

ABAC

**ABAC Complaints Panel
Determination No: 36/06 & 47/06**

CONFIDENTIAL COMPLAINT AND IN THE COMPLAINT OF DR JULIE MORGAN

**Product: Toohey's Extra Dry (Appliances)
Advertiser: Lion Nathan**

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

12 April 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for the alcohol beverage ‘Toohey’s Extra Dry’ by Lion Nathan (“The Advertiser”) and arises from a confidential complaint and a complaint received from Dr Julie Morgan (“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 are within the Panel’s jurisdiction.

The Complaint Timeline

6. The complaints are in the form of a confidential email dated 11 July 2006 (which was received by the ABAC Adjudication Panel on 13 July 2006) and an email from Dr Julie Morgan dated 30 August 2006 (which was received by the ABAC Adjudication Panel on 30 August 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, a number of factors, including the unavailability of Panel members and the Christmas/New Year period, together with the decision to combine both complaints, have delayed the determination.

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 (JB74/04TED).

The Advertisement

9. The complaints are about a 60 second television advertisement.
10. The advertisement opens with what looks like a tap with a water drip. The scene then moves to show a male character opening the door of a refrigerator and removing a six-pack of beer, leaving a single bottle of the product on the shelf. The man is then shown leaving the kitchen and closing the door behind him.
11. Once the man leaves the room, the shot shows the head of the hose of a vacuum cleaner which has come to life. The cleaner peeps around the corner, scuttles across the floor towards the refrigerator, hooks the head of the hose around the refrigerator door and opens it.
12. The head of the vacuum cleaner then secures the product and it and pulls it from the refrigerator onto the floor. The vacuum cleaner starts to move across the floor, carrying the product. The cleaner passes in front of a washing machine which also comes to life. The washing machine suddenly swings open its door, knocking the vacuum cleaner back and dislodging the product.
13. The vacuum cleaner quickly recovers its composure and rights itself. The washing machine manages to dislodge its water hoses from the wall and then is able to use the hoses as if they were the tentacles of an octopus. The two appliances simultaneously grab the product and commence to struggle. In this struggle, both appliances are flipped over and the product escapes their grip.
14. The vacuum cleaner leaves the struggle and makes after the product, but its progress is halted by the washing machine coming down on its electrical cord. The conflict is now occurring on a wet floor as water is released from the taps to which the washing machine had previously been attached. The product by now has been knocked away and the two appliances pursue the bottle with cumbersome motions.

15. The pursuit takes the mechanical rivals into a second room which appears to be a home office. The struggle is renewed, with considerable damage being done to the room, including the dislodgment of a large bookcase.
16. The scene shifts to show the building from the outside. It is a two-story complex and in one room on the second level, away from the mechanical mayhem, a party is seen to be going on. This explains the background dance music which has been playing during the conflict. Also visible is a downstairs courtyard which features an inground swimming pool.
17. Attention returns to the appliances whose battle moves to the courtyard as the product and the washing machine come smashing through a glass door or window and the beer comes to rest on the edge of the swimming pool. Now joining the action is a pool cleaner of the “Kreepy Krauly” type which comes out of the swimming pool and secures the product. It returns to the depths of the pool, followed by the household appliances.
18. The commotion in the swimming pool creates a surface disturbance to the water which is witnessed by a party-goer. The scene returns to the swimming pool and the appliances are seen to be continuing their struggle underwater. The party-goer is then seen approaching the pool. He peers into the water and the three appliances, now lifeless, are seen on the pool bottom.
19. The man reaches down and lifts the pool cleaner which still has the product in its grasp. He removes the product and examines it, while discarding the cleaner. The final scene shows the man hand-holding the product with the background being a shot of the pool with the strewn appliances. The strap-line “The clean crisp taste” is shown next to the product.

The Complaints

20. The complaints both argue that the advertisement is offensive, principally on the grounds that it promotes offensive behaviour. In this regard the complaints argue:
 - The advertisement promotes bad behaviour by suggesting that it is OK to fight over a beer;
 - It supports violence in order to acquire an alcoholic drink;
 - The fight between the appliances is severe and violent, leading to a “life or death struggle”,
 - One complainant also states that the music is offensive due to its volume and is not pleasant to listen to.

The Code

21. 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.

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. This could be argued to be “offensive behaviour” within the meaning of Section a).

The Advertiser’s Comments

- 23. The Advertiser responded to the complaints and questions posed by the Panel by way of email letters dated 20 September 2006 and 9 November 2006. Key points made by the Advertiser were:
 - a. The message of the advertisement is that the beer has a clean crisp taste. This is clearly communicated at the end of the ad. The devices that fight to get hold of the beer are cleaning devices – devices that love to clean. Thus the clear message is that the devices love the clean taste of the beer, not the alcohol content.
 - b. The communication is clearly fantasy and thus acts as a metaphor for the desirability of the taste of the beer.
 - c. The tracking suggests that this is the message that those that see the ad are taking out. It is the advertiser’s strong contention that no reasonable person would consider the communication to be promoting offensive behaviour and no reasonable person would be likely to fight to get hold of a Toohey’s Extra Dry as a result of viewing this ad.

The Panel’s View

- 24. The complaints squarely raise Section a) of the ABAC. This section describes a positive standard for alcohol advertisements which are required to present “a mature, balanced and responsible approach to the consumption of alcohol beverages”. The section then goes to set out a number of negative standards which specify what an advertisement must not do. Relevant to the current case is Section a) (iii) which states an advertisement must not promote offensive behaviour.
- 25. Both complaints take the view that the advertisement “promotes bad behaviour” by supporting violence to acquire an alcoholic drink. In essence, the complainants argue that the struggle between the appliances depicted in the advertisement give the message that it is OK to fight over possession of a beer and that alcohol is important enough to fight about.
- 26. The complainants’ argument reflects the common depiction of machines with lifelike characteristics and human emotions in popular entertainment. The complainants assume that viewers will see the machines as representing human actions and, in this case, the actions show that the product is worth fighting over. This is seen as offensive and contrary to the responsible use of alcohol.

27. The advertiser rebuts this contention with two lines of argument. Firstly, it is pointed out that the machines involved are all cleaning appliances and that their attraction to the product is because of the product's "crisp clean taste" – i.e. the strap line used in the advertisement – and not the product's alcohol content. Secondly, it is argued that the advertisement is a fantasy and a reasonable viewer would not actually take the advertisement as promoting offensive behaviour.
28. The Panel is mindful of the public policy setting within which the ABAC Scheme operates. The National Drug Strategy identifies the minimization of harm from alcohol related violence as a policy goal and the advertising of alcohol products should not detract from this public policy aspiration. That said, advertisers are entitled to promote their products in accordance with the law and the codes of practice applying to advertising standards, and to have confidence that a consistent approach will be taken to the interpretation of these standards upon which decisions about advertising campaigns can be made.
29. The issues of violence and aggressive behaviour and the use of fantasy and exaggerated scenarios in terms of Section a) of the ABAC have been considered by the Panel on previous occasions. In Determination 05/18 the Panel considered an internet advertisement which used a parody of a professional wrestling match as a scenario. In that Determination, the Panel noted:

On balance, the Panel has concluded the advertisement does breach Section a) (iii) by presenting an irresponsible approach to the consumption of alcohol beverages through the promotion of offensive behaviour. The Panel rejects the Advertiser's argument that the fact the main character is physically restrained in the "wrestling" match means he is "conspicuously tolerant and passive thereby reinforcing an association between our product and behaviour which avoids aggression".

On the contrary, the setting of the advertisement in a wrestling match brings about a very direct association between consumption and violence. While the argument that the wrestling match is exaggerated and hardly a "real life" scenario is an important factor, the use of parody and humour cannot of itself repair a breach of the Code. The advertisement, taken as a whole, is in breach of Section a) (iii) of the Code.

30. In Determinations 05/12 and 05/13, the Panel again considered Section a) (iii) of the ABAC. These Determinations dealt with two advertisements in a series of TVCs which parodied real life situations, namely the delivery of furniture by a removalists and a funeral. It was argued in complaints that the advertisements promoted offensive behaviour. The Panel, in dismissing the complaints, noted:
- *The scenario is highly exaggerated and cannot be taken by a reasonable person to be advocating actual behaviour.*
 - *The humour may be in poor taste, in terms of the use of an elderly and possibly more vulnerable couple, but this does not detract from it clearly being pitched as humorous.*

- *While humour alone cannot excise an advertisement from breaching the ABAC, it is a factor in assessing the advertisement as a whole and its impact on a reasonable viewer.*
- *In this instance, the humour provides a context to understand the advertisement.*

31. From these previous Determinations and drawing from the guidance to the interpretation of the ABAC provided in the ABAC Preamble, the following observations can be made as to how the ABAC as a whole and Section a) (iii) in particular will be applied by the Panel:

- Each individual advertisement and the concerns raised by a complaint must be judged on their own merits;
- The spirit and intent of the ABAC is important in interpreting its provisions;
- The Panel adopts a common sense and not a “black letter law” legalistic approach in interpretation;
- The advertisement as a whole is considered in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed;
- The use of humour, fantasy, parody and exaggerated scenarios are relevant and important considerations in assessing the probable impact of the advertisement on a reasonable person; however:
- Humour, fantasy, parody or exaggerated scenarios will not immune an advertisement if its content as a whole does breach an ABAC standard.

32. A majority of the Panel does not believe that the advertisement has breached section a) of the ABAC. The Panel recognizes that the machines have been given some human characteristics. However, the entire context of the advertisement is quite removed from reality and it is not considered likely that viewers will take the advertisement as “promoting” offensive behaviour.

33. Accordingly, the complaint is dismissed.