

ABAC

ABAC Complaints Panel Determination No: 14/10

Complaint by Mrs Judith Winley
Product: Budejovicky Beer
Advertiser: Beverage Australia Pty Ltd

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

12 March 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Budejovicky Beer by Beverage Australia Pty Ltd (“the Advertiser”) and arises from a complaint received 2 February 2010.

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 is in the form of an email received on 2 February 2010.
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 obtained for this advertisement.

The Advertisement

9. The complaint refers to an advertisement featured in the West Australian newspaper on 2 February 2010.
10. The advertisement features a picture of a dog looking sad and holding its lead in its mouth next to a 330ml bottle of Budejovicky lager. Above the picture is the text "Budejovicky Budvar". Below the picture is the large text "Your new best "buddy"". Below that text in smaller print "This "buddy" will never let you down, will be there in good times and bad, and always be the epitome of good taste. Over 700 years brewing tradition in Bohemia makes this lager a real beer connoisseur's choice. Awarded the Czech Republic's Beer of the 20th Century, it is brewed using only natural ingredients – malt, water, hops and yeast. No additives, no preservatives and no sugars. 330ml 5.0%alc/Vol Coming in April: 30 litre Draught Kegs. Ask at your local liquor outlet. Imported by Beverage Australia Pty Ltd 2A Arrigo Street Wangara Enquiries 9409 1118."

The Complaint

11. The complainant argues that:
 - (a) the ad implies that alcohol is your friend, better than a living creature and will never let you down;
 - (b) the Australian binge drinking culture is well documented and our reliance and acceptance of alcohol seems to be growing exponentially; and
 - (c) the ad ignores the benefits of interaction and engagement with a pet.

The Code

12. The ABAC provides at Sections (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages.....

Arguments in favour of the complaint

13. The advertisement breaches section (a) of the ABAC by failing to present a mature balanced and responsible approach to the consumption of alcohol by its implication that the alcohol product is a reliable friend that will be there for you and not let you down and that it is a preferred substitute for a pet dog by a combination of:
 - (a) its depiction of a bottle of the product next to a pet dog; and
 - (b) its statement that the product is your new best “buddy”, that it will never let you down and that it will be there in good times and bad.

The Advertiser’s Comments

14. The Advertiser supplied a copy of the advertisement but failed to respond to the complaint and questions posed by the Panel.

The Panel View

15. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The issue is that Beverage Australia Pty Ltd is not a member of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC’s adjudication process has no binding effect on the company. However they have supplied a copy of the advertisement thereby co-operating with the ABAC process and accordingly the Panel is able to make a determination on this complaint.

16. The principal concern of the complaint is that the ad is irresponsible and suggests that alcohol is a better companion than a pet. The Panel agrees that the wording of the advertisement, namely "This "buddy" will never let you down, will be there in good times and bad..." is inconsistent with ABAC standards.
17. The message from the ad could reasonably be taken as meaning that the product is a necessary or desirable aid to a person in their life, assisting in good and bad times. This message is clearly inconsistent with the ABAC standards.
18. It is noted that the advertiser is not a signatory to the ABAC scheme and the ad had not been submitted to the pre-vetting process. The advertiser is strongly encouraged to participate in the scheme, as the pre-vetting of the ad would have identified the inappropriate nature of the ad's message and would have assisted in the production of an ad consistent with ABAC standards.
19. The complaint is upheld.