

ABAC

ABAC Complaints Panel
Determination No: 76/07

COMPLAINT by Ms Annabelle Dickson

Product: Little Creatures Beer
Advertiser: Little Creatures Brewing Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum - Member
Professor Elizabeth Dangar – Member
Ms Jeanne Strachan - Member
Professor Richard Mattick - Member

November 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a cinema advertisement and posters and fliers available at a cinema for the alcohol beverage Little Creatures Beer by Little Creatures Brewing Pty Ltd (“The Advertiser”).

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 16 October 2007 which was received by the ABAC Adjudication Panel on 17 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 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 sought in respect of this advertisement as the Advertiser is not a signatory to the Code. The Advertiser has been very co-operative in relation to the complaint process.

The Advertisement

9. This complaint refers to a cinema advertisement, a poster and a flier for Little Creatures beer.
10. The cinema advertisement opens to a fictional city scene created by figurines, toys and household items. Wedding couple figurines stand in the middle of a main street. The bride and groom figurines have the following dialogue:

Bride: "I can't believe we just got married"

Groom: "I need a beer"

Bride: "Where shall I go? What shall I do?"

Groom: "Frankly my dear, I don't give a damn!"
11. A Little Creatures 'Pale Ale' bottle then appears held in a hand accompanied by a roar (supposedly from the bottle) and a scream (from the Bride). The bottle takes the form of a "monster" attacking the city. The bottle crushes a nearby police car and crashes through parts of the scene.
12. The camera then pans to a shot of army figurines and the dialogue "Lima Charlie Bravo we need air support!" The bottle then crushes the army figures. A helicopter then appears accompanied by the dialogue "Red leaders start your attack run". There is then a cackle (supposedly from the bottle) as it knocks the helicopter out of the sky. Parts of the scene are on fire. A tank then appears and directs the following dialogue to the bottle "Do you feel lucky Pint? Well, do ya?" A bottle opener is then shot off the tank (carried by a human hand) and the bottle is opened. A man takes a drink, puts the bottle back on the scene and walks away laughing.
13. The advertisement closes with a product shot and the taglines "open up a little" and "its pint size" accompanied by whistling music.

14. The poster which was displayed at the cinema and which the Advertiser advises has also been displayed on Adshel's at bus stops, depicts a pint bottle of Little Creatures Pale Ale beer on the right side of the page against a white background and on the lower left side of the page, the tagline "It's Pint Size" above a small green army figurine kneeling with a bazooka over its shoulder pointing toward the pint bottle. The label of the beer contains a picture of a cherub holding a mug of foaming beer ("the cherub") printed above the name of the beer and embossed on the glass near the neck of the bottle.
15. The flier which was available at the cinema depicts the name "Little Creatures Pale Ale" at the top of the page, with the cherub located on the C in the name. The balance of the page contains a description of how the beer is made, some features of the beer and notes awards the beer has won. It also contains a picture of a 375ml bottle of Little Creatures Pale Ale which contains a picture of the cherub in the middle of both of the labels on the bottle, a schooner of beer with a picture of the cherub etched on the glass and on the bottom right side of the page is the tagline "Open up a little" on top of a red shadow picture of the cherub. On the reverse side of the flier there is the title "the creatures" at the top of the page. Below the title there is a description of the hops used in the beer, and the location and features of the brewery. Next to this description are pictures of two drawings of green creatures that appear to have been made from hops and are named "Spike" and "Trevor" and are described as "hopheads". Below this section is a photograph of the Little Creatures Brewery and contact details for Little Creatures Brewing. On the bottom right side of the page is a very small picture of one of the hopheads.

The Complaint

16. The complaint raises concerns about both the cinema advertisement and the posters and fliers made available in the foyer of the theatre. The complainant only viewed the advertising once and appears to have slightly confused the various separate ads in that elements of the posters are incorrectly described as appearing in the cinema ad. Nonetheless, the nature of the complainant's concerns are clear, namely:
 - that the ads are specifically aimed at children through the use of toys and characters in the depicted scenes in the cinema ad and on the posters;
 - that the ads suggest that drinking beer is preferable to marriage.

The ABAC

17. The ABAC provides that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i)
 - ii) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children or adolescents.

Argument in Favour of the Complaints

18. The advertisements are in breach of section (a) (ii) and (b) of the ABAC by having a strong or evident appeal to children or adolescents by including:
- a) the use of common children's toys such as soldiers, cars and figurines;
 - b) the use of other household items such as empty bottles and containers which are commonly used by children in creating scenarios for play;
 - c) the creation of an overall scene which reflects a child's game;
 - d) the juxtaposition of the term "pint" with the product in the overall context of the ad which invokes an impression of the description of children as "small pints";
 - e) the use of the "hopheads" characters on a flier advertising the beer; and
 - f) the use of an army figurine on a poster advertising the beer.

Further, it can be argued that it was offensive to suggest alcohol consumption is preferable to marriage.

The Advertiser's Comments

19. The Advertiser responded to the complaint by way of emails dated 25 and 26 October 2007. The Advertiser has advised that:
- a) The complaint is not accurate. It is not a cartoon advertisement. It has an adult who has created a "Diorama" movie set to create a mock scene of the Godzilla horror movie but uses his pint bottle as the Godzilla character. The script then uses famous movie quotes such as "Frankly my dear I don't give a damn" etc. A giant foot does not squash down on the married couple. The cinema advertisement does not cut to various hophead characters enjoying a beer. No "hopheads" or any such cartoon characters appear. The complaint seems to not only be inaccurate, but has built in detail that does not exist to build a case.
 - b) Building sets or war scenes or playing with model railways is an adult activity as well as a child's activity, the same way that playing cricket or football can be either. The same way that using items creatively to build a movie set by an adult is separate to a child playing with toys or creating their own scene, ie the overall scene is a "model" of movie scenes by an adult and hard to mistake as otherwise.
 - c) There is no connection between children and "small pints" in the advertisement.
 - d) The ad has been on the Little Creatures Brewing website and with its own dedicated link www.pintzilla.com for approximately a year without complaint and without concerns mentioned.
 - e) The campaign is an ARTHOUSE cinema campaign targeting sophisticated mature adult viewers and is not showing in the more mainstream cinemas that would attract under 18s. Movies that are M+ have been specified. The complainant was watching Death at a Funeral rated M. The complainant mentions advertising to children via hopheads/cartoon characters. Again these are not in the ad. We do have illustrated hophead characters on our

website and some fliers in relation to product ingredients (namely hops) but they are not in the cinema advertisement. The complainant has obviously researched other material to build a case.

- f) The person handling the pint bottle in the ad was over 25 years of age, was a real person not a cartoon character, and has a small sip of the beer at the end, nothing that suggests or encourages excessive consumption.
- g) We have been involved in alcoholic beverage TV advertising for many years and are very aware of the responsibilities involved.

The Panel's View

- 20. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

- 21. 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.
- 22. 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 member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory.
- 23. This means that the cinema advertising was not subject to pre-vetting prior to its showing. Further, this decision by the Panel 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.

The Substantive Issues – Cinema Ad

- 24. The complainant raises concerns about the cinema ad, but in doing so appears to have transposed elements of the related but separate poster ads into the description supplied of the cinema ad. This is not surprising as the complainant would have only viewed the ad on a single occasion and apparently wrote the complaint about 10 or so days after seeing the ad at the movies. The essence of the complainant's concern is however quite clear, namely that the ad is offensive as it claimed to elevate the importance of alcohol over that of marriage and secondly, because the ad is argued to be aimed at children.
- 25. Dealing firstly with the concern about alcohol and marriage, the relevant ABAC provision provides that ads must be mature, balanced and responsible and must not promote offensive behaviour. The Panel does not believe that the ad breaches this standard. The ad cannot be fairly said to elevate alcohol consumption over the institution of marriage and, in any event, the ABAC standard concerning "offensive behaviour" relates to depictions of drunken

behaviour rather than a wider meaning of “offensive behaviour”. “Offensive” elements in advertising more generally are dealt with by the Code of Ethics standards rather than the ABAC, and are not directly relevant to the Panel in this case.

26. The more weighty issue raised by the complaint concerns the ad’s use of toys, figurines and the like, and whether this can be fairly said to encourage under-age drinking and to have strong or evident appeal to children. Certainly the ad depicts the use of toys and items which would commonly be used by children in playing games.
27. The advertiser responds to this concern by pointing out that:
 - The ad is being shown in conjunction with films given an “M” and “M+” classification and hence is not targeted at children.
 - Adults commonly also use models and manufactured “city-scapes” for recreation activities.
 - The overall context of the ad is adult by use of references to dialogue from well-known films which are not children’s films.
 - The bottle is a surrogate for the monster “Godzilla” and the created scene resembles a movie set – not a children’s play set.
28. The Preamble to the ABAC provides guidance in how the Panel is to apply the ABAC standards. The Preamble provides that conformity of an advertisement with the ABAC is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.
29. In this case, the ad was shown in conjunction with a movie with an “M” classification. The advertiser points out that this demonstrates that the ad was not targeted at children. It is noted that the Office of Film and Literature Classification advice on “M” rated movies is that it is not recommended for children under 15 years of age. There is no actual restriction, however, on the audience which can gain entry to view an “M” rated movie.
30. The ABAC is not principally concerned with the placement of advertisements, but rather is focused on the content of ads. Where an ad is published or broadcast is relevant only in determining the class of persons to whom the advertisement is or may be communicated. In this case, the primary audience would be adults, but undoubtedly children will also view the ad.
31. The central issue is whether the ad has a strong or evident appeal to children. The Panel has considered this question in previous determinations and has noted that:
 - each ad has to be assessed on its merits
 - the intention of the advertiser as to its target audience is not material; rather, it is the “probable impact” of the ad which is important
 - the ABAC standard accepts that an ad might have some residual or incidental appeal to children but it is “a strong or evident” appeal which is prohibited
 - the overall context of the ad is critical.

32. This means an overall impression of the ad must be formed. On balance, the Panel believes that the ad does breach the ABAC standard, given its use of toy figures and common household items and the game scenario that is created. The Panel has carefully had regard to the advertiser's comments on the adult themes in the ad, such as the references to dialogue from other movies and the Godzilla imagery. However, the overall context does create a strong impression of children's play.

The Posters and Fliers

33. The Panel has also considered the posters and fliers displayed in the theatre foyer. The principal concern of the complainant turns on the use of the "hophead" characters. These characters do bear some resemblance to children's story characters, but the context of their use does not place them with children's activities. In this instance, the Panel does not consider the fliers or poster breach the ABAC standard.
34. In finding the cinema ad in breach of the ABAC, the Panel draws the attention of the advertiser to the benefits of the pre-vetting system. This process assists in identifying potential problems with the consistency of ads with ABAC standards.
35. The complaint is upheld.