

ABAC

ABAC Complaints Panel Determination No: 87/09

Complaint of Mrs Trudy Fortescue Product: Thirsty Camel Bottleshops Advertiser: Thirsty Camel

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

28 October 2009

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a radio and associated advertisements for Thirsty Camel Bottleshops by Thirsty Camel (“the Advertiser”) and arises from a complaint by Mrs Trudy Fortescue received on 5 October 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 ABAC and accordingly is prima facie within the Panel's jurisdiction.

The Complaint Timeline

- 6 The complaint is in the form of an email received by the ABAC Panel on 5 October 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. This advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

- 9 The radio advertisement commences with a long burping/ camel sound before we hear the following commentary; accompanied by stylized 'belly dancing' like music:

"Gday, this is the camel. How you doin'. Now stop giggling I haven't started yet. Alright now let me inject a little humour into your day. What do Eskimos get from sitting on the ice too long? Polaroids. Get it. Pola-roids. Hahaha. [Camel sound] Well I did say a little humour. Anyway this weeks specials are Carlton Mid stubbies \$29.99 a carton, Vodka Cruisers 4 pack just \$11.99. But only from Thirsty Camel bottleshops."

The advertisement ends with another long burping/ camel sound.

The Complaint

- 10 The complainant argues that the name of the store and its mascot (a cartoon character) is a direct threat to children. The ad is argued to allow effectively a cartoon character to advertise alcohol.

The Code

- 11 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

12 In favour of the complaint it can be argued that featuring a camel as a spokesperson in an ad for alcohol is a breach of sections (a)(ii) and (b) of the ABAC.

The Advertiser's Comments

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

(a) The aim of the advertising is certainly not to engage children in the consumption of alcohol but to brand our Western Australian outlets with a little humour keeping in mind the Responsible Service of Alcohol on all occasions.

(b) The Thirsty Camel Brand has been operating in Western Australia for over 2 years now and the humour and irreverence of the "Camel" has been enjoyed by most consumers and generally we have had nothing but positive feedback from the market we are trying to attract which is the 18 – 39 year old shopper.

The Panel's View

14 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 Thirsty Camel 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. However, Thirsty Camel have stated their commitment to responsible service of alcohol and have provided a response to the complaint and fully cooperated in the adjudication process. Accordingly, the Panel has proceeded to make this determination.

15 The complaint concerns a specific radio advertisement and also refers pictures of the cartoon camel used to promote the retail outlets in other forms of advertising. The complaint raises a concern that the use of the camel in the specific advertisement and in its advertising generally has a strong appeal to children or adolescents. Mrs Fortescue likens it to Dorothy the Dinosaur or Bob the Builder.

16 The Advertiser argues that its advertising is intended to be humorous, is not intended to engage children in the consumption of alcohol and is aimed at the 18 to 39 year old consumer.

17 A listener to the radio ad may or may not be familiar with the visual advertising material used by the advertiser on other occasions. The ABAC scheme assumes a model of the assessment of individual ads against the code rather than a review of an entire marketing strategy as such. That said the Panel takes a common sense approach and clearly an aim of the advertiser's marketing is to build brand recognition and the camel character is a central feature of its brand. This needs to be taken into account in assessing the radio ad.

18 The Panel has previously considered the image of the camel in the context of print and website advertisements in its Determination 48/08. In that case it was noted that the use of the camel in an ad, the bulk of which consisted of pictures of alcohol products and price information, when considered as a whole did not breach the ABAC provision.

- 19 The central issue for determination in the present case is whether the ad can be said to have “a strong or evident” appeal to children or adolescents in breach of section (b) of the Code. This provision accepts that an alcohol ad might have appeal across different age groups but it cannot be targeted or directed to children or adolescents. Further even if the ad could fairly be said to be directed at adults, it will breach the standard if it has evident appeal to children or adolescents.
- 20 The preamble to the ABAC gives some guidance on how the code is to be applied and provides that conformity of an ad is to be assessed in terms of its probable impact upon a reasonable person, taking its content as a whole. Applying this guidance the radio ad consists of the camel character telling a joke and then describing the prices of particular alcohol products. This is done against the backdrop of camel noises and some stylized music.
- 21 The Panel does not believe that the radio ad breaches the ABAC provision. It is not considered that the radio ad can be fairly said to have strong or evident appeal to children or adolescents.
- 22 While the Panel has not held the ad complained of to be in breach of the ABAC the advertiser is strongly encouraged to submit all its advertising to the ABAC Pre-vetters for prior clearance. The advertisers stated goal of advertising responsibly would be enhanced through independent assessment of its advertising prior to use.
- 23 The complaint is dismissed.