

ABAC

ABAC Complaints Panel Determination No: 51/10

Complaint by Miss Vesna Rozman Product: Tooheys Advertiser: Lion Nathan

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

28 October 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 Vesna Rozman received on 5 October 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 5 October 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 been determined within the 30 day 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 [10066].

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 cleaning a boat when a second man walks toward him and places a carton of beer on top of the boat while the voiceover says "Helping a mate clean his boat. One case."
 - (b) The same man is shown in bathers, snorkel, mask and flippers on a jetty next to two cartons of beer as the second man hands him a brush and points to a boat moored a distance from the jetty while the voiceover says "The boat's still in its mooring. Two cases".
 - (c) The man in snorkeling gear is then seen stepping into the water and underwater as the voiceover says "And the moorings a long way from shore. Ten cases".
 - (d) The man is then seen emerging from the water and touches the side of his face which is bleeding as the voiceover says "And that shaving cut's still bleeding a touch. Twenty cases. That's an unusually big fin for a dolphin". We then see a shark fin circling the man as he tries to pull himself up onto the boat and the voiceover says "50 Cases. Tooheys New. Official currency of the beer economy". In the final scene we see

part of a stack of at least four cartons of beer rocking as if on a boat with a flag superimposed above them with the text “For the love of beer”.

The Complaint

10. Ms Rozman argues that the advertisement suggests you need to buy ridiculous quantities of beer and mixes beer and boating which is unsafe and should not be promoted.

The Code

11. 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 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

12. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 13 October 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) At no stage during the advertisement is consumption shown – the only beer shown is in cartons. This format was chosen intentionally, as it is commonly understood to be a format that is both shared amongst many and stored for consumption at a later time. Secondly, the cartons of beer that are shown are only ever shown on land – the first appears at the start when someone is cleaning a boat, the next two appear on a jetty. Once

the man is in the water, near a boat out in the middle of the ocean, no alcohol is present or shown again. The key message is that the beer you give as a 'thankyou' to a friend who has helped you with a favour should be commensurate to that favour. The TVC does not suggest the beer given as a gift has been, is going to be, or should be consumed at that very point in time, as would be the case with any gift. We do not believe that a reasonable response to this TVC would be to assume that the man in the ad is drinking and operating a boat, as this is not shown or suggested at any point.

- (c) The significance of the 'thank you' beer increases in line with a series of very exaggerated favours. The aim is to bring the concept of the 'Beer Economy' to life in a humorous and embellished fashion. The absurdity of the situation is intentional, and it is not expected that a reasonable person would assume this is a common occurrence, but rather a comic hyperbole. No alcohol is consumed and the beer is tallied in cartons being a format widely viewed to be stored over a period of time and shared amongst many. There is no suggestion the man will consume the beer all on one occasion, or indeed on his own.
- (d) There is no-one depicted operating a boat, just cleaning it. A man is shown jumping into the water, however no consumption occurs prior to, during or after this scene. While in the water the presence of beer is removed from the scene. Whilst the cartons at the end do rock slightly this is simply a brief nod to the broader storyline. There is no suggestion someone is consuming alcohol on a boat, the cartons are closed and there is no person present in the shot.

The Panel's View

- 13. The complaint relates to a television commercial in a series 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 thankyou 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.
- 14. The complainant is concerned that this advertisement promotes mixing beer with boating and also suggests the need to buy ridiculous quantities of beer.
- 15. The Advertiser contends that at no time is there any suggestion that the boat will be operated and there is no alcohol consumption shown in the ad.
- 16. The relevant ABAC standards raised by the complaints are:
 - Sections (a) (i), (iii) which provide that an advertisement is not to encourage excessive consumption.

- Section (d) which provides that an advertisement is not to depict any direct association between the consumption of alcohol beverages and the operation of a boat.
 - Section (a) requiring alcohol advertisements to present a mature, balanced and responsible approach to the consumption of alcohol.
17. The argument about the ad encouraging excessive consumption is based on the “price” or the “beer economy” value given to the particular favour given to a mate, namely cleaning his boat in various exaggerated scenarios. The beer economy value is described as respectively “one case”, “two cases”, “twenty cases” and “fifty cases” for each of the favours provided.
 18. The Advertiser argues that cases of beer are “packaging formats that are stored for periods and shared amongst many”.
 19. The Panel has previously considered whether this type of scenario encourages excessive consumption and 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.
 20. 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.
 21. The second issue is whether the ad breaches section (d) of the Code by depicting a direct association between the consumption of alcohol beverages and the operation of a boat. A majority of the Panel does not believe the ad breaches this section of the Code. There is no depiction or suggestion of operating a boat and the ad is focused on the task of cleaning the boat. There is also no depiction of consumption of alcohol during the ad nor any suggestion that alcohol has been or will be consumed in association with operating the boat. It is clear the beer is gifted in a closed format as a gift to thank the friend who is cleaning the boat.
 22. The final issue concerns whether the depiction of a boat and alcohol in the advertisement 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 the complainant is that it is inappropriate to mix boats and alcohol. In this case it is clear that the beer is gifted in a closed format as a gift to thank the friend who is cleaning the boat with no suggestion it will be consumed in conjunction with operating a boat
 23. Accordingly, the complaint is dismissed.