

ABAC

ABAC Complaints Panel Determination No: 74/12A

Complaint by Mr Phil Beresford Product: Carlton Dry Advertiser: CUB

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

22 November 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Carlton Dry by CUB (“the Advertiser”) and arises from a complaint received on 24 October 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 24 October 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 has been determined within 30 business days.

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. This advertiser did not obtain pre-vetting approval for this advertisement but did obtain interim approval of the audio clips for a possible radio campaign that did not eventuate.

The Advertisement

- 9 The advertisement is a banner accompanied by one of four audio clips that appears on Spotify which is a digital music streaming service.
- 10 The banner is set against a background of sky and grass. There is prominent white and blue text at the top of the page "Win 2 x Festival Passes Instantly". Smaller print at the top right side of the page states "Terms & Conditions apply. Promotion ends 30/11/12". In the middle of the page in prominent light blue bubble text is "Hello Festival Season" and next to it click through text "Find out More>". At the bottom of the page on the left side is small print "18+ For people over the age of 18 only" and on the right side the text "Hello Beer" next to two stubby bottles of Carlton Dry.
- 11 Four separate audio clips were used on Spotify to accompany this and other banners:
 - a) So what's your festival? Carlton Dry are giving you the chance to win two festival passes instantly when you buy Carlton Dry or Carlton Dry lime. There's nine festivals and you can choose the one you want. Are you a Big Day Out type or more the Future Music kind? Click on the banner at the bottom of the page for more details and full terms and conditions. 18+ only. Closes 30/11/12. Authorised under permit numbers NSW LTPS1205256 ACT TP1202353 Vic121432 SA T121123.
 - b) Hey are you choosy? Carlton Dry are giving you the chance to win two festival passes instantly when you buy Carlton Dry or Carlton Dry lime. There's nine festivals and you can choose the one you want. Want a Splendour in the Grass pass or are you headed Southbound? Click on the banner at the bottom of the page for more details and full terms and conditions. 18+ only. Closes 30/11/12. Authorised under permit numbers NSW LTPS1205256 ACT TP1202353 Vic121432 SA T121123.
 - c) Dust off the glowsticks. Carlton Dry are giving you the chance to win two festival passes instantly when you buy Carlton Dry or Carlton Dry lime. There's nine festivals

and you can choose the one you want. Are you a Stereosonic sort or more in a Summadayze phase? Click on the banner at the bottom of the page for more details and full terms and conditions. 18+ only. Closes 30/11/12. Authorised under permit numbers NSW LTPS1205256 ACT TP1202353 Vic121432 SA T121123.

- d) Got a favourite festival? Carlton Dry are giving you the chance to win two festival passes instantly when you buy Carlton Dry or Carlton Dry lime. There's nine festivals and you can choose the one you want. Are you a Groovin the Moo dude or do you want a date with Homebake? Click on the banner at the bottom of the page for more details and full terms and conditions. 18+ only. Closes 30/11/12. Authorised under permit numbers NSW LTPS1205256 ACT TP1202353 Vic121432 SA T121123.

The Complaint

- 12 The complainant argues that the content, timing and placement of the advertisement while listening to children's songs is irresponsible and unacceptable.

The Code

- 13 The ABAC provides at Sections (a)(ii) and (b) that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - ii) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents...

The Advertiser's Comments

- 14 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 12 November 2012. The principal points made by the Advertiser were as follows:

- a) Spotify is described as a music library that offers access to millions of songs. It is available for use on PC, Mac, home audio systems and mobile phones. According to the Spotify website, account holders may access the Spotify service by a range of subscriptions:

“Free Service: an ad-based, free-of-charge service;

Unlimited Service: a subscription fee-based service;

Premium Service: an ad-free, subscription fee-based service which enables you to listen to music while not connected to the internet, among other features; or

Mobile Service: via a supported mobile handset.”

In the Spotify Terms and Conditions it states: “In order to use the Spotify Service, you need to (a) be 18 or older, or be 13 or older and have your parent or guardian's consent to these Terms, (b) have the power to enter a binding contract with us and are not barred from doing so under any applicable laws, and (c) be resident in the Local Country. You also warrant that any registration information that you submit to Spotify is true, accurate and complete, and you agree to keep it that way at all times.”

- b) The advertisement in question was an audio advertisement that was accompanied by an online advertisement (provides a click through for more information). The

advertisements themselves are promoting Carlton Dry's music festival association and a ticket giveaway to selected music festivals.

- c) Advertisements are 'served' to subscribers using the free Spotify service and the content they receive will vary depending on their age. Alcohol advertisements are served exclusively to those who are registered as 18 years and over. Currently all Australian Spotify subscribers have registrations that are based on their Facebook profile. Simply, the consumer allows Spotify to duplicate their Facebook profile and this detail is used to establish various details including age. Consumers must also choose their type of Spotify subscription (see details above).
- d) "Spotify specifically targets ads based on the *registered user* age of that profile. For alcohol ads in Australia, we only target users whose registered age is 18 years or older. This targeting was in place at the time that the complaint was made" Radinck van Vollenhoven – Spotify. Senior Sales Manager Australia & New Zealand Spotify Australia Pty. Ltd.
- e) In the case of the complainant they have opted for an ad based free of charge service. The fact that advertisements will be presented is clearly articulated in the promotion of the service and so too in the terms and conditions. Subscribers of the free service will receive an average of three to five minutes of advertising every 60 minutes. The advertisements served are not connected to track selection, as this would be an inexact and very subjective filter. Spotify offers millions of songs across all genres. Whilst it could be argued that some music selections are clearly targeted to certain age groups the bulk of music would be difficult to categorise. Also it would be impossible to pinpoint age based on say sixty minute's worth of songs that may be completely varied. In addition to this, the latter is not the approach taken by Spotify and as such it is not an option for advertisers. That said, it is our belief that the method in place is best practice when it comes to targeting advertising in an appropriate and responsible way. Alcohol advertisements are only served to those subscribers who are registered as aged 18 years or over. In order to avoid advertisements, including alcohol advertisements, a user must choose a paid subscription, which are advertisement free or the other exception is for subscribers registered as 17 years or under, where they will not be served alcohol advertisements.
- f) The advertisements are promoting Carlton Dry's music festival sponsorships and the fact that consumers can go into a draw to win tickets to these festivals. It's worth noting that the complainant was concerned by the fact an alcohol advertisement played on the site rather than the content of the advertisement itself. In fact their complaint makes no reference to the advertisements themselves. That aside, it is our belief that the advertisements comply with section b) and the code in its entirety. In terms of the online advertisement, it's a very simple/static design. Imagery wise we see: sky/grass, two Carlton Dry stubbies and a speaker. Wording includes: "Hello Festival Season", the Carlton Dry slogan "Hello Beer", an alcohol responsibility message that includes an 18 plus symbol and the words "For people over the age of 18 only" plus some information relating to the competition. The font itself is blue and uses a thick script style. We don't believe that these elements in combination have a strong or evident appeal to children. The audio ads feature a male voice (the talent is 33 years of age) but the words change based on the music festivals being promoted. These festivals include: Big Day Out, Homebake, Southbound, Future Music, Splendour in the Grass, Stereosonic, Groovin the Moo and Summadayze. Each is primarily promoting a ticket giveaway and also includes an 18 plus message and information about terms and conditions. The tone is upbeat and whilst there are some catchy references to the festivals the advertisements also share basic

promotional information. Whilst the word “glowsticks” has been singled out it needs to be viewed in context – as one word of many – considering there were four different audio advertisements each 30 seconds in duration. Glowsticks are used for a variety of purposes however in this instance they are referenced due to their popularity at music festivals. In relation to the reference to music festivals, sponsorship arrangements do not fall under the ambit of the ABAC (activation is covered under “Promotion of alcohol at events”) although any advertising that brings that sponsorship to life does. As background the music festivals that Carlton Dry sponsors are in the majority 18 plus only events and those that aren’t have certain sections where access is strictly limited to those 18 years and over (where alcohol is available for purchase). As argued above we don’t believe the creative in its entirety breaches the code including the references to music festivals. We believe the way we have communicated the creative works for our target market of consumers aged 18 to 34 (as it was designed to) but in its entirety does not show a strong or evident appeal to children or adolescents. In addition to the creative itself, it’s worth reiterating that these advertisements are only served to subscribers registered as 18 plus (which includes the complainant). Spotify is overwhelmingly aimed at and used by adults. In fact 93% of subscribers are registered as 18 plus and over.

The Panel’s View

- 15 This is the first occasion the Panel has considered a complaint concerning an alcohol beverage advertisement which has been placed on a music streaming site. The ABAC was initially designed to capture advertising placed on ‘traditional’ media, such as print, television, radio, cinema and outdoor sites such as billboards. The ABAC Scheme was extended to alcohol advertising via the internet in 2004. Progressively, the Panel has also dealt with advertising disseminated via social media such as Facebook. The current case is a further example of how the revolution in communications technology has opened up new ways in which products such as alcohol are able to be marketed.
- 16 While the ABAC Scheme was modeled on mediums that pre-dated the internet, it has been able to cope with the rapid advances in communications technology largely because the Scheme is based on principles which apply to the content of alcohol advertising, rather than focusing on the medium by which the advertising is carried. In other words, the ABAC imposes standards which advertising is to satisfy, whether the advertising is found on television, in a newspaper or transmitted through a music streaming site, such as Spotify.
- 17 This feature of the ABAC, being a code of practice which deals with the content of advertising rather than where the advertising is found, however, in the current case essentially means that the complaint must be dismissed. This is because Mr Beresford is not raising a concern about the content of the advertisements which were streamed onto his Spotify account, but rather he is concerned that any alcohol advertising was sent to his site, irrespective of its content.
- 18 Mr Beresford essentially argues that he has opened a Spotify account so that his young daughter can access music which is suitable for young children. In this regard, the screenshot of the Spotify account which Mr Beresford supplied with his complaint confirms that the music and artists which have been accessed are clearly catering for children. He then goes on to argue that either Spotify and/or the alcohol advertiser should have been aware of this fact and, hence, the presence of alcohol advertisements was totally inappropriate.
- 19 There is no doubt that Mr Beresford’s concern is genuine and is reasonable. He is a parent who is exercising appropriate diligence in his daughter’s use of the Spotify music

facility. The issue for the Panel, however, is that the way in which the Spotify system operates, combined with the nature of the ABAC in focusing on advertising content and not its placement, means that it cannot uphold the complaint.

- 20 The advertiser has provided detailed information as to how Spotify operates. Of note is that:
 - a) The site is open to persons over 18 years of age, or to persons between 13 and 17 years of age if such a person has a parent or guardian's consent;
 - b) The Spotify free service is subject to advertising;
 - c) Alcohol advertising will appear on the free service for persons over 18;
 - d) Spotify does not operate a model which purports to match advertising products or types to particular music genres or tastes;
 - e) Hence, for persons over 18, alcohol advertisements will appear on their sites which receive the free subscription, irrespective of the music and artists the subscriber has chosen.
- 21 The Panel has not purported, nor does it have the power, to compel answers from Spotify as to the nature of its operations. A review of publically available information about Spotify, however, verifies the explanation of the service provided by the advertiser.
- 22 What this means is that presumably Mr Beresford opened a Spotify account in his name, with the intention of accessing music suitable for his daughter. By doing this, however, given that Mr Beresford is over 18, his account was subject to advertising including alcohol advertising. The fact that Mr Beresford has chosen music that is suitable to children does not prevent alcohol advertising appearing on his account.
- 23 In any event, the ABAC Scheme does not impose obligations on Spotify. Rather, it is the advertiser, CUB, which has committed itself to advertising in a manner consistent with the ABAC standards. For its part, CUB argues that it is legitimate for it to use a medium such as Spotify for its advertising and that its advertisements are only transmitted to Spotify accounts held by persons over the age of 18. Further, it is argued that the actual content of the advertisements which appeared on the Spotify site do not encourage underage drinking, nor can it be said that the content of the advertisements has strong or evident appeal to children. These are the two relevant ABAC standards.
- 24 While Mr Beresford's concern is understandable, it is not based on an argument that the content of the advertisements have strong or evident appeal to children. Rather, the argument is that there should have been no alcohol advertising, irrespective of its content, on his Spotify account. As explained, however, the ABAC does not purport to limit where alcohol advertising can appear and, hence, the fact that it did appear on his Spotify account is not of itself a breach of any ABAC standard.
- 25 The Panel has reviewed the content of the actual advertisements and does not believe that it can be said that the advertisements are inconsistent with ABAC standards in terms of appeal to children.
- 26 Accordingly, the complaint is dismissed.