



ABAC Adjudication Panel Determination No. 56/15

Product: VB
Company: CUB
Media: Television
Complainant: Confidential
Date of decision: 15 May 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for VB and arises from a complaint received 23 April 2015.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;
 - (b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
 4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 23 April 2015.
8. The Panel endeavour 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 this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication (13983).

The Marketing Communication

10. The complaint refers to a television advertisement for the VB raise a glass appeal.
11. The advertisement opens with a plain dark green screen with the words “100 years ago at Gallipoli and is accompanied by the sound of the song “A long way to Tipperary” being whistled by a group. We then see a large group of young men standing in a formation of lines whistling the song.
12. We then return to the plain dark green screen with the words “the 16th Battalion began the charge of Bloody Angle”. The screen changes to a wider angle shot of the men standing in lines and whistling and we see that they are standing in rows in front of a war memorial and that there are hundreds of men.
13. The dark green screen reappears with the words “As they did so, they sang this song”. We then return to the men whistling in front of a war memorial and see a close up of one man stop singing and bow his head.
14. The dark green screen reappears with the words “And kept singing, even as they fell”. We then return to the men whistling in front of a war memorial and see more men stop singing and bow their heads as the whistling gets quieter and we finally see only one man whistling the end of the song before he bows his head and there is silence.
15. The dark green screen reappears with the words “Keep their song, and their spirit, alive. Raise a glass to those who serve”. The screen then changes to the words “Raise a Glass.com.au” under the RSL, VB and Legacy logos.

The Complaint

16. The complainant is concerned that the advertisement encourages viewers to raise a glass of VB in circumstances where alcohol causes a lot of damage in society due to excessive consumption, misuse and abuse of alcohol.

The ABAC Code

17. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(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;

The Company's Response

18. The Company responded to the complaint by letter dated 7 May 2015. The Company advised that:
- a) Raise a Glass is a partnership between Victoria Bitter (VB), The Returned and Services League (RSL) and Legacy and is one of the single biggest contributors to veteran welfare in Australia. The VB team donate \$1 million annually and the public is also encouraged to make a contribution at raiseaglass.com.au. The Raise a Glass Appeal was born out of a long, informal association between VB and the armed forces. A photo of soldiers in WWII taken in Egypt, with the letters 'VB' spelt out in Victoria Bitter bottles, was the inspiration for the campaign. The Raise a Glass campaign has been running for seven consecutive years and at the completion of this year's campaign will have contributed over \$7.3 million to Legacy and the RSL. The RSL uses the donation to support the welfare of both serving and ex-service men and women of the Australian Defence Force and their families, particularly those in need. Legacy cares for thousands of families of veterans who have served should they become incapacitated or worse, pass away as a result of their service.
 - b) The 30-second commercial in question was filmed at Melbourne's Shrine of Remembrance and highlights the contribution the 16th Battalion AIF made at Gallipoli. It has played on national TV and has been viewed by over 4 million adults (based on metropolitan data only). In addition, the commercial has been viewed on the VB Facebook page in excess of 837,000 times. The TVC first aired on the 27th of March and ran until the 25th of April. The campaign also included activity on Triple M and the NRL and Footy Shows. For your background the commercials were developed with and approved by both Legacy and The RSL, with filming permission granted by the Shrine of Remembrance.
 - c) The commercial pays tribute to the 16th Battalion, who suffered heavy losses during a hellish fire fight at Bloody Angle on the hills of Gallipoli. First-hand accounts talked about the men singing as they went into battle despite the treacherous conditions. Of the 600 in the Battalion, 338 young men were killed in the Gallipoli campaign. A cast of 338 men was used – one representing each of those fallen men. The following is shared via supers: "One hundred years ago in Gallipoli. The 16th Battalion began the charge of Bloody Angle. As they did so, they sang this song. And kept singing. Even as they fell. Keep their song, and their spirit, alive. Raise a glass to those who serve." The final frame of the commercial features the logos of VB, Legacy and The RSL and the statement: "Raiseaglass.com.au". A drink responsibly message is also present ("For people over the age of 18 only").
 - d) In the commercial no alcohol is depicted nor are there any references to alcohol except in the end frame, which features the VB logo and the campaign name: "Raise a Glass". The concept of toasting or raising a glass however does not equate to or imply alcoholic misuse or excessive consumption. Whilst it is not articulated in the 30-second commercial, in

other elements of the campaign, including the 15-second commercial (featuring Major General David McLachlan), the campaign is brought to life with the following words: “Wherever you are. Whatever you’re drinking. Raise a glass to those who serve.” The latter is the ‘spirit of the campaign’ although I will add that the act of raising a beer to honour the fallen is a long- standing tradition commonly enacted by many Australians in a responsible and moderate fashion.

- e) This long running and high profile campaign has received some negative media coverage and won’t be to everyone’s liking however it’s fair to say that in addition to the backing of the RSL and Legacy, the campaign enjoys wide community support and has done for a great many years.

The Panel’s View

19. The “Raise a Glass” campaign has been run annually since at least 2009 in the lead up to ANZAC Day by the Company, with the endorsement of the RSL and Legacy. Since the commencement of the campaign, the Panel has considered several complaints about individual executions of advertisements, with determinations having been made in 2013 (56/13), 2010 (28/10), and 2009 (31, 3 and 44/09).
20. The previous complaints have generally raised a concern about the appropriateness of an alcohol product campaign being linked to ANZAC Day and the wisdom of service organisations, such as the RSL and Legacy, entering into a sponsorship arrangement with an alcohol company. As previously noted by the Panel, these concerns can be legitimately raised, but they are matters for the two service organisations to consider and, possibly, government and the wider community. The ABAC does not go to these wider questions of public policy, and the Panel has no authority to give an opinion about them.
21. On 1 July 2014, a revised ABAC came into operation. The new Code makes clear that the ABAC standards do not apply to sponsorship. A ‘sponsorship’ is defined by the Code as meaning any agreement or part of an agreement involving payment or other consideration by a marketer to support a sporting or cultural event or activity in return for which the sponsored party agrees to be associated with or promote the sponsors alcohol beverage or outlet. Hence, it is entirely clear cut that the Panel has no authority to offer views as to the desirability of the Raise a Glass campaign per se.
22. What is within the ABAC Scheme, however, is the overall standard of good alcohol marketing which apply to any alcohol advertising flowing from the existence of a sponsorship. Accordingly, the Panel can make a decision about the complaint insofar as the concerns in the complaint go to specific ABAC standards. In this case, the complainant has raised an argument that the advertisement encourages excessive consumption, misuse, and abuse of alcohol. These concerns fall within Part 3(a)(i) of the Code.
23. In assessing whether an advertisement meets the ABAC standards, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person, taking its content as a whole. The ‘reasonable person’ test

is borrowed from the Australian common law system, and means that regard is to be had to the beliefs, opinions, and attitudes common amongst a majority of the community. A person who holds a different interpretation is not necessarily 'unreasonable', but it does mean that their views may not be those shared by a majority of the community.

24. The Panel does not believe that the advertisement is inconsistent with the ABAC standard. The advertisement is drawing an association of the product with Australia's war history and, particularly, the Gallipoli campaign. In doing so, however, the advertisement cannot be fairly said to be encouraging excessive consumption or the abuse of alcohol. No alcohol consumption is depicted during the advertisement, and the 'raise a glass' reference cannot be taken to be promoting rapid or irresponsible patterns of alcohol use.
25. Accordingly, the complaint is dismissed.