

ABAC

ABAC Complaints Panel
Determination No: 46/07, 47/07 & 52/07

**IN THE COMPLAINT OF Ms JEAN NENTWIG, Mr GEOFF MUNRO and
Mr CHRIS SMALLEY**

Product: Toohey's New ("Just Help Yourself")
Advertiser: Lion Nathan

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

16 May 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns both a television advertisement and a website advertisement for the alcohol beverage 'Toohey's New' ("Just Help Yourself") by Lion Nathan ("The Advertiser") and arises from complaints received from Ms Jean Nentwig, Mr Geoff Munro and Mr Chris Smalley ("The Complainants").

The External 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. Currently, alcohol advertising is subject to both:
 - (a) a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB); and
 - (b) an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme.
3. The ASB and the ABAC 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 complaints specifically raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints are in the form of a confidential email dated 4 April 2007 (which was received by the ABAC Adjudication Panel on 5 April 2007), a letter from Mr Geoff Munro dated 12 April 2007 (which was received by the ABAC Adjudication Panel on 20 April 2007) and an email from Mr Chris Smalley dated 27 April 2007 (which was received by the ABAC Adjudication Panel on 2 May 2007).
7. The Panel endeavours to determine complaints within 30 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, the decision to combine the three complaints, received over a four week period, has slightly delayed the determination.

Pre-vetting Clearance

8. The external-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 granted to the advertisement (UN37/07).

The Advertisement

9. The complaints refer to a television and an internet advertisement.
10. The advertisement features a street party with a range of people and brightly coloured inflatable "tallmen" which dance in a synchronised dance routine to the soundtrack of Tom Jones's "Just Help Yourself".
11. A Toohey's New truck drives down the street and the operators of the "tallmen" push them into position to surround the truck, where they continue to dance, then bend over and rise up clutching Toohey's New beer.
12. Men climb into the truck and unload kegs of beer, watched by the Toohey's New stag.
13. Beer is poured from the kegs and the people in the street drink and dance.
14. The final scene is a giant inflatable glass of Toohey's New which is inflated on the front lawn. The ad concludes with the strapline "For the love of beer".

The Complaints

15. The complainants argue that the advertisement has appeal to children and may encourage under-age drinking. In this regard it is stated:
 - The advertisement reminded one complainant of the children's television character "Gumby".
 - Another complainant believed the ad was offensive as it "is obviously and successfully directed at children".

- Children relate to and get attracted to bright, attractive, moving colours and action.
- The inflatable “air dancers” have the appearance of cartoon characters and puppets and are arrayed in colours known to appeal to children and have happy, smiling expressions on their face. As such they will seem familiar, amusing and appealing to young children and thereby the children’s attention will be attracted to the product.
- The involvement of the puppet-like characters and the product is highlighted by their excited response to the arrival of the beer delivery truck and they are pictured waving glasses of beer.
- No alcohol ad should be in any way associated with anything child-like.
- The term “Just help yourself” is a “subliminal temptation” to teens or people who cannot restrict their intake of alcohol.
- The soundtrack underscores the appeal to young people by emphasising issues of experimentation, experience, permission and approval. The words invite an inexperienced audience to sample the product (“you want to taste”) while it does not have approval to do so (“help yourself”).

The Code

16. The ABAC provides at Section a) that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - (iii) must not encourage under-age drinking.

The ABAC provides at Section (b) that advertisements for alcohol beverages must:

- b) not have a strong or evident appeal to children or adolescents.

Arguments in Favour of the Complaint

17. In favour of the complaints it can be argued that the advertisement breaches the standard in Section (a) of the ABAC by the use of the song “Just Help Yourself”, which suggests that alcohol can be consumed irresponsibly or excessively, without regard to responsible and moderate consumption levels.
18. And by breaching section (b) of the Code by having a strong or evident appeal to children or adolescents by its use of colourful inflated figures which “dance” and perform, resemble characters popular in children’s entertainment such as “Gumby”, and music which will appeal to children and adolescents.

The Advertiser's Comments

19. The Advertiser responded to the complaints and questions posed by the Panel by way of email letter dated 4 May 2007 which was emailed on 7 May 2007. Key points made by the Advertiser were:
- a. There is absolutely no community concern about this ad: that the two complaints received at that stage were from known activists.
 - b. In relation to the questions relating to the music, the Advertiser:
 - i. Thought it was “clearly nonsense” to suggest that Tom Jones is popular with those under the age of 18, or that his music could have particular appeal to them.
 - ii. Those under 18 are not known for being attracted by their parents’ favourite music.
 - iii. No reasonable person would interpret the music to be an encouragement to drink excessively.
 - iv. No reasonable person will sit and listen to the lyrics and break them down phrase by phrase to find some hidden meaning that does not exist to act upon.
 - v. “Help Yourself” is a well known song that clearly has not been designed specifically for the advertisement.
 - vi. Reasonable people assume that advertisers choose music that alludes in general to a sentiment expressed in an ad; they do not presume that every word has been tailored to some specific meaning.
 - vii. Reasonable people will assume that the music was chosen because it contained the word “love” within it which fits the strapline “For the Love of Beer”, and community standards dictate that there is nothing inappropriate in using the common parlance “I love a beer” or “I love Tooheys New”.
 - c. There is nothing within the song that would encourage excess.
 - i. Take home beer is a very large portion of the market which means that people regularly “help themselves” without drinking excessively.
 - ii. The consumption depicted is very clearly responsible.
 - d. In relation to the appeal of the “Tallmen”, the Advertiser noted:
 - i. Tallmen are not associated with children’s entertainment; they are associated with sporting entertainment and car sales. (*The Advertiser provided a letter from a leading distributor of Tallmen stating that they have never sold Tallmen for children’s events.*)

- ii. They were chosen because they are primarily used at Rugby events and Tooheys New is an established and long standing sponsor of Rugby.
 - iii. The Tallmen are the same as those used at the Rugby and have not been modified and as such they will not be confused with “Gumby”, which is targeted at younger children who should not be watching television when the advertisement is showing.
 - iv. Children would not be familiar with people operating Tallmen machines in a suburban street; the advertisement depicts a fantasy situation.
 - v. Dancing is a regular and accepted feature of alcohol advertising.
- e. There are no children in the advertisement and there are no child cues in the street, e.g. bikes, swings, etc.
- f. The advertisement is shown after 8.30pm and not in day-time sport.

The Panel’s View

20. The three complaints raise the consistency of the advertisement with section (b) of the ABAC which provides that advertisements for alcohol beverages must not have a strong or evident appeal to children or adolescents. Section (a) (ii) of the ABAC also provides that advertisements must not encourage under-age drinking.
21. The essence of the arguments advanced in the complaints is that the advertisement uses a combination of colourful, attractive figures (tallmen) and a musical score which has a particular appeal to children. This arises because:
- the characters resemble children entertainment figures such as “Gumby”
 - bright primary colours are used
 - the tallmen have happy, smiling expressions which are familiar and appealing to young children.
22. A secondary issue is that the music track has a message of experimentation and is a “subliminal temptation” of particular concern in terms of its appeal to teenagers to experiment with alcohol consumption.
23. The ABAC preamble provides some guidance in how the Panel is to apply the Code. Of note is that advertisements are to:
- be assessed in terms of “probable impact” upon a “reasonable person”; and
 - the content of the advertisement is to be taken as a whole.

24. The issue of the evident appeal of advertisements to children and adolescents has been considered by the Panel on previous occasions and like provisions to that in the ABAC have also been the subject of decisions in the United Kingdom.
25. In its determination 39/05, the Panel considered section (b) and noted “the standard imposed by the ABAC is that the advertisement must not have strong or evident appeal to children or adolescents, not merely incidental appeal to these groups”. In making this judgment between “strong and evident” appeal and “incidental” appeal, it was noted that the Panel takes account of:
 - “The “look and feel” of the advertisement
 - Its overall impact
 - Its reach to different audiences.”
26. The decision in Determination 39/05 was that the advertisement did not have strong or evident appeal, whereas a different outcome was reached in Determination 11/06. In this case, the Panel considered the use of a bear character which, in the particular setting of the advertisement, led to the conclusion that the ad did have a strong or evident appeal to children.
27. In the United Kingdom, the Portman Group operates an advertising code which applies to alcohol product naming and packaging. Section 3.2(g) of the Portman Code provides *inter alia* that “promotional material or activity should not in any direct or indirect way have a particular appeal to under 18s”. A survey of the Portman Group’s website indicates a number of decisions have been made on complaints concerning section 3.2(g) of the Portman Code.
28. In essence, each of these decisions involve an individual assessment of the facts of each case, with reference being made to matters such as:
 - The accessibility of the promotional material to under-18s
 - Whether the material was targeted at adults
 - Overall content and context of the material
 - Whether there was a particular element or feature of the material which did appeal to under-18s.
29. The advertiser strongly refutes that the ad has strong or evident appeal to children or adolescents. It is argued that the “Tallmen” inflatable figures are used at Rugby events and that the use of the figures has no particular appeal to children, nor would the manner in which the figures are used in the ad have any familiarity to children or anyone else, as the scene created is a fantasy. It is also contended that the TV ad screens only after 8.30 pm and not with day-time sport and, as such, is being communicated to adults, and not children.

30. The Panel by majority does not believe that the ad has a strong or evident appeal to children. The ad portrays a somewhat fanciful heist of a truck carrying the product by use of the “tallmen” inflatable figures. The successful heist of the product then results in a street party. While the “tallmen” are bright and colourful, the Panel does not believe the overall context of the ad and its impact can be said to have “strong or evident” appeal to children or adolescents.
31. The Panel also does not believe that the music score, either considered as a freestanding element or in combination with the visual aspects of the ad, breaches the ABAC. Tom Jones is an entertainer removed in style, appearance and age from those who are overwhelmingly popular with under-18 year olds. It seems a “long bow” to read in “subliminal” messages about adolescents experimenting with alcohol. The “help yourself” phrase in the song would more reasonably be understood to sit with the fanciful truck-jacking of the product depicted in the ad.
32. Accordingly, the complaints are dismissed.