

ABAC

ABAC Complaints Panel Determination No: 6/12

Complaint by Mr Peter Gibson
Product: XXXX Summer Bright lager
Advertiser: Lion Australia

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

18 January 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for XXXX Summer Bright lager by Lion Australia (“the Advertiser”) and arises from a complaint received on 4 January 2012.

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 was received by the ABAC Panel on 4 January 2012.
- 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. This advertiser obtained pre-vetting approval for this advertisement [11197].

The Advertisement

- 9 The advertisement opens with a man walking along a path overlooking a beach holding a wooden crate of empty XXXX Summer Bright lager bottles. The scene changes to a man playing the drums on a sidewalk and percussion style music follows throughout the ad. We then see a group of people sitting on a sofa on a rooftop courtyard threading string through the caps of empty bottles of XXXX Summer Bright lager and hanging the bottles from a rotary clothes line. We then see from ground level and two separate adjoining rooftops a group of people standing on the rooftop courtyard of a three-level apartment building around the rotary clothes line filled with hanging empty bottles. One of the men is shown turning the crank to raise the height of the rotary clothes line. We then see the sun shine on the empty bottles and the bottles are changed from empty to full of the product. A group of people are shown socialising around the clothes line holding bottles of the product as the tagline "Are you ready for summer?" is superimposed accompanied by vocals along the line of "All the other kids are...". The final scene is a close up of some of the bottles hanging from the clothes line, with the tagline and Drink Responsibly logo.

The Complaint

- 10 The complainant argues that the advertisement was inappropriately placed prior to a children's game on the internet site, www.yepi.com that is aimed at children with an average age of 10 years.

The Code

- 11 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...

The Advertiser's Comments

12 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 16 January 2012. The principal points made by the Advertiser were as follows:

- a) XXXX has a long and proud history in Queensland, the Sunshine State, and just like local residents, it champions the Queensland lifestyle. As such, the brand has a history of summer-focused marketing campaigns that celebrate summer and enjoying the Australian lifestyle.
- b) The online advertising for XXXX Summer Bright Lager was booked through the Microsoft Media Network. When our online advertising is booked it is done so with a number of measures in place to ensure it is targeted at only those 18+, including targeting technology. As a result of Yepi.com incorrectly classifying its site as 'Entertainment' instead of 'Kid's Gaming', the XXXX Summer Bright Lager ad was mistakenly displayed on this website. As soon as Lion was made aware of the placement the advertisement was removed.
- c) We are confident the XXXX Summer Bright Lager advertisement has no strong or evident appeal to children or adolescents. The environment depicted is a common adult gathering, and all adults are over 25 and clearly portrayed as such. No children or adolescents appear in the advertisement.
- d) During the course of the ad, the adults hang empty bottles of XXXX Summer Bright Lager onto a hills hoist, developing a unique creation to hold the bottles. The invention is intended to be sculptural in effect, and we do not believe a reasonable consumer would interpret the visual as a child's mobile.
- e) As the sun shines on the beer bottles, they fill with beer. This effect is simply intended to draw a connection to the Summer Bright Lager brand and what it is known for. The number of beers on the hills hoist is not in excess of the number of people at the party, and does not portray an image of excessive consumption. While this is certainly fictional, we believe a reasonable person would understand the connection to the brand and would not assume this to be the actual result of holding an empty bottle in the sunshine. As per the ABAC Guidance Notes, the purpose of the ABAC is *"not to prevent or limit the use of fantasy or fiction in the advertising of alcohol beverages, provided the spirit and letter of the Code is adhered to in all respects."* We do not believe the effect of the bottles being filled with beer from the sun has a strong or evident appeal to underage, nor does it encourage excessive or irresponsible consumption, as per our comments above.
- f) The music used in the ad is taken from the track 'Pumped Up Kicks' by Foster The People – a popular song that has been widely used across radio and in licensed premises over summer. The song is not targeted towards children and carries no strong or evident appeal to an underage audience. Like many songs used in TV commercials, the track was chosen for its popularity with the brand's consumers and its catchy beat. This can be seen by the fact the majority of the ad is complemented by the backing track only, with only a minimal amount of lyrics included. When looking at the advertisement as a whole, we do not feel the one mention of the word 'kids' alone denotes an appeal to children or would change the overall impression of a reasonable consumer on the broader content.

- g) The beach is a setting associated with enjoying the Australian summer, which is the focal point of this campaign. Adult targeted beach imagery appears on all XXXX Summer Bright Lager products and marketing and is a standard depiction of the natural surrounds in Queensland, where the product is made. The beach in general is a location and/or activity with broad adult appeal, evidenced by its use in a vast array of marketing activity and entertainment targeted at adults. We do not believe having it as a background for the ad has any strong or evident appeal to children.

The Panel's View

- 13 The complainant raises a very legitimate concern about the appearance of the alcohol advertisement on a children's internet gaming site. The concern expressed is not about the actual content of the ad, but that an alcohol ad of any description should appear on this site.
- 14 The Advertiser explains that it did not select the gaming site specifically for the placement of its ad, but rather it placed ads on a range of sites which were to be targeted at adults. According to the Advertiser, the ad came to appear on the yepi.com site due to the site being incorrectly classified as "Entertainment" instead of "Kids' Gaming".
- 15 As explained earlier, alcohol advertising is subjected to a range of laws and codes of practice which go to various aspects of either the content of the ads or the placement of the ads. Content requirements go to what messages and images are contained within the ad, regardless of where the ad appears. Placement requirements go to where an alcohol ad might be viewed, irrespective of its content. The ABAC is a content code, rather than a placement code.
- 16 Examples of placement codes are the CTICP, which restricts when alcohol ads are to appear on free-to-air television and the Outdoor Media Code of Ethics, which restricts alcohol advertising within 150 metres of a school. There is, however, no code or regulation which prescribes where alcohol ads can be placed on the internet. This means that the appearance of an alcohol ad on a children's gaming site does not of itself offend a specific requirement of the ABAC or any other code applying to alcohol advertising.
- 17 The ABAC does contain a provision which states that alcohol ads are not to have strong or evident appeal to children or adolescents. This appeal however is to be assessed by examining the content of the ad and does not flow from where the ad was found. The complaint raises no argument about the content of the ad, as this was not the concern. The concern was that an alcohol ad of any type would be encountered by children on a child's internet gaming site.
- 18 This is little comfort to the complainant who raises a genuine problem. It also is the second example of inappropriate placement of an alcohol ad on an internet site designed for children that the Panel has encountered in recent times (see Determination 118/11). This may be pointing to a systemic issue which industry and government will need to address.
- 19 The Panel does not believe the content of the ad breaches the ABAC provisions in sections (a) (ii) or (b). Accordingly, the Panel is obliged to dismiss the complaint but, in doing so, it accepts that the ad should not have appeared on the yepi site. The Panel asks that its Management Committee review if further provisions are required to regulate the placement of alcohol advertising on the Internet.
- 20 The complaint is dismissed.