

ABAC

ABAC Complaints Panel Determination No: 67/12

Complaint by Dr Karl O'Callaghan
Product: Various
Advertiser: Woolworths Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

28 September 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for various alcohol beverages by Woolworths Limited (“the Advertiser”) and arises from a complaint received on 4 September 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 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 was received by the ABAC Panel on 4 September 2012.
- 7 The Panel endeavour 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 determined within that 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 did not obtain pre-vetting approval for this advertisement.

The Advertisements

- 9 The advertisement features the BWS and Woolworths Liquor logos along the top of the page.
- 10 Below the logos is the offer "30 % off all wine when you buy 6 or more bottles".
- 11 Next to that offer is the tagline "Happier Father's Day". Around the tagline is the date of Fathers' Day in a black circle, a picture of a catalogue with the tagline on the front, a tumbler with a beverage on ice on a table and the text "Catalogue out now".
- 12 The middle of the advertisement features images of alcohol beverage products together with their prices and the savings.
- 13 The bottom of the advertisement features images of ten different bottle of spirits separated with a + sign and the text "Buy any ONE of these Popular" under the first group of bottles and the text "& any ONE of these Premium" under the second group of bottles. The following text accompanied the images "Buy one for you & one for Dad. Spirit Combo Both for \$72."

The Complaint

- 14 The complainant argues that the use of the term 'Happier Father's Day' rather than 'Happy Fathers' Day' within the advertisement implies that alcohol will contribute to a change of mood or environment as disallowed under the ABAC.

The Code

- 15 The ABAC provides at Part 1 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

16 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 17 September 2012. The principal points made by the Advertiser were as follows:

- a) Woolworths takes its advertising obligations very seriously.
- b) The concept for "Happier Father's Day" was directed at the gift that "Fathers" could appreciate more than the usual stereotypical gifts of handkerchiefs and socks. It was not Woolworth's intention to suggest the state of the person through greater consumption of alcohol as suggested by the complainant.
- c) All communication around this event highlighted the opportunity to purchase a gift solution to make it an even "Happier Father's Day" as evidenced by the number of gifts and unique bonuses on offer during this period as displayed in store, in catalogue and in press advertising.
- d) The "Happier Father's Day" concept was never intended to imply greater alcohol consumption on Fathers' Day. All elements of Woolworths' advertising and instore execution did not depict "consumption" or that the presence of alcohol, as part of this celebration, would make "Fathers" happier by excessive alcohol consumption. Nor did BWS suggest that consumption of alcohol by "Fathers" would induce a "happier" state of mind.

The Panel's View

17 The complainant is concerned that an advertisement for alcohol beverages that uses the tagline "Happier Father's Day" suggests that alcohol causes a change in mood as its consumption or presence as a gift on father's day results in the father having a "happier" Fathers' Day in breach of section (c) of the ABAC.

18 The section (c) standard prevents the suggestion that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment.

19 The advertiser responded to the complainant's concern by stating that:

- a) The concept for "Happier Father's Day" was directed at the gift that "Fathers" could appreciate more than the usual stereotypical gifts of handkerchiefs and socks.
- b) It was not Woolworth's intention to suggest the state of the person through greater consumption of alcohol as suggested by the complainant. All elements of Woolworths' advertising and in-store execution did not depict "consumption" or that the presence of alcohol, as part of this celebration, would make "Fathers" happier by excessive alcohol consumption.

20 The Preamble to the Code provides guidance in how the Panel is to assess an ad against ABAC standards. The Panel is to have regard to the probable impact of the ad upon a reasonable person, taking its content as a whole.

- 21 The concept of the “reasonable person” is borrowed from the traditions of the Australian common law system. Essentially, it means that an “objective” as opposed to a “subjective” test is to be applied. This means that what is important is not that a complainant personally formed a view about the ad, but whether a person who held the ideas, perceptions and attitudes common within the clear majority of the community would hold the same view.
- 22 The Panel believes that the advertisement does breach the section (c) standard. The strapline “Happier Father’s Day” positioned immediately adjacent to a drink, which in the context would be taken to be alcoholic, suggests that alcohol is a cause or contributor to a ‘happier’ mood on Fathers’ Day. While this may not have been the Advertiser’s intention, the test is how the advertisement would be taken by a viewer and the Panel believes a reasonable person would share the conclusion reached by the complainant.
- 23 Accordingly the complaint is upheld.