

ABAC

ABAC Complaints Panel
Determination No: 62/07

CONFIDENTIAL COMPLAINT

Product: Tooheys New
Advertiser: Lion Nathan

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Elizabeth Dangar - Member

31 July 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a television advertisement for the alcohol beverage “Tooheys New” 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 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 raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of a confidential email dated 1 July 2007 which was received by the ABAC Adjudication Panel on 2 July 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 determined within the 30 day timeframe.

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 not sought in relation to this advertisement.

The Advertisement

9. The complaint refers to a television advertisement.
10. The advertisement appeared during television coverage of the Bledisloe Cup match on Saturday 30 June 2007. When Australia scored a try during the match, a hand holding a full schooner of Tooheys New beer appeared from the bottom right hand side of the screen. Australia scored 4 tries during the 80 minute match and therefore the advertisement appeared 4 times.

The Complaint

11. The complainant argues that the advertisement:
 - a) encourages people to drink excessively during the match by having another beer to celebrate the points;
 - b) would reinforce to young children watching the game that celebrating with alcohol is an acceptable thing to do.

The ABAC

12. The ABAC provides that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to consumption of alcohol beverages and accordingly-
 - i) must not encourage excessive consumption or abuse of alcohol;

- ii)
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv)
- b) 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;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement;...
- c) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly:
- i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices;..

Argument in Favour of the Complaint

13. The advertisement is in breach of section (a) of the ABAC by depicting a hand holding a full schooner of Toohey's New beer at the bottom of the screen when Australia scored a try during the rugby match, therefore encouraging or promoting excessive consumption of beer.
14. The advertisement is in breach of section (c) of the ABAC by depicting beer at the same time Australia scored a try, therefore suggesting that the consumption or presence of beer may contribute to sporting success.
15. The advertisement is in breach of section (d) of the ABAC by placing the product into the field of play and hence depicting a direct association between the product and a sporting activity.

The Advertiser's Comments

16. The Advertiser responded to the complaint by a letter dated 10 July 2007 which was received by email on 13 July 2007. The Advertiser has advised that:
 - a) Tooheys New is the official beer sponsor of the Wallabies and a telecast sponsor of Channel 7's Bundaberg Rum Rugby Series. As such, Tooheys New is entitled to certain rights, including a five-second acknowledgement of the brand following tries scored by the Wallabies.

- b) The schooner-holding arm is an element from the final scene of the Wallabies television advertisement and in this broadcast sponsorship context is designed to show Tooheys New's support for our great national team by acknowledging the good work of the men on the field. The 'Cheers' gesture itself (whether a non-alcoholic or alcoholic beverage) is completely aligned with community expectations of how one might acknowledge a try and does not in any way suggest to the reasonable person that it's necessary to open a Toohey's New and celebrate the try by drinking it, quickly finish their current drink in order to open a Toohey's New and drink it or acknowledge the good work of the team with alcohol only. To claim it suggests any of the above is ridiculous and not in line with the thoughts or actions of the reasonable person watching the telecast. At most drinkers who engage in the 'Cheers' gesture following a try may follow it with a sip of their alcoholic or non-alcoholic drink as is common practice. This spot is about reminding Wallabies fans that Tooheys New supports their team and all feedback to date suggests this is the way people are viewing it.
- c) The complainant's suggestion that there is a direct connection between the arm appearing and people feeling they have to have a Tooheys New each and every time they see it is ridiculous and disregards both the effect of media on consumers and the thoughts and behaviours reasonable people exhibit. For example a person who sees a KFC advertisement 10 times throughout a two-hour telecast does not go out to purchase KFC 10 times. We advertise not to encourage excessive consumption or misuse of alcohol, but to remind people about our brand in the hope that when next they go to the fridge or bar to get a beer, they choose Tooheys New.
- d) The 'Cheers' gesture appears only once after each Wallabies try is scored, during a replay of how the play unfolded. In this way it very clearly does not suggest that the consumption or presence of beer has contributed to the try. Instead the spot is viewed by reasonable people as acknowledgement of the good work of the men on the field by a sponsor of the team.
- e) At no stage is there any suggestion explicit or implicit that the 'Cheers' gesture is intended to do anything but acknowledge the good work on the field. A reasonable person does not associate the alcohol as having played a role in contributing to the good work on the field or as a necessary accompaniment to participating in the sport. There is no suggestion that the beer is being offered to players or any other person participating in the action as the schooner-holding arm appears only after each wallabies try is scored, during a replay of how the play unfolded. These replays are often in slow motion and accompanied by commentary talking about how the events have unfolded. There is no voiceover accompaniment to suggest that this is an offer for the players or any other person participating in the play to consume Tooheys New and the spot is perceived by the reasonable person to be no more than brand endorsement of the action they have just seen.

The Panel's View

17. The complaint raises several sections of the ABAC which will be addressed in turn. The first issue is whether section (a) is breached by the ad promoting or encouraging excessive consumption. This is argued by the complainant as arising from the appearance of the hand holding a glass of the product four (4) times during the Rugby test broadcast.

18. It is fairly standard practice for advertisers to place multiple ads within a short period of time on electronic media in order to reinforce brand recognition. The same practice is used in newspapers with a product advertisement being placed on consecutive pages. The advertiser argues that a reasonable viewer does not interpret multiple placements as meaning multiple products should be purchased and consumed.
19. The distinctive element of the advertising practice adopted on this occasion is that the product promotion was not displayed during an “ad break” in the broadcast as such, but as an overlay during the broadcast. This is not an uncommon technique of itself: what seems to have caused the complainant’s concern is that the promotion is in the form of a depiction of a glass of the product shown in conjunction with a replay of a key moment in the game, namely the Australian team posting a try. From this, it seems that the complainant draws the inference that the ad is suggesting that viewers and supporters of the team mark the achievement by consuming a glass of the product.
20. The advertiser’s argument in response to this concern is that it is common for people to note an achievement with a sip of drink, but it is wrong to contend that a reasonable person will consume an entire glass and then seek a refill and that the ad will be interpreted in this way.
21. Section (a) provides that an advertisement must present a mature, balanced and responsible approach to consumption of alcohol and accordingly must not encourage excessive consumption and only depict moderate consumption. No actual consumption, *i.e.* drinking, is shown in the ad and what is in issue is whether “a reasonable approach” to consumption is being presented.
22. The ABAC preamble provides that the Panel is to apply a test of assessing the impact of the ad upon a reasonable person when assessing if an ABAC standard has been breached. The Panel can see the complainant’s point in that the invitation to celebrate the success of the team occurs on multiple occasions (for instance, if Australia had scored five tries in a single half of the game, then the execution would take place five times in 40 minutes). On balance, however, the Panel does not believe a reasonable person would take the multiple executions as requiring excessive consumption. Further, it is not regarded that a viewer would take from the ad that is being presented that the scoring of a try should be accompanied by the “sculling” of an alcohol beverage. Accordingly, the Panel does not believe that section (a) has been breached.
23. The next issue is section (c). The complainant raises a concern that the ads reinforce a view that it is acceptable to celebrate with alcohol and this is an undesirable message, particularly for younger viewers. Section (c) of the ABAC provides that ads must not depict the presence of alcohol as a cause or contributor to success and, if alcohol is depicted as a part of a celebration, the ad must not imply that the beverage was a cause or contributor to the success or achievement. Section (c) does not prohibit the depiction of any association of alcohol with success, but rather the portrayal of alcohol as a cause of or contributor to success.
24. The ad consists of a depiction of a hand-held glass of the product, with logo, being shown during a replay of the Australian rugby team scoring a try. The issue is whether the alcohol product is portrayed as a “cause or contributor” to the sporting success or the celebration of that success.

25. The Panel believes that it is clear that the product is not suggested as a contributor to the success. The ad's appearance is after the scoring of a try and the replay of that event. Further, there is no suggestion that the players have consumed the product. While displaying the product in a glass can imply that a viewer might celebrate the achievement with taking a drink, it is clear that the product itself is not portrayed as the cause of or a contributor to the celebration. In other words, any consumption would be a by-product of the success: not the cause of the success.
26. The final issue is section (d) of the ABAC. This section provides that ads must not depict any discrete association between the consumption of alcohol and the engagement in any sport. If consumption is depicted, then it must not be represented as having taken place before or during engagement in sport.
27. The ads are played during a replay of a part of the rugby game. This does raise a direct association between alcohol and the sport; however, section (d) requires this direct association to be between "consumption" and engagement in sport. While the concept of "consumption" can be viewed as more than the beverage actually being shown entering the mouth and being swallowed, the ad in question does not depict "consumption". More importantly, there is no suggestion that those engaged in the sport, *i.e.* the players, have consumed the product or that the product is being offered to them for consumption.
28. Accordingly, the complaint is dismissed.