

ABAC

**ABAC Complaints Panel
Determination No: 127/08 & 129/08**

**In the complaints of Mr Trevor Langford and Mrs Lana Mathison
Product: Lion Nathan Beer Products featuring “the Natural Beer Promise”
Advertiser: Lion Nathan**

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

23 December 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Natural beer by Lion Nathan (“the Advertiser”) and arises from a complaint by Mr Trevor Langford received 21 November 2008 and a complaint by Mrs Lana Mathison received 25 November 2008.

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 and Alcohol Guidelines which include provisions about the content and placement of 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints are in the form of two emails received by the ABAC Panel on 21 November and 25 November 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. This complaint has been determined within the 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. The television ad was submitted for pre-vetting examination and approval was given to the ad (BH200/08).

The Advertisement

9. The ad is one in a series of three television commercials for the product. The ad opens with a shot of a beautiful lake with mountains in the background. The camera pans quickly from right to left to reveal a man walking towards the camera. The man is wearing a chequered "lumber jack" shirt, jeans and boots. He appears to be carrying a dead boar over his shoulders and he is approaching a pile of other dead animals.
10. The man begins speaking in a North American accent and states "I always say there's no respecting a species that can't get itself out of a headlock". The man then throws the boar onto the pile of dead animals and looks directly to the camera. He continues speaking "I also say if you drink beer make sure it has this" at which point he holds up a stubby of the product and points to the neck of the stubby which has a natural beer promise label which is featured in a close-up shot. The man continues "the natural beer promise means it's brewed naturally, made with natural ingredients free from artificial additives and preservatives". The man then looks down and nods towards the pile of animals and states "just like this mighty hog here".
11. The man continues his narration by stating "find out more and get on your desktop thingy". A text message is then superimposed on the screen which features the natural beer logo www.naturalbeer.com.au. The man

is then seen in a wider shot with one foot resting on the pile of animals as he then squeals like a pig and laughs.

The Complaints

12. The first complainant states that he finds the sight of dead animals extremely upsetting and that he avoids watching programs which includes violence against animals. The complainant contends the ad is inconsistent with section (a) (iii) of the ABAC.
13. The second complainant is concerned the ad depicts a total disrespect for dead animals followed by swilling beer and finds the ad offensive.

The Code

14. 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:-
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

Arguments in Favour of the Complaint

15. In favour of the complaints it can be argued that the advertisement breaches section (a) and (a)(iii) of the ABAC Code by;
 - (a) The principal character having killed a number of animals;
 - (b) The character giving a rationale of why certain species do not deserve respect;
 - (c) Associating alcohol consumption with the character's behaviour of killing animals and making animal noises.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 11 December 2008. The principal points made by the advertiser are as follows:
 - (a) Overall, our strong view is that the majority of these complaints do not raise an ABAC issue. Previous decisions of the ABAC Complaints Panel have interpreted the offensive behaviour component of the Code as relating to behaviour "related to or influenced by the misuse of alcohol".
The Panel said: The expression 'offensive behaviour' in ABAC is not a freestanding standard like to section 2 of the AANA Code of Ethics. Within ABAC, '*offensive behaviour*' means *unacceptable behaviour related to or influenced by the misuse of alcohol* eg. Drunken loutish behaviour.

- (b) We agree with the position of the Panel on this, because in relation to issues that are common to all advertising (i.e. not special to alcohol products) there is no reason for alcohol companies to take a different approach to other companies. There is absolutely no suggestion that the alleged "offensive behaviour" in this campaign is caused or influenced by the misuse of alcohol, which is why we do not believe this is within the mandate for ABAC. Beyond that, we do not agree that the behaviour depicted is offensive for the reasons outlined below.
- (c) The Natural Beer Promise advertisements are part of a campaign, which aimed to promote a new natural platform for Lion Nathan mainstream beers in a way that would resonate with mainstream beer drinkers. The advertisements are clearly fictional and hyper real and are certainly not designed to offend. Each execution is designed to contrast a fictional character who believes he is 'at one' with nature, yet displays very little awareness about himself or his environment, with an initiative which is solely focussed on education and awareness about the product, which features the best nature has to offer. The humour lies in the protagonist's obvious lack of self awareness, rather than his actions. This is very much in line with the same vein of humour as contemporary Australian comedies such as *Kath & Kim* and *Summer Heights High*. The protagonist's behaviour is presented as clearly ridiculous and the character himself was cast with an accent, so that he would seem foreign, fictional and 'other-worldly' to an Australian audience. The audience is supposed to disconnect and be surprised by, rather than identify with, his ridiculous behaviour. The ironic and impossible situations include the character trying to cut down an enormous tree, hunting huge wild pigs with his bare hands, and 'marking his territory' in an overtly over-the-top and physically impossible way.
- (d) We do not believe this ad falls in line with the definition of this clause as there is no consumption of alcohol, nor any indication that the consumption of alcohol has altered the character's behaviour. The 'Pig' instalment shows the character hunting a clearly wild species of animal, which is perfectly legal and in line with community standards. Again, the outtake of this execution is the humour behind the lack of self awareness of the character (which is apparent in not only his actions but his behaviour and script), rather than a celebration of the actions themselves.
- (e) Understandably, Lion Nathan does not expect these executions to be to every consumer's taste. That said, the tone and treatment of the physically impossible actions convey these advertisements as clearly fictional and outrageous. The humour lies in the protagonist's complete lack of self awareness rather than his clearly ridiculous behaviour, in the same style as mainstream television programs currently appearing in the same timeslots as these advertisements.
- (f) There is also the further argument that there is no suggestion that his behaviour is caused by, or influenced by alcohol consumption, and as such, we do not believe these executions contravene the ABAC.

The Panel's View

The ABAC and Code of Ethics

17. The advertisement is one of a series of tvc's from the advertiser which are respectively entitled 'Territory', 'Tree' and 'Pig'. Collectively the series has attracted a large number of public complaints. The Panel will be making separate determinations on each of the advertisements.
18. In most cases the public complaints about this execution have raised issues which in essence are about cruelty to animals. This issue falls squarely under section 2 of the AANA Code of Ethics and will result in a decision on the ad by the ASB.
19. The AANA Code of Ethics is a generic code which applies to advertising irrespective of the type of product being promoted. In contrast, the ABAC is a set of standards which go to alcohol and its responsible use. A complaint might raise issues under the ABAC or the Code of Ethics or both codes. In this case, the complaints dealt with in this determination have raised issues about alcohol as a product as well as more general concerns. This means there will be separate determinations by this Panel and the ASB.
20. While both the ASB and this Panel operate against the backdrop of 'community standards' in assessing complaints and ads, both bodies are applying quite distinct codes which go to different matters and accordingly different conclusions might be reached on a particular ad.

Section (a) and a (iii)

21. The complaints raise the appropriateness of linking alcohol use with the depiction of killing animals by the character in the ad.
22. As previously explained, the starting point is the fact that the ABAC does not go to the general issues of good taste, decency and violence and community safety. These are standards which alcohol advertising, like all advertising, should satisfy, however these standards are laid down in the AANA Code of Ethics and compliance with the standards is assessed by the ASB. The ABAC standards go to more specific issues related to the use of alcohol.
23. The relevant ABAC standards are found in section (a). This requires that advertising of alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol and must not promote offensive behaviour, or excessive consumption, misuse or abuse of alcohol beverages.
24. Section (a) is a combination of both 'positive' and 'negative' standards. Ads must be positive in terms of being balanced, mature and responsible and must not be negative in terms of promoting offensive behaviour. In assessing if an ad meets this standard, the ABAC preamble provides that an ad is to be assessed with regard to its probable impact upon a reasonable viewer taking its content as a whole.
25. The Panel has on previous occasions examined the operation of section (a) and (a)(iii) including:

- Determination 18/05;
 - Determination 40/05;
 - Determination 56/05 and 04/06;
 - Determination 55/06;
 - Determination 43/07;
 - Determination 12/08;
 - Determination 15/08 and 24/08; and
 - Determination 65/08, 68/08, 72/08, 87/08 & 94/08.
26. From a review of these decisions, the following general observations can be made on how the Panel has interpreted section (a) and (a)(iii):
- the section is concerned with a 'responsible approach' to alcohol consumption which is a wider concept than consumption;
 - the expression 'offensive behaviour' used in section (a)(iii) must be understood within the context of the section and ABAC as a whole and is not a freestanding standard akin to section 2 of the AANA Code of Ethics;
 - within the context of ABAC, 'offensive behaviour' means unacceptable behaviour related to or influenced by the misuse of alcohol eg. Drunken loutish behaviour;
27. That said an ad must be assessed on its own merits against the relevant standards of the ABAC. The complainants' concern is the association of alcohol with violence toward animals.
28. The advertiser strongly rejects that the advertisement is in breach of section (a) and (a)(iii) of the ABAC. The advertiser contends there is no consumption of alcohol, nor any indication that the consumption of alcohol has altered the character's behaviour. The 'Pig' instalment shows the character hunting a clearly wild species of animal, which is perfectly legal and in line with community standards. Further, there is humour behind the lack of self awareness of the character (which is apparent in not only his actions but his behaviour and script), rather than a celebration of the actions themselves.
29. The Panel does not believe that this ad is in breach of section (a) as:
- The character does not appear to be under the influence of alcohol;
 - No alcohol consumption is depicted;

- While many people will find the behaviour “offensive” this relates to the ‘redneck’ social attitudes displayed and not to behaviour related to alcohol use;
 - It is for the ASB to determine if the ad breaches The Code of Ethics standards, which are at the heart of the two complaints.
30. Accordingly the complaints are dismissed.