is to have regard to the probable impact of the advertisement upon a reasonable person, taking the content of the advertisement as a whole.
21. The notion of the 'reasonable person' is borrowed from Australia's common law system and means a person sharing the attitudes, values and beliefs of the majority of the population. It does not mean that a person holding a different view is 'unreasonable' in the sense that their view is illogical or nonsensical, but rather the test is that of the prevailing opinion of the wider community.
22. The ABAC standard raised by the complaint is contained in section (a). This requires that alcohol advertisements present a mature, balanced and responsible approach to alcohol consumption. An advertisement which encourages excessive consumption, or underage drinking or alcohol related offensive behaviour, will not meet this standard as specified in section (a)(i) to (iv) of the Code.
23. The Panel accepts that the complaint is genuine in expressing concern about the advertisement, but the Panel does not believe the advertisement breaches the section (a) standard. In reaching this conclusion, the Panel has noted:
- the scenario is highly fanciful and not likely to be taken seriously;
 - only moderate consumption is depicted;
 - the focus is upon the alcohol container rather than the alcohol product.
24. Accordingly, the complaint is dismissed.