

ABAC

ABAC Complaints Panel Determination No: 90/11

Complaint by McCusker Centre for Action on Alcohol & Youth Product: Thirsty Camel Bottleshops Advertiser: Thirsty Camel Bottleshops

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Fran Baum – Member

12 December 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a Facebook advertisement for Thirsty Camel Bottleshops (“the Advertiser”) and arises from a complaint received 12 October 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 and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint 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 ABAC on 12 October 2011.
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 was not decided within the timeframe due to availability of the Chief Adjudicator.

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 signatory to the ABAC and pre-vetting approval was not obtained for the facebook pages.

The Advertisement

9. The complaint refers to WA, Victorian & NSW facebook pages for Thirsty Camel bottleshops.
10. The WA Thirsty Camel facebook page opens with the Thirsty Camel bottleshop logo and the Wall on which a number of posts by the advertiser are featured that sometimes include promotions and offers and sometimes just a humorous comment or observation. User generated material is also included. By selecting "Info" the message "We are here to entertain & hydrate you!!" appears. At the time of the Panel's decision the post referred to in the complaint was no longer on the Facebook page. The statement referred to by the complainant allegedly posted on 7 October 2011 by the advertiser is "24 hours in a day, 24 beers in a case – coincidence?? I think not!".
11. The Victorian Thirsty Camel facebook page opens with the Thirsty Camel bottleshop logo and the statement "Score \$10k" next to a pictures of a Camel holding a suitcase of cash. Below the picture is the statement "Click Like For Your Chance To Win". The site contains photographs and references to alcohol

products and statements promoting Thirsty Camel bottleshops. By selecting “Wall” users are taken to a page on which a number of posts by the advertiser are featured that sometimes include promotions and offers and sometimes just a humorous comment or observation. User generated material is also included. The statement referred to by the complainant posted on 4 September 2011 by the advertiser is “If you’re going to lay around the house and drink beer all day, you gotta start early in the morning”.

12. The NSW Thirsty Camel facebook page is very similar to the Victorian page. The statement referred to by the complainant posted on 17 April 2011 by the advertiser is “Scientists have discovered getting drunk actually enhances your memory, that’s good news after the weekend I have had!”.

The Complaint

13. The complainant argues that the posts by the advertiser on the facebook page fail to present a mature, balanced and responsible approach to alcohol consumption and encourage excessive consumption. Further 90% of 12-17 year olds in Australia use social networking sites and facebook pages controlled by bottle shops and alcohol companies are easily accessible to all Facebook users.

The Code

14. The ABAC provides at Section (a) 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;
 - ii) must not encourage underage drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

The Advertiser’s Comments

15. The Advertiser responded to the questions posed by the Panel by letter dated 24 October 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. Firstly, we would like to advise that the core brand value of Thirsty Camel is “irreverence”. This value, along with our communication strategy, has been in place since the brand was launched in 2007. Whilst the ‘camel’ is widely accepted as irreverent, and could sometimes be seen as controversial, it’s always light-hearted, left-of-centre and well-meaning. The Thirsty Camel Facebook pages continue the irreverent communication of the brand, however at no time are statements posted on these pages designed to encourage excessive or irresponsible consumption of alcohol and nor should our Facebook pages be accessed by anyone under a respective country’s legal drinking age. Furthermore, the ‘Information’ area on each Thirsty Camel

Facebook page clearly states that *“Thirsty Camel bottleshops support the responsible serving and consumption of alcohol”*.

- b. The Facebook sites referred to in the complaint are not alcohol beverage advertisements. They are brand pages for the Thirsty Camel community designed to connect with the brand and its irreverent tonality. The statements included in the complaint do not encourage our Facebook fans to visit a bottleshop, purchase alcohol or consume alcohol in an irresponsible manner.
- c. The postings on the Thirsty Camel Facebook pages are not alcohol beverage advertisements. In addition, the Thirsty Camel Facebook pages use the ‘Alcohol Related’ age restriction - a default set up by Facebook - to ‘Manage Permissions’. This blocks any user that is under the legal drinking age in their respective country (i.e. Australia - 18 years, USA - 21 years) from searching or accessing the Thirsty Camel Facebook pages. This is designed by Facebook to ensure alcohol related pages are not easily accessible to all Facebook users, only those over the respective country’s legal drinking age. Furthermore, the Thirsty Camel Facebook pages ‘Wall’, where all comments are posted, are only accessible to those who have chosen to ‘like’ the page, adding another barrier for any consumer who does not appreciate Thirsty Camel’s irreverent humour.
- d. The postings on the Thirsty Camel Facebook pages are not alcohol beverage advertisements, they are editorial commentary. At no time do Thirsty Camel Facebook sites intend to breach Section (a) and (a)(i) of the ABAC Code. A response to each of the specific statements referred to in the complaint follows:
 - i. This statement draws a similarity between the hours in a day and number of beers in a case, it does not say someone should consume 24 cans of beer in 24 hours. As Thirsty Camel strongly supports the responsible serving and consumption of alcohol, we would never suggest or recommend excess or irresponsible consumption of alcohol.
 - ii. This statement simply points out if you want to drink beer throughout the entire day you have to start in the morning otherwise you would miss part of the day. It is a ‘tongue in cheek’ comment in accordance with our irreverent and light hearted brand personality. It does not refer to, or infer, an excess quantity of beer should be consumed in a day.
 - iii. This statement was in response to a report on a scientific study that found “getting drunk primes certain areas of our brain to learn and remember things more clearly” which was reported widely in the media earlier this year. Read more: <http://www.dailymail.co.uk/sciencetech/article-1376333/Drinking-forget-Bad-news--alcohol-actually-help-remember.html#ixzz1bCbGeKpn> In posting this statement, we were merely drawing attention to these media reports. At no stage would we encourage our Facebook fans to drink in excess of the NH&MRC daily recommendations.

- e. We believe, in all cases, our Facebook posts reflect Thirsty Camel's core brand strategy of irreverence but, like any satire, it can be taken out of context and might unintentionally be offensive to certain individuals. If this is the case in this instance, we sincerely apologise for any offence that Thirsty Camel has caused.

The Panel's View

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

The Application of the ABAC to non-Code signatories

17. 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.
18. 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 advertiser is not contractually bound to follow a panel decision. That said, the advertiser has co-operated with the ABAC processes.

Are the Thirsty Camel WA, NSW and Vic facebook pages "advertisements for alcohol beverages" within the meaning of the ABAC?

19. The complaint concerns Facebook pages for the Western Australian, New South Wales and Victorian Thirsty Camel stores. The ABAC is a code of practice for "alcohol beverage advertising". The Advertiser argues that the Facebook pages are not alcohol beverage advertisements but rather brand pages for the Thirsty Camel community designed to connect with the brand and its irreverent tonality. They also argue that the statements included in the complaint do not encourage Facebook fans to visit a bottleshop, purchase alcohol or consume alcohol in an irresponsible manner. This raises the question of whether the Facebook pages fall within the ambit of the ABAC scheme. There are two parts to this question. The first is whether the relevant Facebook pages are advertisements and secondly, if they are advertisements whether they are advertisements for alcohol beverages.
20. The ABAC provides in its preamble that the industry sponsors of the scheme are committed to the goal of "all advertisements for alcohol beverages" complying with the spirit and intent of this code. "Internet advertisements" are defined in the Code

as "internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia....and to banner advertising of such products on third party sites". The term "advertising" is not defined by the ABAC.

21. The Panel notes that it first considered whether a Facebook page was "an advertisement" for the purposes of the ABAC in Determination 38/09 dated 11 May 2009. After considering the overseas experience and the spirit and intent of the ABAC scheme, as well as the actual characteristics of the Facebook page, the Panel concluded that the particular Facebook page referred to in that complaint was captured by the ABAC scheme.
22. The Panel has considered the Thirsty Camel Facebook pages referred to in the complaint and is of the view that they are "advertisements" for the purposes of the ABAC. The Panel notes that the Facebook pages contain some humorous comments which alone are not advertisements, however looking at each of the pages as a whole is of the view that they are advertisements. The Panel notes that they contain the Thirsty Camel bottleshops name, logo and email address, many of the comments relate to alcohol and some refer to particular brands of alcohol or promotion or giveaways. Further, The NSW and Vic pages contain information about the Thirsty Camel bottleshops that is promotional in nature and while the WA page contains less information it does include the statement, "We are here to entertain & hydrate you!!".
23. Having decided that the Facebook pages are advertisements the Panel must decide whether they are advertisements **for alcohol beverages**. The definitions section of the Code states that the term "alcohol beverage includes any particular brand of alcohol beverage".
24. This question was considered by the Panel in ABAC Determination 6/09 which related to advertisements for the Belgian Beer Café. In that case the Panel examined the definitions in the Code in light of its requirement to interpret the code having regard to the spirit and intent of the ABAC scheme and found that the definition of alcohol beverage in the context of alcohol beverage advertising is wider than a reference to a particular brand of alcohol beverage and can include other matters. The Panel found that, while the ads in question were promoting the Belgian Beer Café as a venue, they were also promoting alcohol as a product, and accordingly the ads fell within the intended scope of the ABAC scheme.
25. The Panel has considered the Thirsty Camel Facebook pages and considers that the pages are advertisements for alcohol beverages. In reaching this conclusion, the Panel has noted that:
 - (a) The Facebook pages are promoting Thirsty Camel bottleshops which are alcohol beverage retailers.
 - (b) The pages are also promoting alcohol as a product with statements such as "We are here to entertain & hydrate you!!" (WA), "Ok folk's the first 12 camel jokes posted on our wall will each get a set of Retro Canadian Club Headphones!" (WA), "Bringing people and Bacardi together...Mmm they've got my vote" with a link to a Bacardi commercial (NSW), "Ah beer

- the reason I wake up every morning" (NSW), "People who say you can't buy happiness just don't know what to buy, I find a slab will always do the trick" (Vic), "we have a 7 for \$25 special on Jim Beam & Cola cans in-store this week!" (Vic).

Substantive issues

26. The complaint raises several substantive issues, namely:
- (a) Do the advertisements breach section (a)(ii) of the Code, namely, encourage underage consumption of alcohol by reason that:
 - 90% of 12 to 17 year olds in Australia use social networking sites; and
 - Facebook pages controlled by bottleshops and alcohol companies are easily accessible to all facebook users.
 - (b) Do the advertisements breach section (a) and (a)(i) of the Code by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages and encouraging excessive consumption and abuse of alcohol by the company posting statements such as the following:
 - 24 hours in a day, 24 beers in a case – coincidence?? I think not! (WA)
 - If you're going to lay around the house and drink beer all day, you gotta start early in the morning. (Vic & NSW)
 - Scientists have discovered getting drunk actually enhances your memory, that's good news after the weekend I have had! (NSW)
27. The first issue is whether the Facebook pages are consistent with section (a) (ii) of the ABAC. The complainant is concerned that Facebook pages are easily accessible by adolescents and that a very large proportion of adolescents have access to Facebook. The advertiser has noted that it has selected a filter that blocks any user that is under the legal drinking age in their respective country (i.e. Australia - 18 years, USA - 21 years) from searching or accessing the Thirsty Camel Facebook pages. The ABAC Code is a content code and placement of an advertisement is only indirectly relevant when assessing the probable impact of the advertisement upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated. The Panel does not believe that the advertisements breach section (a)(ii) of the ABAC by reason only of accessibility by adolescents.
28. The second issue is whether the Facebook pages are consistent with section (a) and (a)(i) of the ABAC. The complainant refers to three statements included on one or more of the Facebook pages that are set out in paragraph 26(b) above. The Panel has considered the statements in the context of the sites as a whole and believes that although they are presented in a lighthearted and humorous way they are all statements by an alcohol beverage retailer that promote or encourage excessive or irresponsible consumption of alcohol.

29. Accordingly the complaint is upheld, in part.