

ABAC

ABAC Complaints Panel Determination No: 102/08

IN THE COMPLAINT OF Amy Robertson for WA Community Alcohol Network Product: Budweiser beer Advertiser: Premium Beverages

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Liz Danger - Member
Professor Richard Mattick – Member

30 October 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a magazine advertisement for Budweiser Beer by Premium Beverages (“the Advertiser”) and arises from a complaint received by Ms Amy Robertson for the WA Community Alcohol Network (“The Complainant”).

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 a letter dated 23 September 2008 received by the ABAC Panel on 1 October 2007.
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 this 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 the advertisement. The Advertiser is not a member of the ABAC scheme but has co-operated with the ABAC process.

The Advertisement

9. The complaint takes the form of a print advertisement 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:

"Slip one past the keeper,.. BUDDY UP! If your efforts to hook up are being shut down by the Gatekeeper, grab a mate and Buddy up. Use him as bait to get a clear run at the girl of your dreams. If he hesitates, tell him to suck it up, the Buds are on you! Clean...Crisp...Refreshing...Budweiser!"

10. Below the coaster is depicted a scene of four people at a bar or hotel. On the left is an attractive young woman with a sweet expression sitting on a bar stool at a table. Next to her on the table is a bottle of the product. Adjacent to this first woman is a second woman, also attractive but with a sour or aggressive expression. Next to this woman is also a bottle of the product.
11. Depicted to the right of the second woman is a standing man, casually dressed with a bottle of the product in his right hand. This man's expression is startled. He is being pushed towards the "sour-expressed" woman by a second man, with only the hands and arms of this man revealed as he is pushing the first man towards the table and the two women.
12. The picture makes sense when read with the beer coaster message, complemented by explanatory diagrams and "thought bubbles" overlaid on the picture. The first woman with the sweet expression is described as "Dreamgirl" and a second message "work mojo" is placed on her lower body.

The second “sour-expressed” woman is described as “Gatekeeper” and devil’s horns have been drawn on her head.

13. The first man being pushed towards the “Gatekeeper” woman is shown with a thought bubble “I wouldn’t do this for any other beer” and he is described as “the bait”. The second man who is largely out of shot is also shown with a thought bubble “keep me covered”. In the right hand bottom corner is the message in different font “responsibility matters”.

The Complaint

14. The complainant argues that the advertisement raises a number of concerns, specifically that:
 - a) by having the woman in the advertisement referred to as the “Gatekeeper” consume Budweiser, the man seeking to engage the woman referred to as the “Dream Girl” will improve his chances for sexual success; and
 - b) the statement “If he hesitates, tell him to suck it up, the Buds are on you!” has a double meaning. Whilst the colloquial phrase “suck it up” means ‘to continue in an unpleasant situation’ when it is coupled with the statement someone else is paying for the beers, it also holds the meaning that he should consume many Budweiser beers.

The Code

15. The ABAC provides at Sections (a) and (c) 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 excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages.
 - c) 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;

Arguments in Favour of the Complaint

16. In favour of the complaint it can be argued that the advertisement breaches the ABAC as follows:
- a) Section (a), (a)(i), (a)(iii) & (a)(iv) is breached by failing to present a mature, balanced and responsible approach to the consumption of alcohol and depicting excessive consumption of the product through its use of the phrase “tell him to suck it up, the buds are on you” which may mean that he should consume many Budweiser beers.;
 - b) Section (c)(i) is breached by the implication that the male will achieve social or sexual success with the female by a combination of:
 - i. The use of the expression “buddy up” meaning the consumption of the product to overcome difficulties in approaching a woman in a bar;
 - ii. The advice that, to overcome a friend’s hesitation to distract the “gatekeeper” can be gained by the use of the product as suggested by the phrases “sucking it up” and “the buds are on you”;
 - iii. The depiction of the “thought bubble” shown from the friend of “I wouldn’t do this for any other beer”, which implies that the friend’s role to the achievement of social success is being contributed to by the consumption of the product.

The Advertiser’s Comments

17. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 13 October 2008. Key points made by the Advertiser in relation to the advertisement were:
- (a) We refute the complaint forwarded to the Adjudication Panel from the Injury Control Council of Western Australia on behalf of the WA Community Alcohol Network. This is the only complaint received, indeed our client has never had a complaint lodged against any of its advertising or marketing activities in Australia. The advertisement in question has been running in the magazines, ‘FHM’, ‘Ralph’, ‘Alpha’ and ‘Rolling Stone’, plus five street press titles (including ‘X-Press’) for the past 11 months. The media was selected specifically to reach the twenties-to-thirties market.
 - (b) It appears the basis of the original complaint - and expanded upon in your letter - revolves around the interpretation of certain phrases expressed in the often-unique vernacular of the twenties/thirties target market. To that point we take the opportunity to set the scene with the creative rationale behind the ‘Gatekeeper’ advertisement:

This magazine execution was created to position Budweiser as a brand that has empathy for, and a place in, the Australian social experience. It's about twenties/thirties friends coming together and trying to navigate the contemporary social landscape, whilst

having a relaxed time. The creative is designed to highlight some of the more awkward aspects of meeting new people in a social situation and how sometimes one needs the assistance of a 'Buddy' (as in a friend) to give it a go. In this advertisement our hero (hands coming in off frame) 'enlists' the reluctant services of his 'Buddy' to distract the 'Gatekeeper' to afford him an opportunity to speak with the 'Dream Girl'. The language, as it occurs in the body copy and the 'hand written' overlays, deliberately employs colloquialisms and phrases designed to resonate with the target audience. The phrase 'suck it up' refers to enduring a little social pain to help out a mate in the spirit of friendship. So where the body copy suggests that our reluctant patsy, 'suck it up,' it's a direct reference to the spirit of 'Buddying Up.' The term 'Buddy Up' does not imply the consumption of alcohol; rather it refers to the spirit of friendship. (The phrase 'suck it up' in this sense is now an accepted part of the vernacular and even used by the ABC – PM, Sabra Lane interview with Peter Garrett, 28 August, 2008). Irreverent, situational humour is used to provide a little a tongue-in-cheek empathy between the two male characters. At no point does the advertisement suggest that these characters will be successful in their social objective. In fact, if one looks at the body language of our character, the 'Gatekeeper' it becomes fairly obvious that despite their clumsy efforts, they are going to fail. The creative execution creates a commonplace social dilemma in which the product, Budweiser, plays a subsidiary but empathetic role. At no stage in the creative development was it envisaged that the advertisement would imply anything but a mature, balanced and responsible approach to the consumption of Budweiser; nor would it suggest that its consumption would create or contribute to a significant change in mood or environment. Premium Beverages and Budweiser are well aware of the responsibility that comes with advertising alcoholic beverages.

(c) Sections (a), (a) (i), (a) (iii) and (a) (iv) of the ABAC Code.

(a) (i): The core of the complaint comes back to the phrase, "Suck it up, the buds are on you..." The first part of this phrase is employed as a colloquialism to suggest a little social pain or hardship. In no way is it intended, as implied in your letter that it "may mean" (your phrase) consumption of too many beers. Further, we contend that the body copy (in the top right hand corner) does not encourage - either directly or indirectly - excessive consumption.

(a) (iii): We cannot see any evidence that this advertisement promotes "...offensive behaviour or the excessive consumption, misuse or abuse of alcoholic beverages."

(a) (iv): Similarly, and for reasons explained above, we do not believe the advertisement fails to "...depict the responsible and moderate consumption." We would also draw your attention to the very prominent display of 'Responsibility Matters' in the bottom right hand corner of the advertisement. We believe therefore that a reasonable interpretation of the copy and overall impression of

the advertisement is that it presents a contemporary but mature, balanced and responsible approach to consumption of Budweiser.

(d) Section (c) (i) of the ABAC Code.

(a) It should be noted that “Buddy Up” uses capitalisation to emphasise a play on words of the product Bud. In this context, it simply means ‘get friendly,’ not drink more Budweiser.

(b) The three words/phrases in question are “Gatekeeper,” “sucking it up” (again), and “the Buds on you.” At no point is it stated or implied that the Gatekeeper is encouraged - directly or indirectly’ by any of the characters in the scenario to consume the product in excess or otherwise. Finally, neither is “the Buds are on you” in any context an invitation to change the mood or imply social, sexual or other success.

(c) The thought bubble “I wouldn’t do this for any other beer” is simply a statement of brand loyalty and to discourage brand switching. We fail to see how a reasonable interpretation of this phrase could be seen as contributing to social or other success. We do not believe therefore there is any suggestion that the consumption or presence of alcohol in this scenario creates or contributes to a significant change in mood or environment.

(e) In conclusion, we appreciate the opportunity to respond to your questions, and do not believe the advertisement breaches the ABAC Code, for which Budweiser has the greatest respect and is prepared to abide by ABAC’s decision.

The Panel’s View

18. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The issue is that Premium Beverages is not members of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC’s adjudication process has no binding effect on the company. Premium Beverages, however, have stated their commitment to good practice in alcohol product advertising and have advised they will abide by the Panel’s decision. Given the advertiser’s willingness to comply with the ABAC scheme in this instance, the Panel has proceeded to make this determination.
19. In essence, the complaint raises two issues. The first is whether the ad is in breach of section (a) of the ABAC through its failure to present a responsible approach to alcohol consumption and the encouragement of excessive or immoderate consumption of alcohol. This is argued to arise from the language and messages used in the ad in phrases such as “buddy up”, “suck it up” and “the buds on you”.
20. The complainant takes these phrases, particularly when used in the context of the scenario created by the ad to have double meanings, but clearly implying that excessive alcohol use is being suggested to navigate a complex social interaction. The advertiser refutes that the ABAC is breached and argues the

language used is the “often unique vernacular of the twenties/thirties population”.

21. In assessing if an ad conforms to ABAC standards, the code’s preamble provides that the ad is to be taken as a whole and regard is to be had to the ad’s probable impact upon a reasonable person.
22. In the context of the ad, the ad uses phrases which have two meanings:
 - “Buddy up” would be taken as referring to gaining a friend’s help and also refers to the shorthand expression of the brand’s name as “a bud”. “Buddy up” would be taken by a reasonable person to mean, in the context, as “drink a bud”.
 - “Suck it up” would be taken as meaning as continue on through an unpleasant circumstance, but also could be reasonably taken to mean the consumption of a beer. This is made clear by the use of the phrase “suck it up, the buds are on you!”
23. The issue is then whether excessive or immoderate consumption is being encouraged by the ad, contrary to the standard in sections (a) (i), (iii) and (iv). In this regard, the ad does depict each character in full view (noting one character is largely out of frame) with a bottle of the product. There is nothing in the demeanor of the characters, however, which suggests that they have been drinking to excess or that their behaviour is influenced by alcohol.
24. The Panel does not believe the ad can fairly be said to breach the section (a) standard. While the ad is promoting the consumption of alcohol in the circumstances of a particular social interaction, it is not possible to conclude that excessive or immoderate consumption is being encouraged.
25. The second issue raised by the complaint concerns section (c) of the ABAC. This section provides that ads must not suggest that the consumption of alcohol may create or contribute to a significant change in mood and alcohol use cannot be depicted as a cause or contributor to the achievement of social or other success.
26. The complainant argues that the ad suggests the use of the product will improve the prospects of the “hero” having social/sexual success with the “dreamgirl”. The advertiser argues that the phrases in the ad are not suggesting that alcohol be used as part of the “scheme” to get past the “gatekeeper” to “hook up” with the “dreamgirl”. Rather, the product “plays a subsidiary but empathetic role” in the scenario where a male friend is enlisted to help in approaching a girl. In any event, the advertiser argues that the ad as a whole is depicting a scene where the “social objective”, *i.e.* “hooking up” with the girl, is going to fail.
27. Section (c) of the ABAC is a broad provision. It deals not only with depictions of alcohol consumption, but also the “presence” of alcohol and circumstances where alcohol “may” create or contribute to a significant change in mood or environment. Alcohol is not to be depicted as “a” cause of the achievement of success. Presumably, this means that achieving success might have a number of causes, and alcohol is not to be depicted as any one of the causes, even if it is a secondary reason for the success.

28. A majority of the Panel believes the ad does breach section (c) (i) of the code. In the Panel's opinion, the ad is depicting a scenario where alcohol is used in an endeavor to change the mood and facilitate the achievement of social success. At a minimum, this is depicted through the friend of the "hero" being encouraged to engage or distract the "gatekeeper" by the inducement of being offered the product. This is established by the language on the coaster and the friend's thought bubble of "I wouldn't do this for any other beer".
29. The Advertiser would have benefited from a review of the ad prior to publication through the pre-vetting process and is encouraged to become a full participant in the ABAC scheme.
30. The complaint is upheld.