

ABAC

ABAC Complaints Panel Determination No: 22/11

Complaint by Ms Julia Stafford, McCusker Centre for Action on Alcohol and Youth
Product: Thirsty Camel Bottleshops
Advertiser: Thirsty Camel Bottleshops

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

25 March 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print and internet advertisement for Thirsty Camel Bottleshops (“the Advertiser”) and arises from a complaint received 9 March 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 9 March 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 full page print advertisement in The West Australian Newspaper on 2 March 2011 and an ad located on the advertiser's website.
10. The print advertisement has the headline "More Classic Specials from the Camel" above a box containing pictures of various alcohol products with their prices. In the top left hand corner of the box is a picture of a carton of Carlton Dry superimposed with the price "\$37.99" and the text "Plus a bonus Camel Pong Game with each ctn". Next to the carton is a picture of a green cup with the Thirsty Camel logo containing ping pong balls with the same logo. Below the box is the Thirsty Camel logo with a list of bottleshops.
11. The Thirsty Camel website featured an advertisement on the home page with the headline "Beer Pong Time!" above a picture of a carton of Carlton Dry superimposed with the price "\$37.99" and the text "Plus a bonus Beer Pong Game" next to a picture of a green cup with the Thirsty Camel logo containing ping pong balls with the same logo. At the bottom of the advertisement is the text "Visit your local Camel today".

The Complaint

12. The complainant argues that:
- (a) The advertisement breaches section (a)(i)(iii) and (g) of the ABAC by encouraging irresponsible and excessive alcohol consumption and consumption in excess of the NHMRC Australian Alcohol Guidelines by offering a free Thirsty Camel branded Beer Pong game as an incentive to purchase a carton of 24 bottles of Carlton Dry full-strength beer. Noting also that beer pong is a drinking game in which players throw a ping pong ball across a table with the intent of landing the ball in a cup of beer positioned at the other end and which is invariably associated with the consumption of large quantities of alcohol.
 - (b) The advertisement breaches section (a)(ii) and (b) by offering a drinking game as a gift with purchase as drinking games have a distinct appeal to young people.

The Code

13. The ABAC provides at Section (a) 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;
 - ii) must not encourage underage drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
14. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
- b) not have a strong or evident appeal to children or adolescents ...
15. Section (g) of the ABAC provides that advertisements for alcohol beverages must:
- (g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by letter received 17 March 2010. The points made by the Advertiser in relation to the advertisements were:

- a. The gift with purchase offer was an incentive to purchase one carton of full strength beer however unlike Coles & Woolworths, it was offered at a fair price and was not encouraging anyone to purchase more than one carton at a time.
- b. The gift of a game was aimed at the fun of the game more so than a drinking game for excessive consumption of beer. Carlton Dry promoted their brand with bouncing ping pong balls off walls and tables recently and this was aimed as an extension to this television commercial. At no point in time (as shown by the game rules in the cups) was it marketed to be a drinking game.

c. The game rules in the cups state:

"Beer Pong is a game where players attempt to toss or bounce ping pong balls into the special cup(s). A player aims to get his team's ping pong ball into the cup and win points. If playing with multiple cups, the shot maker's team wins points AND removes the cup from the table. The game continues in this way, with all players from one team taking a shot, followed by all players from the other team. The team that is able to get all their balls in and get the most points is the winner.

To begin, a player from each team takes a shot simultaneously without looking at the cup(s). This is repeated until one team makes a shot, and one team misses. This decides who gets the first possession. The winning team gets the first shot in the point scoring game. The elbow rule is also applied for EVERY shot. A player's elbow may not cross the plane of the playing table or it does not count. It sounds simple, but the game is more complex than it first appears, as you will soon see once you get going....

Points

Hole in One -1	2 bounce & in – 2	3 bounce & in – 3
Rim shot – 3	Wall bounce & in – 3	Floor & wall bounce & in -3

Contents: 1 x Thirsty Camel Beer Pong Glass 2 x Red Camel head balls
2 x Green Camel head balls"

- d. The game was aimed to appeal to a younger demographic however could only be purchased by people over the age of 18 who are entitled to purchase alcohol. At no point in time, was there any aim to market to underage drinkers or to purchase excessive alcohol.

- e. We understand the concerns you may have perceived with this advertising gift with purchase, however our only intention was to market a fun activity to our consumers aged between 18 to 30 years of age. If you believe this gift with purchase is inappropriate we will not market it again in the future, as was our intention to roll out the game in all states in April.

The Panel's View

17. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

18. 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.
19. 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 and has agreed to abide by the Panel's findings.

The Substantive Aspects

20. The substantive points raised by the complaint are as follows:
 - The ads breach sections (a), (a) (i) and (iii) and (g) of the ABAC by promoting or encouraging excessive alcohol consumption and consumption that is in excess of NHMRC guidelines; and
 - The ads breach section (a) (ii) and (b) by encouraging under-age drinking and/or by having strong or evident appeal to children.

As two separate ads are the subject of the complaint, these issues have to be assessed for both ads.

21. On the excessive consumption point, essentially the complaint makes two arguments. Firstly it is contended that the game “give away” will encourage a consumer to purchase a carton of the product, as opposed to a lesser quantity of alcohol, say a six-pack or an individual can. Secondly, it is argued that the nature of the “give away” game “Camel Pong” or “Beer Pong” promotes excessive alcohol consumption.
22. In response to these arguments, the advertiser contends that the ads are “an incentive to purchase one carton of full-strength beer...at a fair price and was not encouraging anyone to purchase more than one carton at a time”. Further, it is contended by the advertiser that the game is fun and is not marketed “to be a drinking game”. The advertiser rejects that excessive consumption will be encouraged by the nature of the game.
23. The Panel has considered “give away” promotions in previous decisions. The key point is that the Code standard goes to consumption and not purchase of alcohol. To accept the complainant’s argument, it would have to be assumed that a reasonable consumer would:
 - Firstly alter their purchasing intention from a smaller alcohol quantity to buying the carton, based on the lure of the “give away” and then
 - Secondly, consume the purchased carton of beer in an excessive and irresponsible manner.
24. Alcohol is a product which is commonly sold in packaging of multiple of bottles or cans e.g. a carton of beer or a case of wine. By its nature, alcohol is a product which has a long shelf life, with beer being able to be kept before consumption for many months, while spirits and wine have a use-by date of many decades. This means a carton of beer purchased in April 2010 might be consumed progressively over months – not days - or in a single session.
25. In the Panel’s view the “give away” is more likely to entice a consumer to purchase Brand A of a carton of beer as opposed to a carton of Brand B which does not have the “give away”. But even if it was accepted that the “give away” motivated a consumer to purchase a carton instead of a six-pack of beer, it does not follow that the purchased product will then be consumed in a binge drinking session or otherwise in an excessive manner, or at levels inconsistent with NHMRC guidelines. Neither the print ad nor the internet ad can fairly be said to breach ABAC standards by merely promoting the sale of a carton of beer with a “give away” game.
26. The second argument relates to the nature of the “camel pong” or “beer pong” game and whether the advertising of this promotional device can be said to encourage an irresponsible approach to alcohol consumption and/or excessive consumption.
27. The advertiser alludes to the beer pong game being featured in a video clip produced by the distributors of Carlton Dry beer and that the “give away” promotion builds on that existing marketing material. While the advertiser states that camel or beer pong is not a “drinking game”, a brief internet search

of the term reveals that the game is commonly played with cups containing beer and involves the consumption of beer as “part and parcel” of the game. Further, references to the game in popular culture such as the movies: “Road Trip: Beer Pong” and “Beerfest” would indicate that the game often involves excessive alcohol consumption.

28. In applying the ABAC standards, the Panel is mindful of the spirit and intent of the ABAC scheme which is concerned about the responsible and moderate use of alcohol. Further, the code preamble provides that, in assessing if an ad breaches an ABAC standard, the Panel is to have regard to the probable impact of the ad on a reasonable person, taking the ad’s content as a whole.
29. In this case it is likely that some, but not all, readers of the print ad and website would be familiar with the alcohol consumption connotations of the beer pong game. Given this background, the Panel concludes that both the print advertisement and web advertisement breach section (a) of the code. Further, the Panel thinks it is unwise to sell alcohol in conjunction with a game which often involves excessive alcohol consumption. In reaching this conclusion, the Panel has noted:
 - There is a sufficiently strong popular connection between beer pong and alcohol consumption for a reasonable person to take the game as a drinking game;
 - The nature of the game involves alcohol consumption and reasonably widespread depictions of the game in popular culture associate the game with excessive alcohol consumption;
 - The use of the game to promote the sale of alcohol fails to represent a “responsible approach” to alcohol consumption as required by section (a) of the ABAC.
30. The final point raised by the complainant is that the beer pong game association within the advertisement will have a distinct appeal to young people. The advertiser argues that, while the game was aimed to a younger demographic, there was no intention to market to under-age drinkers.
31. The Panel believes that, while the beer pong game may appeal across a wide range of consumers, as the advertiser accepts, it has primary appeal to a “younger demographic”. It is probable that the appeal is strong and evident to adolescents and accordingly the Panel finds both the print ad and website ad breach sections (a) (ii) and (b) of the ABAC.
32. The complaint is upheld.