

ABAC

ABAC Complaints Panel Determination No: 118/11

Complaint by Mr Jason Barrett
Product: Crown Lager
Advertiser: Foster's Group Limited

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

14 January 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for Crown Lager by Foster’s Group Limited (“the Advertiser”) and arises from a complaint received on 23 December 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 the ABAC Panel on 23 December 2011.
- 7 The Panel endeavour 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 30 business days.

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. This advertiser obtained pre-vetting approval for this advertisement [10943].

The Advertisement

- 9 The advertisement opens on a series of scenes, namely a boat in a harbor, a set of traffic lights in a city, cars moving along a highway, a park at night with insects around a street light, a ball rolling around a paved area adjacent to a large building, a clock, the Crown Lager factory, all with the film sped up so changes in the scenes occur quickly. These scenes are accompanied by the sound of a quickly ticking clock followed by the voiceover "Time. You can't stop it. You can't catch it. You can't keep it." The scene then changes to the inside of a brewery with the film slowed down as the voiceover continues "But you can master it. Time. The 5th ingredient in Crown Lager. Australia's Finest." The final scene is a glass of Crown Lager next to a 375ml bottle on the roof of a building in a city with the text "Time. The 5th ingredient" and the "Drink Responsibly" logo superimposed on the scene.

The Complaint

- 10 The complainant argues that the advertisement was placed prior to a children's game on the internet site, <http://www.bestbratzgames.com/magic-pony.html> that is aimed at young 3-8 year old girls.

The Code

- 11 The ABAC provides at Sections (a)(ii) and (b) 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...

The Advertiser's Comments

12 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 11 January 2012. The principal points made by the Advertiser were as follows:

- a) Foster's Group Limited (**Foster's**) has an excellent advertising compliance track record and is an original and long-standing signatory to the Alcohol Beverages Advertising Code (**ABAC**). We take our obligations in relation to responsible consumption of alcohol extremely seriously and believe that with regards to the campaign in question (**Crown Lager**) does not breach the ABAC.
- b) The complainant contacted CUB's consumer contact service directly about this issue and we responded promptly via a full internal investigation. CUB shares the complainant's concern about an alcohol commercial incorrectly appearing on a website of this nature (www.bestbratzgames.com.) Neither Crown Lager nor any other CUB brand advertises with the website in question. The Crown Lager advertisement no longer appears on the website.
- c) The complaint highlights issues regarding placement of an alcohol advertisement. It is important to note that the content of each execution of Crown Lager's campaign is consistent with the ABAC and contains no elements that could be said to contain strong appeal to children or adolescents. The campaign's theme is product quality, focusing on Crown Lager's premium taste and positioning. Christmas-themed advertisements have also been published, associating Crown Lager with the celebratory season (however not intimating that Crown Lager is the cause of celebration).
- d) CUB's online advertising campaigns are managed by parties that fully understand CUB's expectations regarding responsible marketing and adherence to the ABAC. This policy enforces age demographic restrictions for websites. Only websites with predominantly audiences of legal drinking age (in excess of 70%) are selected. The website in question (www.bestbratzgames.com) is an American site that is represented in Australia as part of a network called The Video Network (TVN). The appearance of a Crown Lager commercial on the website in question may have occurred due to a technical targeting error. Advertisements are placed on websites via the automated reading of two information sources: the "user profile" and the website itself. The technology may have recognised the registered profile of the user as somebody meeting the criteria (i.e. Men 25-54) and displayed the advertisement in question. Both profile and website information should be reconciled as part of the required safeguards to avoid misplaced commercials. The supplier has been engaged to ensure the proper procedures are in place and the systems are reviewed periodically. CUB has utilised online advertising for brand campaigns, running tens of millions of advertisements for more than 10 years. This is the first time the business has been alerted to a misplaced online commercial. This issue is very serious, however the lack of any other complaints of a similar nature gives us confidence that technical issues were not widespread or common.
- e) No advertisement from Crown Lager's campaign was intentionally placed on this website. The team has treated the complaint seriously and will continue to inquire as to how this potential technical error could have occurred.

The Panel's View

- 13 The complaint concerns an internet advertisement for Crown Lager located on a children's gaming website. The complainant is concerned about the placement of the advertisement before a children's game featuring an animated pony.
- 14 This issue primarily relates to placement of the advertisement. There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular advertising mediums. For instance, the Outdoor Media Association Code & Guidelines applying to billboards restricts alcohol ads appearing on an outdoor site within 150 metres sight line of any access gates to a primary and secondary school. There is no Code that specifically restricts placement of alcohol advertisements on the internet.
- 15 The ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. The issue of placement is indirectly raised by the ABAC's preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to "the class of persons to whom the advertisement is directed". This means that the ABAC does not prescribe the type of media within which an alcohol ad can be placed but, in assessing the standards as to the ad's content, the likely audience of a particular ad is relevant.
- 16 It is clear that the website on which the advertisement appeared would have a primary audience of children or adolescents. In the Panel's view it is highly undesirable for an alcohol advertisement to appear on such a site, however, the Panel is only permitted to consider whether the content (not the placement) of the advertisement breaches the ABAC. The class of persons to whom the advertisement is directed is only a relevant factor in making its decision on whether the content of the advertisement breaches the ABAC. The Panel is of the view that the actual content of the ad has adult themes and does not have any elements that would have strong or evident appeal to children or adolescents.
- 17 Because of the design of the ABAC, the Panel is obliged to dismiss the complaint but, in doing this, the Panel accepts that the complaint is both entirely legitimate and understandable. The ad should not appear on the Bratz game site which is self-evidently designed for younger female children. The advertiser itself also accepts that the ad should not have appeared on the game site and explains that this occurred by mistake, and not by design. The Panel notes that the advertiser does not have a history which indicates it would think a game site of this type is a legitimate venue for advertising its beer. That said, the advertiser is responsible for its advertising campaigns and must ensure that it meets appropriate standards of practice.
- 18 The complaint is dismissed.