

The Netherlands

Top-class Sport and Alcohol-free Beer: A Tasteful Combination in Advertising

*Ebba Hoogenraad and Sarah Arayess**

I. Amstel 0.0% Radler

Alcohol and top-class sport always makes an interesting combination (in advertising). Recently, a complaint was brought before the self-regulatory Advertising Code Committee regarding a commercial for Amstel 0.0% Radler. This drink was recently introduced on the Dutch market: alcohol free Amstel beer combined with lemon-water. In this commercial, the famous Dutch cyclist, Laurens ten Dam, drinks a beer with some other cyclists while participating in a stage at the Tour de France. The setting of the commercial suggests that the cyclists drink alcohol while participating in top-class sport.

II. Alcohol advertising: Applicable law & self-regulatory provisions

In the Netherlands, regulations regarding alcohol advertising can be found in the Licensing and Catering Act, Media Act and the self-regulatory Advertising Code for alcoholic beverages 2014. As of 1 January 2014, the Code has been changed at some points. At first, the legal minimum age for the consumption of alcohol changed from 16 to 18 years, which affected the content of the Code. Also, the Code stipulates that all advertising must contain the disclaimer: "Not 18 years old? No alcohol". Furthermore, advertising with glasses that are emptied in one gulp, double large glasses or pitchers are prohibited. However, pitchers that are poured into several glasses are still allowed. The use of more glasses implies more drinkers, provided that more people (or no people) are displayed in the advertisement. The self-regulatory advertising system is well known in the Netherlands, easily accessible and commonly used by both consumers and competitors. A small recap of this self-regulatory system: any consumer or competitor can file a complaint with the Advertising Code Committee. If the Com-

mittee considers the complaint well-founded, the Committee recommends this manner of advertising be discontinued. The Committee may not impose financial penalties. The STIVA is another separate self-regulatory system specifically aimed at alcohol advertising. Members of STIVA are obliged to be advised by STIVA for all alcohol advertising on radio, television and in cinema.

III. No alcohol advertising

Back to the Amstel 0.0% Radler case. Article 30, paragraph 3 of the Advertising Code for alcoholic beverages 2014 stipulates that hiring adults who actively participate in sports at the highest level for radio, cinema and television commercials and printed communication is prohibited. However, in this case, the Committee decided that the commercial is not advertising alcoholic beverages. Although the commercial (at first glimpse) may suggest that the cyclists do drink alcohol, the Committee finds the commercial to a large extent surrealistic. It is clear that the cyclists do not (really) drink alcohol, but instead Amstel 0.0%. No alcohol, no alcohol advertising. Therefore, the Advertising Code for alcoholic beverages is not applicable. The sole association with Amstel and its beers containing alcohol does not change the Committee's opinion. The commercial is clear about the advertised product: the Amstel 0.0% Radler. The complaint about the use of the term "beer" is also not justified. According to Dutch regulations, the definition of beer contains both alcohol-free beer and "normal" beer.¹ Therefore, Amstel was obliged to use the term "beer" for its alcohol-free product. Based on

* Hoogenraad & Haak advocaten, Amsterdam.

¹ Beer Regulation Commodity Board for Spirits 2003. http://wetten.overheid.nl/BWBR0014243/geldigheidsdatum_07-08-2014#3_Artikel7.

these considerations, the Code Committee rejects the complaint.

IV. Bavaria and Charlie Sheen

The Amstel 0.0% commercial is not the first commercial for alcohol-free beer that has caused some fuss in the Netherlands. In 2012, Bavaria launched a commercial starring the American actor Charlie Sheen. The commercial shows Charlie Sheen leaving a "rehab clinic". On his way out, he sees pregnant women, policemen, taxi drivers and other people drinking al-

cohol in public. At least he thinks its alcohol, but in fact this drink turns out to be alcohol-free beer. As in the Amstel 0.0% Radler commercial, the president of the Advertising Code Committee found that the commercial is clear about the product that is advertised. In the commercial the brand name Bavaria was only mentioned in combination with "0.0%". The association that consumers may have with regular beer (by mentioning the brand name Bavaria) does not mean that the commercial is contrary to the Dutch Advertising Code. In short, humour and the use of suggestion is allowed if the advertisement remains clear about the product that is advertised.