

ABAC

**ABAC Complaints Panel
Determination No: 24/10**

**Complaint by Dr Marie Deverell
Product: Tooheys
Advertiser: Lion Nathan**

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

8 July 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a website advertisement for Tooheys beer by Lion Nathan (“the Advertiser”) and arises from a complaint by Dr Marie Deverell received on 25 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 by ABAC on 25 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 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. It is not a requirement that ABAC signatories pre-vet websites and pre-vetting approval was not obtained for this website advertisement although elements of the website used in other media received pre-vetting approval.

The Advertisement

9. The complaint refers to the "Tooheys Beer Economy website at www.tooheysnew.com.au/economy.php". This is one of the menu items on the general Tooheys New website and users must select that they are 18 or over to access the site. The web page features the Tooheys New logo above the text "Tooheys Beer economy. Lending your mate a hand when it's needed is just a part of being mates. The deal is that when the jobs done, it's his shout at the bar or the bottle shop. It doesn't matter if you've mowed his lawn or helped him re-tile his roof he owes you a beer. The question is: how many? Find out what it's worth with the Tooheys Beer Economy." Next to the text is a picture of a case of Tooheys New and a case of Tooheys New White Stag. Below is a section headed "Find out what it's worth" above pictures depicting the text "<Cutting your mates grass> <at ANZ stadium on game-day> <in a mankini> = 6 cases owed".
10. Next is a link to the television advertisement named "Tooheys New Grass" which 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 mowing a lawn at the front of a house while a second man is emptying grass cuttings as a woman walks out of the house while the voiceover says "Cutting a mates grass. Six beers."
 - (b) The man mowing the lawn and the woman leaving the house exchange a smile as the voiceover says "Cutting a mates grass." The second man is then shown looking angry and as his eyes follow the man mowing the lawn the voiceover says "No beers".
 - (c) A case of Tooheys New is shown on the grass with a sign hanging over it "For the Love of Beer" and the lawnmower passing by in the background as the voiceover says "Tooheys New. Official currency of the beer economy."
11. Next to the video advertisement is the heading "Get Involved". Under this heading there are two options:
- (a) The first is "I OWE YOU. Your mate has bailed you out of a tight spot. You owe him a beer or two.....Write him an IOU" above the text "Tooheys New". By selecting this option users are taken to a pdf document with a picture of a 375ml bottle of Tooheys New White Stag next to a glass of beer in a Tooheys New glass. In the bottom left hand corner of the page is the "Be Drink Aware" logo. On the right side of the page is the heading "I.O.U" with the Tooheys New and Tooheys New White Stag logos on either side. Further text follows "I _____ certify that you are entitled to: __ Schooner/s __ 6-pack/s __ Carton/s or Tooheys New/ Tooheys New White Stag in return for

Sign _____ Date _____ For the Love of Beer".
 - (b) The second is "WANT TO WORK FOR BEER? Start trading in the Tooheys Beer Economy" above a picture of one man handing another a six pack. By selecting this option users are taken to a pdf document which states "FOR THE LOVE OF BEER I WILL:_____ (and users may select from a list of favours including "Make a smoke signal" or "Bake a cake") Official Currency of the Beer Economy. For the love of Beer". At the bottom right hand side of the page is the Tooheys New logo.
12. Below are five boxes:
- (a) The first has a link to the Tooheys fan club site and Twitter.
 - (b) The second has a link to the four Tooheys New videos that form part of the beer economy campaign. The first is "Grass" which is described above and the others are "Fixing things" which is the subject of complaints 17-21/10 that comprise a separate determination, "Leak" and "Nan". Further videos have been added since the complaint was made.
 - (c) The third is entitled "Merchandise coming Soon" and features a picture of a T-shirt with the "Tooheys New" logo and two 375ml bottles of Tooheys New. There is no link from this box.

- (d) The fourth states “We Support” above the Waratah's logo and “We love our sport nearly as much as you do” and there is a link to the Sponsorship part of the website.
- (e) The fifth is entitled “Hot Offers Coming Soon” above a picture of a case of Tooheys New and “Join Team Tooheys and take advantage of our exclusive offers”. There is no link from this box.

The Complaint

13. The complainant argues that the advertisement:

- (a) Promotes excessive consumption and misuse of alcohol beverages;
- (b) Implies that alcohol beverages can be used to achieve social and personal success;
- (c) Sends the wrong message to consumers, in particular young males, that good mates don't help each other out for free but should be paid in beer.
- (d) The campaign is irresponsible and promotes the hazardous drinking culture in Australia.

The Code

14. 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 issued by the NHMRC.

Arguments in Favour of the Complaint

15. 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 are encouraged to do favours for one another in exchange for various quantities of beer and elevates the significance of beer during various events and stages in life.
- (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 in the advertisements on the website and on “Beer Economy” page under the heading “Find out what it’s worth”; and
 - The implication that the beer would be consumed by the friends depicted in the advertisements.
- (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 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; and
 - The suggestion that beer can be used, via the beer economy, to achieve social, personal or other success.

The Advertiser's Comments

16. 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) 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. It is also 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.

- (c) With regards to the website, the aim is to bring the concept of the ‘Beer Economy’ to life in a humorous fashion, with a variety of online tools. The website is an 18+ environment, and requires users to confirm they are of the legal drinking age prior to entering the site. Consumers make a specific decision to interact with the site. The website’s ‘Beer Calculator’ device allows consumers to combine three fictional and exaggerated scenarios together, which result in an embellished and quite absurd favour for a mate. The significance of each of these favours is then ranked by allocating an amount of beer owed to the favour in question.
- (d) The only people displayed on the website (with the exception of the uploaded advertisements) are in one photo of two men exchanging a six pack of beer, and the partly obscured photos used to represent different scenarios (i.e. sunburn) in the ‘Beer Calculator’. None of the people displayed in these executions is consuming alcohol. In the ‘Beer Calculator’ section, the product is not accompanied by people at all. Additionally, the beer tallied is shown in cases. This format was chosen intentionally, as cases are widely viewed as packaging formats to be stored over a period of time and shared amongst many. It is not expected a reasonable person would believe that one person will or should drink all of the alcohol in one occasion, just as we don’t expect them to do the same if they buy cases from a liquor store.
- (e) The website shows no change in mood as a result of the presence or consumption of alcohol. Beyond the uploaded advertisements, the only people displayed on the website are in one photo of two men exchanging a six pack of beer, and the partly obscured photos used to represent different scenarios (i.e. sunburn) in the ‘Beer Calculator’. None of the people displayed in these executions is a) consuming alcohol and b) shown to have any particular mood at all, therefore not allowing any kind of change to be communicated.
- (f) The website in no way suggests people can achieve social or personal success in the ‘Beer Economy’ – the favours are done because those involved are mates and the 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. Additionally, the website does not suggest one mate would only do another a favour because of the beer reward. It is not an incentive, but rather a thank you. The website is simply celebrating the fact this tradition exists.

The Panel's View

17. The complaint relates to the website for the advertiser's marketing campaign for the product "Tooheys New" beer under the theme "The Beer Economy". The premise of the campaign is argued by the advertiser to be based on an Australian tradition to say thank you to a person who has performed a favour or a good turn, by means of gifting the person some alcohol. From this basis, the campaign then sets out a range of generally-exaggerated scenarios in which one person gives an amount of the product to a friend for the performance of a favour or good deed. The increased difficulty or unpleasant nature of the deed performed results in a greater quantity of alcohol being gifted in return.
18. Dr Deverell's complaint argues that The Beer Economy campaign is irresponsible and promotes the "hazardous drinking culture in Australia". She has specifically identified that the exchange of alcohol for the performance of a favour sends a message to consumers, particularly young males, that good mates do not help each other out for free, but rather alcohol is required as payment. This is concluded as promoting excessive alcohol consumption and to be in breach of sections (a) (i), (a) (iii), (c) (i) and (g) of the ABAC.
19. The website contains a number of separate elements, some of which are linked to television commercials used as part of the campaign. Dr Deverell's complaint is taken by the Panel to be about the campaign theme as a whole, and the website as a whole, rather than its individual components. In other words, the complaint is not arguing that a single execution in the campaign specifically is in breach of the ABAC as such, but that the entire notion of "The Beer Economy" as a campaign theme - then reflected in the elements contained on the website - is irresponsible and breaches the identified sections of the ABAC.
20. The ABAC is a code of practice with an underlying model that requires individual executions of alcohol advertising comply with ABAC standards. The Code was developed prior to the use of the internet and assumes advertising taking place as single executions via the print media or through the electronic media. The use of websites, which often combine multiple elements of a campaign such as links to individual ads broadcast as television commercials, as well as various interactive elements, are generally more challenging in determining compliance with the ABAC than single executions which might be broadcast in the electronic media, given the Code was not modeled on a "whole of campaign" basis.
21. The ABAC pre-vetting scheme does not currently apply as a mandatory requirement to websites which means in this case that the television commercials which are linked to the website have been examined prior to being broadcast on that medium, but the other elements on the site and the site as a whole have not been subjected to pre-vetting.
22. The complaint identifies the specific sections of the ABAC which it is argued are breached, namely:
 - Sections (a) (i), (a) (iii) and (g) which in essence go to advertising not encouraging or promoting excessive alcohol consumption or consumption in excess of NHMRC Guidelines and

- Section (c) which provides that the presence or consumption of alcohol is not to be suggested as a cause or contributor to a significant change in mood or environment and that alcohol is not to be depicted as a cause or contributor to the achievement of success.
23. The Code's preamble provides that in applying the ABAC standards, regard is to be had to the probable impact of the ad upon a reasonable person to whom the ad is directed, taking its content as a whole.
24. In Determination 17-21 of 2010, the Panel considered a single execution within "The Beer Economy" campaign. It was noted that both the complaint and the position of the advertiser had a common starting point about the role which alcohol plays in Australian society. For the complainants, the essence of the concern was that the advertisement showed alcohol use as being "normalised" whereas the advertiser also contended that gifting alcohol to say thank you for a favour was indeed a normal and endearing quirk of Australian culture. The Panel observed that 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/behaviour are not to be encouraged or suggested, such as excessive consumption. The Panel can only apply the Code which is given to it and cannot import broader concerns about the normalisation of alcohol use.
25. The Panel does not believe the website can be regarded as promoting excessive alcohol consumption or consumption which is in excess of NHMRC guidelines. Both the links to the television ads and the "Find out what it's worth" section portrays scenarios which result in multiple cases of beer being gifted for particular actions. It does not follow however that the product "gifted" will be consumed in a single drinking session or by a single individual. Alcohol is often supplied in multiples *e.g.* a case of wine or a carton of beer and alcohol advertising reflecting this fact is not prohibited by the ABAC. What is not permitted is the encouragement of the consumption of alcohol in an excessive manner.
26. The website does not depict the consumption of alcohol, nor does it create an impression that the alcohol which is part of the beer economy is to be consumed in a binge drinking manner or in a manner inconsistent with the ABAC standards. It does "normalise" alcohol use but this is not a breach of the ABAC.
27. The second issue raised by the complaint concerns section (c) and whether the ad is suggesting that alcohol is a cause or contributor to the achievement of success. The advertiser's argument on this point is that the supply of alcohol is not the reason why a particular deed or favour is done; rather the good deed is done through "mateship". It is contended that the alcohol supplied is a thank you gift and not the cause of the performance of the favour. Dr Deverell, in contrast, interprets the message that the supply of beer is a causal factor *i.e.* the deed is being done in order to obtain the alcohol and not for "free".
28. There are three (3) elements of the website which conceivably bring this argument into play, namely:

- The “Find out what it’s worth” calculator
 - The “I owe you” and the “Want to work for beer” elements; and
 - The link to the individual television ads.
29. Reviewing the content of the website as a whole, the Panel has formed the opinion that section (c) (i) of the ABAC has not been breached. It was noted that the “want to work for beer” website element refers to “trading in the beer economy” which in isolation of the website as a whole might be seen to elevate the supply of beer from a gift for a favour done for reasons not linked to the supply of alcohol - to creating the impression that particular actions will be done for alcohol in a barter style system. In the Panel’s view, however, a reasonable visitor to the website would interpret the phrase in the context of the site as a whole.
30. The Panel notes that the advertiser has not (and under ABAC procedures was not required) to have the website pre-vetted. The Panel strongly recommends that the site and other sites used in marketing alcohol be pre-vetted.
31. The complaint is dismissed.