



Ad Standards Community Panel
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Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0099/18
2	Advertiser	Carlton and United Breweries
3	Product	Alcohol
4	Type of Advertisement / media	TV - On Demand
5	Date of Determination	07/03/2018
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.1 - Discrimination or Vilification Physical Characteristics
- 2.1 - Discrimination or Vilification Race

DESCRIPTION OF THE ADVERTISEMENT

The television advertisement depicts a satirical public announcement from Yak Ales regarding the recent fictitious 'discovery' by Yak Ales of a 'ginger gene' and draws an analogy to people with red hair. The announcer notes that ginger bottles are 'hiding' in regular Yak Ale six packs and invites consumers to find one and claim a cash prize.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

The campaign makes fun of people with ginger hair and portrays them in an inferior manner.

It's very offensive for the advertisement to be discriminating against those with red hair, suggesting that they need to 'stop the gene spreading' as if it were some sort of disease. Children already get bullied at school for having red hair, and advertisements



like this only further encourage that type of bullying.

Offensive, racist, and encouraging bullying of a minority group. It is a disgraceful

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Introduction

The complaints make a number of allegations regarding the advertisements for Rusty Yak Ginger Ale products (Advertisements), including that they are offensive towards and discriminate against people with red hair. The Advertising Standards Bureau notes that the Advertisements may breach section 2.1 of the Code of Ethics (Code). With great respect to the Board and for any offense caused to the complainants, we submit that the Advertisements do not breach any sections of the Code including section 2.1.

Section 2.1

Under section 2.1 of the Code, the Advertisements must not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief. Respectfully, we submit that the Advertisements do not breach section 2.1 for the reasons set out below.

The complaints address discrimination and vilification against people on account of their red hair, but this attribute does not fall within race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief and so is not covered by section 2.1.

Even if people with red hair is found to be an attribute covered by section 2.1, the Advertisements do not discriminate or vilify such people. The Advertisements simply seek to associate the launch of the Rusty Yak Ginger Ale product with red heads in our community in an affectionate, light-hearted and humorous way by linking the hair colour with the 'crisp and zingy Rusty Yak gingery flavour' as stated in the Advertisements.

The Practice Note to Section 2.1 provides that 'discrimination' means 'unfair or less favourable treatment' and 'vilification' means humiliates, intimidates, and incites hatred, contempt or ridicule. The Advertisements do not promote discrimination or vilification as defined above in a literal or figurative way given the theme and overall impression of the Advertisements is not negative towards red heads, but rather a



humorous and comical announcement that we have discovered ‘the ginger gene’ in our beer.

The line in the Advertisements asking consumers to help ‘stop the spread of the gene’, which line is raised in the complaints, is a reference to the fictitious ‘ginger gene’ in the products, not in people, and invites consumers to look for bottles of the new product hidden in regular packs of Yak Ales to win a cash prize. In any case, this line is not literal and clearly humorous with a subtext that the products are full of ginger flavour due to the fictitious ‘ginger gene’ in the products. 3

Other parts of Section 2 of the Code

Respectfully, we further submit that the Advertisements do not breach the other sections of the Code because the Advertisements do not:

- employ sexual appeal (section 2.2);*
- present or portray violence (section 2.3);*
- treat sex, sexuality or nudity with a lack of sensitivity (section 2.4);*
- use inappropriate, strong or obscene language (2.5); or*
- depict material contrary to Prevailing Community Standards on health and safety (2.6),*

and the Advertisements are clearly distinguishable as advertising and marketing communications to the relevant audience.

Conclusion

For the reasons set out above, and again with great respect to the Board and for any offense caused to the complainants, we submit that the Advertisements do not breach any sections of the Code including section 2.1 and we ask that the Board dismiss the complaints on this basis.

THE DETERMINATION

The Ad Standards Community Panel (“Panel”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”).

The Panel noted the complainant’s concerns that the advertisement discriminates against people with red hair.

The Panel viewed the advertisement and noted the advertiser’s response. The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that ‘advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of



race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Panel noted that the Practice Note for Section 2.1 of the Code of Ethics provides the following definitions:

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.

The Panel noted that there are two versions of this on-demand TV advertisement, a 15 second version and a 30 second version. Both versions state that they have identified a 'ginger gene' in their beer, similar to the 'ginger gene' in human DNA. Both versions outline a competition to find the ginger bottles in regular six packs and the chance to win money. The 30 second version includes additional footage and a call to help 'stop the spread of the gene'.

The Panel noted the complainants' concerns that the advertisement was offensive and ridicules a minority group.

The Panel noted the advertiser's response that people with red hair is not a category which fits under Section 2.1 of the Code. The Panel noted the Practice Note for Section 2.1 of the Code defines 'race' as 'viewed broadly this term includes colour, descent or ancestry, ethnicity, nationality...'.

The Panel considered that the advertisement referred to the 'ginger gene' and considered that in the context of this advertisement red hair is referenced as a hereditary trait contained in genes. The Panel considered that DNA can be considered to be related to ancestry and descent and therefore considered that in this context the reference to people with red hair falls within the definition of race and can be considered under Section 2.1 of the Code.

The Panel considered that most of the images of people in the advertisement with red hair are positive and the reference to the taste of ginger in the beer is also positive.

A minority of the Panel considered that the humorous tone of the advertisement combined with the positive messaging about the ginger product, did not represent people with red hair in a way which was discriminatory or vilifying.

The majority of the Panel considered that the positive statements and images in the 30 second advertisement were contradicted by the line 'stop the spread of the gene'.

The Panel noted it had previously determined that an advertisement which referenced being 'less popular than a redheaded step child' breached Section 2.1 of the Code (Case 0047/12). In that case the Panel considered that the advertisement



included a “statement which was negative and one which oversteps the line between lighthearted humour and makes a strong suggestion that an identifiable group of children is vilified...the advertisement made a direct, negative comment about red headed step children which most members of the community would find unacceptable.”

In the current advertisement the majority of the Panel considered that similar to case 0047/12, the phrase ‘stop the spread of the gene’ overstepped the line between being light-hearted humour and made a strong suggestion that an identifiable group of the population was to be considered unpopular.

The majority of the Panel considered the suggestion that the genetic trait needed to be stopped was a negative one, and considered that the most reasonable interpretation of this line was that having red hair was undesirable.

The majority of the Panel considered that the inclusion of this line in the advertisement was vilifying of people with red hair as it was likely to incite ridicule of people with red hair.

The Panel determined that the 30 second version of the advertisement did depict material in a way which discriminates against or vilifies a section of the community on account of race and did breach Section 2.1 of the Code.

The Panel considered that the 15 second version of this advertisement was positive and humorous and did not discriminate against or vilify anyone on the basis of physical characteristics or race. Finding that the advertisement did breach Section 2.1 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We do not agree with the outcome of the Determination as, with great respect to any offense caused to the complainants, we believe that the advertisements do not breach any sections of the Code for the reasons set out in our response. However, we have nonetheless decided to remove the advertisements effective immediately out of respect for the complainants, the regulatory system and the Panel.

As stated in our response, we take our compliance obligations very seriously and can assure you that we have given much consideration to our handling of this matter.

