

ABAC

ABAC Complaints Panel Determination No: 114/09

Confidential Complaint Product: Russian Standard Vodka Advertiser: Beam Global Australia Pty Ltd

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

14 January 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement on the “Ninemsn” website for Russian Standard Vodka by Beam Global Australia Pty Ltd (“the Advertiser”) and arises from a complaint received 11 December 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 complaints systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.

4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.
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 a confidential email received on 11 December 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. This advertisement did not receive pre-vetting approval.

The Advertisement

9. The complaint refers to an advertisement featured on the "Windows Live Messenger website.
10. The advertisement features two leaderboards that fade into one another until they are rolled over into a third frame. The first leaderboard features the Russian Standard Vodka logo and name and then the text "Russia's No 1 Premium Vodka" against a black background. The second frame features the Russian Standard Vodka logo and name and then the text "It's the party season, roll over for the Russian remedy" against a black background.
11. The third frame that only appears when the user rolls over the leaderboard features a black background with a grey pattern in parts. On the left side of the frame is the Russian Standard Vodka logo and name above a video. The video commences by quickly flicking through pictures of cocktails one after another. A red cocktail is then shown with the text Discover the World of Russian Cocktails and the beginning of the video is repeated. Russian text is then shown flashing across the page and a picture of a cocktail is shown with the green text "Bolshoi Basil". This is then repeated for drinks named "Tolstoi Tang" in orange text and "Kalinka Kooler" in green text and finishes with the Russian text fading from the page.
12. To the right of the video is a recipe for a drink incorporating the product that is named a "Mini Mary" with the following text "Mini Mary. Russian Standard Original. What's

red hot but ice cold, a giant in a small package? A Mini Mary. The shot may be short but there's nothing mini about its flavour, this recipe has all the taste. If any brand can hold its own against the richness of the tomatoes & Tabasco sauce, it's Russian Standard. And the best part? It's less filling than its bigger older sibling. Ingredients: - 25ml Russian Standard Original – 15ml tomato juice – 1 dash Tabasco sauce – 1 dash Worcester sauce – ½ cherry tomato – salt to taste . Method: Pour tomato juice, Tabasco sauce and Worcester sauce in a chilled shot glass. Insert half of a cherry tomato and fill the glass to the rim with Russian Standard vodka. Garnish with a celery leaf.” To the right of the recipe is a picture of a shot glass with a red coloured drink containing a celery leaf. Below the picture is a red box with the text “Click here for more recipes”.

The Complaint

13. The complainant argues that the ad should not be placed at 8.45am on this website which is one of the biggest websites frequented by children in the age of binge drinking.

The Code

14. 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

15. 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 placement on a website used by children and adolescents at 8.45am in the morning and featuring a red coloured drink named a “Mini Mary”.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 19 November 2009. The points made by the Advertiser in relation to the advertisement were:
 - (a) As the complaint is focused on the placement of the ad, rather than the content, we have spoken with Ninemsn to clarify the serving of the ad and its performance thus far – some details below:
 - The ad went 'live' at between 16:00-17:00 (4 -5 pm) on Monday 07/12/09.

- It has currently served 905,789 impressions to date on the Pushdown, 1,566 clicks and a CTR of 0.17% based on the adserving system (as of yesterday)
- (b) Ninemsn has confirmed this is definitely targeted to users 18+ only and has been throughout the campaign.
 - (c) As with any medium, the media owner, in this case Ninemsn sells the medium as tailored to the specific audience an advertiser seeks to reach. In the case of Russian Standard there is no ambiguity here, the news site was purchased as a medium because it delivers primarily an audience aged over 18, following the guidance of the media owner.
 - (d) The advertisement is tailored to appear in the morning because this is the time at which a Bloody Mary cocktail is traditionally consumed. Similarly the Bloody Mary cocktail always has been a red coloured drink due to the tomato juice base. This particular iteration is called a 'Mini Mary' because it contains less tomato juice than a traditional Bloody Mary.
 - (e) Whilst we feel the content of the advert does not breach placement or content guidelines, in the interests of caution and a willingness to maintain the utmost standards in responsible promotion of our products, we have advised the ad be served only POST 4:30 pm until this complaint has been judged.

The Panel View

17. The complainant argues that alcohol ads, and in particular, this alcohol ad should not be placed on a site used by children and adolescents at 8.45am in the morning.
18. The Advertiser has advised that Ninemsn has confirmed that the ad is targeted to users 18 years of age and over only and has been throughout the campaign.
19. The Panel's role is to make decisions on the consistency of individual alcohol ads against the standards contained in the ABAC. 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. 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 medium 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. The Advertiser has advised that Ninemsn have targeted users 18 years of age and over in serving the ad.
21. What all this means is that the Panel has to examine the content of the alcohol ad against which the 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.

22. The ad depicts a recipe for a “Mini Mary cocktail” and pictures of cocktails.
23. The ad does not, in the Panel’s view, contain elements which have strong appeal to children or adolescents, as opposed to a wider audience.
24. Accordingly, the complaint is dismissed.