

ABAC

**ABAC Complaints Panel
Determination No: 182/13**

**Complaint by Marie-Jo Lecina
Product: Carlton Dry
Advertiser: Carlton & United Breweries**

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

23 January 2014

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Carlton Dry by Carlton & United Breweries (“the Advertiser”) and arises from a complaint received 24 December 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 24 December 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 (12809).

The Advertisement

9. The television advertisement opens with a man sitting at a table holding a stubby of Carlton Dry and looking anxiously at a burger on the table. We then see a hand reaching toward the burger and the man looking anxiously at the hand.
10. The camera angle widens and we see that the hand reaching toward the burger belongs to a man that is restrained by strong rubber bands that are preventing him from reaching the burger. There are also two other men each holding a stubby of Carlton Dry that are watching him. He makes several attempts which are watched seriously by the other men and then he unsuccessfully jumps toward the burger and the men watching him laugh.
11. The text "#Hello Beer" is superimposed in large text on the screen as a door bell rings. We then see a hand holding a stubby of Carlton Dry extended and superimposed into the middle of the screen. An 18 & over message appears in small print on the bottom left of the screen and on the bottom right of the screen is the text "Watch more #Hello Beer".

The Complaint

12. The complainant argues that the advertisement promotes bullying by showing one person being picked on with the others enjoying his struggles and notes that many kids die each year from being tormented and bullied.

The Code

13. 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

14. The Advertiser responded to the complaint and questions posed by the Panel by letter received 16 January 2014. The points made by the Advertiser in relation to the advertisement were:
 - a. The TVC is a 15 second spot that shows four 25 plus men in a private residence. One guy is straining in rubber bands in a physical challenge of sorts in order to reach a 'prize' – a hamburger, which sits on a table in a lounge room. There are three other blokes who are watching with varying levels of interest as their friend strains to grab the burger. Despite his valiant efforts - he is hamming things up for the amusement of his mates - he doesn't succeed. There is then some laughter as the super appears: "# Hello Beer". At the same time in the bottom left hand corner the following appears: "For people over the age of 18 only". Finally you see a hand come on screen with a Carlton Dry stubby in it.
 - b. Before I answer the question you have raised in your letter, I'd like to acknowledge that bullying is a very serious issue. It was never, and absolutely would never be, our intention to show a scenario that depicts bullying. Whilst I respect that the complainant has a personal viewpoint regarding the TVC, I don't believe that the average Australian would view the scenario depicted as an example of bullying. For your reference, the TVC has been on air since December 14 and has been viewed by just over 10 million adults at least once. It is playing on television and in cinemas nationally and also on line. This is the only complaint of this nature.
 - c. According to an Australian Government website dedicated to the issue, bullying is "repeated verbal, physical, social or psychological behaviour that is harmful and involves the misuse of power by an individual or group towards one or more persons". This is not what the TVC depicts. It is a light hearted TVC that is part of a broader campaign that shows the same group of four mates doing a collection of quite random but good natured and harmless activities to amuse themselves. Some of these activities include a physical challenge where a man tries to reach a burger whilst constrained by rubber bands (the TVC in

question), mates hitting golf balls in their backyard whilst wearing binoculars backwards, a man in an inflatable suit made out of garbage bags and a guy slam dunking a basketball with the assistance of some questionable special effects. The impression left after viewing the “Stretch” TVC in its entirety is that they’re mates who have collectively invented an activity for the fun of it. There is no aggressive dialogue or even undertone and you don’t get the impression the bloke in the rubber bands is doing this against his will/under duress. There is also no sense that the rubber band challenge is part of a pattern of behaviour, as is required for bullying to be at play. If anything, the implication is that each of the mates has had a turn in the rubber bands to earn their burger.

- d. More specifically, in relation to the ABAC, I also believe the TVC is compliant. The section of the code you have asked us to respond to (section a) requires all alcohol advertising present a mature and balanced approach to consumption. In this TVC, three of the four blokes featured are shown with one stubby in their hand (excluding the guy in the rubber bands) and all appear sober and alert. As it happens they do not consume any product, so it’s fair to say consumption is low key and responsible and meets the positive standards for consumption as required by the ABAC. Furthermore the following “No go” negative standards also communicated in section a are not present: excessive consumption, underage drinking or alcohol fuelled anti-social behaviour (taken from ABAC Complaints Panel determination number 95/13). In relation to the laughter (by the mates) that you reference in your letter, this stems from the last ditch effort by the mate as he pauses and then makes a final leap for the burger, hamming it up as he does. I think the laughter is best described as good-natured and for this reason, and for the others stated above, does not constitute ‘bullying territory’ or “offensive behaviour” by ABAC standards.
- e. The CUB marketing team takes its commitments to responsible marketing very seriously. Not only do we have internal standards and processes that must be met but we also consider both the AANA Code of Ethics and the ABAC when we are developing our marketing collateral. In addition, this TVC was also independently prevetted in order to ensure its compliance with the ABAC.

The Panel’s View

15. 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 (“ASB”). 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.
16. 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.

17. The advertiser contends that the advertisement is not in breach of the ABAC and argues specifically:
 - The advertisement depicts a light hearted physical challenge devised by a group of friends for the fun of it.
 - There is no aggressive dialogue or even undertone and you don't get the impression the bloke in the rubber bands is doing this against his will/under duress.
 - The laughter by the men observing is good natured and not bullying or offensive behaviour.
18. 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'.
19. The Panel does not believe the advertisement breaches the ABAC standard. While the advertisement may depict behaviour which the complainant genuinely believes to be offensive, the context of the advertisement does not establish that the behaviour is caused or contributed by alcohol use. Further, the advertisement would most likely not be seen by the wider community as actually encouraging bullying, but seen as a light hearted and mutually agreed behaviour from each of the participants.
20. Accordingly, the complaint is dismissed.