

# ABAC

## ABAC Complaints Panel Determination No: 17-21/10

### Complaints by Ms Heather Stonier-Gibson and confidential complainants Product: Tooheys Advertiser: Lion Nathan

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

26 April 2010

#### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Tooheys beer by Lion Nathan (“the Advertiser”) and arises from a complaint by Ms Heather Stonier-Gibson and four confidential complaints received on 15 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The complaints are in the form of emails received by ABAC on 15 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. These complaints have not been determined within the 30 day timeframe due to the unavailability of the Chief Adjudicator.

### **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 obtained for this advertisement [10070].

### **The Advertisement**

9. The advertisement depicts a number of scenarios as the voiceover describes the scenario and allocates a quantity of beer for each scenario as follows.
  - (a) A man is shown working under the hood of the car when a second man walks toward him and places a six pack of beer on top of the car and the first man says "Cheers mate" while the voiceover says "Fixing a mates car. Six beers."
  - (b) The same man is shown in a bar talking to a woman as the second man walks over. The first man introduces him to the woman as the second man hands him a six pack and shakes the woman's hand as they smile and talk to each other while the voiceover says "Fixing a mate up. Another six beers".
  - (c) The same two men are shown moving furniture into a house as the woman walks past smiling and the voiceover says "Fixing a day off to help him move into her place. One case. "
  - (d) The same two men are shown walking quickly out of the house with cardboard boxes of clothes with the woman throwing clothes out of a hamper onto the front yard. The men are then placing the boxes into the

tray of a ute next to two unopened cases of beer as the voiceover says "Fixing the problems caused by fixing him up. Two cases".

- (e) The second man and woman are shown arguing in the back seat of a car driven by the first man while the voiceover says "Fixing a day to drop him off to the mediation meeting. One case".
- (f) The first man is seen leaning on a fold out bed while the second man sits on a sofa next to an unopened case of beer with blankets and sheets on top looking sad while the voiceover says "Fixing him the fold out bed. One case".
- (g) The two men are then shown sitting on the sofa with the unopened case of the product between them. The men then look at each other and the second man starts crying while the voiceover says "Fixing your eyes on him and telling him everything is going to be ok. Complimentary." We then see an unopened case of the product with a towel on top as the voiceover continues "Tooheys New White Stag. Official currency of the beer economy."

## **The Complaint**

10. Ms Stonier-Gibson argues that the advertisement:
  - (a) Makes drinking appear completely normalised, during times of stress, breakups and hardships and a coping mechanism between mates;
  - (b) Allocates massive quantities of alcohol, normalising excessive consumption;
  - (c) Implies drinking will make the bad periods in your life easier as long as you are drinking with your mates.
11. The second complainant argues that the advertisement clearly emphasises the large volume of alcohol that it suggests to be consumed in one go. The volume shown (6 packs) may suggest that 1 or 2 people consume in one day, which exceeds the drinking standards in Australia from a health point of view.
12. The third complainant argues that the advertisement makes people think that beer is going to fix everything when in actual fact the beer is the instigator of all these problems. There should be a warning saying drinking was what caused the breakdown of the relationship. Calculating how much beer is required to "get over" certain things in your life is dangerous and offensive. One beer is enough. You don't need one or two cartons.
13. The fourth complainant argues that the advertisement strongly implies that beer should be used to cope with emotional problems and extremely excessive amounts (1 carton). It contributes to the problems associated with excessive drinking rather than promoting responsible drinking.

14. The fifth complainant argues that the advertisement promotes the notion of beer in carton quantities to solve problems or make you feel better when things don't work out in life. The ad being in close proximity to an ad discouraging teenage alcohol abuse and binge drinking provided a contradictory message.

### **The Code**

15. 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 –
    - i) must not encourage excessive consumption or abuse of alcohol;
    - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - c) 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;
  - g) not encourage consumption that is in excess of, or inconsistent with, the Australian Alcohol Guidelines issues by the NHMRC.

### **Arguments in Favour of the Complaint**

16. In favour of the complaints it is alleged that:
- (a) The advertisement breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages by:
    - Its depiction of a “beer economy” where friends do favours for one another in exchange for various quantities of beer;
    - The elevation of the importance of beer in everyday life; and
    - Its depiction of the presence and importance of beer during significant events in the friend's life including difficult times.
  - (b) The advertisement breaches section (a)(i) (a)(iii) & (g) of the ABAC by encouraging and promoting excessive alcohol consumption and consumption in excess of or inconsistent with the NHMRC guidelines through:
    - The allocation of large quantities of beer to one person; and

- The implication that the beer would be consumed by the two friends depicted in the advertisement.
- (c) The advertisement breaches section (c)(i) of the ABAC by suggesting the consumption or presence of the product is a cause of or contributor to the achievement of social, sexual or other success through a combination of:
- Its encouragement of a “beer economy” where friends do favours for one another in exchange for various quantities of beer;
  - The suggestion, in particular in the scene where one of the friends sets up the other with a girlfriend in exchange for beer, that beer can be used, via the beer economy, to achieve social, sexual or other success.

### The Advertiser’s Comments

17. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 5 March 2010. The principle points made by the Advertiser are:
- (a) The ‘Beer Economy’ campaign is based on an insight into the average, Australian beer drinker. For many years mates have paid each other in beer, instead of money, to say thank you for small favours. Whether it be helping a friend move house, or fix the car, Australians like to say thank you with a beer. Many people can relate to this simple insight and have used beer in this fashion at some stage of their lives. As such, the aim of the Tooheys NEW campaign is to have fun with these experiences, and perpetuate this endearing quirk of Aussie culture.
- (b) In the advertisement referenced in all five complaints, a situation is explored whereby the favours one mate bestows on another continue to rise in significance. The advertisement is exploring the nuances of doing favours for a mate, in a clearly exaggerated, fictional scenario. At no stage is alcohol consumed during the advertisement. Additionally, the beer received as a gift during the advertisement is in the form of six-packs and cases. These were chosen intentionally, as they are widely viewed as packaging formats that are stored for periods of time and shared amongst many. It is not expected a reasonable person would believe the one man will drink all of the alcohol in one occasion, or indeed by himself – just as we wouldn’t expect him to do the same if he bought the cases from a liquor store.
- (c) The reason the ‘Beer Economy’ concept resonates with so many Australians is because it does in fact already exist – this is not a new concept, nor one invented by Tooheys NEW. Our in depth consumer research confirmed this well known, long standing Australian consumer truth has existed for many, many years. The ‘Beer Economy’ campaign celebrates this existing quirk of Aussie culture, but does not elevate the importance of beer. It is a social norm, and we are confident it is consistent with community values. Finally, it is important to highlight that the favours are not done for beer alone – they are done because one

mate wants to help another. Beer is given because they collectively enjoy it, making it a suitable means to say 'thank you'. This is in no way dissimilar to bringing a bottle of wine to a dinner party, to thank the host for their efforts.

- (d) The beer is present as a result of one mate saying thank you for a favour – the favours being fixing a car; fixing a mate-up; fixing a day off to help a mate move; fixing time off to take the mate to a mediation session; and again fixing a day off to help a mate move. The beer is not provided due to the significant event or difficult time, and certainly not provided as a coping mechanism as suggested in the complaints. In fact, the beer is provided to the mate who is not experiencing any difficulties, but rather providing the favours – which clearly demonstrates this is not the case.
- (e) The advertisement shows no change in mood as a result of the presence or consumption of alcohol. In fact it could be argued the only change of mood shown in the advertisement is a result of the failed romance, whereby one mate is shown to be visibly upset at the end of the advertisement. This change has nothing to do with the alcohol, but rather the demise of the relationship. It is also important to point out that this mate is not the one who received any beer to start with – instead it was his friend, who provided the favours but did not experience any difficulties. Likewise, the advertisement in no way suggests the 'Beer Economy' helps someone achieve social or personal success. There are two male characters in the advertisement – one who, over a period of time, does favours for a mate (out of friendship) and is thanked in beer and another, who we see start and end a short-lived relationship. Neither man achieves any greater level of social or personal success during the advertisement. The first man, who does the favours, receives beer as a thank you for his time and efforts – not social or personal success. And quite contrary to this claim, the second man is not presented as successful in his relationship pursuits at all. It is not suggested that the beer was the reason the man was, at first, successful in his pursuits with the female character. The beer was used as a thank you to the mate who happened to introduce the man and woman in the first instance. An introduction to someone is not in itself an achievement of social or sexual success and it is not implied that this simple action will result in such success. It is also important to point out that the man who introduced the man and woman did not do so for a beer reward – it was not an incentive, but rather a common favour from one mate to another, that his friend decided to thank him for.

### **The Panel's View**

18. The advertisement and the issues raised by the complaints all have a common starting point and that is the role which alcohol plays in Australian society. For the complainants, the essence of the concern expressed about the advertisement is that alcohol use is portrayed as "normalised". The Advertiser in its response to the complaints also starts from the proposition that "gifting" alcohol to "say thank you" for a favour is a normal and "endearing quirk of Aussie culture".

19. From a similar starting point, the complainants and the Advertiser see the message in the advertisement in very different ways. The complainants argue that alcohol use is promoted as being a suitable response to times of stress, such as a relationship breakup, and that excessive consumption is encouraged through the “gift” of a 6 pack or a carton of beer in the various scenarios depicted in the ad. The point is made that alcohol misuse is a cause of or contributor to relationship breakups and emotional distress and, to the extent that the ad implies alcohol is a solution to such occasions, it is a highly irresponsible message.
20. The Advertiser contends that the ad reflects existing cultural practices regarding gifting alcohol, that no alcohol consumption is depicted in the ad and the “mate” who receives the alcohol is not the male character who is experiencing the roller-coaster of emotional scenarios, but his friend, who is depicted in a steady emotional state throughout the ad.
21. The Panel’s role is to assess the advertisement in light of the nature of the complaints against the standards contained in the ABAC. The ABAC does not contain a standard which states that alcohol use is not to be shown as normal behaviour. Rather, the ABAC is framed around specific standards, often expressed in the “negative” *i.e.* specific things/behaviours are not to be encouraged or suggested, such as excessive consumption, under-age drinking or alcohol consumption causing sexual or other success. While the Panel approaches its task in a commonsense and non-legalistic manner and mindful of the public policy issues about alcohol use and the social, personal, health and economic consequences of alcohol misuse, the Panel can only apply the Code as given to it. Accordingly, it is necessary to reference the complaints against the specific ABAC standards.
22. The relevant ABAC standards raised by the complaints are:
  - Sections (a) (i), (iii) and (g) which provide that an advertisement is not to encourage excessive consumption or consumption that is in excess of, or in consistent with, Australian Alcohol Guidelines issued by the NHMRC.
  - Section (c) (i) which provides that an advertisement is not to suggest alcohol consumption or the presence of alcohol contributes to a change of mood or environment and is a contributor to the achievement of social or other success.
  - Section (a) requiring alcohol advertisements to present a mature, balanced and responsible approach to the consumption of alcohol.
23. The argument about the ad encouraging excessive consumption is based on the “price” or the “beer economy” value given to the particular good turns performed by the mate of the male character who is depicted going through the stages of a relationship. The beer economy value is described as respectively “six beers” or “one case” or “two cases” for each of the good turns provided.
24. Each of the complaints takes this aspect of the ad as suggesting excessive consumption. The Advertiser argues that “six-packs” and cases of beer are “packaging formats that are stored for periods and shared amongst many”.

25. The Panel has on previous occasions considered advertisements which promote the purchase of cartons of beer. The Panel has recognised that there is a clear distinction between the purchase of multiple bottles of alcohol, such as a case of wine or a carton of beer, and the consumption of the product. If the context of the ad implies that the alcohol product is to be consumed in an excessive manner, then it will be in breach of the ABAC standard; but merely indicating that alcohol is available in cartons will not breach the standard.
26. In this case, the ad does not depict the actual consumption of alcohol and the context of the ad establishes that the alcohol is presented in return for the doing of a good turn. In the Panel's opinion the ad does not suggest that the beer will be consumed in a single drinking session or necessarily by the individual who has been presented the beer alone. It is noted that the male character receiving the alcohol is the mate who is portrayed as the steady influence carrying out the favours; not the male character experiencing the highs and lows of emotions in the fictional relationship with the female character.
27. The second issue is whether the ad breaches section (c) of the Code by suggesting alcohol is a contributor to social success. This might be said to arise by the mate "fixing up" his friend with a new girlfriend being rewarded by a gift of alcohol. The Panel does not believe the ad breaches this section of the Code. The male character who receives the "six pack" does so after the event of the introduction of his friend to the prospective girlfriend. The introduction of the alcohol has not changed the mood of the scene, nor apparently contributed to the success of the meeting. Neither the male nor the female characters who are introduced are depicted as consuming alcohol, nor does their appearance or behaviour appear to be affected by alcohol.
28. The final and most contentious issue concerns the underlying premise of the ad and whether associating alcohol with doing favours or good turns presents a "mature, balanced and responsible approach to the consumption of alcohol beverages" as specified by section (a) of the Code. The argument advanced by Ms Stonier-Gibson and the other complainants to some extent is that the alcohol use is presented by the ad as an everyday and acceptable response to life's ups and downs. In particular, is the ad suggesting that alcohol is a coping mechanism for the emotional distress of a relationship breakdown?
29. As stated earlier, the ABAC does not prohibit the "normalisation" of alcohol use. In fact the Code assumes that alcohol is used and consumed across society, but that alcohol misuse is not to be presented or encouraged by alcohol advertising. Section (a) creates a general "positive" standard for advertising to satisfy, but it needs to be understood in the context of the Code as a whole.
30. On balance, a majority of the Panel does not believe the ad breaches section (a). In reaching this conclusion, the Panel noted:
  - The ad does not establish that the good turns are done for the alcohol, but alcohol is given as a "thank you";
  - The Code does not prohibit showing alcohol as a gift, but does prohibit suggesting certain things are caused by alcohol.

31. Accordingly, the complaint is dismissed.