

ABAC

ABAC Complaints Panel
Determination No: 02/08

CONFIDENTIAL COMPLAINT

Product: Gage Roads Beer
Advertiser: Gage Roads Brewing

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Elizabeth Dangar – Member
Professor Richard Mattick - Member

8 February 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a cinema advertisement for Gage Roads Beer by the Gage Roads Brewing Company which was seen by Ms Holly Shorland (the Complainant) in a cinema in Victoria.

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 Advertiser Code of Ethics (“the AANA Code”). 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. This 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 dated 29 December 2007 which was received by the ABAC Adjudication Panel on 2 January 2008.
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. The timeframe for the determination of this complaint has been impacted upon by the Christmas/New Year period and by illness experienced by the ABAC Administration Officer.

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 sought in respect of this advertising as the Advertiser is not a signatory to the Code. While not a signatory to the ABAC, the Advertiser has been very co-operative in relation to the complaint process.

The Advertisement

9. This complaint refers to a 15 second cinema advertisement for Gage Roads Beer.
10. The advertisement opens with the display of a screen which is, in effect, divided into two (2) parts by a transparent thick green line. On the left-hand side of the line is a picture of the windscreen and front section of a motor vehicle. Seated in the driver's seat of the vehicle is a woman who is resting, with arms crossed, on the dash of the parked car. On the right-hand side of the line is a bottle of product.
11. The scene on the left-hand side moves to focus briefly upon the woman's face which is momentarily lit up. At the same time, a voice-over commences with the words "Gage Roads...". The scene on the left-hand side changes to show a second vehicle, this time featuring a man who is shown looking intently out of the driver's window into the distance. As with the first shot, the vehicle is not being driven, but appears to be parked.
12. Again, the focus of the shot moves to concentrate on the man's face while the voiceover continues "...Australia's award-winning, easy-drinking, craft-brewed beer...". The shot then moves again to show the woman's face from a different perspective, but she is still seated within a motor vehicle. The scene shifts to remove the shot of the woman to enlarge and concentrate solely on the bottle of the product. The voiceover continues "Take a different road" and these words appear as a message on screen in the space previously showing the shots of the man and woman.
13. The final shot features the voiceover conclusion of "Gage Roads" and the words appear on the screen adjacent to the picture of the product.

The Complaint

14. The complainant is concerned about “a very strong link between beer and driving”. It is argued that:
- The connection between driving and drinking as a lifestyle is very clear and is linked to the product’s name;
 - The ad says that it is okay to drink and drive – “it’s desirable, classy and the mature thing to do”;
 - It is objectionable to promote drinking when linked to driving, especially at the Christmas/New Year time of year.

The ABAC

15. The ABAC provides that advertisements for alcohol beverages must:
- d) not 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.

Argument in Favour of the Complainant

16. It could be argued in favour of the complaint that the ad breaches section (d) by implying alcohol consumption has or will take place by a person in charge of the operation of a motor vehicle.

The Advertiser’s Comments

15. The Advertiser responded to the complaint by way of letters dated 14 January 2008 and 22 January 2008. The Advertiser has argued that:
- The ad does not breach any ABAC provisions;
 - There is no direct link between the *consumption* of alcohol and the operation of a motor vehicle. At all times the images of the models and the product are separate;
 - The cars are clearly parked;
 - The people are clearly not driving;
 - The models’ expressions are serious. There is no suggestion that they’ve been drinking;
 - There is NO direct link between the product and control of a motor vehicle;
 - The voice-over used does not refer to a “lifestyle” as claimed by the complaint;

- The “Gage Roads” name is drawn from the name of a body of water between Fremantle and Rottnest Island, and not a road in the usual meaning.

The Panel’s View

17. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide with the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:
 - Australasian Associated Brewers
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
18. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not members of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory.
19. This means that any decision by the Panel on this matter does not have any binding force on the advertiser. That said, the advertiser has fully cooperated with the Panel in enabling the determination to be made and has expressed its support for responsible alcohol advertising consistent with the ABAC standards. Given the willingness of the advertiser to engage in the ABAC processes, the Panel has proceeded to make a determination.
20. The complaint raises a concern about the ad promoting drink driving. Drink driving is a major public policy issue and the misuse of alcohol in this way causes untold personal hardship and extensive economic and social cost to the community. Accordingly, alcohol producers and advertisers must be very careful in advertising alcohol in a manner which can legitimately raise concerns that drink driving might be regarded in any way as acceptable behaviour.
21. In this case, the ad comprises a series of still shots of a woman and a man sitting behind the wheel of stationary motor vehicles. A bottle of the product is featured in each shot, but this bottle is not held by the person and is separated by a transparent green line which in essence divides the screen. The voice-over which accompanies the still shots provides a description of the product, including that it is “easy drinking”.
22. The relevant ABAC provision is quite complicated. It states that an ad must not depict a direct association between alcohol consumption and the operation of a motor vehicle. To breach the standard, the ad needs therefore to depict:
 - A direct association between alcohol and motor vehicles;
 - Alcohol consumption; and
 - The “operation” of a motor vehicle.

23. Presumably, these multiple elements are included in the Code provision to avoid striking down ads which show motor vehicles, but where there is no suggestion that alcohol use is involved in the use of the motor vehicle e.g. a car shown in the background, or a person who has been drinking shown being driven home by someone clearly who has not been consuming alcohol.
24. The ABAC preamble provides guidance as to how the Code is to be applied. It refers to regard being taken to its "spirit and intent" and taking the content of the ad as a whole. For its part, the Panel endeavours to apply a common sense approach to interpretation and avoids legalistic or pedantic reading of provisions. It must however apply the provisions as they are written, and the personal opinions of the Panel members cannot override the natural meaning of the Code and how it would be understood by a "reasonable person within the class of persons to whom the ad is directed".
25. Clearly the ad directly associates the product with motor vehicles, but to breach Section (d) this association needs to involve alcohol "consumption" and the "operation" of a motor vehicle. In essence, the advertiser's response to the complaint is that consumption is not portrayed and the featured motor vehicles are not being operated.
26. The ABAC uses different expressions in its various sections in relation to depictions of alcohol use. Section (a) uses the expression "responsible approach to the consumption of alcohol". Section (c) speaks of "consumption or presence of alcohol", while Section (d) only refers to "consumption". Depictions of "consumption" would appear to be a narrower concept than a "responsible approach to consumption" while "presence of alcohol" is wider again in its scope.
27. The Panel has considered what is embodied within the notion of "consumption" in several previous determinations. In Determination 51/05 the ad in question was a TVC which displayed a can of beer being placed next to a player in a football match, with a sound effect of the can being opened and a voice-over stating "Here's one for you, champion". While there was no depiction of the swallowing of the product, the Panel held that the elements combined did amount to "consumption" for the purposes of Section (d).
28. In Determination 49/07, the Panel considered a radio ad. In this case the ad used language which invoked the idea of consumption when describing a golf game. Again, no actual swallowing of liquid was described, but the overall impression could reasonably be said to suggest that the product was being consumed in conjunction with the sporting activity.
29. In this case, no actual drinking of the product is shown. Rather, an unopened bottle of the product is placed on the screen as characteristics of the product are described as people in cars are shown. While the Panel believes the ad to be undesirable and to unnecessarily link alcohol with the use of motor vehicles, it stretches the meaning of "consumption" too far to conclude that the ad depicts the consumption of alcohol beverages.
30. The advertisement shows in sequence a woman, then a man, and a woman again, behind the wheel of a car. The car is not being driven, and in the first shot it is clear that the woman has her arms resting on the dashboard and not on the steering wheel. The advertiser contends that clearly the characters depicted are not "driving" the car.

31. Section (d) refers, however, not to driving, but to “the operation of a motor vehicle”. This is the first occasion that the Panel has specifically considered what this phrase means. The actual “driving” of a motor vehicle clearly is captured by the notion of “operation” but does the meaning extend to being seated in the driver’s seat of a stationary vehicle, as is depicted in the ad?
32. It is noted that the offence of drink-driving (to which the public policy element of this part of the ABAC is directed) captures being “in charge” of a motor vehicle which does include sitting behind the wheel of a parked vehicle. It is the Panel’s view that “operation” embodies more than driving a motor vehicle and does include control over the vehicle’s movement, whether the vehicle is shown moving or not. A person in the driver’s seat would ordinarily be considered to be in control of the vehicle’s operation *i.e.* have the ability to move the car forward, move it back or keep it stationary and accordingly the Panel believes the ad does depict the “operation of a motor vehicle”.
33. Reluctantly the Panel has concluded that the ad does not breach Section (d) of the ABAC as alcohol consumption is not depicted as required to breach the standard established in the Sections. The Panel believes, however, that the ad does unwisely raise the spectre of alcohol use and the operation of a motor vehicle and recommends that the advertisers not continue with this ad.
34. The Panel draws to the attention of its Management Committee its findings in this case and suggests that the scope of Section (d) in particular, and the various expressions dealing with alcohol consumption, and presence in general, be reviewed to ensure that the ABAC is setting appropriate standards.
35. The complaint is dismissed.