

ABAC

ABAC Complaints Panel Determination No: 44/14

Complaint by Nayer Abdel-Fatah Product: Wild Turkey Advertiser: Campari Australia Pty Ltd

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

12 August 2014

Introduction

1. This determination by the ABAC Responsible Alcohol Marketing Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Wild Turkey produced on behalf of Campari Australia Pty Ltd (“the Advertiser”) and arises from a complaint received on 18 July 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 ABAC Responsible Alcohol Marketing 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 the ABAC scheme on 18 July 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 not obtained for the logos, however a Wild Turkey Rare television advertisement which incorporates the Wild Turkey rare logo was approved by AAPS.

The Advertisement

9. The complaint relates to Wild Turkey Bourbon's virtual on-field signage shown during broadcasts of National Rugby League (NRL) matches on Fox Sports on Saturday afternoons and evenings. The advertisement takes the form of a digitally generated logo which seems to be on the field of play.
10. The advertisement is a Wild Turkey Rare logo at the 30 metre lines at each end of the playing field. The advertisement features a black background with the name of the product, "Wild Turkey Rare" in gold with an image of a turkey also in gold next to the word "Wild" on the left side of the logo. On the right side of the logo is a depiction of a can and small bottle of the product.
11. At the 50 metre line is a further logo that features a green shield superimposed with the yellow text "Wild Turkey Bourbon NRL" followed by the text "Super Saturday" against a red background.

The Complaint

12. The complainant is concerned that:
- (a) The advertising is constant during a program the complainant views with his 14 year old son;
 - (b) The advertising amounts to a constant indirect and passive promotion which may exceed limits on direct advertising;
 - (c) This indirect style of advertising is distracting and reduces the enjoyment of the viewing of the program and there is also a degree of subliminal messaging that is being practiced which is unethical.

The Code

13. Part 3 of the ABAC provides that:
- (a) A Marketing Communication (which is defined to include brand advertising) must NOT:
 - (i) show (visibly, audibly, or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (b) A Marketing Communication must NOT:
 - (i) have Strong or Evident Appeal to Minors;
14. The Definitions in Part 4 of the ABAC provide that Strong or Evident Appeal to Minors means:
- (i) likely to appeal strongly to Minors;
 - (ii) specifically targeted at Minors;
 - (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks;
or
 - (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel on 31 July 2014. The principal points made by the Advertiser are:

- (a) Campari Australia Pty Ltd (Campari Australia) takes all complaints seriously and fully supports the ABAC.
- (b) Wild Turkey Bourbon has a sponsorship agreement with the Australian Rugby League Commission (ARLC) that includes the Exclusive Naming Rights of the NRL Premiership Competition's Saturday Football, known as "Wild Turkey Bourbon NRL Super Saturday". These matches are broadcast on Fox Sports on Saturday afternoon and evening. The signage component of the sponsorship agreement includes virtual on field signage on the 50 metre line (Wild Turkey NRL Super Saturday) and both 30 metre lines (Wild Turkey Rare). Telstra holds the Exclusive Naming Rights of the overall NRL Premiership Competition and its logo also appears as virtual on field signage during matches (see right of screen on footage supplied).
- (c) Virtual on field signage was introduced by the official NRL television broadcast partners (Nine Network and Fox Sports) during the 2013 season. Prior to this time, sponsor logos were painted on football fields.
- (d) Two static logos appear:
 - (i) Wild Turkey Bourbon NRL Super Saturday – this logo was developed by the ARLC in conjunction with Campari Australia. It is an integrated Wild Turkey/NRL logo for use by the ARLC in respect of Saturday Football during the term of the sponsorship contract.
 - (ii) Wild Turkey Rare – this logo was developed by Gruppo Campari (parent company of Campari Australia) and is used internationally on labels, packaging and marketing materials.
- (e) Campari strongly believes the on field logos do not breach the ABAC.
- (f) The virtual logos appear on the Fox Sports Saturday NRL broadcasts only. They do not appear during NRL broadcasts on the Nine network on Friday evenings, as asserted by the complainant.
- (g) The Oxford Dictionary defines 'subliminal' as "(of a stimulus or mental process) below the threshold of sensation or consciousness; perceived by or affecting someone's mind without their being aware of it". The Commercial Television Industry Code of Practice prohibits subliminal content. Clause 1.9.4 of the Code states: "A licensee may not broadcast a program, program promotion, station identification or community service announcement which is likely, in all the circumstances to use or involve any technique which attempts to convey information to the viewer by transmitting messages below or near the threshold of normal awareness".
- (h) On field and perimeter signage is an integral component of many major peak sporting sponsorship agreements. For more than 50 years, on field and perimeter signage has featured on television broadcasts of NRL matches and other peak sporting events. Prior to recent television broadcast technology innovations, often grass signage on sports fields was applied weekly and was consequently a considerable expense for the sponsor. With developments in

broadcast technology over the past few years, grass and perimeter signage on sporting fields for peak codes has been able to be applied digitally, or virtually, to the broadcast. Whether the respective signage is painted on the field or applied digitally via technology, the result is the same – the signage can be clearly seen during the television broadcast.

- (i) In this case the logos can be very clearly seen throughout the program broadcast and cannot be considered subliminal as they are not 'below or near the threshold of normal awareness' or consciousness. In addition the logos do not include any wording or imagery that suggests or encourages excessive consumption of alcohol. A Telstra logo is also digitally included in the broadcast.
- (j) The viewing audience of the Fox Sports NRL broadcasts on Saturday is primarily males (average across programming is 65.7%) over the age of 18 years (average across programming is 88.3%). Therefore it cannot be claimed that the television broadcast strongly appeals to Minors (average across the programming is 11.7%).
- (k) Total viewership of the seven NRL games broadcast on Fox Sports on Saturdays is approximately 1.6 million. Therefore, in the 2014 season to date, the cumulative total viewership on Fox Sports is more than 30 million. We note that only one complaint has been received in relation to the Wild Turkey virtual on field signage.
- (l) Campari Australia is abiding by all relevant Classifications and Codes when placing advertising during live broadcasts of sporting events.
- (m) The complainant's query about the 'allowable limit of direct advertising' by television broadcasters should be directed to the respective television broadcasters. It does not relate to marketing and advertising activity undertaken by Campari Australia.
- (n) Campari strongly believes that the marketing materials do not breach the ABAC and that its accountability and responsibility cannot be called into question or subject to an adverse Adjudication Panel outcome. As a producer and supplier of alcohol in Australia, Campari Australia is committed to the sale and marketing of its brands in a responsible manner in accordance with not only all Australian advertising and liquor licensing laws, regulations, codes and guidelines but also the 'spirit and intent' of these laws, regulations, codes and guidelines. Campari Australia operates with the highest level of commercial integrity and takes its responsibility commitment to both corporate and social responsibility very seriously.

The Panel's View

16. On 1 July 2014, the ABAC Responsible Alcohol Marketing Code replaced a former code applying to alcohol advertising. The new code adopts the standards of good marketing practice which underpin the former code, but clarifies the reach of the Code and its relationship to various forms of marketing. Notably, the new Code provides:

- (a) That it applies to “brand advertising”, such as the current Wild Turkey advertisements;
 - (b) That it does not apply to “sponsorship”, which is defined to include brand name or logo advertising displayed at a sporting venue when arising from a sponsorship arrangement;
 - (c) That it does not apply to the “placement” of marketing communications, except to the extent that the placement may impact on how the marketing communication is understood when applying the substantive provisions of the Code.
17. What this means for the current complaint is that it is not a breach of the Code for the Advertiser to sponsor the NRL competition, or for its logos to be projected onto the football field during the playing of a game.
18. The complaint, however, goes a little further than this and argues that the number of times the logo is visible during the broadcast would:
- (a) Exceed the limit of direct advertising allowable during programs;
 - (b) Amount to subliminal messaging; and
 - (c) As a result of both of these matters, be appealing to under 18 year olds.
19. While the Panel acknowledges the point being raised by the complaint, the simple fact is that the on field advertising is not a breach of the ABAC. There is nothing in the actual content of the advertisements which can be said to have strong or evident appeal to under 18 year olds, and while the complainant might find the advertisements to be annoying and distracting from the enjoyment of watching the game, this does not amount to a breach of the Code. Nor can it be reasonably argued that the very prominent advertising could be considered to be “subliminal”.
20. Accordingly, the complaint is dismissed.