

ABAC

ABAC Complaints Panel Determination No: 24/11

Confidential Complaint Product: Sol Beer Advertiser: Woolworths Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

14 April 2011

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet banner advertisement for Sol Beer by Woolworths Limited (“the Advertiser”) and arises from a confidential complaint received on 15 March 2011.

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 is in the form of an email received by the ABAC Panel on 15 March 2011.
- 7 The Panel endeavour 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. This complaint has been determined within 30 business days.

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. The Advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

- 9 The advertisement features a 375ml bottle of Sol Beer with rays of sunshine emanating from the bottle above the tagline "The Beer They Drink in Mexico – since 1899-".
- 10 On selecting the banner advertisement users are taken to the Sol Beer website.

The Complaint

- 11 The complainant argues that:
 - a) The advertisement features a bottle of sol beer standing in front of a halo and an array of sunbeams, almost suggesting the beer is a source of light;
 - b) The advertisement was placed on youtube next to a video clip of Christian music and may appear anywhere, even next to children's content; and
 - c) There was no suggestion of the responsible service and/or consumption of alcohol on the banner ad and no indication of the legal drinking age and on being taken to the Sol beer website users only had to indicate "Si" to their age being over 18 which any 9 year old child can do thereby having access to all things alcoholic, images, offers to link up on facebook and all sorts of stuff children don't need to see or be involved with.

The Code

- 12 The ABAC provides at Sections (a)(ii) and (b) 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 under-age drinking;

- b) not have a strong or evident appeal to children and adolescents...
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment....

The Advertiser's Comments

13 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 28 March 2011. The principal points made by the Advertiser were as follows:

- a) Woolworths takes its advertising obligations very seriously, particularly as it relates to children and/or ensuring responsible drinking behaviours in young people. It is Woolworth's respectful submission that the complaint should be dismissed and no further action taken in the matter for the reason expressed below.
- b) A review was instigated to ensure the standards Woolworths require are met on an ongoing basis.
- c) The term 'Sol' is Mexican for sun and the 'sun beam' is a concept used worldwide by the manufacturer.
- d) Woolworths has taken this opportunity to undertake certain corrective action through its advertising agency, Red Jelly, and relevant media outlets regarding the advertisements only appearing at over 18 target locations and placement of 'drink responsibly' messages, as appropriate.
- e) Woolworths does not consider that the nature and content of either the subject advertisement or banner advertisements infringe the Code but has taken this opportunity to ensure that our high standards are maintained.

The Panel's View

13 This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

14 The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:

- Brewers Association of Australia & New Zealand
- Distilled Spirits Industry Council of Australia
- Winemakers Federation of Australia

15 While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means that the advertising was not subject to pre-vetting prior to its

publication and the advertiser is not contractually bound to follow a panel decision. That said, the advertiser has cooperated with the Panel in enabling the determination to be made.

The Substantive Aspects

- 16 The complaint concerns an internet advertisement for Sol Beer located on youtube. The complaint raises several issues under the Code, namely:
 - a) Section (a)(ii) and (b) of the Code, namely, encouraging underage consumption of alcohol and having a strong appeal to children by:
 - i Its placement on youtube which has an audience that includes children and adolescents;
 - ii Its placement next to a video clip of Christian music which may be viewed by children or adolescents; and
 - iii Its link to the Sol beer website which contains inappropriate material for children or adolescents and that could be accessed by children or adolescents as the age gateway only asks the viewer to select whether or not they are over 18 years of age.
 - b) Section (a) of the Code, namely, failing to present a mature balanced and responsible approach to the consumption of alcohol beverages by:
 - i Depicting a bottle of Sol beer in front of a halo and sunbeams suggesting beer is a source of light; and
 - ii Failing to include information about responsible service or consumption of alcohol beverages and the legal drinking age on the banner advertisement.
 - c) Section (c) of the Code, namely, suggesting the consumption or presence of the product may create or contribute to a significant change in mood or environment by depicting a bottle of Sol beer in front of a halo and sunbeams suggesting the product is a source of light.
- 17 The first issue primarily relates to placement of the advertisement. There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular advertising mediums. For instance, the Outdoor Media Association Code & Guidelines applying to billboards restricts alcohol ads appearing on an outdoor site within 150 metres sight line of any access gates to a primary and secondary school. There is no Code that specifically restricts placement of alcohol advertisements on the internet.
- 18 The ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. The issue of placement is indirectly raised by the ABAC's preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to "the class of persons to whom the advertisement is directed". This means that the ABAC does not prescribe the type of media within which an alcohol ad can be placed but, in assessing the standards as to the ad's content, the likely audience of a particular ad is relevant.
- 19 Accordingly the placement of the ad on youtube alone is not a breach of the ABAC. The actual content of the ad is unremarkable, featuring a bottle of the product and sunbeams as if the bottle was radiating light. It is not considered that the content of the ad would

have strong or evident appeal to children or adolescents. It would be highly inappropriate for any alcohol ad to be placed on a site which targets children, but there is nothing in the actual content of the ad which appears to breach section (a) (ii) or (b) of the code.

- 20 The second issue is the failure to include a statement about responsible consumption and service of alcohol and the featuring of the product surrounded by sunbeams suggesting it is a source of light. Section (a) provides that alcohol advertisements must present a mature balanced and responsible approach to the consumption of alcohol beverages.
- 21 The ABAC does not contain any provision to require the inclusion of a “drink responsibly” message in alcohol advertising. Such messages have been used by advertisers more frequently in recent times; however a positive obligation to include a message of this type as a code condition is a step which would require amendment of the ABAC and this is not the domain of the Panel. The Panel’s role is to apply the Code it is given by its Management Committee. It is the Management Committee which determines the actual terms of the ABAC. The lack of such a message is not a breach of the ABAC as currently drafted.
- 22 The Panel does not believe that the ad’s depiction of sunbeams radiating from a picture of the product can be said to breach the code. The product’s brand name “Sol” makes the reference to the sun reasonably apparent and the sunbeams would be taken by a reasonable viewer as referring to the sun/”sol” link. The Panel does not believe the sunbeams would be taken as suggesting the product has properties or characteristics so as to breach section (a) or section (c) dealing with a change in mood.
- 23 In dismissing the complaint, the Panel recommends that the advertiser become a signatory of the ABAC scheme so that it is able to access independent pre-vetting of its advertising prior to its publication or broadcast.