

ABAC

ABAC Complaints Panel
Determination No: 63/09, 66/09 & 72/09

Complaints of WA Community Alcohol Network, Alcohol Policy Coalition & a confidential complainant

Product: Skinny Blonde Beer
Advertiser: Brothers Ink Pty Ltd

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

21 October 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns websites and a product label for the product Skinny Blonde Beer. Skinny Blonde Beer is produced and marketed by Brothers Ink Pty Ltd (“the Advertiser”).
2. The determination results from three (3) complaints. The first dated 3 July 2009 is from the Western Australian Community Alcohol Network (WACAN). The second complaint dated 17 July 2009 is from the Alcohol Policy Coalition which is a coalition of public health agencies, namely:
 - Australian Drug Foundation
 - Cancer Council of Victoria
 - Turning Point Alcohol and Drug Centre
 - Vic Health

The third complaint dated 17 August 2009 is from a confidential complainant.

The Quasi-Regulatory System

3. 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.
4. 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.
 5. 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.
 6. The complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints are in the form of letters received by ABAC on 3 July 2009 and 17 July 2009 and an email received by ABAC on 17 August 2009.
8. 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. In this case, it was decided to combine the three complaints into a single determination, given that they raise similar issues and the fact that the specific section of the advertiser's website that is the subject of the first complaint and part of the second complaint had been removed by the advertiser prior to the receipt of the complaint. Combining the three complaints and some delay in the availability of Panel members has resulted in the target timeframe not being reached on this occasion.

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 Advertiser is not a Code signatory and pre-vetting approval was not obtained for the website advertisements.

The Advertisements

10. The first complaint refers to a website located at www.skinnyblonde.com.au/sixpack that was removed prior to receipt of the first complaint. The second complaint refers to the same website as the first complaint but also refers to the label of Skinny Blonde beer and a website located at www.skinnyblonde.com.au which has subsequently been altered. The third complaint refers to a current version of the website located at www.skinnyblonde.com.au and a link that has since been removed to an advertisement located at http://www.sexyandfunny.com/watch_video/can-you-win-a-staring-contest-with-this-hot-aussie-blonde_39620.html ("The Staring Contest ad").

www.skinnyblonde.com.au/sixpack

11. On entering the website a bottle of Skinny Blonde beer is featured with the statement "You must be over 18 to access this site". The user is asked to select "I am over 18 (not in dog years)" or "I wish I was over 18". In small print in the bottom left corner of the page there is a statement "Brothers INK encourages responsible drinking of alcohol".
12. The user is then taken to a page featuring six beautiful blonde models in red bikinis posing in an oversized six-pack carton of Skinny Blonde beer. The text above the models reads "The Skinny Blondes like to have a good time. When the temperature rises interesting things happen." Smaller text to the right of the models reads "Choose your favourite blonde for a demo". Users are able to select any of the models and are taken to a short statement about each model. Each model is named SB1 through to 6. By way of example the statement about SB1 reads "There are two main requirements in being a Skinny Blonde. You need to be skinny and you need to be blonde. My other strengths include taekwondo, roller disco and carpentry – I like using tools." The user then has an opportunity to download an image of the model or send the image to a friend. The site allowed the user to click on a thermometer to see the model topless. The site has been removed.

www.skinnyblonde.com.au (version referred to in the second complaint)

13. On entering the website the Skinny Blonde logo is shown and the user is asked to select whether they are over or under 18 years. On selecting that they are over 18 years the user is taken to the homepage of the website. The website welcomes users to Skinny Blonde and depicts bottles of the product showing the label both and without the bikini top. The distributors of the product are listed and links to recent press are included.
14. The page on the website entitled "What's News" provides links to various articles and a link to stockists. The page also contains the following statement next to a picture of the logo and 2 x 375ml bottles of the product, "The rumours are true, the Brothers are the first in the world to create it. "A girl on a label that tells you your beer is too warm." Skinny likes it in a nice cold fridge, but once you drink her down she can't help but get her clothes off.
15. The website contains a large number of links to articles about the beer, biographies of the brewers, links to facebook, twitter and an online ordering site. This site has since been altered.

Skinny Blonde beer label

16. The label features a 1950's style picture of a buxom attractive blonde woman wearing a red bikini. As the beer warms up the woman's bikini top disappears and she is seen topless.

www.skinnyblonde.com.au (current version referred to in the third complaint)

17. On entering the website the Skinny Blonde logo is shown and the user is asked to select whether they are over or under 18 years. On selecting that they are over 18 years the user is taken to the homepage of the website. The website welcomes users to Skinny Blonde and depicts a bottle of the product and a blonde woman dressed in a red bikini alongside the text "Find out what all the fuss is about". The complainant advised that there was a link from that text to The Staring Contest ad. The link had been removed by the time ABAC received the complaint but the video advertisement could still be viewed on the host website.
18. The Staring Contest ad features a blonde woman wearing a red bikini, with a yellow flower in her hair and bright red lipstick presented in similar way to the woman on the skinny blonde beer bottles. The woman stares at the camera during the following monologue accompanied by a tropical drumbeat and toward the end she takes off her bikini top revealing her bare breasts. "So you think you've got what it takes to outstare me. Alright let's have a go. That's it, not bad. I wonder what your strategy is. I like to pretend my eyes are frozen, usually works quite well. You know, my grandfather is a starrer, and so is my grandma. I think that's how they met actually. You ARE pretty good, yeah [takes off her bikini top], think I win. See ya next time." The skinny blonde beer logo is shown at the end of the ad.
19. On the Skinny Blonde home page users can select a page from the menu entitled "Controversy". The page features seven 375ml bottles of Skinny Blonde Beer, some of which have the model wearing no bikini below the following text:

Did you see the Sixpack?

Here's some public links to the old site.

<http://www.thegrafikmuseum.com/2009/06/16/skinny-blonde-beer-controversially-genius/>.

<http://www.lostatemirror.com/2009/06/11/skinny-blonde-beer/>.

<http://www.examiner.com/ExaminerSlideshow.html?entryid=295223&slide=2>.

You should see some of the other beer ads (sic) around.

<http://www.youtube.com/watch?v=BrSSsfYE2dQ>.

If you see any images of the previous site around

Send the link to us and we'll post it.

Cheers!

The links to the old site are links to third party sites that have copied images from the old sixpack website that has been removed. The link to youtube is to a Guinness ad that shows a bottle of Guinness balancing on a woman's bare back while she appears to be engaging in a sexual encounter.

20. Both the Home and Controversy pages contain a list of recent press articles about the beer some of which contain images from the previous sixpack website. The website

also contains details of stockists, biographies of the brewers, links to facebook, twitter and an online ordering site.

The Complaint

21. The first complainant argues that:

- (a) The use of the word 'skinny' in the description of the beer encourages excessive consumption of low carbohydrate beer to avoid getting fat or putting on weight.
- (b) The ad encourages an irresponsible approach to alcohol consumption by the use of scantily clad women, the promise of holding a topless woman as the beer warms up. The ad also suggests that the use of the product results in sexual success as choosing skinny blonde beer equates to choosing skinny blondes (real women) in the ad.
- (c) The highly sexual use of women to promote and encourage alcohol use is objectifying and demeaning to women.

22. The second complainant argues that:

- (a) The whole of the marketing campaign for Skinny Blonde beer (label and website content both current and historical) must be considered together when considering breaches of the ABAC Code.
- (b) The potential for the campaign (via internet and bottles of beer) to be viewed by large sections of the community, including minors must be taken into consideration.
- (c) The campaign fails to present a mature, balanced or responsible approach to alcohol consumption as it directly links a highly sexualized image with the consumption of alcohol. The label implies an ongoing promise of sex and invites men to treat women as consumer goods, to be bought, sold and discarded when finished. This was enhanced by the withdrawn website that invited viewers to 'choose' a blonde of their own and by increasing the temperature could make the blonde remove her bikini.
- (d) The campaign encourages excessive consumption or abuse of alcohol as the effect of the label is that the woman's red bikini disappears as the beer level drops and the bottle warms up. Therefore, the quicker one drinks the beer, the quicker the woman loses her bikini, thereby encouraging faster consumption of the beer to reveal the naked lady.
- (e) The campaign promotes offensive behaviour or the excessive consumption, misuse or abuse of alcohol beverages as it encourages loutish or drunken behaviour by reinforcing and normalizing an expectation that people – in particular women – within drinking settings, are or should be open to sexual advances. The campaign inappropriately links the consumption of alcohol with the removal of a woman's clothing

and suggests that alcohol should be associated with women who are prepared to take their clothes off for the entertainment of men. It gives an impression that the removal of a woman's clothing in a drinking context is a joke. The website states "[A] girl on a label that tells you your beer is too warm. Skinny likes it in a nice cold fridge, but once you drink her down, she can't help but get her clothes off." The campaign promotes anti-social acts and behaviour and associates such behaviour with the irresponsible and immoderate consumption of alcohol.

- (f) The campaign breaches section (c) (i) of the Code by suggesting that the consumption of the product creates a change in mood or environment from one where a bikini clad woman is shown to a highly sexualized environment where the female character is naked.
- (g) The campaign breaches section (f) of the ABAC Code by failing to comply with the Code of Ethics in relation to treatment of sex, sexuality, nudity and discrimination against women.

23. The third complainant argues that:

- (a) The Staring Contest ad was uploaded after ABAC and the ASB upheld a complaint about a website about Skinny Blonde beer and is on a website viewable without age restriction.
- (b) The ad features a model that appears to be under the age of 25 years and is not depicted as an adult.
- (c) The ad implies that consumption of alcohol leads to sex or associates sexuality with the beer.
- (d) The nudity does not meet the code of ethics requirements.
- (e) The ad violates section (h) of the ABAC as it infers that previous ABAC and Board decisions were a "fuss". After adverse rulings Brothers Ink continues to flaunt the Code.

The Code

24. 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 –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - 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 and, accordingly –

- i) Adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly -
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
 - h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.
25. The ABAC also provides in relation to internet advertisements that its standards apply “to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia

The Advertiser’s Comments

26. The Advertiser responded to the first complaint and questions posed by the Panel by email dated 14 July 2009. The principle points made by the Advertiser are:
- (a) We strongly refute the allegation that the name of our product encourages excessive alcohol consumption. Our product is a “Blonde” beer – a name that represents the low carbohydrate beer category eg (Pure Blonde, Pure Blonde Naked, Carlton Natural Blonde, Boags Classic Blonde, Bondi Blonde, Platinum Blonde, Virgin Blonde). The label simply presents an obvious indicator of the type of beer contained – a low carb product. The fact that our label refers to the nature of the product is appropriate. To suggest that members of the public would believe that consuming large amounts of the product leads to weight loss is not implied by the label, nor is it a reasonable consumer reaction. Printed on the label is the caption “Skinny Blonde has not been proven to make you funnier, more charming or a better dancer. Enjoy Responsibly”, evidence that Brothers Ink is committed to the responsible consumption of alcohol.
 - (b) Whilst we strongly maintain that the previous website content does not encourage an irresponsible approach to alcohol consumption or suggest that the consumption or presence of the product can lead to the achievement of sexual success we note that the content at issue has now been removed.
27. The Advertiser responded to the second complaint by email dated 30 July 2009. The principle points made by the Advertiser are:
- (a) As you are aware the website has been modified in accordance with previous ASB and ABAC rulings and therefore the subject matter of this complaint has been removed.

- (b) Given that labelling is not within the jurisdiction of the ABAC this is not the appropriate forum to raise such a complaint as there is no breach of any advertising guidelines.
28. The Advertiser responded to the third complaint and questions posed by the Panel by email dated 1 September 2009. The principle points made by the Advertiser are:
- (a) The previous Skinny Blonde website, as short lived as it was, has gained attention internationally and is directly responsible for international export and licensing deals that Brothers Ink is currently negotiating. All material that makes up the basis of this complaint is hosted by third party websites not related or affiliated with Brothers Ink. The Skinny Blonde website no longer contains the link to the 'Staring Contest'.
 - (b) The viral "Staring Contest" clip does not depict the consumption of alcohol at all nor does it even show the product. There is no mention of alcohol in the dialogue and no suggestion of consumption therefore there is no implication that Skinny Blonde beer is cause of or contributor to encounters of the kind depicted in the staring contest. Furthermore there is only one person depicted in the clip. It is a commonly held belief that two or more people are required to be present for sexual success to be achieved. The clip's probable impact upon a reasonable person within the class of persons to whom the clip is directed would be mild amusement. No reasonable person would believe that drinking the product will lead to this kind of encounter. Moreover anyone with a knowledge of Skinny Blonde will realise that the clip is a reference to the disappearing ink of the product's label.
 - (c) In no way does Brothers Ink intend to bring the ABAC scheme into disrepute. "Find out what all the fuss is about" is merely a slogan and is a reference to the fact that Skinny Blonde, and in particular the innovative label, has caused controversy and achieved media coverage all over the world. This is further referenced by links to news articles from Australia, the UK and the USA. The Skinny Blonde website contains no implication that the 'six pack' site is less offensive than other ads, merely a link to a funny beer ad hosted by youtube.

The Panel's View

29. The three complaints and the various aspects of the advertiser's marketing approach challenged by the complaints make this determination by necessity long and complex. For ease of reference, a summary of the decision of the panel is as follows:

(a) The first complaint

- The website breaches section (a) of the ABAC by encouraging an irresponsible approach to alcohol consumption
- The website breaches section (c) of the ABAC by suggesting the presence and or consumption of the product contributes to a change of mood and the achievement of sexual success
- The website's use of the term "skinny" does not breach section (a) of the ABAC by encouraging excessive consumption of alcohol
- The question of whether the website breaches the AANA Code of Ethics by objectifying and demeaning women is a decision to be made by the ASB and not this Panel

(b) The second complaint

- The ABAC scheme does not currently cover product labels and packaging and it is beyond the jurisdiction of the Panel to rule on the consistency of the label with the ABAC provisions
- The website breaches section (a) of the ABAC by encouraging an irresponsible approach to alcohol consumption
- The website's description and depiction of the "disappearing bikini" label does not breach section (a)(i) and (iii) of the ABAC by encouraging excessive consumption or abuse of alcohol
- The website breaches section (a)(iii) of the ABAC by encouraging "offensive behaviour"
- The website breaches section (c) of the ABAC by suggesting the presence and/or consumption of the product contributes to a change in mood and the achievement of sexual success
- The question of whether the website breaches the AANA Code of Ethics in the relation to the website's treatment of sex, sexuality, nudity and by discriminating against women is a decision to be made by the ASB and not this Panel

(c) The third complaint

- The website breaches section (a) of the ABAC by encouraging an irresponsible approach to alcohol consumption
- The website breaches section (b)(i) by use of a model who may not be over the age of 25 years

- The website breaches section (c) of the ABAC by suggesting the presence and/or consumption of product contributes to a change in mood and the achievement of sexual success
 - The marketing approach of the advertiser in terms of elements of its website breach section (h) of the ABAC by seeking to use the advertiser's non-compliance with the spirit and intent of the ABAC as a promotional opportunity
 - The question of whether the website breaches the AANA Code of Ethics by the use of nudity is a decision to be made by the ASB and not this Panel
30. The complaints and the nature of the advertiser's marketing approach raise a number of issues which go to both structural and procedural matters involving the operation of the ABAC scheme and the substantive issue about the advertiser's website and its consistency in various respects with the provisions of the ABAC. Due to the interrelated and somewhat complex nature of the determination the Panel's findings are set out under the following headings:
- Application of the ABAC provisions to the advertiser
 - Relationship of the ABAC scheme and the AANA Code of Ethics
 - Labels and packaging and the application of the ABAC provisions
 - The website's consistency with section (a) of the ABAC
 - The website's consistency with section (b) of the ABAC
 - The website's consistency with section (c) of the ABAC
 - The website's consistency with section (h) of the ABAC

Application of the ABAC Provisions to the Advertiser

31. The ABAC Scheme is quintessentially a self-regulatory initiative sponsored by three (3) industry peak bodies covering major components of the alcohol beverage industry. The three (3) sponsoring organisations are:
- Brewers Association of Australian and New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
32. The Scheme operates because the member companies of the three peak bodies have committed themselves to advertise consistently with the terms of the ABAC and to comply with decisions of the Panel when determining public complaints about

advertisements which fall within the scope of the scheme. In this case, the advertiser is not a member of one of the three scheme sponsors, nor has it become a direct signatory to the Code. Accordingly, on the face of it, the Panel has no authority to make a determination which has any binding effect on the advertiser.

33. This is the third occasion on which the Panel has, however, made a determination concerning advertising for Skinny Blonde beer (38/09 dated 11 May 2009 and 60/09 dated 7 July 2009). On each occasion, the advertiser has stated its commitment to good advertising practice and its willingness to comply with the Panel's decision. Based on this, the Panel has proceeded to make the determination.

Relationship with the ABAC Scheme and the AANA Code of Ethics

34. All three (3) complaints argue that aspects of the website are inconsistent with the terms of the AANA Code of Ethics. Specifically, it is argued that the thermostat feature which allows a viewer to remove the bikini top of the models fails to meet the standards in relation to the treatment of sex, sexuality and nudity, as well as being objectifying and demeaning to women.
35. Section (f) of the ABAC provides that advertisements for alcohol beverages must comply with the Code of Ethics. This means that complaints about alcohol ads which raise Code of Ethics issues will be adjudicated; however, through agreement between the Management Committee of the ABAC scheme and the Advertising Standards Bureau, the adjudicative body for Code of Ethics issues is the ASB and not this Panel.
36. Accordingly, this determination does not deal with those aspects of the complaints which go to the Code of Ethics, with the ASB making a determination on these matters.

Labels and Packaging and the Application of the ABAC Provisions

37. The second complaint raises the consistency of the label of the Skinny Blonde product with the ABAC provisions. It is the product's label which features the model's disappearing bikini top which is the "hook" upon which much of the advertiser's marketing approach is based.
38. The second complainant correctly identifies that the ABAC Scheme does not extend to the labelling and packaging of products. A discussion of this issue is contained in Determination 81/07 dated 17 December 2007. As a result, the Panel cannot make a decision which specifically goes to the consistency of the product label with the ABAC.
39. It is noted that there has been for some time a proposal before the ABAC Scheme's Management Committee to introduce an extension of the Scheme which would include labeling and packaging. It is of course a matter of the terms of any such future extension as to whether the advertiser's product label would firstly be included within the terms of the extension and secondly, whether it is consistent with the ABAC provisions, as modified to extend to product labels.

Website's Consistency with Section (a) of the ABAC

40. The first two (2) complaints raise issues under section (a) of the ABAC. It is proposed that each complaint will be examined in turn.

First Complaint

41. The first complaint argues that the website breaches section (a) in two respects, namely:

- Use of the word "skinny" in the description of the beer which encourages excessive consumption; and
- The website encourages an irresponsible approach to alcohol consumption by means of the thermostat feature resulting in the models' becoming topless.

42. Section (a) (i) and (iii) of the ABAC provide that advertisements for alcohol beverages must not encourage excessive consumption. The Panel does not believe, however, that the use of the term "skinny" in both the product name and on the advertiser's website can of itself be said to be an encouragement to excessive consumption. The reasoning of the complainant is that the use of the term "skinny" will imply that excessive amounts of the product can be consumed without a detrimental impact on a consumer's health and weight. In essence, this is a concern about the name of the product itself. If the advertisement made claims about the amount of the product that can be consumed so that a reasonable person might take that excessive consumption was being suggested the advertisement would breach the ABAC. The advertising complained of makes no such claim. The mere use of the term "skinny" does not offend the ABAC.

43. The second argument advanced by the complainant relates to the thermostat feature by which a viewer is able to remove the bikini top from several models.

44. The Panel does believe that this feature is contrary to the intention of Section (a) of the ABAC. The direct association between removing clothing with alcohol use, combined with sexually suggestive references, is not consistent with the standard of a balanced and responsible approach to alcohol consumption. It is noted that unwise, inappropriate and on occasions, criminal behaviour is one of the recognised social harms which can flow from alcohol misuse. An advertising device such as that used on the website which links consumption of alcohol with the removal of clothing and sexually suggestive references is irresponsible within the meaning of the ABAC.

Second Complaint

45. The second complaint argues that the website breaches section (a) in three respects, namely:

- The six-pack website encourages an irresponsible approach to alcohol consumption by means of the "choose your favourite blonde for a demo" and thermostat features resulting in the models' becoming topless; and
- Both websites' promotion of a beer with a "disappearing bikini" label:

- Encourages faster consumption so the bikini disappears thereby encouraging excessive consumption and abuse of alcohol; and
 - Inappropriately links alcohol consumption with the removal of a woman's clothing thereby encouraging offensive behaviour.
46. The first issue is that the advertisement breaches section (a) of the ABAC by failing to present a mature, balanced or responsible approach to the consumption of alcohol beverages. This is the same issue as that raised in respect of the first complaint and the Panel has found that the six-pack website is in breach of section (a) of the ABAC for the reasons discussed in paragraphs 43 and 44 above.
47. The second and third issues are that both the websites referred to in the second complaint breach section (a) by firstly encouraging excessive consumption or abuse of alcohol and secondly by failing to present a mature, balanced or responsible approach to the consumption of alcohol beverages. The complaint essentially raises concerns about the websites' promotion of an association between consuming a Skinny Blonde beer and revealing a topless woman on the beer bottle as the beer is consumed.
48. These matters are depicted on the six-pack website by photographs of blonde women in red bikinis standing in an oversized six-pack below the caption, "The Skinny Blondes like to have a good time. When the temperature rises interesting things happen". Also, by selecting a model the user is taken to a page where that girl is featured with a suggestive profile and when clicking on a temperature gauge that has the caption "Click and hold to see what happens when a Skinny Blonde gets hot" some of the girls are shown topless. These matters are also depicted on the previous version of the company website where on the page entitled "What's News" the following phrase is included "[a]girl on a label that tells you when your beer is too warm, Skinny loves it in a nice cold fridge, but once you drink her down, she can't help but get her clothes off". This website also includes pictures of the 375ml beer bottles with the woman on the label both wearing a bikini and topless.
49. The complaint that these features of the website encourage faster consumption and therefore excessive consumption or abuse of alcohol is not accepted by the Panel. Only one beer needs to be consumed or left to warm to room temperature to remove the model's top. It does not follow that a drinker will consume multiple drinks in order to see the same topless model.
50. Thirdly, this complaint raises section (a) and (a) (iii) of the ABAC which requires alcohol beverage advertisements to present a mature, balanced and responsible approach to the consumption of alcohol and not promote offensive behaviour.
51. From a review of previous decisions that considered the operation of sections (a) and (a)(iii) of the ABAC the following general observations can be made:
- 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;
52. The Panel notes that a woman removing her clothing 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).
53. 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.
54. The Panel concludes that sections (a) and (a) (iii) have been breached by both of the website advertisements. The removal of the woman’s bikini depicted and described on the websites referred to in this complaint is closely linked to the consumption of the product and this presents an immature and irresponsible approach to the consumption of alcohol beverages and is also “offensive behaviour” within the meaning of the ABAC.

Section (b) of the ABAC

Third Complaint

55. The third complainant raised an issue relating to an advertisement that has been described earlier as “The Staring Contest ad”. This is an ad to promote Skinny Blonde beer but is hosted by a third party website and was until around the time the complaint was received able to be accessed via a link from the company website. The Advertiser argues that the ad is no longer able to be accessed via the company website and is hosted by a third party website not related to or affiliated with Brothers Ink. It is clear however that the ad was developed by or for Skinny Blonde beer as it uses one of the models that was featured on an earlier website for Skinny Blonde beer, dressed in a way that is representative of the picture used on the Skinny Blonde logo and at the conclusion of the ad the Skinny Blonde logo is featured. Although the site that hosts the ad is not primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia the ad itself was developed by or for the producers of Skinny Blonde beer and it is likely they would have been directly or indirectly involved in its posting on the host website.
56. The issue is whether the model in the ad is under 25 years of age or not depicted clearly as an adult. The Panel has previously considered the issue of the age of this and other Skinny Blonde models in its determination 60-09. As in that matter the Advertiser has not supplied information as to the age of the model despite being specifically asked for this information. Clearly it is difficult for the Panel to make a

decision on a question of fact, such as the actual age of a model, when the Advertiser fails to provide information on the point.

57. Judging the age of a model shown in an advertisement can be quite fraught and the perception of age will be shaped by factors such as dress, makeup and the setting in which the person is depicted. In this case, the model is shown from the torso up wearing a red bikini top. The Panel believes that the model appears to be over the age of 18 but it is quite possible, based on appearance that she is under the age of 25.
58. Given the Advertiser's decision not to supply any information on the age of the model, the Panel can only apply its best judgment as to the models' appearance and, based on this, the Panel concludes that The Staring Contest ad breaches section (b) (i) of the ABAC.

Section (c) of the ABAC

59. All three complaints raise issues under section (c) of the ABAC. Each complaint will be examined in turn.

First Complaint

60. The first complaint argues that the six-pack website breaches section (c) in that it suggests that the use of the product results in sexual success as choosing a skinny blonde beer equates to choosing skinny blondes (real women) in the ad.
61. Section (c) of the ABAC provides that alcohol product advertisements are not to suggest that the presence or consumption of alcohol may lead to a significant change in mood and accordingly must not suggest that alcohol is or might be a cause or contributor to the achievement of sexual success.
62. In applying the ABAC standards, the Code's preamble provides that conformity is to be assessed in terms of the probable impact of the ad upon a reasonable person taking the ad's content as a whole. The Panel has previously considered the application of section (c) in determinations such as:
 - 14.1.05 – St Agnes Brandy
 - 26.2.07 – James Boag
 - 23.5.08 – Cockatoo Ridge
 - 23.12.08 – Moorilla Wines

From these determinations it can be noted that the ABAC does not prohibit ads from being sexy or portraying individuals as sexually confident. The key matter which section (c) prohibits is the implication that alcohol contributes to the achievement of success such as sexual success. In other words, is an ad implying that there is a causal relationship between the use of alcohol and the achievement of success?

63. The Panel notes the following features of the sixpack website advertisement:

- the promotion of the product's features, namely the consumption of the product creating a change in mood or environment from one where a bikini clad woman is shown to one where a topless woman is shown;
- the depiction of bikini clad models in place of 375ml bottles of the product in an oversized beer carton;
- the statement that "Skinny blondes like to have a good time";
- the feature that allowed users to "choose a blonde" which then took users to a picture of the blonde (who was representative of a 375ml bottle of beer) and allowed users to increase her temperature (which was representative of consuming the product) which resulted in some of the women appearing topless;
- the inclusion of suggestive comments by the Skinny Blonde models; and
- the statements on the website referred to in paragraph 12 above.

64. Invariably a decision as to whether an ad breaches the section will come down to a matter of judgment and it is possible that different people viewing the ad might reasonably come to different conclusions as to whether the standard has been complied with. In this case the Panel concludes that section (c) has been breached by the six-pack website advertisement. In the Panel's opinion, the advertisement would be taken by a reasonable person as suggesting that the product can contribute to the achievement of sexual success.

Second Complaint

65. The second complaint argues that both the six-pack and previous version of the skinny blonde websites breach the ABAC. The Panel has considered the six-pack website in relation to the first complaint and found it to be in breach of the ABAC for the reasons set out in paragraphs 64 and 65.

66. The Panel notes the following features of the previous version of the skinny blonde website advertisement:

- the depictions of bottle of the product showing the label featuring the model with and without the bikini;
- the statement next to a picture of the logo and 2 x 375ml bottles of the product, "The rumours are true, the Brothers are the first in the world to create it. "A girl on a label that tells you your beer is too warm." Skinny likes it in a nice cold fridge, but once you drink her down she can't help but get her clothes off."

67. The description of the features of the beer and the strong causal link between consuming the product and the removal of a woman's clothing is a breach of section (c) of the ABAC.

Third Complaint

68. The Panel notes the following features of the third website advertisement and “The Staring Contest ad”:
- (a) The models are clearly depicting the woman on the label of Skinny Blonde beer;
 - (b) The model in The Staring Contest ad invites viewers to engage in a staring contest with her and then removes her bikini top revealing her breasts, which action is analogous to what happens on the label of the product when it is consumed;
 - (c) The Skinny Blonde logo is featured at the conclusion of the ad;
 - (d) A link to the ad was featured on the company website;
 - (e) Photographs of the product featuring the label both with and without bikinis;
 - (f) The website contains links to numerous articles that contain pictures from the six-pack website and descriptions of the “disappearing bikini” feature of the label of the product.
69. The Staring Contest Ad that was accessed via a link on the Skinny Blonde website depicts a model removing her bikini top in an ad for a beer that when consumed has the woman on the label’s bikini disappearing. This feature of the beer is featured on the website and is described in articles that can be accessed via links on the website. Accordingly, the Panel finds both the advertisement and the website to be in breach of section (c) of the ABAC.

Section (h) of the ABAC

Third Complaint

70. The third complaint argues that the advertisement breaches section (h) of the ABAC by referring by implication to the ABAC scheme, in a manner which may bring the scheme into disrepute. The Advertiser has advised that it did not intend to bring the ABAC scheme into disrepute and that “Find out what all the fuss is about” is merely a slogan and is a reference to the fact that Skinny Blonde, and in particular its label, has caused controversy and achieved media coverage all over the world. The Panel does not consider that this part of the website to be in breach of section (h) of the Code.
71. However, the page on the website entitled, “Controversy” refers to a previous website for Skinny Blonde, “the six-pack website”, contains links to independent articles about the six-pack website that contain images from that site and also invites users to advise of other places images from the six-pack website can be found so the link can be posted on the current site. The six-pack website, including the images accessed via links on the current site, was found to be in breach of the ABAC and was removed. This is a clear attempt by the Advertisers to circumvent the previous decision by the Panel. The Advertisers may have no control over the third party websites that have

continued to post images of the website; however, they have control over their own website, the references to the six-pack website and the inclusion of links to images from the six-pack website. This page of the current website is a continuing breach of the decision made by the Panel in determination 60-09 and is also a breach of section (h) of the ABAC in that it is attempting to circumvent the ABAC Scheme.

72. The Panel also finds the inclusion of a link to an ad for Guinness posted on Youtube in the context of the preceding text to be an implication that the six-pack website is not as offensive as other beer ads, thereby being critical of the ABAC Scheme. The Panel does not accept the Advertisers assertion that it is merely a link to a funny beer ad hosted by youtube.
73. The Panel finds the page entitled "Controversy" and the use of links throughout the website to articles that reproduce images from websites that have previously been found to be in breach of the Code to be in breach of section (h) of the ABAC and to be an ongoing failure to comply with ABAC Determination 60-09.
74. Accordingly, the Panel upholds each of the complaints.