



CASE REPORT

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| 1. Complaint reference number | 24/08 |
| 2. Advertiser | Fosters Australia (Victoria Bitter - Shane Warne) |
| 3. Product | Alcohol |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Portrayal of sex/sexuality/nudity – section 2.3
Discrimination or vilification Disability – section 2.1 |
| 6. Date of determination | Wednesday, 13 February 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens in a maternity ward where the humorous/spoofy tone is set with Shane Warne appearing as his mother, father and himself as an infant. A male voiceover relates “A hard earned thirst needs a big cold beer, and we’d like to raise one right now, to Australia’s favourite son, Warnie. Yep, when it came to tormenting the top order...” (a white padded cell shows two opposing cricketers banging their heads against the wall and crawling around the cell)... “Shane had ‘em by the balls.” A quick succession of Warne’s greatest deliveries is shown. The voiceover continues “Sure, his middle name may be Keith, but the Sultan of Spin could get almost anything to turn.” Warne is shown having a beer in a traditional Aussie pub. He looks up and raises his beer to someone who we then see is David Boon dressed in a green sequined dress. “Now, the great man may’ve hung up the box”... (Warne is seen kissing his protective groin box and putting it into a little wooden box called the ‘Box Box’) ...“but we can still toast him with an ice cold beer.” A group of males are shown watching the TV cricket and raising a beer to the telly, on which they have built a Warne shrine as the voiceover concludes “and the best cold beer is VB.”

THE COMPLAINT

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

I find it extremely offensive to hear all the innuendos concerning Shane Warne: "has them by the balls", "kissing the box goodbye".

The advertisement depicts Mr Warne's cricketing "victims" as ending up in a mental asylum banging their heads against a padded cell - the implication being that those with a mental illness are somehow weak, incapable of performing at the highest level and need restraint. Stigmatisation of people with mental illness is a serious issue. In the sporting world we have recently seen several high profile sportspeople talk about the pressure they were under not to reveal their mental health problems. The MHCA recognises that the advertisement is humorous and designed to be viewed in that context, however the imagery used - that if you are unable to successfully handle the pressure of cricket then you may have a breakdown and be forced into a padded cell - is deeply offensive and insulting to the millions of Australians who are mental health consumers or carers. To ridicule those with a mental illness to promote beer sales is inappropriate.

THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

There are two complaints that each relate to different parts of the ad so we will respond separately to each, however before doing so we would like to make it clear that the TVC in question was crafted as a parody in a humorous and jocular tone and was pre-vetted and approved through

AAPS. The TVC was certainly not intended to offend any section of the community, and if it has done so, we regret any offence taken. For the reasons outlined below on both complaints, we do not consider that the ordinary viewer would draw an inference that the TVC was portraying any section of the community in a derogatory or discriminatory manner in breach of the relevant advertising standards.

“Shane had em by the balls” is supported by footage of Shane Warne taking one of his 708 test wickets. The phrase should be taken literally given Shane, as arguably the world’s greatest spin bowler, really did dominate his opponents with his bowling (or balls). We acknowledge the phrase is also well known slang and means to have someone under your control or to have power over them. Some viewers may choose to apply the second meaning, but since Shane’s bowling process is legendary and the fact that the ad is about cricket, and there are no sex/sexual references (section 2.3) or “innuendo” as the complainant suggests we do not believe the ad is in breach of section 2.3.

In relation to being offended because the complainant had to “hear all the innuendoes...kissing the box goodbye” for the record, Shane kissing the box is a vision that is accompanied by a voice over which states: “Now, the great man may’ve hung up the box”. This vision and script are illustrating, albeit in a comical way, Shane’s recent retirement. The ad agency could have chosen a number of key pieces of cricketing equipment – a ball, bat, pads or box - however the aim was to make blokes and VB drinkers laugh. As such, the box was chosen for its comic value and as a funny take on “Hanging up your boots” – a common phrase used to symbolise retirement. The spoofy nature is confirmed when we see Shane tenderly kiss a golden symbolic box and then place it in the “box box”. Once again we argue that there is nothing sexual intended or otherwise about this scene.

The complainant was offended that this campaign was aired during the day. Since it is only on air during live sport and post the 8.30pm watershed, the campaign is broadcast in line with all regulations for alcohol advertising in Australia.

We refer to the letter from Mental Health Council of Australia dated 7 January 2008. Whilst the complaint is more general in nature we have reviewed the code and in particular section 2.1 of the code which states: “Advertisements shall 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, sex, age, sexual preference, religion, disability or political belief.” Section 2.6 was also considered as it states: “Advertisements shall not depict material contrary to prevailing community standards on health and safety.”

The advertisement specifically illustrates a well known and documented aspect of Shane’s reputation for overpowering and bewildering his opponents with his unpredictable bowling style. An example of this, whilst not explored in any explicit detail in the ad, is the famous Gattling ball (otherwise known as the “Ball of the Century” which spun sharply and bowled a bemused Mike Gattling in the 1993 Ashes series) and Warne’s relationship with South African batsman Daryl Cullinan. It is well known that competitive sport involves both the body and mind and sportspeople will often attempt to intimidate their opponents in order to get a competitive edge. The ad is parodying that Shane was a fierce opponent both on a physical and psychological level. In order to bring this to life in mere seconds and in a light hearted manner (in keeping with the tone of the whole advertisement) – a couple of cricketers were placed in a padded cell with the voiceover: “Yep, when it came to tormenting the top order” before showing footage where Shane bowls an opponent.

In reviewing the complaint it’s important to view the ad in its entirety and from an ‘average’ person’s viewpoint rather than that of a specific interest group. We would accept the chosen imagery might not be to everyone’s taste, but strongly argue that it does not discriminate against or vilify those with a disability. While we strongly refute both claims, we feel that a serious charge like vilification is a particularly long bow to draw, given the context and nature of the footage depicted and the definition of vilification being the “engagement in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, another person or class of persons.”

Based on the above, we believe that the VB television advertisement upholds both the spirit and the letter of the ABAC and AANA Code of Ethics for alcohol beverage advertising in Australia.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants' concerns about sexual innuendo in the advertisement and the depiction of two cricketers as having mental problems.

The Board viewed the advertisement and noted the advertiser's comment that the advertisement had only been shown in legally permissible timezones. The Board accepted that this is the case.

The Board noted the references to cricketer Shane Warne 'having them by the balls' and kissing his box. The Board considered that, while the advertisement did intend to play on innuendo and double entendre, the overall impact of the advertisement is humorous and not sexual. The Board considered that the advertisement was not inappropriate for the timezone and relevant audience and determined that the advertisement did not breach Section 2.3 of the Code.

The Board also noted the image of the two cricketers meant to be in a padded cell - caused by the expert and confusing bowling of Shane Warne. The Board noted the comments from the Mental Health Council of Australia and that the Code specifically prohibits advertisements that discriminate against or vilify people on account of any disability which would include mental illness. The Board considered that the depiction of the cricketers was not intended to make fun of or demean people with a mental illness. The Board considered that most members of the community would see the advertisement for what it was intended - a series of humorous depictions relating to Shane Warne and his career - and take the depiction in a humorous light not as a vilification of people with mental illness. The Board determined that the advertisement did not breach Section 2.1 of the Code.

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