

ABAC

ABAC Complaints Panel Determination No: 48/09

Confidential Complaint Product: Sip'n'Save Advertiser: Liquor Marketing Group

Professor The Hon Michael Lavarch – Chief Adjudicator
Elizabeth Dangar - Member
Professor Fran Baum – Member

10 June 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Sip’n’Save by Liquor Marketing Group (“the Advertiser”) and arises from a confidential complaint received 8 May 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 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 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 complaint received 8 May 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 that 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 advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The television advertisement has the dark setting and appearance of an amateur 1960's horror movie. It opens on an old fashioned television set showing a black and white horror movie. It then moves to two young men sitting in lounge chairs in a dark room watching the television, holding open stubbies of beer and laughing. There appears to be an electrical storm occurring outside.
10. A voiceover commences a narration. The voiceover is performed in a deep, slightly sinister tone akin to a person telling a horror story. The narration begins with "It was a night like any other". The men go to sip their beers to find them empty and they exchange concerned glances. One of the men then walks down a hallway towards the kitchen and the fridge. As he does, a bolt of lightning strikes and creates a foreboding atmosphere. The narration continues: "...but then terror struck, at 10 pm nothing compares to the horror ofthe empty fridge".
11. At this point the man has reached and opened the fridge which is completely empty. A "B" grade 1950s style text is superimposed inside a close-up of the fridge which reads "The empty fridge!". The man reacts in an exaggerated and hysterical manner and screams: "There's no more beer...THERE'S NO MORE BEER!". He raises his arms, clenches his fists and releases a long scream as he gazes skyward. A ghostly apparition briefly flashes across the opened fridge. A superimposed text is again used which reads: "Experience the ultimate nightmare" as the narration continues: "experience the ultimate nightmare....".
12. The scene changes to a Sip'n'Save outlet at night with lightning flashing, the narrator continues "Or get down to a Sip'n'Save drive thru. Open Late. No

dramas.” The text “Open Late No Dramas” is superimposed on the final scene in the same type style as used earlier. There are no people or vehicles depicted at the outlet.

The Complaint

13. The complainant argues that the advertisement promotes and encourages drink driving.

The Code

14. The ABAC provides that advertisements for alcohol beverages must-
 - (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle or potentially hazardous activity and, accordingly-
 - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices..

Arguments in Favour of the Complaint

15. In favour of the complaint it can be argued that the advertisement breaches section (d) of the ABAC Code by associating alcohol consumption and the operation of a motor vehicle through its depiction of two men drinking beer and when they run out of beer suggesting the solution is a Sip'n'Save drive through.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 21 May 2009. The principal points made by the advertiser are as follows:
 - (a) We are not a subscriber to ABAC, although strongly support the responsible service of alcohol and will accept the Panel's decision in respect of the current advertisement.
 - (b) We modified an earlier version of this complaint in response to a previous complaint of a similar nature. In order to overcome the alleged association of drinking and driving we removed the image of a vehicle. We believe that to make such an association in respect of the current advertisement is unreasonable, if not pedantic. The vision of the bottle shop premises excludes any images of persons or vehicles.
 - (c) The revised ad was not pre-vetted through ABAC as we are not a subscriber. However we do adhere to the standard FACTS process.

The Panel's View

17. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The issue is that the Liquor Marketing Group is not a member of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC's adjudication process has no binding effect on the company. The Liquor Marketing Group, however, has stated their commitment to good practice in alcohol product advertising and has fully cooperated in this adjudication process and a previous adjudication process involving a different version of the same ad. Given the advertiser's willingness to comply with the ABAC scheme and to accept the Panel's decision in this and a previous instance, the Panel has proceeded to make this determination.
18. This is the second determination that the Panel has made in relation to an ad from this particular advertiser. The first Determination 148/08 and 160/08 dated 22 December 2008 concerned an advertisement which was similar to the ad which is the subject of this complaint. In the earlier determination, the Panel upheld the complaint and, in accordance with the rules and procedures applying to the ABAC scheme, the advertiser was asked to advise within five (5) business days if the ad was to be modified or discontinued. The advertiser withdrew the ad and subsequently a modified version has been broadcast.
19. The Panel plays no role in giving advice to an advertiser as to how an ad should be modified following an adverse Panel decision. This is because, as occurred in this case, any modified ad can attract fresh complaints and the Panel would be prejudiced in its consideration of further complaints if it had played a role in advising on the content of the ad. Rather, the advertiser was encouraged to use the ABAC pre-vetting service to have its advertising examined for consistency with ABAC standards. It seems, however, that the advertiser did not refer the ad to pre-vetting.
20. The current complaint and the complaints dealt with in the earlier determination have all gone to section (d) of the ABAC. Section (d) provides that ads are not to depict any direct association between the consumption of alcohol, other than low alcohol beverages, and the operation of a motor vehicle. The section goes on to provide that any depiction of alcohol consumption must not be represented as having taken place before or during engagement of the activity in question.
21. The complainant takes the ad as suggesting that it is in order for a person who has been consuming alcohol to drive to the advertiser's outlet when further supplies are needed. This is argued to be an encouragement of drink-driving. In essence, this is the same complaint which was made about the advertiser's original advertisement which was subject to the earlier determination. As indicated, this determination upheld the complaint and accordingly this complaint turns on whether the modification made to the ad means that it now is consistent with the provision in section (d).
22. The sole modification made to the ad is in the final scene which removed a shot of a passenger alighting from a motor vehicle at one of the advertiser's retail outlets. The balance of the scene remains the same with notably a bolt of lightning

depicted and the same type style is used for the text message 'Open Late No Dramas' as was used in the earlier 'horror story' scenes.

23. In finding the previous ad in breach of Section (d) of the ABAC the Panel had regard to the following:
 - The lightning strike seen at the outlet appears to establish the scene as occurring on the same night as the men are depicted consuming the alcohol
 - The text style used in the final scene is the same as that employed during the earlier empty fridge scene
 - The ad uses a 'problem' and 'solution' device which is essentially that the problem of running out of beer out of hours can be solved by accessing the advertiser's outlet. The implication being that the men would access the outlet by driving.
24. It would be fair to say that the removal of the motor vehicle from the final scene addresses an aspect of the Panel's concern, but a majority of the Panel believes the ad remains in breach of the section (d) standard. The majority of the Panel believe the ad would be taken by a reasonable viewer, taking the ad as a whole, as directly associating alcohol consumption shown in the ad with the most probable means of resolving the no beer 'horror' by driving to the late night outlet. The fact that the ad still clearly links the earlier drinking scene with the final scene at the outlet via the use of lightning and the same type style reinforces this view.
25. The advertiser modified the earlier ad and then re-broadcast the ad without taking the ad to the ABAC pre-vetting scheme. By doing this the advertiser has denied itself the benefit of obtaining an independent opinion on its advertising by a pre-vetter who is experienced in the ABAC and its application. The Panel once again strongly encourages the advertiser to take advantage of the entire ABAC scheme, particularly the pre-vetting process.
26. The complaint is upheld.