

ABAC

ABAC Complaints Panel Determination No: 76-7/11

Complaints by Miss Louise Fischer & Dr Phill Read Product: Various Advertiser: Dan Murphys

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

30 September 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement by Dan Murphys (“the Advertiser”) and arises from complaints received 30 August & 1 September 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 30 August & 1 September 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 complaint refers to three outdoor advertisements by Dan Murphys.
10. Each advertisement features a strip at the top of the ad with the text "Buy Dad what he really wants" on the left side and on the right side a drawn head and shoulders picture of a mature man. Each of the three advertisements includes a different photograph below. The first features a photograph of a barbecue with food cooking and a bottle of Wolf Blass Shiraz next to a glass with a small amount of red wine. The second photograph includes a 375ml bottle and full glass of Coopers 62 on a bar table in front of a pool table. The third photograph includes a bottle of Chivas Regal on a side table next to a leather sofa with a partially filled glass sitting on the arm of the sofa and an open fire in the background. Each photograph is superimposed with a gift tag with the text "Father's Day Sunday 5 September", the Dan Murphy's logo with the text "Lowest Liquor price guarantee" and the "ID required if under 25 logo".

The Complaints

11. The first complainant argues that the advertisement does not include any photo or other depiction to indicate that the advertiser is not targeting children or other underage persons to buy or desire to buy alcohol. The very public locations (including many public transport stops all of which are frequented by school aged children) suggest it is targeting underage persons as much as adults which is inappropriate.
12. The second complainant argues that the advertisement is likely to encourage children to desire buying alcohol for their father and also results in alcohol appealing to children or adolescents. A child would get the impression that purchasing an alcohol beverage as a present is how they can show their love for their father on father's day resulting in them asking their mum to buy their father alcohol and as father's are aspirational role models for their kids it is also likely to result in the child desiring to be like their father and desiring alcohol.

The Code

13. 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 underage drinking;
14. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children and adolescents and accordingly:
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages.
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by letter received 12 September 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. The advertisement is not directed at children or adolescents. Only adult persons are entitled to purchase alcohol as noted in the "ID under 25" logo appearing in the bottom left hand corner.

- b. No advertising was located near schools in accordance with Dan Murphy's specific instructions to its media agency.
- c. The design and imagery has been styled to attract an adult audience, not minors.
- d. The product type advertised has been carefully selected to appeal only to the adult audience.
- e. Dan Murphy's advertising record is exemplary in the manner in which it carefully directs its advertising, including special events such as Father's Day, to its intended adult audience.
- f. Dan Murphy's takes very seriously its obligations at store level to avoid any underage drinking.

The Panel's View

16. The complaints raise both substantive and procedural issues.

The Procedural Aspects

17. 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.
18. 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 members 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

19. Both complainants are concerned that the ad is targeting children and adolescents, although the basis of each complaint is somewhat different. The first complainant raises the location of the ads (bus shelter sheds) which are frequented by school-age children and that the content of the ad does not include material to indicate that the advertiser is not targeting children. The second complaint argues that the ad

will encourage a child to seek to have alcohol purchased for their father and this in turn will have a “role model” like influence on the child’s perceptions of alcohol.

The location of the ads on bus shelter sheds

20. The ABAC is a content as opposed to a placement code. By this, it is meant that the code sets out standards which alcohol advertising must satisfy, irrespective of the medium in which the ad is broadcast or displayed *i.e.* print, outdoor media, electronic media or the internet. The ABAC does not specify where ads can be placed and this can be contrasted to the outdoor media guidelines which do restrict the location of ads *e.g.* 150 metres in line of sight of a school. In this case it is not claimed that the ad was within a specified radius of the school, but rather that it was on bus shelter sheds which would be used by school-age children.
21. There is no doubt that school-age children would see the ads, but this is of itself not a breach of the ABAC. The ad will breach the ABAC if its content can be fairly said to be encouraging underage drinking or has a strong or evident appeal to children or adolescents. This appeal does not arise merely because of the location of an ad.

The content of the ad

22. In past decisions, the Panel has considered ads on the basis of arguments that they have self-evident appeal to children or adolescents and hence encouraged children or adolescents to drink alcohol. Often this has entailed an examination of the imagery, use of colours and depictions of activities within advertising which could be said to appeal to a youth culture or otherwise encourage a child or an adolescent to consume alcohol. The implication in these previous cases has been that young people will be attracted to drinking alcohol beverages themselves.
23. The current case is a little different. It does not raise a concern that the ads will encourage directly a child or adolescent to drink alcohol; but rather that they will seek the acquisition of alcohol for a parent as a gift. This might then indirectly encourage alcohol use by the child. The nature of the ads themselves is sombre in colour and imagery and could hardly be described as exciting or eye-catching in style.
24. For its part, the advertiser contends that the product types advertised, together with the design and imagery used, have been selected to appeal to an adult audience. This is further reinforced, it is claimed, by the reference in the ad to ID being required for customers under the age of 25.
25. The preamble to the ABAC provides that, in assessing the consistency of an ad with an ABAC standard, the Panel is to have regard to the probable impact of the ad on a reasonable person, taking the content of the ad as a whole.
26. On balance, the Panel does not believe the ads are a breach of the ABAC. While the ads are a call to family members to purchase a gift of an alcohol product for Fathers’ Day, the style and appearance of the ads can be fairly said to be targeting an adult audience. The Panel does not believe that the pitch of the ads is towards children or adolescents under the age of 18, but rather to adults who have fathers.

The Panel does not believe the ad, taken as a whole, can be said to be strongly appealing to school-age children or adolescents.

27. Accordingly, the complaints are dismissed.