

ABAC

ABAC Complaints Panel Determination No: 82/12

Complaint by Mr Chris Muir Product: Schweppes Soda/Bacardi Advertiser: Schweppes Australia Pty Ltd

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

7 December 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement produced by Schweppes Australia Pty Ltd (“Advertiser”) which includes a Bacardi product and arises from a complaint received 19 November 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 on 19 November 2012.
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. The complaint 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 alcohol beverage advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an outdoor advertisement. The advertisement is a photograph of a drink being prepared. The ingredients on the bench include citrus fruits, Schweppes soda water, ice and in the background a bottle of Bacardi. We only see the midriff and hands of the person preparing the drink.
10. The tagline superimposed on the picture is "Mix It Up At Home."
11. Below the picture is the text "cocktailrevolution.com.au" and the Schweppes logo with a hand holding a cocktail glass emerging from the logo.

The Complaint

12. The complainant is concerned about the inclusion of Bacardi rum in what purports to be an ad for the non-alcoholic beverage Schweppes Soda. He is also concerned about the failure to include a responsible drinking message in the advertisement.

The Code

13. The Preamble to the ABAC states that the Australasian Associated Brewers, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of **all advertisements for alcohol beverages** produced for publication or broadcast in Australia other than point of sale material produced by alcohol beverage retailers, comply with the spirit and intent of this Code. The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.
14. The Definition section of the ABAC states, "alcohol beverage includes any particular brand of alcohol beverage".
15. The ABAC Part 1 provides that advertisements for alcohol beverages must-
 - (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:

The Advertiser's Comments

16. Bacardi Lion responded to the substantive issues raised in the complaint and questions posed by the Panel by way of letter dated 23 November 2012 and email dated 27 November 2012. The principal points made by Bacardi Lion are as follows:
 - (a) Bacardi Lion agreed with Schweppes that the Bacardi product trademark could be used generally but provided input which was:
 - i) guidelines in regards to placement;
 - ii) to ensure that all creative was assessed by AAPS prior to being aired.
 - (b) Schweppes advised they should have the ad pre-vetted by AAPS but did not do so. As such Bacardi Lion have not provided approval for the creative that is currently in market and were unaware that it was in market until the complaint was received.
 - (c) The Bacardi product included in the advertisement is depicted in a responsible way and in accordance with section (a) of the code. Specifically:
 - i) The advertisement does not in any way encourage the excessive consumption or abuse of alcohol in that:
 - The advertisement features two mixed drinks, each based on a standard serving size;

- The advertisement does not depict any binge drinking or other forms of excessive consumption of alcohol.
- ii) The advertisement does not encourage under-age drinking. There are no children depicted in the advertisement. The person in shot is 25 years or older.
 - iii) The advertisement does not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcoholic beverages. The setting of the advertisement is a relaxed and controlled environment.
 - iv) Further, the advertisement does not suggest in any way that alcohol will help with personal, business or social success or that it has therapeutic benefits which are necessary to unwind.
 - v) The advertisement depicts the responsible and moderate consumption of alcoholic beverages in that it contains a “Drink responsibly” message which is displayed clearly at the bottom of the image.
17. The Advertiser (Schweppes) responded to the questions posed by the Panel by way of letter dated 28 November 2012. The principal points made by the Advertiser are as follows:
- (a) Bacardi Lion is the owner of the Bacardi brand.
 - (b) Bacardi Lion was aware of the advertisement but did not approve the final advertisement.
 - (c) The advertisement features a still photo of an adult male crushing an orange in a glass. Two bottles of Schweppes Soda Water, Bacardi Rum, oranges and limes appear in the shot as well. We consider that the advertisement complies with section (a) of the Code because of the following.
 - i) The advertisement does not in any way encourage the excessive consumption or abuse of alcohol in that it features two mixed drinks each based on standard serving size and does not depict any binge drinking or other forms of excessive consumption of alcohol.
 - ii) The advertisement does not encourage under-age drinking. There are no children depicted in the advertisement. The person in shot is over the Australian legal drinking age of 18. The advertisement complies with Schweppes internal policy that any people depicted in advertisements featuring alcohol of any kind must be adults aged 25 years or older.
 - iii) The advertisement does not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcoholic beverages.

The setting of the advertisement is a relaxed and controlled environment. Further, the advertisement does not suggest in any way that alcohol will help with personal, business or social success or that it has therapeutic benefits which are necessary to unwind.

- iv) The advertisement depicts the responsible and moderate consumption of alcoholic beverages in that it contains a “Drink Responsibly” message which is displayed clearly at the bottom of the image.
- (d) The advertiser takes the responsible promotion of alcohol very seriously. Whilst not strictly bound by the Code or Code of Practice the advertiser is aware of the requirements of these codes and does all it can to ensure that its advertisements and marketing campaigns are in compliance with them. Schweppes also has internal “best practice” policies in place which incorporate the key requirements of the relevant codes and alcohol marketing guides. The advertiser agrees to accept the Panel’s decision in relation to the complaint.

The Panel’s View

18. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers of alcohol beverages 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.
19. The initial issue raised by the complaint is that Schweppes is not an alcohol beverage company and as such is not a signatory to the ABAC scheme. Schweppes has, however, indicated its willingness to accept the Panel’s decision on the complaint.
20. The second preliminary issue is that the ABAC is a code which applies to “alcohol beverage advertisements”, and not all forms of advertising, such as advertisements for soft drinks. In this case, Bacardi Lion, the owner of Bacardi alcohol beverage brand, and Schweppes have entered into an arrangement whereby the Bacardi brand and product can be used by Schweppes in its advertising of soft drinks. Bacardi Lion have a measure of control over how their brand will be used, and in these circumstances, consistent with earlier Panel determinations, the Panel concludes that the advertisement is one which the standards in the ABAC apply.

21. The principal concern of the complainant is that alcohol advertising should not be permitted within an ostensibly non-alcohol advertisement, at least not without a 'drink responsibly' message.
22. While not a standard practice, the Panel has on several occasions considered advertisements where the alcohol product is promoted in a subsidiary way to a non-alcohol product which is the principal focus of the advertisement. The ABAC does not purport to prohibit this form of advertising. What it does require, is that the advertisement satisfy the same standards as if the advertisement was solely for an alcohol product.
23. Alcohol advertising, by section (a) of the ABAC, must present a mature, balanced and responsible approach to alcohol consumption. An advertisement will fail this standard if it can be said to encourage excessive consumption, or under-age drinking or the misuse of alcohol.
24. The advertisement in this case does not offend these standards. It depicts a male, making a cocktail. It does not imply that alcohol will be consumed in an irresponsible manner. In fact the advertisement is quite unremarkable in its content.
25. The copy of the advertisement supplied to the Panel contained a 'drink responsibly' message. The complainant argues that the version he saw did not contain such a message. It's not possible for the Panel to establish as a matter of fact whether the actual advertisement contained the message or not, but assuming there was no message, this of itself is not a breach of the ABAC standards.
26. 'Drink responsibly' messages are commonly, but by no means universally, used in various alcohol advertisements. While it may now be regarded as good practice to include such a message, a failure to contain the message does not mean an advertisement is irresponsible or by its content, can be said to be promoting irresponsible alcohol use. It is a matter for the Management Committee of the ABAC to assess if the Code should be altered in the future to mandate such a message. Such a requirement cannot be imported into the Code by the Panel, which must apply the Code it is given.
27. The complaint is dismissed.