

ABAC

**ABAC Complaints Panel
Determination No: 14/09**

**Complaint by Mrs Natalie Sutherland
Product: Budweiser Beer
Advertiser: Premium Beverages**

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 Budweiser Beer by Premium Beverages (“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 has recently become a signatory to the ABAC Code and all future advertising will be pre-vetted.

The Advertisement

9. The complaint takes the form of a print advertisement featured on page 31 of the February edition of jmag magazine and reflects a "story board" style. The outline of the story is told in a depiction of a beer coaster positioned in the right hand corner of the advertisement. The coaster features a picture of a bottle of the product which has been circled in ink, as by a pen. Printed on the coaster is the message:

"Accept no substitute,.. BUDDY UP! If your mate tries 'switching' to a lesser beer on his shout, tell that tightarse muppet to pry open his wallet and Buddy Up with the good stuff! Clean... Crisp... Refreshing...Budweiser! buddyup.com.au"

10. Below the coaster is depicted a scene of four people at a bar or hotel. On the left is a man sitting in a booth and holding a bottle of the product with an alarmed expression. Sitting next to him is a man looking at an unlabelled bottle with a puzzled expression. To the right of the second man is a woman sitting in

the booth but leaning forward with a furtive expression. Next to her on the table is a bottle of the product. Standing in front of the table facing the three people sitting down and with his back to the reader is a man who is shrugging and has turned the pockets of his pants inside out. A bottle of the product is in front of him on the table.

11. The picture makes sense when read with the beer coaster message, complemented by explanatory diagrams and “thought bubbles” overlaid on the picture. The first man with the alarmed expression is shown with a thought bubble “But nothing’s as smooth as Bud!”. The second man has a thought bubble with various punctuation marks as if depicting expletives and a cross has been drawn over the unlabelled bottle he is holding. The woman on the right has a caption below her that reads “Plan B: check shoes & socks for change”. The man with his back to the reader has a text box pointing at his back that reads “Tightarse” and a further text box pointing at his outturned pockets “Pockets of shame”. Superimposed on the bottom left side of the scene is the logo “Responsibility matters”.

The Complaint

12. 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

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 –
 - 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

14. 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 its direction to and communication with the class of persons to whom jmag is directed, namely children and adolescents.

The Advertiser’s Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 6 March 2009. The points made by the Advertiser in relation to the advertisement were:

- (a) To be quite clear from the outset, we refute the complaint forwarded to the Adjudication Panel from Mrs Natalie Sutherland.
- (b) We also point out that this is the sole complaint received for this creative execution and Budweiser's insertion into this or any other publication. The advertisement in question has been running in FHM, Ralph, Alpha, Rolling Stone, plus five street press titles for the past 15 months. The media was selected specifically to reach the 18-35 year old market.
- (c) It appears that the basis of the complaint and its explanation in your letter is that the complainant believes that by placing alcohol advertising in jmag we are intending to market to children and adolescents.
- (d) Talent included in the image used to represent this advertisement are all over the age of 25. The language, clothing and scenario (pub booth) used in this advertisement are all inclusive of a normal 25-year-old social scene. We dispute entirely the notion that jmag is directed at children and adolescents. Our target audience for Budweiser is 18-35 and we only advertise in publications that mirror our target demographic, which this publication does according to the jmag media kit.
- (e) All people cast in this advertisement are over the age of 25 and appear to be over the age of 25. They are located in a pub booth and no children or adolescents appear in the advertisement.
- (f) The intention of jmag is to aim to young adults aged 18-25. Content in the magazine is targeted to those over the age of 18 with features on, among other things, groupies, orgies and sex toys. The main readership age group of jmag is 18-34 with 65% males and 35% females. All competitions and promotions in the magazine have terms and conditions stating entrants must be over 18 to enter. The language used in articles in jmag mention "make your own wine", "where the bands booze", "celebs on the turps" and "sipping wine in a semi-comatose state". It is clear that there is so much adult content in this publication that the concerns of Mrs Sutherland should be about her choice of publication for her child rather than the advertising contained within. There has been alcohol advertising in every issue of jmag since launching in April 2004.
- (g) According to the jmag media kit it is evident that the target audience for jmag is those aged 18-34.
- (h) In conclusion, we appreciate the opportunity to respond to your questions, and do not believe the advertisement breaches the ABAC Code, for which Budweiser (Premium Beverages) have recently signed as a signatory to the scheme.

The Panel View

16. 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.
17. 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 related to her children (aged 11 and 14) being exposed to alcohol advertising within a medium which she did not expect would contain such advertising.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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 the content of an alcohol ad must not encourage under-age drinking or have strong or evident appeal to children or adolescents.
25. The Panel does not believe that the content of the ad has elements which, taken as a whole, could be fairly said to breach the ABAC provisions relating to strong appeal to children and adolescents. The ad in question is depicting a storyline about a person buying another brand instead of a Budweiser for his friends. There is nothing in this content which breaches the standards relating to strong appeal to children and adolescents.
26. The complaint is dismissed.