

ABAC

ABAC Complaints Panel Determination No: 101/11

Complainant by McCusker Centre for Action on Alcohol and Youth
Product: Crabbies Alcoholic Ginger Beer
Advertiser: Woolworths Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

23 December 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Crabbies Alcoholic Ginger Beer by Woolworths Limited (“the Advertiser”) and arises from a complaint received 28 November 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 and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint 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 28 November 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. This complaint was decided within the 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 signatory to the ABAC and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a print advertisement for Crabbies Alcoholic Ginger Beer that was included on the back page of a Sunday Newspaper "lift out" (The Times).
10. The advertisement features a drawn picture of a man and woman dressed in clothing from a previous era sitting on a picnic rug in a suburban park smiling at one another with the woman holding a small bottle of Crabbies Alcoholic Ginger Beer and a glass and the man with a glass next to him. There is a cricket game in the background. The statement at the top of the page is "Refreshing Ginger Beer Only For Grown-ups". Below the picture there is a text box with the Crabbies logo, the statement "Crabbie's imported alcoholic ginger beer is a spicy, refreshing drink made from real steeped ginger. Served over ice with a slice!" and a bottle and glass of Crabbies Ginger Beer and a cut lime. The text "Exclusive to Dan Murphy's, BWS and Woolworths Liquor. Not for sale to persons under the age of 18. Please drink responsibly. We take Responsible Service of Alcohol seriously" is included at the bottom of the page.

The Complaint

11. The complainant argues that the advertisement has strong or evident appeal to children or adolescents by:
 - (a) Presenting it as “only for grown-ups”. The language “only for grown-ups” is clearly suggestive of the language adults use to speak to children and young people when trying to deter them from something adult. Positioning a product as being for adults only is certain to make the product appealing to young people.
 - (b) Placement of the advertisement within a magazine-style newspaper insert which features celebrity interviews, music reviews, fashion and gossip ensuring that young people will have access to the magazine and be exposed to the advertisement.
 - (c) The cartoon-like style of the advertisement is likely to have a strong appeal to children and adolescents.

The Code

12. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - 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

13. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 2 December 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. Woolworths takes its advertising responsibilities very seriously and has policies and procedures in place to ensure compliance with the Law.
 - b. The advertisement depicts a “by gone” era which appeared in a Sunday Newspaper “lift out” (the Times) directed to an adult audience.
 - c. On no basis does Woolworths consider the advertisement could be seen to direct its attention to children or young people in either breach of the Code or for the detrimental effects suggested by the complainant.

The Panel's View

14. This complaint raises both substantive and procedural issues.

The Procedural Aspects

15. 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.
16. 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 publication and the advertiser is not contractually bound to follow a panel decision. That said, the advertiser has cooperated with the Panel in enabling the determination to be made.

The Substantive Aspects

17. The complainant believes the ad has strong or evident appeal to children or adolescents. This is said to be the case by the use of the language "only for grown-ups" when describing the product, the cartoon-like style of the picture and the placement in a Sunday newspaper "lift out" that children and adolescents would be interested in and have access to. For its part, the advertiser argues that the depiction is of a "by gone" era and that the publication and advertisement is directed to an adult audience.
18. Accordingly, the key question is whether the ad as a whole can be fairly considered to have strong or evident appeal to children and adolescents. 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 under the ABAC scheme is indirectly relevant in terms of assessing the content of the ad. For instance, an ad in "Dolly" magazine with a teenage demographic as its audience will have a different audience to a "Madison" magazine, with an older female principal demographic. But the ABAC does not say an alcohol ad cannot be placed in a particular type of publication, but rather, in assessing the consistency of the ad's content with the ABAC standards, the audience of the ad is a relevant consideration.

19. In this case the complaint is about both the content and placement of the ad in a Sunday newspaper magazine. In relation to placement, the complainant is concerned that as the magazine features celebrity interviews, music reviews, fashion and gossip, children and adolescents will be exposed to the advertisement. The advertiser contends that the magazine is directed to an adult audience. The Panel recognises that children and adolescents would access the newspaper "liftout"; however mass circulation newspapers cannot be fairly said to have a demographic which is particularly targeted at children or adolescents. In any event, the ABAC does not purport to regulate where alcohol ads can be placed.
20. The preamble to the ABAC gives some guidance in how the consistency of an ad to code standards is to be assessed. The Panel is to have regard to the probable impact of the ad on a reasonable person, taking the content of the ad as a whole.
21. In considering whether an advertisement has strong or evident appeal to children or adolescents, the Panel has noted:
 - Each ad has to be assessed on its merits.
 - The intention of the advertiser as to its target audience is not material; rather it is the "probable impact" of the ad which is important.
 - The ABAC standard accepts that an ad might have some residual or incidental appeal to children or adolescents but it is "a strong or evident" appeal which is prohibited.
 - The overall context of the ad is critical.
22. The complainant essentially argues that strong or evident appeal of the ad to children or adolescents arises from two aspects, namely:
 - The use of the expression "only for grown-ups" and
 - The "cartoon" style of the ad.
23. The Panel does not believe the ad would be regarded by a reasonable person as having strong or evident appeal to children or adolescents. The ad is not "cartoon like" but rather a coloured drawing somewhat reminiscent of drawings popular in the 1940s and 1950s. Equally, while the phrase "only for grown-ups" could conceivably in some contexts be said to be a "reverse psychology" attempt to appeal to children, in the current context no such conclusion can fairly be drawn. It seems more probable that the phrase is distinguishing the alcoholic ginger beer from its non-alcoholic cousin. The overall context is clear and the ad has neither a "look or feel" or contains messages which can fairly be said to breach the ABAC standard.
24. Accordingly, the complaint is dismissed.