

ABAC

**ABAC Complaints Panel
Determination No: 05/07**

CONFIDENTIAL COMPLAINT

**Product: Southern Comfort (SOCO) “All for One”
Advertiser: Brown Forman Beverages**

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

16 May 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about the placement of a cinema advertisement for Southern Comfort SOCO by Brown Forman Beverages (“The Advertiser”).

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations *e.g.* near schools.
3. The ASB and the Panel 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 raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The confidential complaint is in the form of an email dated 24 January 2007 which was received by the ABAC Adjudication Panel on 27 February 2007.
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. In this case, it has taken longer owing to the original complaint being sent to an incorrect email address and then delays in contacting the advertiser.

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 advertisement was not pre-vetted.

The Advertisement

9. The advertisement features people at a bar or disco with music appropriate to the venue.
10. Bottles of Southern Comfort SOCO flash onto the screen and a bar attendant pours drinks from the bottle into glasses.

The Complaint

11. The Complainant is concerned about the placement of the advertisement rather than the actual content. Specifically the complainant argues:
 - The advertisement was shown before the 4pm screening of a film ("Eragon"), which is aimed at young people.
 - The film, rated "M" appeals also to younger children.
 - The audience in the theatre was mostly younger than 15 – there were children apparently as young as 8 and many aged in their early teens.
 - The ad showed young people partying and having fun.
 - An advertisement for spirits is not appropriate for the age of the target audience for the film.
 - Advertising spirits to 15 years old youth is harmful and counter to efforts by governments to limit drinking among youth.

The ABAC

12. Section (a) of 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 underage drinking.

The ABAC provides at Section (b) that advertisements for alcohol beverages must:

- b) not have a strong or evident appeal to children or adolescents.

Arguments in Favour of the Complaint

13. The movie "Eragon" has strong appeal to children and adolescents and accordingly it was inappropriate for the advertisement to be screened with this movie.
14. The screening may mean that the advertisement has strong or evident appeal to children or adolescents in breach of section (b) of the ABAC.
15. The screening of the advertisement with the movie "Eragon" might encourage underage drinking in breach of section (a) (ii) of the ABAC.

The Advertiser's Comments

16. The Advertiser responded to the complaint by way a lengthy and detailed email dated 30 April 2007. In response to the questions asked, the main points made by the Advertiser were:
- The ad was not submitted for pre-vetting so no conditions or limitations were placed on the screening of the advertisement.
 - The Office of Film and Literature Classification placed an "M" rating on the movie – "Recommended for mature audiences". A "mature audience", which can be expected from the movie's rating, is an acceptable audience for the advertisement.
 - The advertiser is not aware of any proposition that the depiction of responsible consumption of alcoholic beverages to "mature audiences" is inappropriate or encourages underage drinking.
 - The advertisement does not have a "strong appeal to children or adolescents".
 - i. It does not depict children or adolescents.
 - ii. All of the adults are at least 25 years of age (one is 31 and two are 28).

- iii. The actors are not simply “partying”. They are depicted drinking in a bar, a place accessible only to persons aged 18 and over.
- The process for placing the advertisement was consistent with the process commonly adopted in this industry; advertising is placed through Universal McCann who liaises with Val Morgan.
 - “Eragon” was given an “M” classification. The OFLC guidelines provide that a film with the “M” classification “is not recommended for persons under 15 years of age”.
 - Films with an “M” and “MA+15” classification are considered for placement of ads.
 - The film classification system is relied upon “to ensure that our advertisements are directed to an appropriate target audience”.
 - The new policy adopted will involve a “subjective evaluation of the likely ages of each movie’s probable audience”.

The Panel’s View

17. This complaint raises an issue of placement of an advertisement, rather than the actual content of an advertisement. The ABAC is principally concerned with the content of an ad and only indirectly refers to placement by reference in the ABAC preamble to assessments to conformity of an advertisement with the ABAC to be undertaken “in terms of its probable impact 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”.
18. Guidance as to the ABAC’s application invites consideration of the placement of the advertisement only where the issue of placement is material in assessing the class of persons to whom the advertisement “is directed” and “may be communicated”. Also relevant in this case is the Office of Film and Literature Classification (OFLC) rating of the film “Eragon” and what this means as to the likely “class of persons” to whom the advertisement may have been communicated.
19. The OFLC is Australia’s censor. It is an independent body established by the Federal Government and it applies a classification system for films released in Australia by way of a cooperative agreement reached with each State and Territory government with the Australian government. The OFLC assigns each film a classification in accordance with published guidelines.
20. “Eragon” was given an “M” classification. The OFLC guidelines provide that a film with the “M” classification “is not recommended for persons under 15 years of age”. There are, however, no legal restrictions on younger people viewing the film. The complainant contends that, at the movie session in question, there were numerous children present and that the film had a particular appeal to a younger audience.

21. The advertiser provided a detailed explanation of its cinema advertising practices. The advertiser advised:
 - The services of the agencies, Universal McCann and Val Morgan, are used for cinema advertising.
 - Films with an “M” and “MA+15” classification are considered for placement of ads.
 - The film classification system is relied upon “to ensure that our advertisements are directed to an appropriate target audience”.
22. The advertiser goes on to make the point that, if an alcohol advertisement complies with the ABAC standards as to content, then logically it will depict a “mature, balanced and responsible” approach to alcohol consumption which does not appeal to under-age drinkers. Such an ad, it is argued, should be able to be screened with an “M” classification film.
23. The Panel acknowledges this point made by the advertiser; however, it would have more force if the ad had been subjected to pre-vetting. The advertiser advised the ad was not pre-vetted and accordingly its content was not independently assessed for its consistency with the ABAC standards.
24. The point of the complaint, however, is not the content of the ad *per se*, but the complainant’s contention that the advertisement of the product was not appropriate for the age of the target audience of the film. To this, the advertiser responds (while stressing that the ABAC has not been breached) that it has now:
 - Withdrawn the advertisement from further screening of “Eragon”; and
 - Reviewed the implementation of its cinema placement policy.
25. The new policy adopted by the advertiser will involve a “subjective evaluation of the likely ages of each movie’s probable audience”. In other words, reliance on the OFLC classification will be added to by a further level of assessment of each individual film to determine if the film is appropriate for alcohol advertising. The Panel welcomes the willingness of the advertiser to take on board the complainant’s concerns and adjust its future practices.
26. The Panel’s role, however, is to decide if the complaint should be upheld or dismissed. As mentioned earlier, the ABAC is a code about the content of alcohol advertisements and only indirectly refers to placement of advertisements as a guidance tool in assessing issues about content. The relevant operative provisions of the ABAC go to alcohol advertising not encouraging under-age drinking or having strong or evident appeal to children or adolescents.
27. The complaint does not argue that there was anything in particular within the content of the ad which encouraged under-age drinking or which exhibited a particular appeal to children or adolescents. The concern was that an alcohol ad (presumably any alcohol ad) should not have screened with a film which attracted a young teenage audience.

28. The Panel does not believe it can find that the ad is in breach of the ABAC. The ABAC does not state alcohol ads should not be broadcast at particular times, or placed in particular styles of publication or shown with particular films. The placement of an ad only comes into play when assessing content issues and is not a free-standing standard of itself. In this case, no objection is raised about the ad other than its placement. This placement was with a film with an "M" classification. While it can be argued that the film was not a good choice to screen an alcohol ad, this is not an actual breach of an ABAC standard.
29. Accordingly, the complaint is dismissed.