

ABAC

ABAC Complaints Panel Determination No: 116/09

Confidential Complaint Product: Strongbow alcoholic cider Advertiser: Fosters Group

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 a billboard advertisement for Strongbow alcoholic cider by the Fosters Group (“the Advertiser”) and arises from a confidential complaint received on 16 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 Outdoor Media Association Code of Ethics and Alcohol Guidelines (which do not have their own complaints adjudication process) and also under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

- 6 The complaint is in the form of an email received by the ABAC Panel on 16 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 30 business days.

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. Pre-vetting approval was obtained for this advertisement (BH271/09).

The Advertisement

- 9 The billboard features a picture of a clean and empty city street scene with three storey older style apartment buildings on each side. In the middle of the street is a sculpture of a bare tree that is the height of the buildings constructed from timber chairs and hat racks. The 'tree branches' have bottles of Strongbow apple cider hanging from the branches. On the left side of the picture the text "It's Strongbow season", the Strongbow logo and the text "Enjoy Responsibly" is superimposed. On the right side of the picture a large bottle and glass of Strongbow cider is featured.

The Complaint

- 10 The complainant argues that the ad is close to Clovelly Public School and that it appeals to her 10 year old son who says "mmmm It's Strongbow Season" all the time.

The Code

- 11 The Outdoor Media Association Code of Ethics Responsibilities towards the community clause 6 provides:

- a) We are committed to the responsible advertising of alcoholic beverages, including limiting their display around schools, as outlined in the OMA's Alcohol Advertising Guidelines.

- 12 The Outdoor Media Association Alcohol Guidelines provide:

- a)The OMA has therefore introduced a new policy which requires all members to limit the advertising of alcohol products on fixed signs that are located within a 150 metre sight line of a primary or secondary school. This generally relates to any access gates to the school. There are some locations near schools where this policy does not apply, for example where the school is in the vicinity of a club, pub or bottle shop or any other venue

that sells alcohol products. The policy also does not apply to transit advertising on buses and taxis.....

- b) The OMA and its members will continue to support all decisions made by the Advertising Standards Board or the ABAC Adjudication Panel in regards to complaints made about alcohol advertisements and outdoor advertising in general.

13 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 Complaints

14 In favour of the complaint it can be argued that the advertisement's placement near a school:

- a) is in breach of the Outdoor Media Association Code of Ethics and Alcohol Guidelines; and
- b) encourages under-age drinking and has a strong or evident appeal to adolescents in breach section of (a)(ii) and (b) of the ABAC.

The Advertiser's Comments

15 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 24 December 2009. The principal points made by the Advertiser were as follows:

- a) Foster's takes its responsible marketing commitment very seriously and is vigilant in upholding the codes that apply to the advertising industry and specifically the alcohol industry. This includes the restrictions for outdoor advertising in direct line of sight (150 metres) of schools. The Outdoor Media Association (OMA) guidelines are the standard set for alcohol advertisers when it comes to outdoor media and provides a clear benchmark. Sites that don't meet these criteria are not made available to alcohol advertisements. The outdoor location at the corner of Arden and Boundary Streets, Bronte (NSW) is outside the 150 metre restriction and as such is an allowed site under the OMA guidelines.
- b) oOh!media have advised "The site placement meets the OMA guidelines (which relate to line of sight distance from schools) and for your reference was one of a number of sites purchased as part of a package of high profile metropolitan sites. As such its placement was not influenced by its position relative to the primary school nor a desire to target an under 18 market."
- c) The complainant states the "Advert <is> not in itself the issue". We also believe the creative complies fully with ABAC and is clearly targeted at adults – in fact there is an absence of any of the elements required to have strong or evident appeal to

children i.e. colourful cartoon characters, toys, G rated/PG rated film personalities etc.

- d) Outdoor advertising at sites like this aim to capture the attention of the adults who are in transit via busy thoroughfares. There will be some exposure that is broader than this however it could not be argued to demonstrate a “strong or evident appeal to children or adolescents”. Furthermore, the creative and the fact that the location meets the OMA guidelines also ensure the ABAC is upheld.

The Panel’s View

- 16 The complaint concerns a billboard advertisement located near Clovelly Public school in New South Wales. The complainant is principally concerned with the placement of the alcohol advertisement close to her son’s school.
- 17 There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular advertising mediums. For instance, the Outdoor Media Association code & guidelines applying to billboards restricts alcohol ads appearing on an outdoor site within 150 metres sight line of any access gates to a primary and secondary school. The Advertiser has advised that the advertisement is not within 150 metres of the school either by a linear measurement or by a direct line of sight measurement and accordingly complies with the Outdoor Media Association Guidelines for placement of alcohol advertisements.
- 18 The ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. 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 media 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 ad is relevant.
- 19 This means that the Panel has to examine the content of the alcohol ad for which a complaint has been lodged and determine whether the ad contains elements which are inconsistent with the relevant standard set out in the ABAC. In this case, the relevant ABAC provisions are found in sections (a) (ii) and (b). These provisions provide that the content of an alcohol ad must not present an irresponsible approach to alcohol consumption and not encourage under-age drinking or have strong or evident appeal to children or adolescents.
- 20 The complainant notes that her 10 year old son says “mmm It’s Strongbow season” each time he passes the ad but states that it is not the ad itself but its placement that concerns her. The Panel does not believe the content of the ad has any elements that might encourage underage drinking or has a strong or evident appeal to children or adolescents.
- 21 The Panel has no capacity itself to measure the distance of the billboard from the school and needs to rely on the advice of the advertiser. It is clear that the billboard is near the school but appears to be located consistently with the strict application of the OMA guidelines. The Panel suggests that advertisers take a conservative approach with regard to placement of ads on billboards close to schools, but it cannot find that the ad breaches the OMA standards.
- 22 The complaint is dismissed.