

# ABAC

**ABAC Complaints Panel  
Determination No: 55/06**

## **CONFIDENTIAL COMPLAINT**

**Product: Tooheys Extra Dry  
Advertiser: Lion Nathan**

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

15 February 2006

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns the advertising campaign for the alcohol beverage ‘Tooheys Extra Dry’ by Lion Nathan (“The Advertiser”) and arises from a confidential complaint (“The Complainant”).

### **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 complaint specifically raises concerns under the ABAC and accordingly is within the Panel’s jurisdiction.

## **The Complaint Timeline**

6. The complaint is the form of a confidential email dated 16 December 2005 and was received by the ABAC Adjudication Panel on 20 December 2005.
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, the determination has not been made within 30 days, largely due to the Christmas/New Year holiday period.

## **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 is not required for website material. Other elements of the campaign have been approved (JB7575/05TED).

## **The Advertisement**

9. The complaint concerns the campaign featuring outdoor signage and a website for Tooheys Extra Dry Beer. The concern of the complainant is not about a particular execution of the campaign, but the campaign as a whole.
10. The campaign is based on the premise of a pseudo-police unit tracking down the theft of glasses bearing the Tooheys "Extra Dry" logo. The website consists of a series of pages commencing with a depiction similar to a police badge with the words "Stolen Glass Recovery Unit" and the product logo. Under the mock police badge are the words "To Serve, Protect and Recover".
11. Subsequent pages of the website feature the activities of two "Stolen Glass Recovery" officers who are dressed in a para-police uniform of dark green – the colour of the product's logo. The site features a video clip made in documentary style of the two "officers" as they track down stolen glasses and accost various suspected perpetrators of the "crime" of stealing the custom Tooheys Dry glasses.
12. The site provides the facility for viewers to download the video clip and send it to others by email. It also shows glasses supposedly found by the Glass Recovery Unit in various locations in homes and outside settings;
13. The outdoor signage features a number of different executions of the campaign which show glasses with the product's logo in various settings with the message "Now on tap in bars and clubs". The glasses shown by implication have been "stolen". The complainant does not specify a particular sign to which objection has been taken, but describes signs showing the glasses in handbags, a person's waistband and in a home kitchen.

## **The Complaint**

14. The complainant is involved in the hospitality industry and is concerned that the campaign glamorises the theft of glasses. It is argued that glass theft is a large expense to the hotel and hospitality industry and that this expense will increase as a result of the advertising campaign.

## **The Code**

15. 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**

16. In favour of the complaint, it can be argued that the advertisement promotes “offensive behaviour” by making light of, and actually glamorising, the theft of glasses.

## **The Advertiser’s Comments**

17. 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 campaign highlights the fact that Tooheys Extra Dry is available on tap for the first time in special glasses provided by Lion Nathan.
  - b. The joke is that the glasses are so desirable that people will want to take them home with them. There are mini cars manned with recovery teams who use sausage dogs as sniffer dogs. The entire program is clearly depicted as a bit of fun and it is being seen in that way by consumers.
  - c. We do not believe that reasonable people will be impacted by the communication in such a way as to steal the glasses but, even in that improbable circumstance, given the fact that we have supplied them, the venues concerned would not be out of pocket.
  - d. There is no suggestion in any of the communication that those shown to be stealing the glasses are intoxicated or have been caused to involve themselves in such behaviour because of the consumption of the product.

## **The Panel’s View**

18. Before turning to the substance of the complaint, it is necessary to refer to an issue of Code interpretation. The ABAC is predicated on setting out standards of compliance for alcohol beverage advertising on an execution-by-execution basis. In other words, the ABAC system, from pre-vetting to the complaints mechanism, looks at an individual advertisement to determine its consistency with the ABAC.

19. In this case, the complaint is not about an individual advertisement as such but rather about the theme of an advertising campaign. The complaint nominates various outdoor signage and a website as examples of the campaign and expresses concern about the possible effect of the campaign as a whole on promoting the theft of glasses from licensed premises.
20. While the ABAC is drafted (as is the Advertisers' Code of Ethics) on an individual advertisement basis, the Panel seeks to carry out its role to provide a considered view to every complaint within its jurisdiction and to apply a common sense "purposive" approach to interpreting the ABAC, and not a legalistic approach. Accordingly, in this case it will decide the complaint on its merits. It is recognised, however, that a future complaint might raise this same point and in the given circumstances it may not be fair or appropriate to either the complainant or advertiser to entertain a complaint against an entire campaign as opposed to a single advertisement within the campaign.
21. Turning to the substance of the complaint, the concern expressed is that the campaign theme will lead to an increase in the theft of glasses from hotels and clubs. The ABAC does not contain a provision which expressly goes to the issue of the encouragement of theft but section (a) (i) states that advertisements must present a responsible approach to the consumption of alcohol beverages and must not promote "offensive" behaviour.
22. "Offensive behaviour" is clearly a wide expression, but the context of its use in section (a) seems to be most likely directed at loutish or drunken behaviour. That said, the occurrence of alcohol-related crime, particularly violence, is well-recognised as a social and economic problem and national health and drug policy aims to minimise the occurrence of such alcohol-related behaviour. The Panel believes an advertisement which promoted criminal activity would be in breach of the ABAC.
23. The issue then turns on whether a reasonable person to whom the advertisement is directed would take the advertisements and the campaign as a whole as promoting criminal behaviour. The advertiser argues that the campaign is light-hearted, would not encourage glass theft and, in the improbable event glasses were stolen, these custom glasses had been supplied by Lion Nathan and their theft would not financially impact on the licensed venues.
24. The Panel, on considering the campaign material as a whole, does not believe it breaches the ABAC. In reaching this conclusion, the Panel has noted:
  - The advertising executions provide a parody of policing and "crime" and would not be taken as showing actual behaviour by a reasonable person;
  - While the material makes light of glass theft, it is not considered as "promoting" criminal activity or anti-social behaviour within the sense contemplated in the ABAC.
25. Accordingly, the complaint is dismissed.