



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

# Case Report

1	<b>Case Number</b>	<b>0100/18</b>
2	<b>Advertiser</b>	<b>Carlton and United Breweries</b>
3	<b>Product</b>	<b>Alcohol</b>
4	<b>Type of Advertisement / media</b>	<b>Radio</b>
5	<b>Date of Determination</b>	<b>07/03/2018</b>
6	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

2.1 - Discrimination or Vilification Physical Characteristics

## DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement features a satirical public radio 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 being in the community. The announcer states 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 add states, Please help us stop the spread of the Ginger Gene!  
This is incredibly offensive to someone who is born with or has a family member with Red hair. Nobody can choose what they are born with and this add suggests that there is something wrong with red hair to the point that it " must be stopped"  
It is highly Racist and offensive and I'm shocked it was allowed to be aired. This misleads people into thinking its ok to "joke" about someones colouring. If it was skin colour would it have been allowed?? NO , so how is hair colour that cannot be controlled be ok?*



*PLEASE take this horrendous add off the air.*

*I was driving with my 16 year old red headed daughter to sport when this advertisement came on the radio. It mocks redheads, treats them like they are inferior to the rest of the population and implies that they need to be eradicated. Her face changed immediately when she heard this and she was totally crestfallen. An online ad refers to a "shocking discovery" and the "need to stop the spread of the gene". At a time when we are all concerned about our young people's mental health, how can an advertisement for beer be allowed to victimise a proportion of our society? Would they think it's ok to base this ad on race, religion or sexual preference? No.*

### **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 (the "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 reviewed 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 this radio advertisement describes that they have identified a 'ginger gene' in their beer, similar to the 'ginger gene' in human DNA. The advertisement then describes a competition to find the ginger bottles in regular six packs and the chance to win money



The Panel noted the complainant's concern that the advertisement is offensive and discriminates against people with red hair.

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 noted that it had considered versions of this campaign on on-demand TV (0099/18) and online (0101/18), in which

"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 lighthearted 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 considered that the current advertisement did not include the line 'stop the spread of the ginger gene'.

The Panel noted the advertisement refers to 'the ginger gene' and 'fiery, freckle-faced infants' and describes the ginger flavoured beer as 'crisp and zingy'.

The Panel considered that in this version of the ad the references to people with red hair are light-hearted and humorous and did not create the impression that having red-hair was undesirable.

The Panel considered that the overall impression of this advertisement was positive and considered that the advertisement did not discriminate against or vilify people with red hair.

The Panel considered the advertisement did not portray material in a way which discriminates against or vilifies a person on the basis of race.



Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.