

ABAC

ABAC Complaints Panel
Determination No: 144/08 & 154/08

Confidential Complainants
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 two complaints by confidential complainants received 25 November 2008 and 2 December 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 25 November and 2 December 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.
8. In this case, the advertisement was the subject of several complaints and it was decided to combine all complaints into a single determination. This has delayed resolution of the earliest complaints but collectively the complaints have been determined within the 30 day timeframe.

Pre-vetting Clearance

9. 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

10. The ad is one in a series of three television commercials for the product. The ad opens with a beautiful natural setting of large trees against the backdrop of a mountain range. The shot pans from the right to left to reveal a man dressed in a chequered "lumber jacket" shirt, jeans and boots with his back to the camera and facing a large tree. The man appears to be urinating on the tree but the stream of urine is highly exaggerated and extends high along the trunk of the tree.
11. The man then turns his head toward the camera and speaks in a North American accent as follows "out here you gotta remind your four-legged neighbours what's yours and this is mine. He stops urinating zips up his fly and turns towards the camera. The man then reaches down and picks up a stubby of the product then talks to the camera and points towards the beer and says "just like this beer cause it's made with this". The man points to the neck of the beer which has a "natural beer promise" label as the camera zooms in on the label. The man continues speaking "the natural beer promise means its brewed naturally, made with natural ingredients, free from artificial additives and preservatives". The man

then winces and appears to break wind. He then concludes by stating “find out which beers make the promise. Go to the www. It’s right here”. The man points to a text which has been superimposed on the screen which features the product logo and next to it text which reads “www.naturalbeer.com.au”.

The Complaints

12. The first complainant argues that the advertisement is screened during an inappropriate time slot when children could be viewing, specifically 3pm on 24 November 2008.
13. The second complainant argues that the advertisement depicts urination which is crass beer drinking behaviour.

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:-
 - (ii) must not encourage under-age drinking;
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - (b) not have a strong or evident appeal to children or adolescents.....

Arguments in Favour of the Complaint

15. In favour of the complaints it can be argued that the advertisement:
 - (a) breaches section (a) of the ABAC Code by presenting an immature and irresponsible approach to the consumption of alcohol by depicting the public urination of the principal character;
 - (b) breaches section (a)(ii) and (b) by encouraging under-age drinking by its broadcast at a time when children may view the advertisement, specifically Monday 24 November at approximately 3.00pm on the Ten network in south-east Queensland;
 - (c) breaches section (a)(iii) by depicting a man urinating on a tree and then promoting beer, in circumstances where public urination is a behaviour that can be associated with alcohol consumption.

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 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) The 'Territory' execution shows Natural Man marking his territory, as beasts in nature naturally do. Putting aside the fact the set up of this scenario is quite clearly ridiculous and physically impossible, this action is shown in many popular television programs and movies screened in the post 8.30pm timeslot, which is set aside for viewing by mature audiences. As such, we believe the 'Territory' execution is in line with community expectations and standards of taste and decency.
- (e) Lion Nathan has confirmed with the media buying agency, as well as with Network Ten in both metropolitan and regional Queensland and all Network Ten affiliates that these advertisements did NOT air around 3.00pm on 24 November. All iterations of the Natural Beer Promise campaign advertisements were aired in line with regulations

around alcohol advertising, i.e. in a post 8.30pm timeslot set aside for mature audiences.

- (f) 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.
- (g) 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 The Code of Ethics

- 17. The advertisement is one of a series of tvcs from the advertiser which are respectively entitled 'Territory', 'Tree Birdy' 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 the taste and decency of depicting public urination. 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)(ii) and (b)

- 21. The first complaint raises concerns that the ad was broadcast during a weekday mid afternoon timeslot and will therefore be seen by young viewers. The advertiser provided information that it has received advice from its media buying agency, Network 10 and its affiliates that the ad was not screened at 3pm as claimed by the complainant and was always screened after 8.30pm.
- 22. The ABAC is a code which is based on the content of ads rather than the placement of ads. This can be contrasted with the CTVI Code of Practice which specifically limits the times at which alcohol ads can be broadcast. The

ABAC standard goes to ads not encouraging underage drinking or having a strong or evident appeal to children.

23. The Panel does not believe that the content of the ad can reasonably be said to have a particular appeal to younger viewers and in the absence of evidence to the contrary contradicting the advertiser's advice from the 10 Network, the Panel must accept that it was broadcast at times consistent with the CTVI Code of Practice.

Section (a) and (a)(iii)

24. The second complaint raises the appropriateness of linking alcohol use with the depiction of public urination by the character in the ad.
25. 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.
26. 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.
27. 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.
28. 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.

29. 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;
30. For its part, the advertiser strongly rejects that the advertisement is in breach of section (a) and (a) (iii) of the ABAC. The advertiser contends the ad is not offensive as the behaviour is portrayed in an over the top way that is clearly ridiculous and in any event there is no suggestion that the character’s behaviour is caused by, or influenced by alcohol consumption.
31. The Panel notes that urinating in a public place is a behaviour that can be associated with the loss of inhibitions that accompanies alcohol consumption and accordingly this brings into consideration the prohibition on “offensive behaviour” in section a (iii).
32. The preamble to the ABAC provides that conformity of an advertisement with the Code’s standards is to be assessed in terms of the ad’s probable impact upon a reasonable person within the class of persons to whom the advertisement is directed or maybe communicated taking its content as a whole. This means that the context and overall impression of the ad is important in assessing its compliance with the ABAC.
33. In Determination No. 12/08 the Panel considered section a (iii) in the context of a billboard advertising a brand of scotch. The billboard featured a photograph of a statute of three men in kilts bearing their backsides. The Panel considered the overall context of the ad and concluded that it did not sufficiently establish the claimed historical background of conflict between the Scots and the English and that the ad could reasonably be taken as associating “offensive behaviour” in the context of alcohol use.
34. Like the earlier decision this particular case must be assessed on its own terms. Clearly the act of urination which is depicted is highly fanciful given the exaggerated stream of urine that the man is supposedly producing. Further it is noted that when the man displays a bottle of the product, the bottle is unopened and this might be argued to suggest that he has not as yet consumed any alcohol. It’s also noted that the man’s speech and general behaviour do not give the impression that excessive alcohol consumption has occurred.
35. On balance a majority of the Panel concludes that section a (iii) is not breached by the ad but the Panel shares the concern expressed by many complainants that the ad is crass and in poor taste. Whether this is

sufficient however to say that the ad breaches accepted community standards in this regard is more properly a matter for the ASB in applying the Code of Ethics than this Panel in applying the ABAC.

36. Accordingly the complaint is dismissed.