

ABAC

ABAC Complaints Panel Determination No: 10/11

Complaint by Ms Laura Hesketh
Product: Three Kings alcohol beverages
Advertiser: Independent Distillers Australia

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

10 February 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for Three Kings alcohol beverages by Independent Distillers Australia (“the Advertiser”) and arises from a complaint by Ms Laura Hesketh received on 7 January 2011.

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 Media Association Code of Ethics which includes provisions about Billboard advertising.
3. The complaints systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.

4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 7 January 2011.
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. The 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. The Advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an internet advertisement at www.threekings.com.au.
10. Users first see a page that features three bottles of the product against a black background with the text "Three Kings". Users are asked to indicate whether they are over the age of 18. If they select No they are taken to the Drinkwise website and if they select Yes they are taken to the Three Kings website.
11. The first page of the website features a photograph of three young men sitting on a bench with graffiti in the background and holding a bottle of the product with the text "Three Kings" superimposed. Below the photograph the following text appears:

"Three Kings Photo Shoot

Tuesday September 21 2010 Sydney

Recently three mates, Australia's hottest young photographer and enough Three Kings to last a week were all packed up and sent off to Sydney. With no sets, stages, makeup chairs or any other of the regular photography bs, they got to shoot wherever, whenever and whatever. The bleary eyed group that returned seven days later had not only had a great time they'd also taken great shots. The legend behind the lens was photographer Nirrimi Hakanson. Being in demand globally at just 18 years of age

it's pretty clear she's killing it. She was recently named in the Triple J's 25 under 25 and we've no doubt she'll be one to watch in the future."

Next to the text are three photographs of the same three young men standing around talking and holding or drinking bottles of the product.

12. By selecting "Check it out" users are taken to another page that features photographs of the same three young men in various locations including on the streets, at the beach, with surfboards and with skateboards.
13. Users may also select "About" to find out about the three products.
14. On the bottom of each page of the website is a link to the Drinkwise website that can be accessed by selecting "Drink Responsibly".

The Complaint

15. The complainant argues that the advertisement encourages underage drinking and has strong appeal to children by:
 - (a) including models that do not look over 20 years of age and could be under the age of 18;
 - (b) modeling activities that appeal strongly to under 18's;
 - (c) giving the impression that this is a cool product for under age drinkers; and
 - (d) fails to include a warning about why the site is not appropriate for under 18s on the 'enter' page.

The Code

16. 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 under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents and accordingly:
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverage

- iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene

The Advertiser's Comments

17. The Advertiser responded to the complaint and questions posed by the Panel on 12 January 2011. The principal points made by the Advertiser are:
 - (a) www.threekings.com.au requires the viewer to confirm they are of legal drinking age, 18. Such a request and mode of the request is global industry standard.
 - (b) The imagery contained within the site uses talent with ages in their 20's, therefore significantly above the legal drinking age of 18.
 - (c) On every page within site there is a "Drink Responsibly" message and link through to the drinkwise.com.au website.
 - (d) Based on these facts we are satisfied that the website does not promote and encourage underage consumption of alcohol nor does it have a strong or evident appeal to children or adolescents.

The Panel's View

18. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

19. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:
 - Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
20. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means that the advertising was not subject to pre-vetting prior to its showing. Further, this decision by the Panel does not have any binding force on the advertiser. That said, the advertiser has cooperated with the Panel and accordingly a determination can be made.

The Substantive Aspects

21. This complaint raises an issue of whether the internet advertisement breaches section (a) (ii) and (b) of the ABAC by encouraging underage drinking and having a strong and evident appeal to children. The complainant specifically raises the issue of the age of the models in the ads and the activities they are modelling and that the ad appeals to children or adolescents. Section (b) (i) of the ABAC provides that adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
22. The Panel has previously considered three of the photographs featured on the website in the context of their use in outdoor advertising and in a trade magazine. In both cases, the Panel found that the ads breached section (a) (ii) and (b) of the ABAC. The Panel must now consider the internet advertisement which has different content and is placed in different media.
23. The ABAC applies across all media *i.e.* print, television, radio, billboards and the internet and is a content based set of standards. This means that, regardless of where an alcohol ad is placed, its content is to meet the standards laid down in the ABAC. The issue of where the ad is placed is indirectly relevant in terms of assessing the content of the ad in that the audience of the ad is a relevant consideration.
24. The advertiser has advised that the models used on the website are “in their 20s, therefore significantly above the legal drinking age of 18”. The ABAC standard in section (b) however requires that adults appearing in alcohol ads be at least 25 years of age. Without specific advice from the advertiser, the Panel concludes that the models are most likely under the age of 25, given their appearance and their association with activities such as skateboarding, which is usually regarded as a younger person’s recreational activity. Hence, the website in its use of the models breaches section (b) (i) and (iii) and more broadly section (a) of the ABAC.
25. In upholding the complaint, the Panel strongly encourages the advertiser to become a signatory to the ABAC Scheme and take advantage of pre-vetting process. Pre-vetting would have identified the inconsistency of the advertising approach with ABAC Standards and enabled the advertiser to consider alternative creative means to pursue its marketing objectives in a manner reflective of ABAC Standards of good alcohol advertising practice.