

ABAC

ABAC Complaints Panel Determination No: 95/12

Confidential Complaint Product: Corona Advertiser: Lion

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Louisa Jorm – Member

11 January 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Corona produced on behalf of Lion (“the Advertiser”) and arises from a complaint received on 17 December 2012.

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 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 17 December 2012.
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 this advertisement.

The Advertisement

9. The advertisement is a billboard located on a highway at the Gold Coast in Queensland. The billboard shows a photograph shot from behind of three young adults sitting on a platform looking at a sunset over the sea each holding or sipping a 375ml bottle of Corona. Superimposed on the view is the logo for "Corona Extra" and the tagline "From Where You'd Rather Be".

The Complaint

10. The complainant argues that:
 - (a) It is school holidays and young people drinking in public places is a big problem, particularly on the Gold Coast in Queensland.
 - (b) A couple kilometres from the advertisement the Palm Beach police station has a large sign warning that drinking in public places attracts a fine of \$110.00.
 - (c) The image on the advertisement looks to be in a public place, such as a picturesque national park, and it is irresponsible to give the impression to young people that they can consume alcohol wherever they like or "where they want to be" as the ad suggests. The ads should encourage alcohol consumption in appropriate places.

The Code

11. The ABAC provides that advertisements for alcohol beverages must:
 - (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - (ii) must not encourage underage drinking;
 - (b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - (i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;

The Advertiser's Comments

12. The Advertiser responded to the complaint and questions posed by the Panel on 21 December 2012 and to supplementary questions on 9 January 2013. The principal points made by the Advertiser are:
 - a. We believe the advertisement presents a mature, balanced and responsible approach to the consumption of alcohol and does not depict the consumption of alcohol in a setting that is illegal nor irresponsible.
 - b. As background, the advertisement was shot at a private property in Mexico, and the people depicted in the advertisement are seated on a grass platform attached to a private house. The image has been shot in a way that shows the view from the vantage point of those depicted in the photo – which the 'from where you'd rather be' tagline relates to.
 - c. There are no visuals nor any language contained within the advertisement that suggests the people are located in any public place where the consumption of alcohol is illegal. In addition, each of those photographed has one only one beer - no other alcohol is present in the shot and therefore there is no suggestion (visual or otherwise) that they are not consuming alcohol in a responsible way.
 - d. We do not believe that a reasonable person would assume that the participants in the advertisement were in an environment where the consumption of alcohol is illegal, nor that the way they are consuming alcohol is irresponsible.
 - e. We do not believe that this advertisement in any way encourages underage drinking, nor does it have strong or evident appeal to children or adolescents. The image simply shows three people relaxing together at the end of the day – this activity is not something that could be argued to have strong or evident appeal to children or adolescents. No activity or imagery is displayed that could be argued to have strong appeal to children or adolescents, and the attire of those depicted is typical of beachgoers.
 - f. The models used in the advertisement are all over 25 years of age and we don't believe anything included in the visual suggests that those depicted are not

adults. As mentioned above, the attire of those depicted is typical of beachgoers and they aren't participating in any activity that could be construed as having strong appeal to children or adolescents.

The Panel's View

13. Queensland's Gold Coast is the venue for the annual 'Schoolies' celebration where many thousands of graduating high school students descend upon the location to mark the end of their high school years. While the vast majority of the adolescents and young adults attending Schoolies act responsibly, the period always experiences its share of poor, and sometimes dangerous, behaviour related to the misuse of alcohol. It is against this backdrop that the complaint has been made.
14. The complaint is about a billboard situated on the Gold Coast highway. The billboard features an idyllic scene showing three young persons sitting atop some high ground above the sea at sunset. The three characters are drinking one beer each while viewing the beautiful scene. The photograph is accompanied by the Advertiser's strapline, "From Where You'd Rather Be".
15. The complainant is concerned about the message the advertisement is sending. It is argued that a reasonable person would view the scene as being set in a public space, like a national park, and depicts alcohol consumption. It is contended that drinking alcohol in a public area is illegal and this point is reinforced by the fact that not far from the Corona billboard is another sign on a police station advising that drinking in a public place attracts a fine. The overall take out from the advertisement for the complainant is that young people, particularly those attending the Gold Coast for Schoolies week, are being given the message that it is okay to drink alcohol in public areas and that this message is irresponsible.
16. The Advertiser counters this argument by stating that as a matter of fact the advertisement is shot on a private property in Mexico. It is argued that the scene shows only a single beer with each person and no behavior or other visual cues which suggest that excessive or irresponsible alcohol consumption is encouraged. In short, the Advertiser contends that the advertisement is mature and balanced in its depiction of alcohol consumption. Further, the advertiser states the models in the advertisement are over 25 years of age and depicted as adults and that the advertisement cannot be said to have strong appeal to children or adolescents.
17. The public policy intent behind the ABAC scheme is that alcohol advertising should occur in a manner that is not inconsistent or detracts from a public health and safety goal that alcohol use be moderate and responsible. It is recognised that alcohol is both a legal product and is widely used in the Australian community. It is also acknowledged, however, that the misuse of alcohol causes enormous economic, health and social harm. Accordingly, it is the responsibility of the alcohol industry to market its product in a mature and thoughtful manner. The ABAC endeavours to establish a set of standards which advertisements must satisfy in order to meet this public policy expectation.
18. The underlying concern of the complainant is that the advertisement legitimises drinking in a public place when such activity is illegal. In reality, however, the position regarding alcohol consumption in a public place is somewhat more nuanced. In

Queensland, for instance, while the *Liquor Act 1992* has as its starting point the prohibition of drinking in public places, this prohibition does not apply in a number of circumstances. Each local council can designate areas in parks and other public spaces where alcohol can be consumed. Further, even in areas where there is not a council designation allowing alcohol consumption on a permanent basis, a person can apply for permission to allow alcohol consumption in association with a particular event (e.g. a wedding or the holding of a staff Christmas party). Similar arrangements to those in Queensland are in place in the other Australian States and Territories.

19. An important associated concern for the complainant is the advertisement's message about public drinking having particular resonance with young people attending the Gold Coast for 'Schoolies' activities. In other words, irrespective of whether legitimising drinking in public is irresponsible of itself, it certainly is if the advertisement has a strong appeal to children or adolescents.
20. While the Panel accepts the genuine nature of the complaint, it does not believe the advertisement breaches of the ABAC by its depiction of alcohol consumption in an open space. In reaching this conclusion the Panel has noted:
 - (a) The advertisement is depicting moderate alcohol consumption.
 - (b) While the advertisement is set in an open space there is nothing within the content of the advertisement to contradict the Advertiser's assertion that the advertisement is shot on private property. Possibly the placement of the models on a structure, maybe a roof, as opposed to say a rocky outcrop lends some support to the contention that they are on private property.
 - (c) Even if it was assumed that the area shown in the advertisement was a public space, there is nothing in the behavior of the people depicted which indicates that they have or will act in a manner which is inappropriate or contrary to the public interest. Merely showing alcohol use in an open space without any indication of irresponsible behavior or misuse of alcohol is not a breach of ABAC standard.
21. The associated issue is about young people. Section (b) of the Code provides that an advertisement must not have strong or evident appeal to children or adolescents and, accordingly, adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
22. The advertiser has advised that the models used in the advertisement are in fact over 25 years of age. Given the way the models are positioned with their backs to the viewer and in fading light, it is more difficult to assess their apparent age. Nonetheless, it is sufficiently clear that they are adults (i.e. over 18 years of age).
23. More broadly, the advertisement is painting a romantic picture of an idyllic if not an almost escapist life. While this may have wide appeal, it is not considered to have strong or evident appeal to children or adolescents as a specific group.
24. Accordingly, the complaint is dismissed.