

ABAC

ABAC Complaints Panel
Determination No: 71/07

CONFIDENTIAL COMPLAINT

Product: Tooheys Extra Dry
Advertiser: Lion Nathan

Professor The Hon Michael Lavarch – Chief Adjudicator
Ms Jeanne Strachan - Member
Professor Richard Mattick - Member

1 November 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about an internet advertisement for the alcohol beverage “Tooheys Extra Dry” by Lion Nathan (“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 Advertiser Code of Ethics (“the AANA Code”). 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. This complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of an email dated 19 September 2007 which was received by the ABAC Adjudication Panel on 20 September 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. This complaint has been delayed due to the Advertiser's late response to the complaint.

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. Pre-vetting approval was granted to at least part of the advertisement complained of (JB51/07TED).

The Advertisement

9. This complaint refers to an advertisement for Tooheys Extra Dry which was featured as a "pop up" advertisement on the Ausgamers website. Upon entering the Ausgamers website, a window pops up providing viewers with an option to connect to a Tooheys Extra Dry site. Upon taking this option, which included confirmation that the viewer was over the age of 18, the viewer was taken to a Tooheys Extra Dry site. Upon entering the Tooheys Extra Dry site, viewers were taken to a video clip of the television advertisement for the campaign and then given a range of interactive options as to what they wished to view.
10. The video clip shows a man working in a field, planting hairs from his quaffed-style head and watering them with Tooheys Extra Dry beer. As time passes we see the farmer tending the crop of pods in various ways and once they are fully grown we see many people arrive in the field who start partying in preparation for the harvest of the pods. As the pods begin to open, it is seen that the person inside bears the farmer's quaffed hairstyle although each person has different features and clothing. Each holds a bottle of Toohey's Extra Dry and the farmer blasts a person inside a pod with frost, plucks the bottle of beer from the snap frozen hand and satisfied at the crispness of the beer, continues to harvest his crop.
11. Importantly, in relation to the link from the Ausgamer's site, one of the interactive options available to viewers was a game. This game is accessed under the "TED of war" option one finds on the field of "Extra Dry" growing plants. The viewer is able to play a game in which they use keyboard controls to attempt to wrestle a Tooheys Extra Dry from a pod person. The game has three levels of difficulty and scores are recorded.

The Complaint

12. The complainant is concerned that the advertisement is located on a gaming website that lots of children would visit.

The ABAC

13. The ABAC provides that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children or adolescents.

Argument in Favour of the Complaints

14. The advertisement is in breach of section (b) of the ABAC by having a strong or evident appeal to children or adolescents by its use of:
 - a) Interactive/ gaming elements which will appeal to children or adolescents, and
 - b) its placement on a gamer's website, which website would attract children and adolescents to whom the gaming elements of the advertisement would have particular appeal.

The Advertiser's Comments

15. The Advertiser responded to the complaint by way of letter dated 11 October 2007. The Advertiser has advised that:
 - a) Ausgamers is listed on the Roy Morgan Single Source Survey. Roy Morgan allows advertisers to profile the audience of the site based on age and in the latest survey (July 2006 – June 2007) the site has an audience of 72.6% aged 18 or over.
 - b) Lion Nathan requires its media buying agencies not to place advertising in any media where it could reasonably be expected that less than 70 per cent of the regular audience is of legal drinking age. This site meets that standard. Computer games are now a component of mainstream culture with many games targeted at adults and some even carrying adult classifications.
 - c) When this component of media buy came to their attention through the complaint Lion Nathan elected to remove it as they did not believe it to be on strategy for the brand and do not have any intention of further advertising on the Ausgamers site.

The Panel's View

16. The complaint goes to the issue of the placement of alcohol advertisements as the concern expressed by the complainant is not about a feature of the advertising, but rather that it was found via the Ausgamers website. The complainant believes this site would have "a lot of young kids" as visitors.
17. The ABAC is a code which deals principally with the content of advertising and not the placement of advertising. This can be contrasted with the Commercial Television Industry Code of Practice which does restrict when alcohol ads can be broadcast. The ABAC only indirectly refers to the placement of alcohol advertising by means of its preamble which states that conformity of an advertisement with the ABAC is to be assessed in terms of its probable impact upon a person "within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated".
18. This means that the ABAC does not endeavour to specify or limit the type of medium which might be used to advertise alcohol beverages: nor does it nominate times etc. when advertisements might be shown. Placement is relevant only in so far as it assists in assessing to whom the advertisement may have

been communicated when determining if a substantive standard set out in the ABAC has been breached.

19. In this case, the advertisement which has concerned the complainant is a “pop up” on the Ausgamers’ website. The Ausgamers’ site contains reviews and information on various PC and game console video games. The “pop up” promoted the product and invited viewers (who self-affirmed they were over 18 years of age) to be taken to the advertiser’s website which promotes the product. The advertiser’s site has numerous features including a simple game.
20. The advertiser supplied information which stated that 72% of the audience of the Ausgamers’ site were over the age of 18. The Ausgamers’ site itself contains a link to another site entitled “Media Smart” which contains information about the audience of the Ausgamers’ site. This information advises that the site has an audience which is:
 - 97% male
 - 81% single
 - 32% aged between 14 and 17
 - 32% aged between 25 and 34
21. As stated, the issue for the Panel is not whether the Ausgamers’ site is appropriate or not for alcohol advertising, as the ABAC does not deal with placement in this way. Rather, the Panel needs to determine if the ad has a strong or evident appeal to children or adolescents in breach of section (b) of the ABAC. The most that can be taken from the apparent age breakdown of the Ausgamers’ audience is that a majority of the viewers are not children or adolescents, but a sizable minority (up to 32% on the “Media Smart” information or 28% on the advertiser’s advice) are children or adolescents.
22. The critical issue is the content of the ad and whether it has strong or evident appeal to children, irrespective of the Ausgamers’ audience profile. The Ausgamers’ “pop up” is unexceptional and has no features (other than the indirect issue of its placement) which could be said to appeal particularly to children and adolescents.
23. The substantive product website is quite complex and detailed and features multiple layers. No concern about this website is raised by the complainant who is concerned solely about the placement of the pop-up on the Ausgamers’ site. Given that the placement of an ad is not subject to a freestanding ABAC standard and there is nothing in the content of the “pop up” which can be said to have particular appeal to children or adolescents, it is clear that the ABAC standards are not breached.
24. It is noted that the advertiser has withdrawn the ad from the Ausgamers’ site. The complaint is dismissed.