

ABAC

ABAC Complaints Panel Determination No: 13/09

Complaint by Mrs Natalie Sutherland Product: Bacardi Advertiser: Bacardi Lion

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

19 March 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Bacardi by Bacardi Lion (“the Advertiser”) and arises from a complaint received 18 February 2009.

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 ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
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 from Mrs Natalie Sutherland received on 18 February 2009.
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 not obtained for this advertisement. The Advertiser advised that they did not seek approval for the ad as it was an advertorial but in future advertorials will be subject to the pre-vetting process.

The Advertisement

9. The complaint refers to an advertisement featured on the page 11 of the February edition of jmag magazine.
10. The advertisement begins with the text at the top of the page "Groove Armada are getting on board the Bacardi Express". Below the text there is a large photograph of two men captioned "Groove Armada" and in smaller print "enhanced DJ set". There are also 6 smaller photographs featuring men and women and captioned "Lost Valentinos", "Van She", "British India", "Blue Juice", "Beardyman (UK)" and "Hoops DJ's".
11. Below the photographs there is an advertorial with the headline "Five Bands, One Train, Four Cities, One Hell of a Ride!". Following the headline, the advertorial reads: "Following the success of its debut journey in early 2008, Australia's touring music festival on rails returns with an all star line-up. This year UK DJ sensations Groove Armada are taking the helm as headliners, joined by British India, Blue Juice, Van She, Lost Valentinos, Beardyman and Hoops DJs. A classic 1960's train, the Bacardi Express train will take the bands on a rock and roll adventure of a lifetime from 26-28 March 2009 stopping off to play exclusive concerts in Melbourne, Wagga Wagga, Wollongong and the final destination of Sydney. It's being touted as "one hell

of a ride". Bacardi Express will be Groove Armada's only shows in Australia this year and they're hyped it will be such a unique occasion: "We can't wait to climb aboard the Bacardi Express – DJ decks and plenty of time between stations can mean only one thing – FUN! It will be great meeting some of our fans and other artists on the train journey before stopping off to play in Melbourne, Wagga Wagga, Wollongong and Sydney. All aboard.....next stop PARTY CENTRAL!" Concert tickets are FREE and are available at www.Bacardi.com now. Hurry, tickets are limited!".

12. Below the advertorial there is a photograph of a group of men and women in front of a train and to the right of the photograph the Bacardi Express logo together with dates and venues.

The Complaint

13. The complainant argues that the ad should not be included in jmag as it is irresponsible to promote alcohol in the magazine for the federal government funded youth radio station which appeals to children and adolescents.

The Code

14. 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 –
 - i) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents...

Arguments in Favour of the Complaint

15. In favour of the complaint it can be argued that the advertisement breaches section (a)(ii) and (b) of the ABAC thereby encouraging underage drinking and having a strong or evident appeal to children and adolescents by promoting a free concert and also by its direction to and communication with the class of persons to whom jmag is directed, namely children and adolescents.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 2 March 2009. The points made by the Advertiser in relation to the advertisement were:
 - (a) Although the concert is free, availability of tickets are through specific channels targeted at adults – online, media partners and on-premise. In the case of online ticketing users must log onto the Bacardi website which includes validation that the applicant's age is over 18 years. For media partners all terms and conditions require entrants to be over the age of 18, whilst on-premise

giveaways are clearly targeted at an over 18's audience by the nature of the venue they appear in. Final validation occurs at the event itself via proof of age upon entry at each concert.

- (b) Furthermore, a free concert does not make a brand more likely to appeal to a younger target audience. The appeal of a concert – paid or free – is determined by the line-up and ultimately the audience's anticipated experience. The line-up and experience of the Bacardi Express clearly appeals to an over 18s audience as evidenced by the line-ups appearances at over 18's music festivals such as Homebake (Bluejuice), Splendour in the Grass (Van She, Lost Valentino's, British India), V Festival (Groove Armada) as well as on-going live performances in over 18's only music venues nation-wide.
- (c) J Mag's media kit states that readers are 18-35 (source: AustraliaScan 2008) with breakdown:
 - 19% aged 18-20;
 - 44% aged 20-34;
 - 17% aged 20-24;
 - 27% aged 25-34.
- (d) Content in the magazine is targeted at over 18s, with features featuring sexual themes, groupies, 18+ DVDs/film/live reviews and almost all tour ads are exclusively for 18+ concerts/shows.

The Panel View

17. This determination flows from five (5) separate complaints made by Mrs Sutherland about alcohol advertising which appeared in the February 2009 edition of the jmag. This is a magazine associated with the ABC radio network, Triple J. Mrs Sutherland argues that the jmag contains extensive alcohol advertising and that advertising of this kind is inconsistent with her understanding of the radio station being targeted at a younger audience.
18. In essence, Mrs Sutherland's point is that the jmag should not contain alcohol ads. The concern is not so much about the content of the individual ads about which she has lodged complaints, but that there are alcohol ads in the magazine at all. Her concern is about her children (aged 11 and 14) and that they not be exposed to alcohol advertising within a medium which she did not expect would contain such advertising.
19. It is self-evident that Mrs Sutherland's complaint is genuine and based on her good faith (but possibly mistaken) perception of the genre and target audience of the jmag. Clearly she has been surprised and disappointed by the jmag's position on accepting alcohol advertising.

20. Mrs Sutherland asks on “what grounds is the advertising of alcohol permitted and ethical in jmag”. This, however, is not a question the ABAC Panel can answer. It is a question for the publishers of jmag and possibly a broader question for government to consider in the context of alcohol advertising as a whole.
21. The Panel’s role is to make decisions on the consistency of individual alcohol ads against the standards contained in the ABAC. In this respect, this determination and the others made in relation to Mrs Sutherland’s complaints will be unable to really address her principal concern. This is because the Panel is not empowered to make a free-standing judgment as to whether alcohol ads should be placed in a particular medium or not. The ABAC is a - content code, which goes to what is contained within an ad, irrespective of where the ad is placed e.g. TV, print, radio, billboards, websites. Whether the ad, irrespective of its content, should or should not have been placed in the medium in the first place is not a decision the Panel is given responsibility to make.
22. There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular mediums. For instance, the code applying to TV places time restrictions on when alcohol ads can be broadcast *i.e.* generally after 8.30 pm. The code applying to outdoor advertising recently was amended to restrict alcohol ads being placed within a certain distance from a school. Alcohol ads at the cinemas are permitted to be shown with films given an “M” or higher classification, and not with “G” or “PG” classified movies. There is, however, no code going to the type of publications *i.e.* newspaper, magazine etc within which alcohol advertising is expressly restricted.
23. As explained, the ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. The issue of placement is indirectly raised by the ABAC’s preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to “the class of persons to whom the advertisement is directed”. This means that the ABAC does not prescribe the type of publication within which an alcohol ad can be placed but, in assessing the standards as to the ad’s content, the likely audience of a particular publication is relevant.
24. Mrs Sutherland believes that the typical audience of the jmag is such as to include children and younger teenagers. In contrast, the “media kit” produced by the publisher of jmag provides a readership breakdown which indicates that the largest readership is in the 20-34 age bracket. While the magazine is available to under-18 year olds, the target audience is the older age group of young adults. The editorial content of the magazine reflects this, with articles which would appeal to young adults rather than children or younger teenagers. Indeed, some of the articles appear quite unsuitable for children in the 11-14 age group.
25. What all this means is that the Panel has to examine the content of each of the alcohol ads for which a complaint has been lodged and determine whether the ad contains elements which are inconsistent with the relevant standard set out in the ABAC. Given the nature of the complaint, the relevant ABAC provisions

are found in sections (a) (ii) and (b). These provisions provide that an alcohol ad must not encourage under-age drinking or have strong or evident appeal to children or adolescents.

26. The ad in question is promoting a train journey featuring five (5) rock bands and the DJ's "Groove Armada". The train trip is entitled the "Bacardi Express". The train is travelling to various venues in Victoria and New South Wales where concerts are to be held.
27. The Panel does not believe that the content of the ad contains elements which can fairly said to have a strong or evident appeal to children or adolescents. The only alcohol product reference is in relation to the name of the journey as the "Bacardi Express". There is nothing in the pictures used or the text contained in the ad which would particularly appeal to children or adolescents, as opposed to readers more generally.
28. The complaint is dismissed.