

ABAC

ABAC Complaints Panel Determination No: 56/05 & 04/06

CONFIDENTIAL COMPLAINT AND IN THE COMPLAINT OF MS ANITA VALHER

Product: Hahn Premium Light (Gondola)
Advertiser: Lion Nathan

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

7 February 2006

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for the alcohol beverage ‘Hahn Premium Light’ by Lion Nathan (“The Advertiser”) and arises from a confidential complaint and a complaint received from Ms Anita Valher (“The Complainants”).

The External 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. Currently, alcohol advertising is subject to both:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme.
3. The ASB and the ABAC both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.
4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaints specifically raise concerns under the ABAC and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

6. The complaints are in the form of a confidential email dated 14 December 2005 (which was received by the ABAC Adjudication Panel on 20 December 2005) and an email from Ms Anita Valher dated 11 January 2006 (which was received by the ABAC Adjudication Panel on 13 January 2006).
7. The Panel endeavours to determine complaints within 30 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. In this case, it was decided to deal with both complaints in a single determination, with the result that the time limit has been satisfied for the second, but not the first, complaint.

Pre-vetting Clearance

8. The external-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 granted to the advertisement (No VR94/05 and VR151/05).

The Advertisement

9. The complaints are about a 30-second television advertisement which features an attractive woman and man in Venice. The advertisement opens with a shot of the woman walking towards the camera. She is dressed in a glamorous evening gown which is low-cut and split to the thigh. She is wearing long earrings and her hair is beautifully presented.
10. The camera follows the woman as she walks alone over an ornate bridge. She is then seen being assisted by the male character as she steps into a gondola on a canal. The shots establish that the couple is in Venice. During these opening scenes a sensual sound track is played.
11. The gondola is maneuvered by its gondolier away from its mooring and is rowed slowly along the canal and under a bridge as a panoramic scene of Venice is seen in the background. The woman is pictured sitting in the gondola, legs crossed and sipping a glass of champagne. She appears to be enjoying the sensual nature of her setting.
12. The male character has not been featured up to this point. The scene then moves to a shot of the man standing in the gondola as he pulls from the water a very large fish. It is established that the man has been fishing during the gondola ride. The fish is pulled from the water with such force to cause it to fly in the air and hit the woman on the side of her head.
13. The woman squeals as she struggles to push the fish away from her. In doing so, her hair and dress are ruined and the glass of champagne is lost from her hand.
14. The shot moves back to the man who is seen sitting down as he places his hand fishing reel down. This shot shows a single bottle of the product resting in an ice bucket. The man grabs and then opens the bottle and proceeds to take a long swallow of the beer.

15. The music has stopped and is replaced by a voice-over which states: "Hahn Premium Light – some drink it because they're responsible". At this point the man completes his drinking and looks happily at the bottle and makes a contented "aaahh" sound.
16. The shot then turns to the woman who is shown disheveled, with wet clothes and messy hair. She looks exasperatedly towards the man with both arms raised, as if asking for an explanation for his actions. The man is then shown, who has the bottle in one hand and the fish in the other hand. His expression turns from happy to perplexed as he asks: "What?"
17. The shot then moves away from the couple to a close-up of the product with the slogan "Love the taste". This is accompanied by the end of the voice-over: "Others just love the taste". The music recommences and a close-up of the bottle label is shown with a feature which emphasizes the "AH" in "Hahn". This is accompanied by the "aaahh" sound.

The Complaints

18. The complaints both argue that the advertisement is offensive, principally on the grounds that it promotes offensive behaviour, in particular violence against women and the humiliation of women. In this regard the complaints argue:
 - The advertisement uses "violence and male strength to humiliate" the female character;
 - The beer company thinks it is actually OK to encourage, and even gloat over, the fact that they are using the degradation of women and the applauding of crass, stereotypical wrong male behaviour";
 - Male strength should be used as "a protector of what is good, right and true and not used as a means to abuse, intimidate or degrade anyone";
 - There is a clear link between the consumption of alcohol and the occurrence of violence against women and the advertisement blatantly encourages, not only disrespectful treatment of women, but violent treatment of women;
 - The man hits the woman with the fish and this is an act of violence. While this occurs "under the guise of a callous accident", the male character has a callous indifference to having hit the woman.
19. One of the complaints also links the consumption of alcohol with the "success" of the male character in having an attractive female companion. It is stated that the advertisement implies "an Aussie ocker who drinks beer like this can have whatever woman he likes".

The Code

20. 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:
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.
21. The ABAC further provides at section (c) (i) that advertisements for alcohol beverages must:
- not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

Arguments in Favour of the Complaint

22. In favour of the complaints it can be argued that the advertisement breaches the standard in section (a) (iii) of the ABAC by portraying behaviour which, at worst, links alcohol with violence towards women or, at best, shows behaviour which is recklessly indifferent to the harm caused by others. This could be argued to be “offensive behaviour” within the meaning of section (a).
23. Further, it might be argued that section (c) (i) of the ABAC is breached by depicting alcohol consumption and a romantic setting, and hence suggesting alcohol leads to sexual or personal success.

The Advertiser’s Comments

24. The Advertiser responded to the complaints and questions posed by the Panel by way of email letter dated 23 January 2006. Key points made by the Advertiser were:
- a. The advertisement is for light beer. The campaign has been instrumental in limiting the decline of the light beer segment in Australia. In giving the brand characteristics beyond its function as a low-alcohol choice, namely around the taste, we are able to improve the desirability of the segment.
 - b. Our research shows that the ad is well liked by both men and women. The joke is centred on the lack of self-awareness of the male. The entire point of the ad is that the behaviour is presented as inappropriate. His behaviour is clearly depicted as fantasy and no reasonable person would be impacted by the ad in such a way as to engage in such behaviour themselves or to see it as normal or real.
 - c. We are confident that Australians have shown themselves sophisticated enough to understand the light-hearted concept of this campaign. Equally, there is no causal connection between the behaviour and the consumption of alcohol and certainly no suggestion that either character is intoxicated.

- d. There is no suggestion that the product has played any role in the relationship between the two characters in the ad. We are given no information about the history of the couple's relationship.
- e. Given that the ad ends with the male character having executed a major social *faux pas* and his partner is extremely unimpressed, the ad itself cannot have given any suggestion that the one sip of light beer he consumes has enabled him to have a relationship with an attractive woman.

The Panel's View

- 25. The complaints raise matters under both the Advertisers' Code of Ethics and the ABAC, and hence will be subject to determinations by the ASB in relation to the Code of Ethics and this Panel in relation to the ABAC. The ASB decision will presumably go to the way the woman is portrayed in the advertisement and the issue of violence, as issues of sexism and violence are matters within the Code of Ethics.
- 26. In relation to the ABAC, the complaints raise two provisions which, it can be argued, are enlivened by the advertisement, namely section (a) (iii) dealing with offensive behaviour and section (c) (i) dealing with alcohol contributing to the achievement of social or sexual success.
- 27. In assessing the consistency of an advertisement against their respective Codes, both the ASB and this Panel attempt to apply the touchstone of community standards. Exactly what are "community standards" is often a difficult judgment and two reasonable people might come to different conclusions in a given case. Equally, it is possible that the ASB and this Panel might come to different conclusions on a complaint as although related, two different Codes of Practice are being applied.
- 28. The complainants argue that the behaviour of the male character depicted in the advertisement is violent and generally offensive. This is because he is seen pulling a fish from the water with such force that it hits the female character. It is argued that the woman, whose beautiful dress and appearance is ruined by the resulting struggle with the flaying fish, is humiliated by the man's actions. The man, it is argued, is at best callously indifferent to the distress he has caused;
- 29. The advertiser argues the ad is light-hearted and hardly a depiction of a real life scenario. It is contended that the man has committed a major social *faux pas* and responds in an inept fashion. There is no suggestion, according to the advertiser, that the man had been drinking prior to the fish being pulled from the water. In short, the advertisement parodies the different perspectives of men and women *i.e.* the "men are from Mars and women are from Venus" explanation of the different outlooks of men and women.
- 30. The Panel understands the points raised by the complaints. For instance, it would have been possible for the advertisement to have the same effect by say, the fish landing in the boat and then jumping into the woman's lap, rather than it striking the woman. However, the Panel does not believe the depiction would be regarded by most people as being "violent", in the sense of the deliberate application of force by one person to another. If taken literally the man's actions would certainly be negligent and insensitive.

31. The prohibition on the promotion of “offensive behaviour” in section (a) (iii) of the ABAC is most likely intended to deal with loutish or drunken behaviour. It is recognised that alcohol-related violence is a major social and public health and safety issue, and an advertisement which gave encouragement to alcohol-related violent behaviour would be contrary to section (a) of the ABAC. The Panel, however, does not consider that the message a reasonable viewer would take from the advertisement is one of violence against women, as argued in the complaints.
32. The advertisement does depict the spoiling of the woman’s appearance as a result of the struggle with the fish. The complaints contend that the man’s action leading to this outcome is “offensive” in that it has humiliated the woman. The Panel does not believe the advertisement breaches the ABAC standard in this regard. In reaching this decision, the Panel has noted:
 - The advertisement is light-hearted and depicts an exaggerated scenario;
 - The behaviour of the man is not shown to be influenced by alcohol as he is seen drinking after, and not before, the incident.
33. The Panel also concludes that section (c) (i) of the ABAC is not breached. Merely featuring attractive people in advertisements is not a breach of the prohibition of the standard dealing with the depiction of alcohol contributing to the achievement of social or sexual success. The very provocative dress of the woman might, in some circumstances, add to concerns on this point. In any event, it seems the result of the man’s actions is that he has caused harm to, rather than advancement of, any relationship he might be assumed to have with the woman.
34. Accordingly, the complaints are dismissed.