

ABAC

ABAC Complaints Panel Determination No: 91/11

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

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

23 December 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for SKKY Vodka by Thirsty Camel Bottleshops (“the Advertiser”) and arises from a complaint by the McCusker Centre for Action on Alcohol & Youth received on 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 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 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. The complaint has been determined outside the 30 day timeframe due to unavailability 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 member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an internet advertisement at www.thirstycamel.com.au.
10. Users first see a page that features a drawing of a camel sitting down with the text, "Which tasty bit of camel are you from", "Click on your bit". "Thirsty Camel supports the responsible serving and consumption of alcohol beverages" and "Thirsty Camel Bottleshops". To enter the site users must select that they are over 18 years of age and select a state of Australia.
11. On selecting WA, users are taken to a web page for Thirsty Camel bottleshops in WA. On the right side of the page three specials are featured. At the time the complaint was made the bottom of the three specials entitled "\$#! HOT!" was a picture of SKKY Vodka for \$29.99 next to a picture of a lip gloss with a text box stating "Bonus Napoleon Lip Gloss".

The Complaint

12. The complainant argues that the advertisement encourages underage drinking and has strong appeal to children by offering a free lip gloss with the purchase of a bottle of SKKY vodka where:

- (a) Cosmetics, including lip gloss, have a broad appeal to both children and adolescents with market research in the US showing that 43% of 6-9 year olds use lipstick or lip gloss, lip products in general are the most commonly used cosmetic category across all ages of women and lip gloss is used most regularly by pre-teens and teenagers;
- (b) There are many lip glosses available in Australia which are targeted at children and adolescents;
- (c) Offering a free pink lip gloss with a bottle of vodka is a clear attempt to appeal to young females; and
- (d) Both retailers and alcohol companies are aware of the effectiveness of the gift with purchase marketing strategy, such as the offer of a bonus lip gloss. When asked to provide tips for retailers a spokesperson for Campari Australia, the distributors of SKKY Vodka, was reported as saying "Gift with purchase activity works extremely well".

The Code

- 13. 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 –
 - ii) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents....

The Advertiser's Comments

- 14. The Advertiser responded to the complaint and questions posed by the Panel on 24 October 2011. The principal points made by the Advertiser are:
 - (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.
 - (b) The visual referred to in the complaint is an in-store promotional poster offering a 'gift-with-purchase' when purchasing a 700ml bottle of SKYY Vodka in-store. A gift-with-purchase is a common promotion in not only the alcohol beverage industry but also in many consumer facing industries. Depending on the product, the 'gift-with purchase' can range from lip gloss (in this case), through to thongs, t-shirts, caps, makeup kits, hand cream, bottle openers etc. The promotion and promotional materials were prepared and supplied by SKYY Vodka (parent company Campari Australia Pty Ltd). We did not alter the poster supplied by SKYY Vodka.

- (c) We posted the supplied promotional poster on our website. It is important to note that, in keeping with alcohol industry standards, the front page of our website requires individuals to confirm they are 18 years of age or over to enter our site. Therefore no one under the age of 18 years should be accessing our site. Having said that, the actual promotion is only available to Thirsty Camel customers when purchasing the product in-store - it is not available for sale through our website. It therefore cannot be determined to have strong appeal to female children and adolescents as firstly, they should not have access to our website and, in addition, anyone under the age of 18 years cannot purchase alcohol in our stores and therefore cannot receive the gift-with-purchase.
15. Campari who are the company offering the gift with purchase responded to the complaint and questions posed by the Panel on 28 October 2011. The principal points made by the Advertiser are:
- (a) Campari Australia Pty Ltd (**Campari**) takes all complaints about any aspects of our business very seriously and we thank you for the opportunity to address this complaint with the ABAC Adjudication Panel. Campari fully supports the Alcohol Beverages Advertising and Packaging Code (**ABAC**) and we take care when developing and executing advertising and promotional materials to ensure we abide by all aspects of the ABAC as well as other Australian advertising and liquor licensing laws, regulations, codes and guidelines.
- (b) The Promotion in question offers a complimentary Napoleon Perdis Lip Gloss, with the purchase of every SKYY Vodka 700ml bottle. Campari developed this gift-with-purchase (**GWP**) promotion and associated promotional materials including A3 posters, plasma screen images, counter stands and wobblers for display in liquor stores (**Promotion Materials**). This national promotion is currently being offered in a number of independent and "banner" liquor stores, including Thirsty Camel. The Promotion is only available to consumers purchasing SKYY Vodka in person at participating liquor outlets; it cannot be purchased over the internet or redeemed by any other method. The Promotion will conclude when stocks of the GWP are depleted. All Promotion Materials include the following, prominent qualifications *"Enjoy Responsibly. Offer valid with SKYY Vodka 700ml only. While stocks last. Open to individuals 18+. Limit of 1 gift per person."* Campari developed the Promotion for three legitimate commercial reasons – to enhance brand loyalty, encourage switching from a competitor product and to build the SKYY Vodka brand.
- (c) The Promotion and Promotion Materials were developed by Campari in association with Fuzebox (an advertising agency) and Napoleon Perdis (a cosmetics company). The Promotion Materials were given to various retailers, including Thirsty Camel, by Campari to display in their stores and on their websites. To date, Campari is only aware of Thirsty Camel displaying the Promotion Materials online including on its website and Facebook page as referred to in the Complaint. We confirm that Thirsty Camel was not involved in the development of the Promotion and / or the Promotional Materials. We cannot comment on any aspect of Thirsty

Camel's website or Facebook page as we have no control over any aspects of these sites or their content, however, we note that the landing page of their website requires viewers to confirm they are 18 years or over to enter the site. We also understand that Facebook users are required to either sign-up to Facebook or log in to their existing Facebook accounts in order to access the Thirsty Camel Facebook page. Only those users who are 18 years or over (as verified by either their existing or new account details) will then be allowed to view the Thirsty Camel Facebook page. Contrary to the comments in the complaint, pages of this nature are not easily accessible to all Facebook users.

(d) In response to the ABAC Adjudication Panel's specific questions, we confirm that:

- The SKYY Vodka product and brand was featured in the Promotion Materials with the full knowledge and consent of Campari;
- Campari had full direction and control over the portrayal of the SKYY Vodka brand and the depictions of the use of the product in its own promotion materials; and
- Campari approved the final versions of the Promotion Materials. However, we also note that once the Promotion Materials have been delivered to the participating retailers, Campari does not have any direct control over the way in which they are displayed by the retailers, or whether the Promotion Materials are modified by the retailers. By way of example, Campari did not see, or give specific approval for, the online ads on Thirsty Camel's website or Facebook page relating to the Promotion. In addition, we note that the particular comments on the Thirsty Camel Facebook page referred to in the complaint do not relate to the Promotion, Campari or Campari's products.

(e) We strongly believe that the Promotion does not breach any sections of the ABAC, including and in particular, sections (a) (ii) and (b) as noted in your letter. We consider that the Promotion does not in any way promote or encourage underage consumption of alcohol and does not have strong or evident appeal to children or adolescents. Campari strongly believes that the Promotion:

- presents a mature, balanced and responsible approach to the consumption of alcohol beverages;
- does not encourage underage drinking; and
- does not have a strong or evident appeal to children or adolescents.

- (f) The Promotion does not encourage underage drinking. All of the Promotion Materials include the following qualifications "*Open to individuals 18+*", "*Limit of 1 gift per person*" and "*Enjoy responsibly*". These qualifications present a mature, balanced and responsible approach to the consumption of alcohol beverages by ensuring that:
- only persons over the legal drinking age of 18 years are eligible to receive the GWP; and
 - encouraging consumers to enjoy SKYY Vodka in a responsible manner.

As a result of these qualifications, we also consider that **reasonable** consumers would inherently understand participants in the Promotion must be adults. In addition, the Promotion is only accessible and available in locations where consumers must be over the age of 18 in order to participate in the Promotion. Namely, the Promotion is only available in participating liquor outlets when consumers must be over the age of 18 to purchase a bottle of SKYY Vodka and receive the GWP. We also note that each of these participating outlets also have the right to request proof of age from a customer if they look under 25 years of age. Likewise, the Promotion is advertised online only on websites which require visitors to confirm they are over 18 years of age to enter the site. As mentioned above, the SKYY Vodka Promotional product cannot be purchased over the internet or redeemed by any other method besides an in-store purchase where proof of age is required. There is no content in the Promotion Materials which is suggestive of, depicts, or encourages, underage drinking. Further, we note that the Promotion Materials do not depict any persons, including any persons under the age of 25, children, adolescents or any persons of any age consuming alcohol. We also note that as set out in section 3.3 below, the Promotion Materials do not have a strong or evident appeal to children or adolescents and therefore cannot be perceived as indirectly encouraging underage drinking in this manner. The visual and text components of the Promotion Materials support and present a mature, balanced and responsible approach to the consumption of alcohol beverages and do not encourage underage drinking in any manner. Campari also wishes to note that it in no way encourages or supports underage drinking and strongly supports the work of organisations such as the McCusker Centre for Action on Alcohol and Youth in seeking to reduce the levels of drinking, harmful drinking and alcohol problems among young people.

- (g) The Promotion and Promotional Materials do not have a strong or evident appeal to children (i.e. persons under the age of 14) or adolescents (i.e. persons aged 14-17 years). The Promotion and Promotion Materials were developed to appeal to the target demographic for SKYY Vodka,

being stylish and glamorous adult women, aged 18-34, with a particular focus on adult women aged 25-34. The Promotion is not directed at persons aged under 18 years of age. As indicated above, the Promotional Materials are only displayed in contexts where persons must be over the age of 18. The appeal of the Promotion and Promotional Materials must be considered by regard to the theme, visuals and language used. The relevant enquiry is the overall impression of the Promotion Materials and their appeal as a whole. The Promotional Materials depict a sleek, night-time city-scape depicted in the same dark blue tones as the SKYY Vodka bottle. The theme of the Promotion Materials is glamorous, stylish and evocative of a city's sophisticated night-life. The visuals used in the Promotion Materials include the city-scape, the SKYY Vodka bottle and an image of the GWP lip gloss. The language used in the Promotion Materials simply describe the details of the Promotion offer and include the prominent qualifications *"Enjoy Responsibly. Offer valid with SKYY Vodka 700ml only. While stocks last. Open to individuals 18+. Limit of 1 gift per person."* We also consider that the price-point of the 700mL SKYY Vodka (\$37.99 RRP), the brand association with Napoleon Perdis, a prestige, sophisticated cosmetics brand (as discussed in section 3.4 below), and the locations in which the Promotion Materials will be displayed, are also relevant considerations in regard to the appeal of the Promotion and Promotion Materials. When the Promotion Materials are considered as a whole, their appeal is targeted to sophisticated, glamorous and stylish adult women. The placement of the lip gloss GWP in the Promotion Materials enhances this appeal. The placement of the lip gloss GWP does not result in the Promotion Materials having any appeal to children or adolescents. There are no other visual, thematic, language, contextual or associated aspects of the Promotion Materials which would have any particular appeal to children or adolescents. We note that the complaint refers to a US study and an article from the MSN website to support the proposition that lip gloss has a particular appeal to children and adolescents. Campari queries the relevance of a US study to Australia and the scientific weight that should be given to an article from news website. In any event, Campari disagrees strongly with the proposition that lip gloss has a particular appeal to children and adolescents. It may be the case that certain lip glosses are popular among children and adolescents, and it may also be the case, as suggested in the complaint, that there are certain lip glosses available in Australia which are targeted at children and adolescents. However, the Napoleon Perdis lip gloss offered as the GWP is not one of them. As discussed below, the Napoleon Perdis brand is a prestige cosmetics brand which is targeted towards adult women. In addition, Campari Australia strongly believes that lip gloss is a product which is popular across a wide age range of the population, but mainly adult women. Therefore, it cannot be said that simply offering lip gloss, from a prestige, adult cosmetics brand as a GWP means that the Promotion is intended to appeal to children and adolescent females. For the reasons set out above, we strongly believe that the Promotion and Promotion Materials do not have a strong or evident appeal to children or adolescents. In fact, we consider that the Promotion and Promotion Materials would have no, or an extremely low appeal to children and adolescents.

- (h) Campari selected the Napoleon Perdis lip gloss as the GWP for the Promotion due to the synergies between the SKYY Vodka and Napoleon Perdis brands. Both brands are glamorous and stylish and are targeted to stylish and glamorous adult women, with interests in fashion and beauty. We also note that the Napoleon Perdis cosmetics brand is classified as a 'prestige' product range and the key target demographic for the Napoleon Perdis brand is women aged 25-49 years, not children or adolescents. A Napoleon Perdis lip gloss was therefore chosen as the GWP for the Promotion due to the shared target-market and shared essence of the SKYY Vodka and Napoleon Perdis brands. Campari considered that the Napoleon Perdis lip gloss would be popular with its target market of adult women. The shade of lip gloss depicted in the Promotion Materials was produced specifically by Napoleon Perdis for the Promotion. The shade of the lip gloss was selected as it is a relatively neutral colour (a peach/nude shade) which would appeal to and suit a broad range of SKYY Vodka consumers.
- (i) We note that only one complaint has been received in relation to the Promotion. Campari would also like to bring to the attention of the Panel that we are aware of a number of alcohol brands offering a lip gloss as part of GWP promotions. In particular, Campari is aware of the following similar GWP promotions:
- Midori offered a limited edition, specially-created Midori- Napoleon Perdis lip gloss GWP promotion;
 - Vodka Cruiser offered a lip gloss GWP with their "carnival" flavoured product; and
 - Chambord offered a limited edition Napoleon Perdis lip gloss palette GWP.

As far as Campari is aware, none of these GWP promotions were the subject of consumer complaints or decisions by the ABAC Adjudication Panel. Campari is also aware that the ABAC Adjudication Panel considered a similar complaint in determination no. 80/09 concerning a Cellarbrations advertisement which featured a carton of Hahn Superdry beer with a chance to win a Nintendo Wii. In this matter, the ABAC Adjudication Panel considered that although the Nintendo Wii is a product which could reasonably be taken to be popular amongst children or adolescents, it would be equally popular across a broad age group of the population. In considering the advertisement in question as a whole, the Panel considered that the advertisement did not have strong or evident appeal to children and did not encourage underage drinking. The complaint was dismissed. Campari is of the view that the Promotion Materials and the nature of the GWP when considered as a whole have even less of an inherent interest or appeal to children and adolescents as the advertisement the subject of determination no. 80/09.

- (j) Campari submits that the Promotion should be permitted to continue in its current form as it does not breach any sections of the ABAC. In the event that the ABAC Adjudication Panel decides to uphold the complaint, we confirm that Campari will accept the Panel's decision in relation to this complaint.

The Panel's View

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

The Procedural Aspects

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 members 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 showing. Further, this decision by the Panel does not have any binding force on the advertiser. That said, the advertiser has cooperated with the Panel in this and previous determinations, and accordingly a determination can be made.

The Substantive Aspects

19. The essence of the complaint is that it is irresponsible and inappropriate to market an alcohol product such as a vodka which is popular with female consumers by way of a "lip gloss" giveaway. It is argued that this is because lip gloss, as a cosmetic product, has a strong market appeal to female children and adolescents.

20. For their part and on this point, both the advertiser and the product distributor argue:
- The actual ability to acquire the lip gloss giveaway is limited to consumers within the advertiser's retail outlets and hence under-age purchasing of the product will not be permitted.
 - Lip gloss is not a product which has particular appeal to children or adolescents as opposed to female adults.

- In any event, the actual lip gloss brand involved in the giveaway is a prestige brand priced and marketed at women in the 25-34 age bracket.
21. The ABAC scheme is directed towards the establishment of and compliance with standards in the advertising of alcohol beverages. As was recently thoroughly canvassed by the Panel in Determination 85/11 (which involved a complaint from the McCusker Centre), the ABAC does not purport to govern all forms of alcohol marketing, but is directed at “advertising”. This means that the Panel is not empowered to decide whether it is desirable or otherwise for alcohol products to be marketed by use of “giveaways” generally, or cosmetics giveaways in particular. It is a matter for government to determine if the regulatory framework covering alcohol marketing should encompass an assessment of the desirability of “giveaways” as a marketing device.
 22. Hence the Panel’s role is to assess the actual advertisement and its consistency with section (a) (ii) and (b) of the ABAC. The ad features a depiction of a bottle of the product and a depiction of a container of the lip gloss (clearly identified as “Napoleon Perdis”), with the text “Bonus Napoleon Lip Gloss” and the price set against a plain green background. The ad promotes the giveaway of the lip gloss upon purchase of the product.
 23. Section (a) (ii) provides that alcohol beverage advertising must not encourage underage drinking, while section (b) provides that ads are not to have a strong or evident appeal to children or adolescents. The code preamble provides that the conformity of an ad with ABAC standards is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the ad is directed.
 24. The Panel has considered ads featuring “giveaways” in conjunction with sections (a) (ii) and (b) on three (3) previous occasions, namely:
 - 7/09 – Domino’s Pizza with Jim Beam sauce (The website featured a bottle of Jim Beam barbecue sauce, a reference to the “New 8 meats pizza with Jim Beam double smoked BBQ sauce” and an X-box game console promotion for online orders)
 - 80/09 – Cellarbrations (A carton of Hahn Superdry stubbies advertised for \$34.99 with a chance to win a Nintendo Wii. A picture next to the promotional caption shows a man doing a handstand on a carton of Hahn Superdry with the text “Win a fitness kit”.)
 - 22/11 – Thirsty Camel (a carton of Carlton Dry advertised for \$37.99 with a gift with purchase of a Beer Pong game next to a picture of a green cup with the Thirsty Camel logo containing ping pong balls with the same logo)

25. The previous decisions recognise that each ad has to be assessed on its own facts and that the overall context of the ad is important. In this case the Panel does not believe the ad can be said to breach the ABAC provisions. In reaching this conclusion, the Panel has noted the design, use of colours and general layout of the ad could not be said to have strong or evident appeal to children or adolescents.
26. In reaching this conclusion, the Panel is not endorsing the use of a lip gloss as an appropriate marketing “give away” with an alcohol product. As stated, the Panel is tasked with assessing the ad only, not the broader marketing strategy. The question of the adequacy of the regulation of alcohol marketing in the form of “give aways” is referred to the Management Committee for consideration.
27. The complaint is dismissed.