

ABAC

**ABAC Complaints Panel
Determination No: 29/10**

**Confidential Complaint
Product: Tooheys
Advertiser: Lion Nathan**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

8 July 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Tooheys beer by Lion Nathan (“the Advertiser”) and arises from a confidential complaint received on 27 May 2010.

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 ABAC on 27 May 2010.
7. The Panel endeavours 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 the 30 day timeframe.

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. Pre-vetting approval was obtained for this advertisement [10072].

The Advertisement

9. The advertisement concerns a television advertisement broadcast during a State of Origin Rugby League game. It depicts a quiet suburban street as the following events unfold.
 - (a) A young man is shown walking toward a conservative older couple in the front yard of their suburban house and handing them a case of beer as the voiceover says "Smoothing over the neighbours before your party. One case."
 - (b) Several musicians walk behind the young man and the elderly couple watch them with concern as the voiceover continues "There's a band playing. Two cases."
 - (c) A larger group of young people walk behind the young man as he turns to wave to them, the couple continues watching the street with concern and another young man places a further case of beer next to the couple's front door as the voiceover continues "That's the first band. Three cases."
 - (d) The noise levels in the street increase as the young man places event passes around the couples neck, further cases of beer are placed next to the couple's front door and men walk past with a trolley laden with kegs of

beer as the voiceover continues “Telling them that it’s more like a small festival. Twenty cases”.

- (e) A banner stating “Official merchandise and a manned table with boxes is placed out the front of the couple’s house as the couple look stunned and the voiceover continues “And the house is the merch tent. 50 cases”.
- (f) The young man then listens to his ear piece and says “Right” and gives the couple the thumbs up as he walks away. We then see the couple standing in their nightclothes in front of the house in daylight next to a pallet of beer among rubbish and mess as several partygoers wander past and the voiceover continues “Later on saying thanks for everything. 100 cases. Tooheys New White Stag. Official currency of the beer economy”. The camera focuses on the packaging of a case of Tooheys New White Stag beer.

The Complaint

10. The complainant argues that the advertisement:

- (a) Promotes binge drinking to young people watching the football game;
- (b) Gave the impression that the neighbours could be bribed with gargantuan amounts of beer which would ensure they would not complain about the party next door. It implies that copious amounts of alcohol will solve any problem in the neighbourhood.

The Code

11. The ABAC provides that advertisements for alcohol beverages must:

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - j) must not encourage under-age drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

Arguments in Favour of the Complaint

12. In favour of the complaints it is alleged that:

- (a) The advertisement breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages and encouraging and promoting excessive consumption by its depiction of:
 - A young man bribing neighbours to tolerate a street party/ small festival in their street with very large quantities of beer;

- The allocation of extremely large quantities of beer to the couple in the advertisement;
 - The implication that large amounts of alcohol will solve any problem in the neighbourhood; and
 - The implication from the state of the street the next morning that excessive consumption occurred at the street party/ small festival.
- (b) The advertisement breaches section (a)(ii) of the ABAC by encouraging under-age drinking by broadcasting the advertisement during a state of origin game that young people would be watching.

The Advertiser's Comments

13. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 2 June 2010. The principle points made by the Advertiser are:
- (a) 'The Beer Economy' campaign is based on an insight into the average Australian beer drinker. For many years mates have paid each other in beer, instead of money, to say thankyou for small favours. Many people can relate to this simple insight and have used beer in this fashion at some stage in their lives. As such the aim of the campaign is to have fun with these experiences and perpetuate this enduring quirk of Aussie culture.
 - (b) This TVC explores a situation where a man is thanking his neighbours in advance of a party he is organizing. The 'party' is progressively exaggerated. The significance of the 'thank you' beer increases in line with the exaggerations. The absurdity of the situation is intentional and it is not expected that a reasonable person would assume this is a common occurrence but a rather comical hyperbole.
 - (c) At no stage during the advertisement is alcohol consumed. Additionally when the beer is tallied it is shown in cases. This format was chosen intentionally, as cases are widely viewed as packaging formats to be stored over a period of time and shared amongst many.
 - (d) In the ABAC preamble it states '*the conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other person to whom the advertisement may be communicated, and taking its content as a whole.*' The creative is executed in a deliberately comical and exaggerated fashion and it is not expected a reasonable person would believe that the neighbours would drink all of the alcohol in one occasion, or indeed by themselves – just as we wouldn't expect them to do the same if they bought the cases from a liquor store.
 - (e) The TVC was shown post 8.30pm in line with the Commercial Television Industry Code of Practice and targeted at an adult audience.

- (f) No other problems in the neighbourhood are referred to. The situation in the TVC is humorous because of its absurdity, it is not expected a reasonable person would assume this situation is a common occurrence and could be addressed in a similar fashion.
- (g) In the final scene we are shown a shot of the neighbours front garden, which was fictionally used as the merchandise tent. At no stage is the street shown. The implication from this shot is that the front garden has seen a lot of foot traffic from the festival given its proximity to the event and the fact it was used as a merchandise tent. There is some litter on the ground and a tent set up, but no empty alcohol bottles are shown. No previous consumption is suggested or shown.

The Panel's View

14. This Determination is the third made by the Panel arising from complaints related to the advertiser's "beer economy" campaign. As with the previous matters, this complaint essentially raises two points, namely:
 - Does the ad promote or encourage excessive alcohol consumption and
 - Does the ad suggest that alcohol solves problems?
15. The argument about the encouragement of excessive consumption is primarily based on the "price" or "beer economy" value of the impact of holding the party on the neighbours affected by the event. As the extent of the party grows in scope to become a major concert, so does the quantity of the product provided to the couple. In the end the amount of beer "gifted" to the neighbours is 100 cases.
16. The advertisement is presenting a highly-exaggerated scenario which is obviously intended to be taken as humorous. While humour is not a cure for an ad which breaches an ABAC standard, it is a factor in how a reasonable viewer would interpret the ad. The Panel does not believe the ad is promoting excessive consumption as:
 - The provision of alcohol in cases or cartons does not mean the alcohol will be consumed on a single occasion or necessarily by the couple alone *i.e.* there is a clear distinction between consumption of alcohol and its acquisition by purchase (or as in this case "gifting").
 - No alcohol consumption is depicted and while it might be assumed alcohol was consumed at the street party, it cannot be concluded excessive consumption was being encouraged.
17. The second point raised by the complainant is whether the ad is irresponsible by suggesting alcohol can solve neighbourhood problems. The advertiser contends that the ad is clearly exaggerated and humorous and would not be taken literally or seriously.
18. Section (a) of the ABAC requires that advertising present a mature, balanced and responsible approach to alcohol consumption. The ad portrays a couple in a fanciful scenario which would not be taken literally by viewers, but which does resonate as

experiencing a noisy party is a common enough occurrence in a typical suburb. The product is shown as “gifted” as a thank you for putting up with the inconvenience of the party.

19. The Panel can see the point made by the complainant, but does not think the ad breaches the ABAC standard. While humour alone is not a cure all for an ad which otherwise breaches the code, in this case the highly exaggerated scenario would not be taken as suggesting alcohol is a solution to life’s problems.
20. The final point is whether broadcasting the ad during the State of Origin game changes the position because “young people” would be viewing the game. The ABAC is a Code which goes to the content of an ad rather than where the ad is placed. The separate Code applying to commercial television provides alcohol ads should not appear before 8.30pm on a weekday, except in conjunction with a live sports broadcast. The ad would have been broadcast consistently with this requirement and there is nothing in the actual content of the ad which can be said to have an appeal to younger viewers over and above its general appeal to all viewers.
21. Accordingly, the complaint is dismissed.