

ABAC

**ABAC Complaints Panel
Determination No: 43/07**

**COMPLAINANT
ABAC Management Committee**

**Product: Bondi Blonde Beer
Advertiser: BlueTongue Brewery**

Professor The Hon Michael Lavarch – Chief Adjudicator

Professor Fran Baum – Member

Ms Liz Dangar – Member

Ms Jeanne Strachan – Member

**DETERMINATION
18 April 2007**

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint by the Alcohol Beverages Advertising Code Management Committee (ABAC MC) about an electronic advertisement for Bondi Blonde Beer by BlueTongue Brewery (“The Advertiser”).

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.
6. The ABAC scheme is sponsored by the four alcohol industry peak bodies, namely:
 - Australian Associated Brewers Inc (AAB)
 - Distilled Spirits Industry Council of Australia (DSICA)
 - Liquor Merchants Association of Australia Ltd (LMA)
 - Winemakers Federation of Australia Inc (WFA)

and compliance with the scheme is a commitment undertaken by companies which are members of one of the peak bodies. The advertiser is not a member of one of the four industry bodies but has voluntarily submitted itself to the scheme for the purposes of the assessment of the advertisement.

The Complaint Timeline

7. The confidential complaint is in the form of a letter dated 22 March 2007 which was received by the ABAC Adjudication Panel on 22 March 2007.
8. 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.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Although the advertiser is not a member of an industry peak body or a signatory to the Code, it is understood that the advertiser did submit the advertisement for pre-vetting and that approval was not given.

The Advertisement

10. The complaint concerns a 40 second advertisement which was viewed on the advertiser's website.
11. The opening shot is a black screen with white writing: "This commercial has not been approved by the Alcohol Board of Ethics".

12. The advertisement then cuts to the opening scene showing a huge wave being ridden by a surfer on a board. A helicopter enters from left-hand side and flies across and disappears off to the right. The door of the helicopter is open and a man is seen watching the surfer.
13. While the surfer continues to ride the wave the voice-over commences:

V1 – “And Kobe Abberton ... wow, this is the wave of the day.”

V2 – “That’s why the bloke’s a legend back home.”

V1 – “That was awesome.”

The surfer rides the giant wave in.

V1 – “And I don’t think Kobe will be buying any beers tonight somehow.”
13. The surfer (Kobe) gets off board and stands up in waist deep water.

A bottle of beer is thrown to him which he catches in his right hand and starts to drink. Head and shoulders shot of him drinking the beer.
14. Voice over continues:

V1 – “I wonder what does go down best after a wave like that.”

V2 – “Yeah.”

Background noise can be heard of blokes calling out: “On ya mate”, “Yo Bra”.
15. The camera pans back to Kobe who is still waist high in water still drinking the beer.

A blonde-haired woman bobs up from under the water next to Kobe; she touches him on the body.
16. V1 – “Whoa, hello, here you go – that’s gotta be a Bondi Blonde right there.”

The blonde-haired woman stands up next to Kobe, snatches the bottle of beer from him and drinks the rest of it.

V2 – “That’s a Bondi Blonde alright.”
17. Long close up shot of her breasts in white bikini top as she drinks the beer watched by Kobe.

V1 – “Unbelievable.”

V2 – “Well, you know what they say ... nothing goes down like a Bondi Blonde.”
18. The blonde-haired woman holds up bottle of beer out in front of her and the words “Nothing goes down like a Bondi Blonde” appear on the screen, printed across the shot of her breasts.

19. The final frame is a black screen with the words “Bondi Blonde would like to inform the general public beer & water don’t mix … It spoils the beer.”

The Complaint

20. The Complainant argues that:

- The blatant use of ABAC in its promotion with the statement “This commercial has not been approved by the Alcohol Beverages Advertising Code” shown at the beginning, seeks to establish its self described credentials on the website as a “controversial ad”.
- Potentially breaches clause (c) (i) of the Code regarding possible contribution to the achievement of sexual success.
- Potentially breaches clause (d) (i) regarding consumption in connection with water sports.

The ABAC

21. The ABAC provides in section (a) that advertisement for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages.
22. Section (c) (i) states that advertising must 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.
23. Section (d) provides that an advertisement not must depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity, and accordingly:
- (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices.

Arguments in Favour of the Complaint

24. In favour of the complaint it can be argued that the advertisement breaches:

- Section (a) of the ABAC by presenting an irresponsible approach to alcohol consumption by declaring that the advertisement has not been approved under the ABAC system.
- Section (c) (i) of the ABAC by suggesting the consumption or presence of the product contributes to a significant change in mood by:

- Depicting the male character drinking the product while the blonde-haired female character is below the water next to the male character, and
- Combining this scene with voice-over “nothing goes down like a Bondi Blonde”.

which together suggest the presence and/or consumption of the product led to the performance of a sexual act.

- Section (d) of the ABAC by depicting the consumption of the product during the act of surfing and/or wading through the surf.

The Advertiser's Comments

25. The Advertiser responded to the complaint by way of letter dated 10 April 2007. The principal points made by the Advertiser were:
 - At no stage did they intend to offend or depict “the performance of a sexual act”.
 - Their intention was to showcase the great Australian sport of surfing and highlight the surfer Kobe Abberton. Bondi Blonde is sponsoring a documentary featuring Kobe Abberton as part of their marketing mix to promote Bondi Blonde as a Low Carb Beer to fit in with the Australian lifestyle.
 - The strap line “Nothing goes down like a Bondi Blonde” is not offensive and their research results show it is more a tongue in cheek, fun reminder of good times and small waist and a good body.
 - The commercial was produced to go to cinema to support their sponsorship of the documentary.
 - It does not breach the code by suggesting the consumption of presence of the product contributes to a significant change in mood.
 - The target group for Bondi Blonde is 18+ health conscious.

The Panel's View

Preliminary Matters

26. The ABAC Scheme is sponsored by the four peak alcohol industry bodies and relies on the commitment of members of the peak bodies for its effectiveness. The advertiser is not a member of a relevant industry peak body and is not bound by the ABAC Scheme.
27. Despite not being legally required to do so, the advertiser voluntarily submitted the advertisement for pre-vetting clearance. Approval was not granted. Notwithstanding the rejection of the advertisement, the advertiser has proceeded to use the ad on its website and has made a particular point of stating that the ad has not been approved under the ABAC Scheme. It would seem that this reference is used to promote the ad as being controversial.

28. The ABAC Management Committee has lodged this complaint. The Management Committee comprises of a representative from each of the four industry associations, as well as a representative from Government and the Advertising Federation of Australia. This is the only occasion that the Panel has dealt with a complaint lodged by the ABAC Scheme's Management Committee.
29. The Adjudication Panel is entirely independent of the alcohol industry and the Management Committee. The Committee has a governance role in the entire ABAC Scheme, including the complaints process; however the Panel alone decides complaints. In reaching its decision in this case, the Panel has followed the same process and applied the same practices as it does in each of its determinations.

The Issues

30. The complaint raises several issues, namely:
 - Does the advertisement breach section (a) by irresponsibly using its rejection of pre-vetting clearance to promote the advertisement as "controversial"?
 - Does the advertisement breach section (c) by suggesting the presence or consumption of the product contributes to the achievement of sexual success?
 - Does the advertisement breach section (d) by depicting a direct association between the consumption of alcohol and the engagement of sport, in this case surfing?
31. Section (a) of the ABAC provides that advertisements must present a mature, balanced and responsible approach to the consumption of alcohol. The section then goes on to specify particular instances where this standard will not be met, which focus on the encouragement of excessive consumption, under-age drinking and the promotion of "offensive behaviour". The issue before the Panel is whether the actions of the advertiser in seeking pre-vetting clearance and then failing to gain this approval, but using this rejection in promoting the advertisement as controversial, breach the standard in section (a).
32. The interpretation of section (a) has been before the Panel on previous occasions. In its Determination 40/05, the Panel considered complaints about a television advertisement which made reference to a fictional previous complaint about an advertisement; and suggested that the complainant be contacted by consumers of the product who disapproved of the complaint. This Determination considered the scope of section (a) and whether it established a sufficiently general standard of responsibility in alcohol advertising to cover a concern which was not related to alcohol use or product branding as such.
33. The Panel concluded that, while the advertisement was arguably "offensive", the standard in section (a) did not cover the concerns expressed by the complainants. It is clear that reference to "offensive behaviour" in section (a) relates to depictions of alcohol-affected behaviour, and it is artificial and

unsustainable to attempt to extend the section's meaning to include more general concerns about the appropriateness of an advertisement.

34. The Panel believes a similar conclusion must be reached in this case. While it is arguably irresponsible and "offensive" to the spirit of the ABAC to use the system to create some public controversy and attract some "free media" to the product, such actions are not captured by the standards in the ABAC. The Panel can only apply the Code as it is written; and the marketing tactic adopted by the advertiser in using the ABAC pre-vetting process is neither prohibited nor endorsed by the Code. The Code simply does not deal with such a tactic.
35. The second issue revolves around section (c) (i) of the ABAC. This provision requires that advertisements must not suggest that the consumption or presence of alcohol creates or contributes to a significant change in mood or environment and must not depict alcohol as a contributor to the achievement of sexual success. The complaint argues that the advertisement breaches this standard.
36. The advertisement makes extensive use of sexual imagery and connotations about oral sex. Specifically, the advertisement features:
 - The unexpected appearance of the beautiful blonde female character from the waist deep water immediately in front of the male character;
 - The female character's touching of the male;
 - The banter between the commentators which has sexual connotations;
 - The prolonged shot of the female character's torso and bikini top;
 - The juxtaposition of these shots and the voiceover of the product slogan - "You know what they say – nothing goes down like a Bondi blonde".
37. The Panel has made a number of previous determinations which turn on section (c) (i) of the ABAC. The ABAC does not prohibit the use of sexual imagery in advertising. Ads can be sexy and characters used in ads are able to be portrayed as sexually confident. What is prohibited is the suggestion that the presence of alcohol causes a significant change in mood and that alcohol contributes to sexual success.
38. It is sometimes a matter of fine judgment as to whether a particular advertisement crosses the line from being "sexy" and strays into suggesting that alcohol contributes to sexual success. In making this judgement, the Panel endeavours to apply a common sense approach which reflects community standards about the depiction of sexuality. In this case, the Panel believes the advertisement does breach the standard in section (c). The imagery, combined with the banter between the commentators and the change in mood in the advertisement after the introduction of the product, demonstrates that the advertisement offends section (c).
39. The final issue raised by the complaint is whether section (d) of the ABAC is breached. This section provides that advertisements are not to depict any direct association between the consumption of alcohol and the engagement in

any sport (including swimming and water sports). Specifically, consumption of alcohol must not be represented as having taken place before or during engagement of the activity.

40. In this case, the male surfer catches the product which is thrown to him after he finishes riding a large wave and while still in waist deep water and with his surfboard. The female character also consumes the product after emerging from the water and while still in the water. These depictions of consumption clearly breach the ABAC provision.
41. The best that could be said for the advertisement is that the wave riding scene had been completed and hence the consumption occurred “after” the engagement in the sporting activity. However, the characters consume the product while in quite deep water and it is the intent of the provision that consumption should be depicted in safe conditions. Standing in surf while consuming alcohol is not safe practice. Further, the message at the completion of the advertisement that “beer and water don’t mix” does not repair the clear breach of the provision.

Conclusion

42. It seems evident that the advertiser has endeavoured to use the ABAC system to assist in promoting the product by endeavouring to depict the advertisement as controversial. The advertisement does breach the ABAC and not surprisingly it was refused pre-vetting clearance.
43. The ABAC system operates on the basis of a commitment from industry participants to comply with good practice standards in advertising. Alcohol is a product which, if not used responsibly, has the potential to cause harm to individuals and great cost to the community. Responsible advertising is an aim of the National Drug Strategy and the actions of this advertiser contravene public policy and harm the credibility of the quasi-regulatory system.
44. While the advertiser might believe its actions will give it a marketing advantage, its ultimate result might be to cause legislators to look again at the cost/benefit analysis of heavier government regulation of advertising.
45. The complaint is upheld. It is up to the Management Committee to seek the agreement of the advertiser to withdraw the advertisement.