

ABAC

**ABAC Complaints Panel
Determination No: 84/10**

**Complaint by Mr Patrick Flynn
Product: XXXX Gold
Advertiser: Lion Nathan**

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

23 December 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for XXXX Gold by Lion Nathan (“the Advertiser”) and arises from a complaint by Mr Patrick Flynn received on 14 December 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 14 December 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 [310/09].

The Advertisement

9. The advertisement opens on a beach with two men standing next to a large spool of fishing line with a fishing rod attached. One of the men says "You' reckon we've got enough line?" as the other chuckles and then holds up one arm and shouts "Okay".
10. There is the sound of an engine running as a third man who is some distance away from the first two holds up a squid that is attached to the fishing line and places it in a catapult that is held back by the tow bar of a 4WD and says "Alright mate". A fourth man says "Yep? Alright Digger" and he opens the door of the 4WD which has the engine idling, a dog jumps in the car and then the fourth man gets in.
11. We then see the fourth man driving the car slowly forward with the dog in the passenger seat as the other three men walk alongside the vehicle, two of which are holding opened stubbies. One of them shouts "That's it Brucey keep going" as the tires on the vehicle start to spin. Another shouts "That'll do. We can see that the catapult is a thick band of elastic tied to two trees and being pulled back by the vehicle.
12. One of the men then releases the catapult and the squid is shown travelling a long distance out to sea and over the heads of two men fishing in a boat. One of the men in the boat says "Hey Jacko I think I just saw a flying squid". The other man in the boat says "Yeah sure Harry".

13. We then see the four men and dog standing by the catapult looking over the ocean as two of them sip on a stubby of beer and laugh. One of them says “Well that went well” and another says “Yeah”. The XXXX Gold logo is superimposed on the screen with the tagline “Good as Gold”.

The Complaint

14. Mr Flynn argues that:
- (a) the advertisement depicts 4WDs with beaches and alcohol as light hearted fun when this combination kills many people each year;
 - (b) the damage to the environment and mistreatment of an animal are to be deplored; and
 - (c) there should be a ban on showing alcohol and any activity, such as driving or boating, where drinking can and does contribute to injury and death.

The Code

15. The ABAC provides that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages ...
 - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly -
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices...

The Advertiser’s Comments

16. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 17 December 2010. The principle points made by the Advertiser are:
- (a) The XXXX GOLD ‘Catapult’ TVC is part of a broader series of advertisements for the XXXX GOLD brand. In each execution, the same four friends are seen ‘living the good life’ – which is essentially about good times with good mates. It’s about time and space, activity without purpose and a good injection of sociable, larrikin humour. The XXXX GOLD consumer does not take him or herself too seriously, and the advertisements are about bringing to life this kind of Aussie lifestyle and comical ingenuity.

- (b) In the 'Catapult' TVC the four friends connect their fishing line to a catapult, to launch a large piece of bait much further into the ocean than they would normally be able to do. This is not a 'prank' – it is an example of the four friends finding a new and comical way to fish.
- (c) The 4WD is moved forward a small distance to extend the catapult and launch the bait – it is not driven along the beach. The man who drives the 4WD this distance is never shown with a drink in his hand, neither before driving, during or after. Only two of the four men are shown to have a beer at the end of the activity, neither of which is ever seen operating the vehicle. There is no suggestion that the two men with stubbies of beer have or will drive the 4WD. There are clearly two men who are not consuming alcohol who can operate the car if it is needed, however the only purpose it serves in the advertisement is to extend the catapult and launch the bait.
- (d) With regards to the boat, two different characters are shown to be fishing out on the ocean when the bait flies overhead. Neither of these characters is drinking. There is no alcohol present on the boat and no suggestion that they have or will engage in alcohol consumption at any point.

The Panel's View

- 17. The complainant raises a genuine concern about the dangers associated with operating 4WD vehicles on beaches and points to the risk of combining alcohol use with vehicles in these conditions. The ABAC also expressly recognizes the importance of drink driving as a public policy and safety issue and includes a provision which goes to this issue.
- 18. Section (d) of the Code provides that an alcohol advertisement must not depict a direct association between the consumption of alcohol and the operation of a motor vehicle and accordingly any depiction of the consumption of alcohol in connection with the operation of a motor vehicle must not be represented as having taken place before or during engagement of the activity and must in all cases portray safe practices.
- 19. The provision has several elements namely:
 - A direct association between alcohol and a motor vehicle
 - Alcohol consumption and
 - The operation of a motor vehicle

all of which are present in the current ad. What is contended by the advertiser, however, is that the driver of the vehicle does not at any point consume alcohol and hence the provision is not breached.

20. Specifically the advertiser argues that
- The ad sits within a series which are about 'living the good life – good times with good mates'
 - It depicts a humorous, lighthearted scenario
 - The man who drives the vehicle is not shown with alcohol in his hand, and only 2 of the 4 characters depicted with the vehicle are shown consuming alcohol and these two are not involved in operating the vehicle
21. In interpreting the Code, the Panel has regard to the 'spirit and intent' of the provisions. In this case, the intention is clearly around the serious potential consequences of drink driving. The Code preamble also provides that conformity of an ad with Code standards is to be assessed taking the content of the ad as a whole and how the ad would probably impact upon a reasonable person.
22. In this case the ad creates a scenario where each of the 4 mates plays a role in the launching of the bait. Two of the men, who are depicted consuming alcohol, are firstly shown near the water's edge with the fishing reel and line. In a later scene, these two men are shown alongside the vehicle while it is moving into position to launch the bait. At this point the two men are shown with stubbies of the products in their hands and can reasonably be assumed to be consuming alcohol.
23. The two other men in the scenes featuring the vehicle are not shown to be consuming alcohol and it is the advertiser's argument that it is these men and in particular, the man who is behind the wheel of the vehicle who is 'operating' the motor vehicle. The Panel believes however, that it is not clear that only the non-alcohol consuming men are involved in 'operating' the vehicle in its' maneuver.
24. Firstly, section (d) and (d)(i) refers to 'the operation of a motor vehicle' and 'consumption of alcohol beverages in connection with' the operation of a motor vehicle and not simply to driving a vehicle. In the ad, one man drives the vehicle, while the 3 others apparently assist the driver by giving directions and advice as to how far forward the vehicle needs to travel in order to successfully launch the bait. At one point a voice is heard giving advice to the driver, "that's it Brucey – keep it going", and then "that'll do". This initially occurs during a wide shot of the vehicle and all 3 men walking alongside of the vehicle. It is not evident which man is giving the instructions and it could be one of the men consuming alcohol.
25. On balance, the Panel believes the overall impression a reasonable person could take from the ad is that the vehicle is being operated in conjunction with the consumption of alcohol. In this case, therefore, the ad breaches section (d) of the ABAC. Clearly, the complainant gained the impression from the ad that all of the men may have been drinking and while the Panel does not base its conclusion on this, it does reinforce that

advertisers need to be careful when depicting alcohol use and the operation of motor vehicles.

26. The Panel does not believe the depiction of two other men fishing while the bait flies overhead suggests that these two men are operating the boat while consuming alcohol. There is no depiction of alcohol with the men, and they are not shown as involved with the men using the vehicle.
27. Finally, the Panel does not believe the ad breaches section (a) of the Code. The ad does not depict or suggest excessive alcohol consumption and the key issue of the ad in terms of ABAC standards is how the vehicle is used in conjunction with alcohol use.
28. Accordingly, the Complaint is upheld in relation to section (d).