

ABAC

**ABAC Complaints Panel
Determination No: 39/05**

IN THE COMPLAINT OF DR PHILIP JORDAN

**Product: Sass Bubbly (Peach)
Advertiser: Carlton & United Beverages**

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

26 August 2005

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns the billboard advertisement for the alcohol beverage ‘Sass Bubbly (Peach)’ by Carlton and United Beverages (“The Advertiser”) and arises from a complaint received from Dr Philip Jordan (“The Complainant”).

The External 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. Currently, alcohol advertising is subject to both:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme.
3. The ASB and the ABAC 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 complaint specifically 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 from Dr Philip Jordan dated 12 July 2005 and was received by the ABAC Adjudication Panel on 26 July 2005.
7. The Panel endeavours to determine complaints within 30 days of receipt of the complaint, but this timeline depends on timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. In this case, the determination has been made within 30 days of receipt of the complaint by the Panel.

Pre-vetting Clearance

8. The external-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 granted to the advertisement (No. UL56/05: 22/06/05).

The Advertisement

9. The complaint is about one of a three billboard series of advertisements for the Advertiser's fruit flavoured alcohol beverages "Sass Bubbly". The specific advertisement, which is the subject of the complaint, promotes the 'Peach with Sparkle' flavour in the billboard series ("Sass Bubbly Peach").
10. The advertisement depicts the reflective image of a female character posed in front of an ornate mirror and dressing table. The character is dressed in highly fashionable and glamorous evening attire. The outfit is bare shouldered in design, close fitting and highly textured with decorative pieces. The character is also adorned with relatively ostentatious pieces of fashion jewellery comprising neck, wrist and ear pieces. The character's hair and makeup is highly styled to complement the glamorous nature of the evening attire and jewellery.
11. The character holds a highly posed position with her head thrown back to one side as she smiles while observing her reflection. The character is also positioned holding one hand on her hip while the other hand holds the Sass Bubbly Peach with the straw to her mouth.
12. The glamorous and highly fashionable effect of the advertisement is reinforced by the heavily sparkled and ornate surroundings to the reflecting which depict the mirror frame, wallpaper and items decorating the dressing table, as well as the reflection of the sparkling curtains and water horizon seen behind the character's image.

The Complaint

13. The complainant argues that the female character appears to under the age of 25 years of age. The complainant also argues that the advertisement is specifically targeted at young women and promotes under-age drinking.

The Code

14. The ABAC provides at Section (a) 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.
15. The ABAC also provides at Section (b) that advertisements for alcohol beverages must:
- (b) not have a strong or evident appeal to children or adolescents and, accordingly:
 - (i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
16. The ABAC provides that for the purposes of the Code, the term:
- adult** means a person who is at least 18 years of age;
- adolescent** means a person aged 14 – 17 years inclusive;
- child** means a person under 14 years of age.

Arguments in Favour of the Complaint

17. In favour of the complaints it can be argued that it is not obvious that the female character featured in the advertisement is clearly over 25 years of age. Further, it might be argued that the advertisement as a whole, taking account the dress of the woman, the setting and the use of colour, will have a strong appeal to adolescent females

The Advertiser's Comments

18. The Advertiser responded to the complaint by letter dated 10 August 2005. The Panel was also supplied with a letter from the Advertiser to the ASB dated 29 July 2005. It is explained that the product is aimed at female consumers in the 18 – 24 age group and strongly aligns the product with the fashion trends of this age group. In advertising the brand, regard was also had for the traits of sassiness, fun and fashion.
19. The Advertiser states the model used in the advertisement was 25 years old at the time of the photography. Proof of age is offered. It is also asserted that the character 'looks' her age. It is also argued that the character is depicted in an adult scenario of 'getting dressed up in a high fashion outfit for a special occasion'.
20. Finally, the Advertiser refutes that the product is being promoted to minors. 'While the imagery may be attractive to adolescents – the same could be said of a variety of advertisements aimed at an adult audience – the Sass Bubbly campaign is firmly and entirely aimed at legal age female consumers'.

The Panel's View

21. Dr Jordan's complaint is in two parts. Firstly he is of the opinion that the female character is 'clearly under the age of 18'. Secondly, he argues that the advertisement is targeted at young women under the age of 18.
22. The complaint brings into focus section (b) of the ABAC. Section (b)(i) has a factual element and a limb which raises an issue based on individual judgment and opinion. The factual element is that adults appearing in advertisements 'must be over 25 years of age'. Unfortunately, this wording brings about an ambiguity which the Panel must now resolve.
23. The ambiguity arises because the Advertiser states that the model used in the advertisement was 25 years old at the time of the photography for the advertisement. Section (b)(i) states that adults appearing in the advertisement must be over 25 years of age. There are several ways which the ABAC requirement could be interpreted.
24. One possible interpretation is that a character used in an alcohol advertisement must be least 26 years of age. A second interpretation is that the character must be at least 25 years and 1 day old. The third interpretation is that the character must be 25 years or over in age.
25. Section (b)(iii) uses the language of 'adults under the age of 25 years'. The definition section uses the phrase 'at least 18 years of age' in describing an adolescent. In short, the ABAC employs different wording to deal with age limits for different purposes.
26. Taken as a whole, section (b) appears to place restrictions on the depiction of adults under the age of 25 years. It might be reasonably assumed that the intention was that 25 years of age was to be the 'line in the sand' in terms of the age of adult characters who are to feature in alcohol advertisements. This appears consistent with some international standards such as the Portman Group Code in the United Kingdom and the Amsterdam Group standards in Europe. The Portman Group Code, for instance, has a provision which states "a drink, its packaging, any promotional material or activity should not in any direct or indirect way: (g) incorporate images of people who are, or look as if they are, under the 25 years of age'.
27. The Panel has consistently adopted the approach that it interprets and applies the ABAC in a common sense, non-legalistic manner which is guided by the spirit of the provisions. In this light, the Panel takes from the Advertiser's advice that the female character was under the age of 26 at the time advertisement was developed and 'over' the age of 25. Accordingly, on this factual point, Dr Jordan's complaint is dismissed.
28. The second limb of section (b)(i) is that adults in alcohol advertisements must be clearly depicted as adults. This is an issue of judgment. Dr Jordan would be of the view that while the female character may be an adult, she 'looks' to be under 18 years of age.
29. As noted, the Code defines an adult as a 'person who is at least 18 years of age'. The Panel interprets section (b)(i) to mean, in this regard, that the actual age of a character is immaterial if the advertisement depicts the person

as an adolescent or a child. This requires the Panel to make a judgment as to the apparent age of the character.

30. In making this judgment, the Panel has noted the appearance of the model, her clothing and the setting. The character is glamorously dressed and wearing extensive jewellery. The dressing room in which the mirror is located appears ornate and somewhat akin to a hotel room. Taken as a whole, the Panel concludes that the character is depicted as an adult (i.e. a person of at least 18 years of age).
31. The next issue is whether the advertisement has a strong or evident appeal to children or adolescents and hence breaches sections (b) or (a)(ii) which deals with the prohibition of the encouragement of under age drinking. This relates to the second part of Dr Jordan's complaint which alleges the advertisement targets adolescent females.
32. The Advertiser concedes the advertisement might be attractive to adolescent females, but asserts it is aimed at young adult women. The standard imposed by the ABAC is that the advertisement must not have 'strong or evident' appeal to children or adolescents, not merely incidental appeal to these groups. Equally, however, an advertisement which is genuinely aimed at adults will not be saved by this intention if there is a strong or evident appeal to younger viewers by the nature of the advertisement.
33. In making this judgment the Panel takes account of:
 - the 'look and feel' of the advertisement;
 - its overall impact;
 - its reach to different audiences.
34. The Panel believes the advertisement is in the 'orange' zone of advertisements where a reasonable person might conclude it does breach the ABAC while another person might reach a different conclusion. The Panel draws the attention of the Advertiser to the ABAC provision prohibiting the association of alcohol products with the achievement of social success and suggests to the Advertiser the need for caution to ensure that its advertisements are consistent with this provision. On balance, however, the Panel believes that while the advertisement could have an appeal to adolescent females, such appeal is incidental and not 'strong or evident' which would make it contrary to the intention of section (b) of the ABAC. In reaching this conclusion, the Panel noted:
 - The character is clearly depicted as over 18 years of age and hence an adult.
 - The clothing and jewellery worn by the character is that of an adult and not typically an adolescent.
 - The setting in an ornate room conveys wealth and position beyond that which an adolescent would generally expect.
35. Accordingly, the complaint is dismissed.