

ABAC

ABAC Complaints Panel Determination No: 29, 34 & 37/11

Complaint by Mr Paul Cook, Mr Sean Dawson and a Confidential Complainant
Product: Thirsty Camel Bottleshops
Advertiser: Thirsty Camel Bottleshops

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

13 May 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a billboard and television advertisement for Thirsty Camel Bottleshops (“the Advertiser”) and arises from complaints received 4, 8 and 20 April 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by ABAC on 4, 8 and 20 April 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 first and third complaint refers to a television advertisement and the second complaint refers to a billboard advertisement both part of the same advertising campaign for Thirsty Camel Bottleshops.
10. The television advertisement is set on public streets at night and is filmed like a home movie following two people's activities. It opens with two people spray painting on sheets of paper. We then see two people dressed in hoodies and black clothing walking through a train station, along public streets and other public places placing stickers over posters, graffiti and signs, running and laughing from one sign to the next. The stickers feature the word "HUMP" and are used to change the signs and posters to different messages including "We Hump Boxes", "Give Way Hump Pedestrians", "Hump on Red Signal", "Give Hump", "Man Hump A Van", "Prepare to Hump", "Hump", "Hump Satan" and "Hump Legend". We then see the two people that appear to be a male and female running toward a Thirsty Camel bottleshop as the screen is superimposed with the text and voiceover "Think Camel".

11. The billboard advertisement is placed on the external wall of a bus shelter shed opposite a McDonald's restaurant. It depicts a Casual Parking Sign with a sticker with the word "Hump" placed over the word "Park". On the bottom right side of the billboard is the text "Think Camel" next to the Thirsty Camel logo.

The Complaint

12. The first complainant argues that the advertisement promotes anti-social behaviour, vandalism, under-age drinking and youthful inconsideration of society.
13. The second complainant argues that:
 - (a) The advertisement uses a sexual euphemism which is at least offensive and at worst promotes a link between the consumption of alcohol and sexual promiscuity.
 - (b) The advertisement is not suitable for younger audiences but is directly opposite a McDonald's restaurant in Geelong West.
14. The third complainant argues that the advertisement promotes criminal activity, a traffic hazard and that the two people depicted in the advert are laughing and acting drunk running through the streets at night. The final shot sees them running into a thirsty camel bottle shop in the middle of the night to refuel for the next random act.

The Code

15. 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;
16. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children or adolescents ...
17. Section (c) of the ABAC provides that advertisements for alcohol beverages must:

- 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.

The Advertiser's Comments

- 18. The Advertiser responded to the first complaint and questions posed by the Panel by letter received 13 April 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. The core brand value of Thirsty Camel Bottleshops is irreverence. This communication strategy has been in place since the brand was launched in 2005. Whilst the 'camel' is widely accepted as irreverent, and could sometimes be seen as controversial, it's always light-hearted, left-of-centre and well-meaning.
 - b. The 'Think Camel' brand campaign has been designed as a light hearted way to encourage people to visit Thirsty Camel Bottleshops by using the word HUMP, which is synonymous with the camel, in amusing real-life situations.
 - c. In response to the specific points relating to breaching section (a)(ii) and (b) by promoting underage drinking the advert does not show the consumption of alcohol at any point in time, nor does it show the talent even entering a bottleshop, just running towards it. Furthermore the talent used in the advert are adults over 25 years of age with a full beard in view on the male talent.
 - d. Regarding the second questioned breach Section (a) and (a) (iii) of the code, as mentioned above no alcohol is consumed in the advert. When creating the TV advert we used removable stickers which were taken down immediately after filming. The intention was certainly not to encourage graffiti or vandalism of public property which is why stickers, which could be easily removed, and not paint or permanent materials, were used.
 - e. We believe, in all cases, our communication reflects Thirsty Camel core brand strategy of irreverence, but like any satire it can be taken out of context and might unintentionally offend someone. And in this case, we sincerely apologise for any offence that Thirsty Camel has caused.
- 19. The Advertiser responded to the second complaint and questions posed by the Panel by letter received 15 April 2011. The points made by the Advertiser in relation to the advertisement were:

- a. The core brand value of Thirsty Camel Bottleshops is irreverence. This communication strategy has been in place since the brand was launched in 2005. Whilst the 'camel' is widely accepted as irreverent, and could sometimes be seen as controversial, it's always light-hearted, left-of-centre and well-meaning. The advert in question depicts a Casual Parking sign with the word HUMP placed over the word Park.
 - b. In response to the suggested breach of Section (c) of the Code, the advert has been designed as a light hearted way to promote the Thirsty Camel bottleshops brand by using the word HUMP, which is synonymous with camels, in amusing real-life situations. In no way is it intended to imply that consuming alcohol could contribute to the achievement of sexual success.
 - c. Regarding the second questioned breach of Section (a)(ii) and (b) of the code the advert does not show alcohol in any form including being consumed and even the Thirsty Camel Bottleshops logo is designed as a minimal element on the creative. In relation to the placement of the advert the outdoor sites were selected by our media buyer OMD to appear in close geographical location to Thirsty Camel bottleshops but were certainly not intentionally positioned near children to promote underage drinking.
 - d. We believe, in all cases, our communication reflects Thirsty Camel core brand strategy of irreverence, but like any satire it can be taken out of context and might unintentionally offend someone. And in this case, we sincerely apologise for any offence that Thirsty Camel has caused.
20. The Advertiser responded to the third complaint by email received 20 April 2011. The points made by the Advertiser in relation to the advertisement were:
- a. At no point in time during the advertisement did we use spray paint on walls or private property, as per my previous response the intention of our advert was not to encourage graffiti and that is why only stickers which could be, and were, easily removed were used.

The Panel's View

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

The Procedural Aspects

- 22. 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.
23. 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.

The Substantive Aspects

The TVC

24. The essence of the first and third complaint concerning the television ad is that the ad encourages anti-social behaviours such as vandalism. This aspect falls more squarely under the standards applying to advertising generally contained within the AANA Code of Ethics than it does to the alcohol as a product standards contained in the ABAC. In other words, if the same ad was promoting milk with the final scene having the two characters arriving at a milk bar rather than a bottle shop, presumably the complainant would be equally concerned about the 'anti-social theme' of the ad.
25. The general question about the ad promoting anti-social behaviour and youthful inconsideration of society will be considered by the Advertising Standards Board under the Code of Ethics. The Panel has a more specific role and that is to assess the ad against Sections (a) and (b) of the ABAC. This means the questions are effectively:
- Does the ad fail to present a responsible approach to alcohol consumption by promoting offensive behaviour or excessive alcohol consumption? and
 - Does the ad encourage under-age drinking and/or does it have a strong or evident appeal to children?
26. The advertiser argues that the ad is about the irreverent Thirsty Camel brand and not about alcohol consumption as such. It points to the fact that the ad does not show alcohol use and that the characters featured in the ad are over 25 years of age, with one male shown to have a beard.
27. The Panel has previously considered the operation of Section (a) of ABAC. It can be noted:

- The concept of a “responsible approach to the consumption of alcohol” is wider than actual consumption;
 - The term “offensive behaviour” in Section (a) (iii) needs to be understood within the context of the section and the Code as a whole and refers to behavior which is related to alcohol use or misuse e.g. drunken loutish behaviour.
28. The Panel does not believe the television ad breaches section (a) of the ABAC. There is no suggestion that the actions of the characters have been affected by alcohol use and the arrival of the couple at the bottle shop at the conclusion of the ad suggests that any alcohol use would take place after the installation of the “Hump” messages and not before these actions occurred. As mentioned, the main issue of the ad generally, (as opposed to its alcohol product aspect), namely promoting anti-social behaviour, will be decided by the ASB.
29. The second question is whether the television ad has a strong or evident appeal to children or adolescents. Here the argument is whether the theme and appearance of the ad would resonate more strongly to an under the age of 18 audience than to the population as a whole.
30. In assessing if an ad breaches an ABAC Standard, The Panel is to have regard to the probable impact of the ad upon a reasonable person, taking the ad’s content as a whole. On balance, The Panel does believe the ad breaches sections (a) (ii) and (b) of the Code. In reaching this conclusion The Panel noted:
- The appearance of the characters dressed in “hoodies” and the actions of engaging in “urban guerilla” activities are considered to resonate strongly with adolescent males.
 - The term “hump” has a sexual context likely to be regarded as amusing, to younger males in particular.
31. Taken as a whole, the Panel believes a reasonable person would believe the ad has strong and evident appeal to an adolescent male audience and that this appeal is more pronounced than its appeal to the wider community.

The Billboard

32. The second complaint goes to a billboard which is part of the same marketing campaign as the television ad. The complaint in essence is that the term “Hump” is a sexual euphemism and is offensive and possibly promotes a link between alcohol consumption and sexual promiscuity. The complaint is also concerned that the location of the billboard near a McDonald’s restaurant will mean it will have a younger audience.
33. The ABAC is primarily a code which goes to the content of an ad irrespective of the medium which is used to publish, display or broadcast the ad. This means that however the ad is disseminated, it must comply with the ABAC Standards.

Some Codes of Practice, such as that applying to television advertising do place restrictions on when alcohol can be shown i.e. generally after 8:30pm.

34. For billboards, the outdoor media guidelines limit the placement of alcohol ads on billboards within a 150 metre line of sight of schools. There are no restrictions however in placing alcohol ads nearby to shopping centres or fast food outlets. Hence placing the billboard near a McDonald's restaurant is not of itself a breach of the ABAC.
35. Section (c) of the ABAC provides that alcohol ads are not to suggest that the consumption or presence of alcohol contributes to a change in mood and the achievement of sexual success. This means an alcohol ad can be "sexy" however, an ad cannot suggest that there is a causal relationship between alcohol and the achievement of sexual success.
36. The ad depicts a mock parking sign, where the word "Hump" is superimposed over the word "Parking" so instead of an arrow pointing towards "Casual Parking", the arrow points towards "Casual Humping". The logo and name "Thirsty Camel" is also displayed on the corner of the ad.
37. The advertiser argues that the word "Hump" refers to the hump on a camel. While this may be true, there is no doubt that the term "Hump" is, as the complainant points out, a common slang for sex. The "humour" in the ad comes from the sexual connotations.
38. That said, The Panel does not believe the ad can be said to breach the Section (c) standard. It requires too many assumptions in a chain of reasoning to reach the point that simply having the expression "Casual Humping" within the context of the stickers going over the term "parking, would mean to a reasonable viewer that shopping at the retail outlet will lead to sexual success.
39. The complaints in relation to the TVC are upheld and the complaint regarding the billboard is dismissed. The Panel again recommends that the advertiser becomes a signatory to the ABAC scheme and avails itself of the advantage of having its advertising independently pre-vetted prior to use. It is noted that the last two determinations involving the advertiser have resulted in complaints being upheld and this clearly indicates that the advertiser would benefit from pre-vetting of its advertising to ensure good standards of advertising practice are being observed.