

ABAC

**ABAC Complaints Panel
Determination No: 18/12**

**Confidential Complaint
Product: Strongbow Cider
Advertiser: Fosters Group**

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

22 March 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Strongbow Cider by the Fosters Group (“the Advertiser”) and arises from a complaint received 28 February 2012.

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 February 2012.
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. Pre-vetting approval was obtained for this advertisement [10519].

The Advertisement

9. The complaint refers to a television advertisement.
10. The advertisement opens with what appears to be snow falling in a series of scenes. The scenes are a mobile food van in the middle of a playing field, clothes flapping on a clothes line and an empty swimming pool. The scene then changes to a woman opening a set of curtains and looking outside over a rural scene as what appears to be snow is falling. A song begins to play as the scene changes so we are looking at the 2-storey house that the woman is in.
11. The snow continues to fall as we see a car driving along a road and passing a tractor. The man on the tractor is wearing a singlet and shorts and the occupants of the car are also wearing summer clothing. We then see a woman wearing shorts and with a swimming towel over her shoulder walking her bicycle through what appears to be snow. The car is shown driving toward the 2-storey house seen earlier and we see the woman walking her bike enter the yard of that house. We then see a number of people around the outside of the 2-storey house moving a sofa, starting a barbecue and sitting around, swimming, jumping and diving into a swimming pool. Two women, one of which was the woman opening the curtains

earlier in the advertisement, are shown standing fully clothed on the second storey balcony of the house looking over the pool and one of the women is sipping a drink from a tall glass.

12. We then see that there are orchards surrounding the house and the camera moves to a large tree on a hill from which blossoms are blowing over the ground and we see that the snow is in fact blossoms. We then see a tractor pulling a wooden trailer full of apples through an orchard with the words "Cider apples" painted on the back of the trailer. The large tree on the hill is superimposed with the Strongbow Cider logo and a bottle of Strongbow Cider with a full glass alongside is superimposed around the logo. The text "It's Strongbow season" and "Enjoy Responsibly" appears on the screen.

The Complaint

13. The complainant argues that the advertisement shows people drinking around a swimming pool covered in apple blossoms and a guy diving into a swimming pool and that this is inappropriate given the risks of injury from diving into water while intoxicated.

The Code

14. The ABAC provides that advertisements for alcohol beverages must:
 - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices.

The Advertiser's Comments

15. The Advertiser responded to the questions posed by the Panel by letter received 6 March 2012. The points made by the Advertiser in relation to the advertisement were:
 - a. Carlton United Brewers (**CUB**) 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 seriously and are confident the Strongbow Cider campaign does not breach the ABAC.
 - b. The television commercial (**TVC**) was pre-vetted via AAPS (approval number #11014). The campaign also includes an outdoor billboard (AAPS approval number #10519).

- c. The TVC is a summer scene with apple blossom blanketing the ground around a house and pool. Actors congregate around the pool, with some viewing the party from a balcony. The scene progresses to views of an orchard and finishes with an image of a Strongbow bottle and glass. The billboard is an image from the TVC, showing actors around the pool area. Accompanying this is an image of the product.
- d. Regarding question one, there is no depiction of consumption by those actors near the pool or swimming in the pool. In the development of the campaign in 2010, the team was careful to ensure no open containers were shown anywhere near the pool or deck. Only the actors on the balcony are enjoying a Strongbow Cider, purposefully positioned away from the pool to ensure no confusion that they were drinking prior to or whilst swimming. We were very mindful of our obligations under section (d) of the ABAC and it was discussed in detail with the pre-vetting service prior to AAPS approval being granted. The campaign has been broadcast for more than two years and was the most searched Australian TVC on Google in 2011. This is the first complaint we have received on the commercial.

The Panel's View

16. This complaint raises a concern about an advertisement showing consumption of alcohol and diving into a swimming pool and notes that many people have broken their necks while intoxicated and diving into swimming pools. The complainant is also concerned that the advertisement is inconsistent with the Australian Alcohol Advisory Council "Don't drink and drown" advertisement.
17. In this case, the ad shows a group of people socializing around a pool and people diving or jumping into that pool. None of the people in or in the vicinity of the pool are shown consuming a beverage. A woman is shown consuming a beverage during the advertisement but she is standing on a second storey balcony overlooking the pool and is fully clothed.
18. The advertiser's response to the complaint is that:
 - (a) consumption is not portrayed by those actors near the pool or swimming in the pool and no open containers were shown anywhere near the pool or deck.
 - (b) only the actors on the balcony are enjoying a Strongbow Cider, purposefully positioned away from the pool to ensure no confusion that they were drinking prior to or whilst swimming.
19. The relevant ABAC provision states that an ad must not depict a direct association between alcohol consumption and swimming or a potentially hazardous activity. In particular alcohol consumption must not be represented as having taken place before or during engagement of the activity.
20. The ABAC preamble provides guidance as to how the Code is to be applied. It refers to regard being taken to its "spirit and intent" and taking the content of the ad as a whole. For its part, the Panel endeavours to apply a common sense approach

to interpretation and avoids legalistic or pedantic reading of provisions and must assess how it would be understood by a “reasonable person within the class of persons to whom the ad is directed”.

21. In order to breach Section (d) any direct association between alcohol and the water activities needs to involve alcohol “consumption”. Specifically, consumption of alcohol must not be represented as having taken place before or during engagement of the activity.
22. A majority of the Panel does not believe the ad can fairly be said to breach the terms of section (d). In reaching this conclusion, the Panel has noted:
 - The persons engaging in the use of the swimming pool are not depicted as consuming any alcohol.
 - There is no evidence, e.g. bottles of the product, adjacent to the pool which could reasonably imply the persons using the pool have been consuming alcohol.
 - The depiction of consumption is placed away from the swimming pool and features a character who is not wearing a swimming costume, nor clothing which implies that the pool will be used by the person consuming alcohol.
23. The Panel is obliged to dismiss the complaint.