

ABAC

ABAC Complaints Panel Determination No: 110/09

Complaint by Dr Marie Deverell
Product: Coopers beer
Advertiser: Coopers Brewery

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

21 December 2009

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a website advertisement for Coopers beer by Coopers Brewery (“the Advertiser”) and arises from a complaint by Dr Marie Deverell received on 20 November 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 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 is in the form of an email received by the ABAC Panel on 20 November 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 30 business days.

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 Advertisement

- 9 The Coopers website opens with an age verification page that states "At Coopers, we are committed to responsible drinking and therefore must ask you whether you are over 18 years of age". The user may select one of three options "I'm 18+ and would like to enter the flash enhanced site. I'm 18+ and would like to enter the quick access site. I'm under 18." By selecting either of the first two options the user is taken to the official Coopers website Home Page. The advertiser has advised that by clicking the third option users are immediately directed to the ABAC Scheme Guidelines document.
- 10 One of the menu items that may be selected is "Students & FAQ". By selecting this menu item the user is taken to a page that has a picture along the top that features a Coopers bottle top and the Coopers logo on a factory wall on the left side and on the right side of the page the Coopers logo above the text "Students". Below this is a heading "Student Guide" followed by the text "The Student Guide provides 'general' information on Coopers Brewery based on commonly asked questions. Information such as history, product range, marketing information, competitive advantages and export success are all discussed. The guide can be viewed, printed and downloaded.
- 11 The front cover of the guide is entitled "Student Information Booklet". It provides information about the history of the company and its products, information about and images of its products and marketing and sales information.
- 12 The Guide contains the following statements:
 - (a) "His ailing wife required a tonic, and Thomas, following a family recipe, produced a restorative brew";
 - (b) "Thomas Cooper's vision of providing value and quality in the form of a healthy beer for an appreciative public";
 - (c) "We produce natural beers recommended by the medical profession as a body nutrient."

The Complaint

13 The complainant argues that the website ad:

- (a) is too easy to access as there is no date of birth requirement just the need to select if the user is over of under 18 years of age;
- (b) contains a student information booklet; and
- (c) makes statements suggesting the product has a therapeutic or medical benefit.

14 The complainant also refers to a billboard advertisement that makes the statement that the product is "Hand made by the Cooper family" which she says is misleading. The Billboard ad and this part of the complaint is not being considered by the Panel as the complaint does not raise ABAC issues but will be considered by the ASB.

The Code

15 The ABAC provides at Sections (a), (a)(ii), (b) and (c)(iii) 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...
- 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
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;

The Advertiser's Comments

16 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 11 December 2009. The principal points made by the Advertiser were as follows:

- (a) We do not believe that Coopers Brewery has breached section (a) of the ABAC:
 - i There are currently no legal requirements to place any age related restrictions on entry to an alcohol related website. However, Coopers took it upon themselves when building the existing website to include a statement on the front page asking for users to confirm they are 18 years of age and above before entering the site.
 - ii Coopers Brewery strongly supports responsible drinking and we do not under any circumstances condone underage drinking. We believe that with the current entry statements on the Coopers website we are making an effort to ensure users think before entering. We certainly do not believe there is encouragement to enter the site or appeal to children.
 - iii Coopers are in fact currently in the build phase of a new website, which will go live on 19th January 2010. As part of this process, we chose to alter the entry

point to a date of birth requirement. However, it is still our belief that entering a date of birth or acknowledging an 18+ age for entry to a website can both be just as easily falsified.

- iv The current menu item entitled “Students & FAQ” and the document entitled “Student Information Booklet” was developed in response to the large amount of University enquiries we receive each week. Students who are undertaking major assignments on Australian companies, export links, business analysis, marketing plans and the like. The tone of communication in this booklet is directed towards an older age demographic, and certainly has no intention in being directed to younger students, below 18. In light of the complaint, it has been removed from the website and will remain off until the new website launches in January 2010. It should not be assumed that the term ‘students’ are young, under 18 year olds. Many people study well into the later years of their life. Our use of the word ‘student’ refers to anyone who is ‘learning’ and is not intended to be age specific. We do concede, however, that the term could be misleading and will replace the text to read “Coopers Information Booklet” on the new website. Finally, we wish to point out that this is the only complaint we have received in relation to the Student Information Guide, which has existed for quite a long period of time, and the public response to having this information available for their use has been overwhelmingly positive.

(b) We do not believe that Coopers Brewery has breached section (c)(iii) of the ABAC:

- i The statements, namely, a) “His ailing wife required a tonic, and Thomas, following a family recipe, produced a restorative brew”, and b) “Thomas Cooper’s vision of providing value and quality in the form of a healthy beer for an appreciative public” are located in the historical section of the Information Guide, which we consider to be appropriate. These statements refer to personal letters written in the 19th Century by Coopers’ Founder, Thomas Cooper, to his family in the United Kingdom. It is indeed the case that Thomas Cooper started his career in brewing because of his wife’s request that he brew a batch of beer, according to a recipe that she obtained from her father, for the specific purpose of aiding her recovery from illness. Thomas was a Methodist lay preacher, and he did not believe in selling beer through licensed premises, but he did sell from door to door for appreciative consumers in the local community. He undoubtedly was influenced by John Wesley, the founder of Methodism, who considered that beer for consumption at home was to be commended, but wine and spirits were to be condemned. In 1864 Thomas Cooper wrote to his brother in Yorkshire, “There are some half dozen Breweries besides ours in and about Adelaide but they all use a good deal of sugar and so on for brewing, but we use only malt and hops consequently, ours being pure the doctors recommend it to all their patients. This is the first time in the history of the colony that there has been a brewery brewing only malt and hop and a good honest ale”.
- ii We acknowledge that the Student Information Booklet on our website contained the statement “We produce natural beers recommended by the medical profession as a body nutrient.” Our justification for this statement was as follows:-
 - (a) Coopers’ Managing Director, Dr Tim Cooper, studied medicine in the 1970’s, and during his internship at the Royal Adelaide Hospital in 1980, doctors would prescribe Coopers Sparkling Ale and Coopers Stout for the purpose of improving the appetite of patients who were suffering anorexia or the effects of catabolism associated with serious infections, recovery

from surgery, or treatment for cancer. The prescription for the ale or stout would be written on the patient's normal drug chart, so as to ensure that the attending nursing staff would provide the prescribed amount of product. Dr Cooper explains that some hospitals in Adelaide continue to provide for prescription of these naturally conditioned ales for the same ongoing purpose of providing an appetite stimulant and a form of nutrition.

- (b) Epidemiological studies indicate that individuals who enjoy moderate consumption of beer, wine or spirits confers a substantial reduction (30-40%)¹ of coronary heart disease risk when compared with teetotallers and heavy drinkers (detailed examples of studies were provided by the advertiser).
 - (c) Non-alcoholic beer has been recommended for nursing mothers, as beer has been shown to increase prolactin secretion, a hormone which stimulates milk production; the alcohol itself does not have the effect but some other component of beer does¹⁰. Beer is produced using wholesome raw materials, malted barley, cereals, hops, yeast and water (and a proportion of sugar is used in some beers). As with any natural food, thousands of components can be identified in beer including antioxidants, vitamins (particularly B vitamins), minerals such as silicon and soluble fibre. Particularly important among the B vitamins is B12 which is helpful for vegetarians/ vegans who enjoy drinking beer (the absence of meat from the diet is a cause of B12 deficiency).
 - (d) Beer is 93% water and is a thirst-quenching long drink which is relatively low in alcohol. Low alcohol beers are considered nutritionally valuable, particularly in Germany, where they are recommended for rehydration for sport, for providing calories in an isotonic medium which aids absorption¹¹, and replacing fluid and minerals lost in perspiration. Beer has a favourable balance of some essential minerals. It is relatively high in potassium and relatively low in sodium. It is low in calcium and rich in magnesium which may help to protect against gallstones and kidney stone formation. Moderate alcohol consumption is also associated with higher bone mineral density, and beer is a rich source of dietary silicon which is readily absorbed by the body. There is increasing evidence to support the importance of silicon for healthy bones.
 - (e) In order to provide greater clarity to our statement on the Coopers website, we intend to revise this statement to read "Our naturally conditioned beers have historically been recommended by the medical profession for nutritional reasons."
 - (f) Dr Cooper has presented a number of papers for medical and brewing conferences/seminars on the topic of "Medical considerations of moderate alcohol consumption", and his qualifications are MBBS (Adelaide), 1980, MSc (Birmingham), 1987, MD (Bristol), 1990, MBA (Adelaide), 1998.
- (c) In respect to the Alcohol Beverages Advertising Code, we strongly refute the suggestion that the company website fails to present a mature, balanced and responsible approach to the consumption of alcohol, or encourages underage drinking.

The Panel's View

- 17 The complaint concerns a company website promoting Coopers beers. Dr Deverell is concerned that the website does not require birth dates to enable entry to the website and that the site contains a Student Guide which includes statements that suggest the product has a therapeutic benefit.
- 18 The relevant ABAC provisions are found in sections (a), (a) (ii), (b) and (c) (i). These provisions provide that the content of an alcohol ad must not present an immature, unbalanced or irresponsible approach to alcohol consumption, not encourage under-age drinking or have strong or evident appeal to children or adolescents and not suggest the consumption of alcohol beverages offers any therapeutic benefit.
- 19 The first issue concerns the complainant's argument that the failure of the advertiser's website to contain an age verification step of requiring a user to enter a birth date before being given access to the site. This is argued to be irresponsible.
- 20 The ABAC contains no express provision requiring that alcohol company websites have age verification procedures in place before access to the site is permitted for a viewer. Many alcohol websites do have some form of age verification and, in this case, the site does contain a step for a viewer to confirm that they are 18 years of age or over.
- 21 The Panel does not believe the failure to contain an express step to verify age is a breach of the ABAC. It is clearly good practice to have a step of this kind, but it stretches the general provisions of the Code too far to import such a specific requirement. It is a matter for the ABAC Management Committee, and not the Panel, as to whether the Code should be amended to add an express requirement about age verification to access websites.
- 22 The second aspect of the complaint goes to the menu item on the website entitled "Students and FAQ". This takes the viewer to the "Student Guide" and within this part of the site are statements which have concerned the complainant. It is argued by Dr Deverell that the statements breach section (c) (iii) by suggesting the Coopers products have a therapeutic or medical benefit.
- 23 For its part, the advertiser explains that the Student guide was not intended for school-age students, but was prepared in response to a "large amount of university enquiries we receive each week". The statements in the Guide objected to by Dr Deverell are argued by the advertiser to be drawn from historical material such as personal letters written in the 19th century by the founder of the Coopers company.
- 24 In one instance, the Guide contains the statement "we produce natural beers recommended by the medical profession as a body nutrient". The advertiser justifies this statement by citing some medical experiences of its Managing Director, Dr Tim Cooper, and some medical research.
- 25 The Panel believes the website in relation to the "Student Guide" does breach the ABAC standard in section (c) (iii). In reaching this conclusion, the Panel has noted:
 - The section (c) (iii) standard prohibits ads suggesting that alcohol consumption offers any therapeutic benefit. The standard does not invite consideration of arguments or evidence of the validity of a particular claim of therapeutic benefit of alcohol use, but rather makes clear that ads are not to suggest that **any** therapeutic benefit comes from alcohol consumption.

- While some of the statements are historical in nature, the statement “we produce beers recommended by the medical profession as a body nutrient” is not a reference within historical material.

26 The Panel notes that the advertiser has, as at the time of this determination, removed the Student Guide and the menu item “Students and FAQ” from the website. The Panel, however, makes its decisions based on the advertisement as at the time of the complaint. It would be advisable for the advertiser to seek the advice of the ABAC scheme pre-vetters in finalising its new website.

27 The complaint is upheld.