

ABAC

**ABAC Complaints Panel
Determination No: 60/09**

**Confidential Complaint
Product: Skinny Blonde Beer
Advertiser: Brothers Ink Pty Ltd**

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

6 July 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a website advertisement for Skinny Blonde Beer by Brothers Ink Pty Ltd (“the Advertiser”) and arises from a confidential complaint received from the ASB on 15 June 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 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 a concern under the ABAC Code and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of a confidential email received on 15 June 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. The Advertiser is not a Code signatory and pre-vetting approval was not obtained for the website advertisement.

The Advertisement

9. The advertisement takes the form of a website located at:
www.skinnyblonde.com.au/sixpack.
10. 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".
11. 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 as it was at the time the complaint was made allowed the user to click on a thermometer to see the model show bare breasts. The site has been removed.

The Complaint

12. The complainant argues that:
 - (a) Both the website and the packaging and label for the beer feature pornography flaunting public decency;
 - (b) It appears that some or all of the models are under the age of 25 and are not depicted as adults in breach of the ABAC.

The Code

13. The ABAC provides that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children and adolescents and accordingly –
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages;
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.
14. 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

Arguments in Favour of the Complaint

15. In favour of the complaint it is alleged that the advertisement features models under the age of 25 years or adults over 25 years that are not clearly depicted as adults.

The Advertiser’s Comments

16. The Advertiser declined to respond to the complaint and questions posed by the Panel. A representative of the Advertiser telephoned the ABAC administration officer on 26 June 2009 and advised that the ASB had upheld this complaint and they would remove the advertisement complained about from the internet by Monday, 29 June 2009. The Advertiser was advised that where a complaint raises an ABAC issue that issue is considered by the ABAC Panel regardless of whether the advertiser withdraws the advertisement and therefore the Panel would still consider the issue of the age of the models featured in the ad. The Advertiser advised that responding would be a waste of their time given they are withdrawing the ad.

The Panel's View

17. The complaint has led to consideration of the advertiser's website by the ASB and this Panel. The ASB decision goes to section 2 of the AANA Code of Ethics and deals with the complainant's concern about public decency. This determination deals with the complainant's second concern, namely whether the models featured on the website are under the age of 25.
18. Section (b) (i) of the ABAC provides that "adults appearing in advertisements must be over 25 years of age and clearly be depicted as adults". This means that an ad will be in breach of the ABAC standard if it features a model who is, as a matter of fact, under the age of 25 or, irrespective of the model's actual age, appears not to be an adult. The ABAC defines "adult" as a person who is at least 18 years of age.
19. The Advertiser has elected not to provide the Panel with advice on the age of the models as it has decided to withdraw the relevant part of its website. Irrespective of this decision by the advertiser the Panel, under its rules and procedures, is to continue to make this determination. 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.
20. 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 models are shown from the torso up wearing a red bikini top. The Panel believes that the models appear to be over the age of 18 but it is quite possible, based on appearance, that one or more of them are under the age of 25.
21. Given the Advertiser's decision not to supply any information on the age of the models, the Panel can only apply its best judgment as to the models' appearance and, based on this, the Panel concludes the ad breaches section (b) (i) of the ABAC.
22. Accordingly the complaint is upheld.