

ABAC

ABAC Complaints Panel Determination No: 15/14

Complaint by Robyn Irving
Product: Strongbow Cider
Advertiser: Carlton & United Breweries

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

28 March 2014

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Strongbow Cider by Carlton & United Breweries (“the Advertiser”) and arises from a complaint received 7 March 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 7 March 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 television advertisement opens in an apple orchard with the sign "Strongbow" above the entrance to the orchard and a handwritten sign staked into the ground in front of the entrance "only expert pickers need apply". A man is driving a tractor towing a trailer with two crates of apples out of the orchard.
10. We then see two women, one tall and one short, picking apples in the orchard. The shorter woman turns around to the other woman and smiles and says "Picker of the month, again, well done" and then turns back to the tree she is picking from and says quietly "Although you do have a slight advantage". The taller woman partially turns to the other woman and says "Pardon, hm, did you mutter something?". The shorter woman says "I didn't mutter, must be hearing things, all the way up there". The taller woman turns to the shorter woman and says "You know my picking ability is independent of my height". The shorter woman turns to her and says "Course it isyou're a good picker" and then turns back to her tree and says quietly "just happen to be a giraffe". The taller woman then says quietly "Well maybe you should try picking potatoes".

11. We then see a group of people standing outside in a country setting holding or sipping from the product as a glass of the product is poured in the foreground next to the tagline "Hand picked by hand" as a voiceover says "Strongbow, hand picked by hand"..

The Complaint

12. The complainant argues that the advertisement displays bullying behaviour by one woman making derogatory remarks about the other and the other returning the barbs and is concerned that in this day and age when bullying is such a problem we do not need the behaviour glorified on an alcohol beverage advertisement.

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 24 March 2014. The points made by the Advertiser in relation to the advertisement were:
 - a. The complaint relates to a Strongbow television commercial (TVC) that shows apple picking at the Strongbow Orchard. In this particular TVC we see two female pickers (both in their mid-30s) who are passionate about their apple picking engaged in a light hearted verbal exchange.
 - b. The TVC opens with a farmer leaving the Strongbow Orchard with a trailer of apples. One woman then congratulates a fellow (noticeably taller) apple picker on being awarded the coveted title of 'picker of the month' - again. It's obvious she wants to be happy for her fellow picker but her well wishes are delivered in a somewhat begrudging way. The exchange between the two evolves into tongue in cheek banter regarding the other's picking ability. The commercial concludes with a Strongbow being poured over ice and the line "Strongbow, Hand Picked By Hand". In the background we see the group of Strongbow pickers enjoy a knock off drink as they laugh and chat together.
 - c. 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 the scenario depicted is an example of bullying. For your reference, the TVC has been on air since 26th January this year and has been viewed by just over 7.5 million adults. It is playing on television in Sydney,

Melbourne, Brisbane, Adelaide and Perth and also on line. This is the only complaint we have received for this TVC.

- d. 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’s a light-hearted exchange between two women sharing views on the other’s picking abilities in a comical way, which is made clear by the following: the exaggerated height difference between the pickers and the lines they deliver: “Of course it is, you’re a good picker...You just happen to be a giraffe” and “Well maybe you should try picking potatoes”.
- e. Each apple picker gives as ‘good as they get’ in the verbal exchange – both participate equally and in the same style. Furthermore both pickers seem unaffected by the banter – there is no hurt or upset caused. Represented in the TVC is a one off exchange between the two and there is no evidence that the conversation is part of a pattern of ongoing behaviour. Given the absence of these qualities (unequal power/pattern of behaviour) I think it’s fair to say the TVC does not meet the definition of bullying. This is further supported by the overall tone of the TVC which is light and engaging.
- f. More specifically, in relation to the ABAC, I believe the TVC is compliant. The section of the code you have asked us to respond to (section a) requires all alcohol advertising to present a mature and balanced approach to consumption. In this TVC, the pickers themselves do not consume any alcohol in the picking scenes (where the dialogue between them takes place), there is no presence of alcohol in terms of bottles/cans and nor do the two female pickers appear under the influence of alcohol. In relation to section a iii, it’s very clear that the exchange between the two female pickers is not connected to or influenced by alcohol and so is compliant. Furthermore the broader “No go” negative standards communicated in section a iii are not present: excessive consumption, underage drinking or alcohol fuelled anti-social behaviour (taken from ABAC Complaints Panel determination number 95/13). There is a scene at the end of the TVC where we see people enjoying a knock off drink (apple picking has concluded) but the atmosphere appears convivial and friendly. And it’s fair to say you are left with the impression that only moderate consumption is portrayed.
- g. 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 Alcohol Beverages Advertising Code (ABAC) when we are developing our marketing collateral. This TVC was also independently pre-vetted 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 complainant has interpreted the advertisement as glorifying bullying through the exchange between the women. If the advertisement could be fairly taken as encouraging bullying behaviour related to or influenced by alcohol use, then this would breach the requirement in section (a)(iii) of the ABAC.
18. The advertiser contends that the advertisement is not in breach of the ABAC and argues specifically:
 - The advertisement depicts a light hearted verbal exchange that does not amount to bullying; and
 - There is no depiction or implication that alcohol was consumed prior to the exchange or played any part in the women's behaviour.
19. 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'.
20. The Panel does not believe the advertisement breaches the ABAC standard. While the advertisement may depict behaviour which the complainant genuinely believes to be inappropriate, the context of the advertisement establishes that the behaviour was unrelated to alcohol use. Further, the advertisement would most likely not be seen by the wider community as actually encouraging bullying, but seen as a verbal exchange between two women.
21. Accordingly, the complaint is dismissed.