

ABAC

ABAC Complaints Panel Determination No: 70/11

Complaint by Mrs Susanna Morley-Wong Product: CUB beverages Advertiser: CUB

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

16 September 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television broadcast for CUB by the Fosters Group (“the Advertiser”) and arises from a complaint received 22 August 2011.

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 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 22 August 2011.
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 not granted for this advertisement.

The Advertisement

9. The complaint refers to a television advertisement. The visual elements of the advertisement are accompanied by a male voiceover.
10. The advertisement opens with a young man walking along a street into a bar as a voiceover says "Why is it these days it seems easier to look online than look someone in the eye."
11. The young man looks and smiles at several women in the bar as he is walking through the bar as the voiceover continues "It seems ok to have 500 facebook friends but very few you'd have a drink with".
12. The young man walks past a group of men holding glasses of beer and enjoying something on a television screen. The camera then moves to two middle aged couples sitting at a table consuming glasses of beer as they engage in a serious discussion as the voiceover says "As a beer company we're proud that we bring people together in unguarded moments".

13. The camera then follows a young woman ordering a drink from the bar and moves along the bar past a group of three workmen drinking beer as the voiceover continues “where laughter and real words are shared”.
14. The camera then follows a waitress taking two glasses of beer and a stubby on a tray into a restaurant past patrons including a man looking at a woman’s dress ring as she smiles and sips her beer as the voiceover says “We love that communities are strengthened through the unique everyday bonds our beer creates and most of all we’re proud to put a beer in front of someone and see their world become just that little bit better”.
15. We then see the young man from the start of the advertisement leaving the bar with a six pack of Crown Lager as the voiceover says “When you break it all down what we do is about providing the backdrop to so many of the great times and experiences we love to remember”.
16. The young man is then seen greeting and talking to two people on the street outside the bar and continuing along the street and into the front yard of a house as the voiceover continues “We’re there for the little moments when people feel comfortable with who they are and who they’re with and we understand that what we make has always and will always be right there in the thick of things as people create friendships, face adversity and enjoy prosperity”.
17. The young man enters the house, walks down the hall and greets a young woman in the kitchen as the voiceover says “From the casual beer at the local to the grandest of celebrations, to the moment where you just want to drop back home to remember where you came from and where you belong”.
18. We then see the young man walk into the backyard where a middle aged man is tending a barbecue, greet the man and take two Crown Lager stubbies from his six-pack and hand one to the man as the voiceover says “In fact we believe, in a society becoming too busy to pause for simple pleasures, if a whole lot more people raised a beer in friendship the world would be a better place.”
19. The CUB logo appears on the screen as the voiceover concludes “That’s what’s united us for 150 years”. The text “Raised in friendship” and “cub.com.au” then appears next to the CUB logo.

The Complaint

20. The complainant objects to:
 - (a) the phrase “we delight in putting a beer in front of a person and seeing their day get a whole lot better”,
 - (b) the message that alcohol = spiritual improvement/personal happiness;
 - (c) the image of a brewery being a solver of social ills;

- (d) the image of a brewery being a pillar of the community given the dreadful problems indigenous and rural communities face over alcoholism.
- (e) the failure to include a caveat “enjoy responsibly” or “drink only in moderation”.

The Code

21. The ABAC provides that advertisements for alcohol beverages must-
- (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages ..
 - (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;
 - (ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement;
 - (iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

Arguments in Favour of the Complaint

22. In favour of the complaint it can be argued that the advertisement breaches the ABAC by:
- (a) failure to include a drink responsibly message in breach of Part 1 section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages.
 - (b) suggesting that the presence or consumption of alcohol may create or contribute to a significant change in mood or environment by depicting CUB alcohol products as a cause of or contributor to social success, the achievement or success of a celebration or the achievement of a therapeutic benefit by a combination of :
 - depicting people of all ages enjoying happy social interactions while consuming alcohol beverages or while in a setting where alcohol is present or consumed;
 - the use of the CUB logo next to the tagline “Raised in friendship”; and

- the voiceover to the advertisement discussing the positive social aspects of consuming CUB products.

The Advertiser's Comments

23. The Advertiser responded to the complaint and questions posed by the Panel in relation to the complaint by way of letter received 2 September 2011. The principal points made by the advertiser are as follows:
- (a) Foster's Group Limited (**Foster's**) has an excellent advertising compliance track record and is an original and long-standing signatory to the Alcohol Beverages Advertising Code (**ABAC**). We take our obligations in relation to responsible consumption of alcohol extremely seriously and believe that the footage in question (**CUB Film**) does not breach the ABAC. We also strongly disagree with a number of the comments made in the complaint.
 - (b) Foster's is a company with a 150 year heritage. The CUB Film formed part of the recent relaunch of Foster's iconic Australian beer business CUB as Carlton United Brewers, following the demerger of the Group's wine business in May. The rebranding of Carlton United Brewers followed a 10-month employee engagement program designed to create a new set of corporate values and beliefs. This culminated in the creation of a CUB Story, depicting the new culture we believe will foster success across our team and business partners. The Story was the voiceover to the CUB Film. The Story text is derived from our belief that in a fast moving and increasingly computerised age, there are benefits from socialisation and conviviality. We see beer as providing the backdrop to these occasions and believe that people coming together and drinking a beer in the spirit of friendship encourages connections and bonds, which will have a positive impact on the community. The key message underpinning the CUB Story is that as a company, we are proud to produce and distribute beer, and believe that beer has a unique, positive place in Australia's culture and history. With close to 2,000 staff located in communities across the country, the new Carlton United Brewers name also highlights people as central to our operations, as opposed to "Breweries" or buildings.
 - (c) As part of the rollout of our new identity, we produced this film for presentation to employees. The intention was to provide a context for the CUB Story and our new core values and beliefs, which is narrated in the voiceover. Although beer is shown in the film, it was not intended to be an alcohol advertisement. In particular, it does not contain references to any brand or content designed to influence consumer purchasing. Indeed it is possible that a person may view the CUB Film and still not be aware of CUB's beer brands. In practical terms, its length is almost three minutes and therefore in the format of an editorial rather than advertising, which is typically 30 seconds. We shared the CUB Film with various business partners including the AFL and the NRL, and the respective broadcast networks. After extremely

positive feedback from many stakeholders, it was decided to show the CUB Film during the screening of the AFL football game between Carlton and Hawthorn on Friday 19 August as a one off event. The intention was to share with the Australian public the pride we have in our business and new values. It was also intended to provide the setting for Foster's annual results announcement on Monday 23 August 2011 and reinforce the new corporate identity of CUB. The CUB Film was also shown to investors at the results announcement.

- (d) No part of the ABAC, including section (a) stipulates that a 'drink responsibly' message is needed to present a mature and balanced approach to alcohol. In addition, the ABAC Guidance Notes do not state that such a message is required and explains that it is the depiction of consumption that is central to presenting a mature and balanced approach. We consider that all consumption depicted in the film is mature, balanced and responsible. The setting is a natural context in which people would be consuming alcohol, i.e. a licensed premises and home, and all talent are over 25 years of age and show no signs of intoxication. No character is shown consuming, either explicitly or implicitly via empty containers, more than one standard drink. Moreover there is no evidence of change in a character's mood or behaviour due to consumption. The main premise of the film is that beer is incidental to and not the cause of any of the social interactions portrayed.
- (e) In our view, the CUB Film does not breach the ABAC by suggesting that the consumption or presence of CUB products create or contribute to a significant change in mood and environment, by depicting CUB products as a cause of or a contributor to social success, an achievement or success that is being celebrated or offering a therapeutic benefit. As discussed above, the consumption of alcohol beverages is shown in the CUB Film in a mature, balanced and responsible manner. The new CUB logo and the tagline "Raised in Friendship" forms part of our new corporate branding and complements our new name and beliefs. The key element of the new CUB logo is a raised 'U', to emphasise the word "united" and symbolise a glass raised as a gesture of friendship, which is also the tagline. In our view, this is highlighting a spirit of friendship and the fact that our products are common place in social settings. The new logo and tagline reflects CUB's new corporate identity and it has principally been used for the purposes discussed above, being employee, investor and shareholder engagement. In our view, a reasonable person would not regard this tagline as implying that consumption is a cause of celebration or contributor to social success. Each statement in the CUB Story needs to be considered in the context of the Story as a whole and its commentary pertaining to CUB's value in community, genuine interaction and contact with friends and family. The central premise is that we see beer as providing the backdrop for the act of socialising and creating bonds and that this contributes positively to the broader community. The CUB Story does not claim that beer transforms or directly contributes

to social or other success or achievements, but that it is incidental to the activities of socialising and celebration. This is consistent with the ABAC Guidance Notes for part 1c) of the ABAC. The visuals of the CUB Film are consistent with beer being an incidental part of ordinary socialising and do not depict any mood change, success or celebration. The key statements that were of concern to the complainant related to “communities are strengthened” and a person’s world becoming “a little bit better” in relation to beer. We strongly disagree with the complainant’s interpretation of these statements and do not consider that this interpretation is representative of the reasonable person. In our view, the reasonable person would regard these statements in the context of our wider belief as to the role our products play at the heart of occasions when people come together. In particular, the world becoming “a little bit better” is due to the act of coming together in friendship and having a beer, rather than just as a result of drinking CUB products.

The Panel’s View

24. This determination is considering three (3) issues, two (2) raised by the complainant and one (1) by the advertiser in its response to the complaint. These issues are as follows:
- Is the broadcast material an “alcohol beverage advertisement” within the meaning of the ABAC scheme? (this issue was raised by the advertiser)
 - If the broadcast material is an “ad”, then is it consistent with:
 - Section (a), through its depiction of CUB company values when the complainant argues alcohol is related to social ills and notwithstanding the lack of a “drink responsibly” message shown with the ad; and
 - Section (c), in terms of the ad arguably suggesting alcohol is a cause of or contributor to a change in mood and/or the achievement of social success?
25. The advertiser explains that the film was produced for presentation to employees in the context of a rebranding process being undertaken by “Carlton United Brewers”. It was not made to be used as part of the advertiser’s standard advertising schedule and, as such, does not contain references to particular product brands. In the advertiser’s view, the content is not designed to influence consumer purchasing. It is very long (three minutes) and was shown only once. A standard TV ad would be broadcast on numerous occasions and be typically 30 second in length. Its broadcast, according to the advertiser, was to “share with the Australian public the pride we have in our business and new values”.
26. The Panel recognises the background to the film and can accept that it was not intended to be product advertising as such. However, the test as to whether material can be fairly said to be “alcohol beverage advertising” is not solely

based on a company's intention, but on the scope of the ABAC and an objective assessment of whether a reasonable person would consider the material to be an "ad".

27. The ABAC does not define the term "advertisement". Rather, the Panel has over a series of determinations had to assess particular examples of materials, or types of activities, and on a case-by-case basis, determine if something falls within the spirit and intent of the ABAC scheme as "advertising".
28. This assessment is not always straightforward. For instance, the portrayal of the use of alcohol in a movie by a character would not be "advertising", but rather would be part of the narrative or plot of the movie. It is possible to envisage, however, a commercial arrangement between, say, an alcohol company and the movie producer to feature a particular product type or brand of alcohol within the movie *i.e.* product placement, and this could conceivably be "advertising".
29. In relation to the CUB film, it was produced apparently for an internal audience as an explanation of the company's overall re-branding and re-set values. If, say, a TV business affairs program then showed part of the film in a report about the business performance of CUB, then the fact that it was produced for an internal audience, and used in a factual way within in a news program, may well lead to the conclusion that its public broadcast would not make "advertising" for ABAC purposes.
30. The particular circumstance of this case in which the company decided to show the film was during the broadcast of an AFL football game. The Panel believes the broadcast is an "advertisement" for ABAC purposes. In reaching this conclusion, it has been noted:
 - There is no single formula for "advertising" in terms of length or repetition as such and accordingly the fact that the film was broadcast only once does not disqualify it from being an "ad".
 - The film, while not focusing on CUB brand products, does feature some CUB products and shows various scenes of alcohol use and the presence of alcohol beverages, which clearly identify a CUB product brand *e.g.* Crown Lager.
 - The film is not only about CUB as a company, but promotes its products in a general sense.
 - It was broadcast within a football game which often features alcohol product advertising and, at a minimum, the film contained incidental promotion of alcohol products and generally promoted the role of alcohol use in society.
 - The film had a "look and feel" which a reasonable viewer could take to be advertising or promotional material.

31. Having concluded the film is an ad for ABAC purposes, it is necessary to assess if the ad is consistent with the two ABAC standards raised by the complaint. The relevant sections are (a) and (c).
32. The complainant takes issue with the ad, firstly on the grounds that it is irresponsible for an alcohol company to position itself as “being a solver of social ills”, particularly when Indigenous and rural communities face problems of alcoholism. Further, the complainant is concerned over the failure of the ad to contain a “drink responsibly” message.
33. The advertiser refutes these arguments and states that all alcohol consumption depicted in the film is mature, balanced and responsible. It is argued that alcohol use is shown in natural settings, no excessive consumption is implied and alcohol is shown as incidental to social interactions. Further, it is pointed out that there is no ABAC provision requiring a “drink responsibly” message.
34. The Panel does not believe the ad can be said to breach section (a). In essence, the complaint on this point is based on a concern about the normalization of alcohol use within Australian society. While this is a valid view to advocate, the fact is that the ABAC provisions assume that alcohol use is a widespread and socially acceptable activity and that advertising alcohol beverages is allowable, provided such advertising is consistent with ABAC standards. The standards go in this part to the responsible use of alcohol. The Panel does not believe the scenes of alcohol use portrayed in the ad are irresponsible in terms of suggesting excessive consumption, underage drinking, alcohol-related bad behavior or the like. Further, the lack of a “drink responsibly” message is not of itself a breach of any code provision.
35. The second area of concern raised by the complainant goes to section (c) of the ABAC. This section is about alcohol advertising suggesting that the consumption or presence of alcohol is a cause of, or contributor to, a change in mood or the achievement of success. The essential issue here is that of “causation”. If an ad can be fairly said to be suggesting alcohol is a cause of success, then it is inconsistent with the standard. On the other hand, if the ad is simply associating the product with success which has been achieved without any contribution by alcohol, then this will be consistent with the ABAC standard.
36. The complainant points to the statements in the voiceover during the ad, such as “we’re proud to put a beer in front of someone and see their world become just that little bit better”, as an example of the ad being unacceptable. For its part, the advertiser argues that the film needs to be assessed as a whole and this reveals the depiction of beer as providing a “backdrop for the act of socializing”. In other words, alcohol is shown as “incidental to the activities of socializing and celebration”.
37. In assessing the consistency of an ad to an ABAC standard, the code preamble asks the Panel to have regard to the probable impact of the ad upon a reasonable person, taking its content as a whole. In examining section (c) on previous occasions, the Panel has noted that:

- It is a widely drawn provision which goes beyond depictions of alcohol consumption and includes the presence of alcohol. It also uses expressions “may” and “a cause” which give the section a wide scope.
 - An ad will be inconsistent with the standard if it suggests alcohol is one of several causes of the achievement of success, even if alcohol use is depicted as a secondary cause.
38. The Panel believes that the ad does breach section (c) of the code by suggesting that alcohol can change the mood or environment and is “a” cause of social success. In reaching this conclusion, the Panel has noted a number of the statements made during the ad which collectively would lead a reasonable viewer to the view that alcohol is not merely incidental to successful social interactions, but plays a role in causing these successful social occasions. These statements are:
- “As a beer company, we are proud that we bring people together”
 - “Communities are strengthened through the unique everyday bonds our beer creates”
 - “Put a beer in front of someone and see their world become just that little bit better”
 - “If a whole lot more people raised a beer in friendship, the world would be a better place”.
39. The Panel does note the unusual circumstances of this particular broadcast. It was clearly not a standard advertisement and was apparently produced for purposes other than the normal promotion of the advertiser’s product range. The Panel notes the ongoing commitment of the advertiser to the ABAC scheme.
40. The complaint is upheld.