

ABAC

ABAC Complaints Panel Determination No: 11/09

Complaint by Mrs Natalie Sutherland Product: Corona Beer Advertiser: Fosters Group Limited

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 Corona Beer by Fosters Group Limited (“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 obtained for this advertisement.

The Advertisement

9. The complaint refers to an advertisement featured on the inside cover and on page 51 of the February edition of jmag magazine.
10. The advertisement featured across the inside cover of the magazine is a photograph of a man and woman relaxing in a beachside structure holding full open 375ml bottles of Corona beer and looking out toward the sea where there are two surfers. Text superimposed on the sky reads "Corona Extra From where you'd rather be". Smaller text superimposed on the bottom left side of the photograph reads "Enjoy Responsibly". The same ad is featured on page 51 but is slightly different in that the right side of the photograph which is sea, two surfers and beach has been cut off to fit the ad on one page.

The Complaint

11. 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

12. 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

13. 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

14. 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) The complaint focuses on the appropriateness of jmag allowing alcohol advertisements. As background, the ABC has chosen to license various products (i.e. magazines, CDs) and, in the case of JMAG, it is produced by an external publishing house and is a commercial undertaking. That is, the magazine is self funded and profits are shared between News Ltd (the publisher) and the ABC. Since inception this has been the chosen approach (or strategy) and its inaugural edition (April 2004) featured both alcohol advertising and adult content as it does to this day. Whilst this may not be to the complainant's personal taste, this is how the ABC has chosen to produce JMAG. By appearing in this magazine, our advertisement meets the current guidelines in place for content placement and the two advertising codes and we're working with a media partner who promotes to adults.
 - (b) To this end, jmag is targeted at readers 18 to 35 years of age. This is the magazine's primary target market as documented in their media kit, which is designed to provide information for potential advertisers. We took guidance on our decision to advertise in jmag based on this information and also the magazine's editorial content. In support of the adult nature of the magazine:
 - The majority of the readership is 18 plus.*

- It's been an advertising space for adult markets including alcohol brands since April 2004.
 - The editorial content contains adult themes and regularly features headlines/topics like sex, alcohol, tattoos, groupies and 18 plus live reviews. Many of these themes are advertised prominently on the front cover and in article headlines and tone. Imagery used to illustrate these articles also supports this.
 - 100% of competitions and promotions restrict entry to those 18 plus.
 - Almost all tour ads are exclusively for 18 plus concerts and shows.
 - *The source is AustraliaScan 2008.
- (c) Based on the above overview of the monthly magazine content, we believe the magazine is very clearly not targeted towards children or adolescents. Obviously parents must use parental discretion in decisions they make in relation to the magazines and content they give their children. No doubt others in the community would make a different decision to the complainant in light of the magazine content.
- (d) Finally, the complaint itself does not make a single reference to anything in the specific advertisement itself. The advertisement is targeted to Corona drinkers (consumers in their 20s) and there is no sense that this would have a strong or evident appeal to children or adolescents. The advertisement was pre-vetted and approved under the Alcohol Advertising Pre-vetting Scheme (ABAC); in fact we worked very closely with the AAPS adjudicators to ensure that the advertisement was very clearly ABAC compliant.
- (e) Based on the above we believe that the Corona print advertisement upholds both ABAC and the AANA Code of Ethics for alcohol beverage advertising in Australia.

The Panel View

15. 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.
16. 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.

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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 features young adults with the product at a beautiful beach setting. The ad has a romantic, escapist feel which is probably more appealing to older adults than children and adolescents.
25. The complaint is dismissed.