

ABAC

ABAC Complaints Panel Determination No: 40/14

Complaint by Meredythe Crane, FARE
Product: Victoria Bitter
Advertiser: Carlton & United Breweries

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Jeanne Strachan – Member
Professor Louisa Jorm – Member
Professor Richard Mattick – Member

18 July 2014

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for VB produced on behalf of Carlton & United Breweries (“the Advertiser”) and arises from a complaint received on 25 June 2014.

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 complaints 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 25 June 2014.
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 has been determined within the 30 day 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 full page colour print advertisement appeared in the Daily Telegraph on Thursday 19 June 2014.
10. The advertisement is set against has a dark green background with condensation droplets. At the top of the page is a Vic Bitter logo that overlaps a State of Origin NSW Blues logo. Below the logos in large text is "JOB DONE", followed in smaller print "Congratulations to the NSW VB Blues for taking out the 2014 Origin Series". Below this and in slightly larger print is "For a hard earned thirst."
11. On the bottom half of the page is a depiction of an open stubby bottle of VB and a can of VB partly covered with fragments of ice and a full glass of beer with condensation. The bottle and can have had the name of the product changed to "Victory Bitter" and the background to the labels and the colour of the can changed from its usual dark green to dark blue. There is an 18+ logo on the bottom left side of the page followed by the text "For people over the age of 18 only".

The Complaint

12. The complainant is concerned that the advertisement clearly depicts a direct association between the presence and consumption of alcohol and engagement in sport, and achievement of sporting success for the following reasons:
- The Victoria Bitter logo impinges on the NSW State of Origin logo linking the two products inextricably;
 - The main picture shows a glass, stubby and can of beer, with the stubby and can having altered images of the Victoria Bitter logo as follows:
 - Instead of Victoria Bitter the label says 'Victory Bitter' to associate Victoria Bitter with the victory of the NSW State of Origin team;
 - Normally green, the outer part of the VB label in the image is blue to align with the NSW team's colours, noting that the NSW State of Origin team is known as 'the blues';
 - The text refers to 'Job Done' and 'For a hard earned thirst', which indicate a strong relationship between Victoria Bitter and the State of Origin Team and can be interpreted as a way of saying that "we've done it together";
 - The text "For a hard earned thirst", together with the open bottle and full glass of beer, strongly implies that the NSW State of Origin Team will be 'rewarding' themselves with beer, and specifically Victoria Bitter, providing a clear link between Victoria Bitter and sport, and importantly', sporting success;
 - The advertisement shows a strong link between sporting engagement and success and alcohol consumption; and
 - The advertisement also depicts the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of sporting success.

The Code

13. The ABAC provides that advertisements for alcohol beverages must at sections (c) and (d):
- (c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly:
 - (i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practice;

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel on 7 July 2014. The principal points made by the Advertiser are:
- (a) In relation to this complaint, VB is the naming rights partner of the NSW Blues. We have been a partner of the NSW Blues for six years and became the naming rights partner in 2010. It is also the official beer partner of the NRL and the naming partner of Friday Night Football.
 - (b) The complaint in question refers to a full-page advertisement in The Daily Telegraph – a newspaper intended for an adult NSW audience with a circulation of 276,176 and a readership around the one million mark (weekdays). The one off advertisement was produced to congratulate the Blues on their series victory after eight years of consecutive losses.
 - (c) In relation to section (c) of the code, which is concerned with ensuring the consumption or presence of alcohol is not communicated as playing a role in sporting success, the advertisement is compliant.
 - i. The advertisement appeared the day after the game so it is clearly congratulating the team on a win after the fact.
 - ii. Readers would understand that the Advertiser is a sponsor and so have a connection with the team but not that the advertisement is implying the beer contributed to the team's on field prowess and ultimate success.
 - iii. In relation to linking the VB logo with the team logo, when a brand sponsors a 'property' co-branding marketing collateral is common. The linkage, as displayed in this advertisement, does not give the impression that the beer played an on field role in the win by the Blues. It's also fair to say that the public are familiar with companies/brands sponsoring sports (and other properties) whilst still understanding each is a separate entity.
 - iv. The name change to "Victory Bitter" is an obvious play on the Victoria Bitter brand name and a tribute to the win – it was just a name/label tweak for this one off advertisement, which ran post the game and only the one time. It was not an actual beer that was produced. The VB team also used the term "Victory Bitter" as a tie in to their current campaign where drinkers have the opportunity to win their name on a player's jersey (within the VB logo). The VB team changed the can and bottle label blue to demonstrate their support for the Blues and show the brand's true 'colours' just as the fans do at the game. This is the first time the team has 'changed' the logo and colour for a sporting team, but thought the significance of this milestone warranted it. Again it's very clear that this was a tribute advertisement.

- v. “Job done” refers to the Blues winning the game but uses VB style language. It’s important to note that “Congratulations to the NSW VB Blues for taking out the 2014 Origin Series” sits beneath and provides additional context. In relation to the VB tagline “For a hard earned thirst”, it is present on most VB advertising and is about the concept of enjoying a beer post your work/effort.
 - vi. In relation to the opened product and the tagline implying the team will reward themselves with a beer, whilst that was not the intended take out if you did take that from the advertisement, celebrating a success with a beer is allowed under the ABAC. Not allowed is implying/showing the beer played a role in that success. The latter is not the case with this advertisement.
- (d) Section (d) of the ABAC, as it applies to this complaint, aims to ensure that the Advertiser doesn’t show an association with the engagement in sport and as such doesn’t show consumption before or during a sporting activity.
- i. Previously made points in relation to section (c) apply here too.
 - ii. In addition to this, the advertisement is clearly congratulating the team on a win after the game has been played – this is clear from the text, imagery and the timing of the advertisement. There is no imagery of players consuming beer before or during the match. The advertisement undoubtedly presents the Blues and VB together – VB is the team sponsor – but the general public would not consider that the advertisement shows or implies that consumption took place during ‘play’.

The Panel’s View

15. The ABAC was substantially revised as at 1 July 2014 with the commencement of the ABAC Responsible Alcohol Marketing Code. This new code replaces the Alcohol Beverages Advertising (and Packaging) Code which has operated since 1998 (with several revisions). The transitional arrangements to the new code provide that complaints received prior to 1 July 2014 will be decided under the old code. As this complaint was received on 25 June 2014, this determination will be decided in accordance with old code provisions.
16. The complaint relates to a full page colour print advertisement which was published in the Sydney Daily Telegraph newspaper. The advertisement marks the series victory by the NSW rugby league team in the annual ‘State of Origin’ competition. The advertiser is a sponsor of the NSW team.
17. The complaint is concerned at the association of the product with the NSW team and the victory the team achieved in the 2014 Origin series. It is argued that a combination of factors, such as the juxtaposition between the NSW team logo and the VB logo, the alteration in the usual green VB brand colour to NSW blue and the catch line of ‘Hard earned thirst’ and ‘Job done’ all amount to a breach of sections (c) and (d) of the ABAC.

18. For its part, the Advertiser advises that it is a sponsor of the NSW team and its branding is linked to the NSW logo as a result. It refutes that the section (c) standard has been breached, arguing that the advertisement is celebrating the success of the team and would not be taken as implying that the product was a cause of the success. Equally, it is argued that section (d) is not breached.
19. In assessing if an advertisement is consistent with an ABAC standard, the Panel is to have regard to the probable impact of the advertisement upon a reasonable person taking its content as a whole. The notion of a 'reasonable person' is drawn from Australia's common law system and means that regard is to be had to the views, opinions and values common in a majority of the population. Someone holding a different view isn't 'unreasonable', but possibly their view point is not shared by a majority of the community.
20. Underlying the complainant's concern is the issue of alcohol sponsorship of sporting teams and competitions. While it is a perfectly valid view to hold that alcohol as a product should not be associated with sport via sponsorship, the ABAC standards do not go to the issue and sponsorship is not prohibited by the code standards. It is a matter for industry, sports officials, public health advisors and ultimately government if this should change. For its part, the Panel has to apply the Code it is given and sponsorship is allowed under the Code.
21. The advertisement does associate the product with the success of the NSW team, but the Panel is of the view that it cannot be reasonably concluded that it is suggested that the product was a cause of contributor to that success. The Code does not prohibit the portrayal of alcohol in the celebration of success, provided it is not suggested that alcohol was a reason for the success. The Panel believes a reasonable person would take the advertisement as marking the NSW team victory, but it would not be interpreted that the alcohol product was a reason for the NSW team success.
22. Equally, the advertisement does not breach section (d) of the Code. It is not suggested that alcohol should be or was consumed by the team prior to the sporting activity. The context of the advertisement establishes that the alcohol is marking the success and the conclusion of the series win.
23. Accordingly, the complaint is dismissed.