

ABAC

ABAC Complaints Panel
Determination No: 66/07

CONFIDENTIAL COMPLAINT

Product: Tooheys New
Advertiser: Lion Nathan

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Richard Mattick - Member
Professor Elizabeth Dangar - Member

25 October 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a television advertisement for the alcohol beverage “Tooheys New” by Lion Nathan (“The Advertiser”).

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
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 concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of a confidential email dated 22 August 2007 which was received by the ABAC Adjudication Panel on 23 August 2007.
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. Advertisers are required to respond to questions to answer within 10 days. In this case the Advertiser's response was received 12 days late. Accordingly, this complaint has been determined outside 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. Pre-vetting approval was granted to the advertisement (UN37/07).

The Advertisement

9. The complaint refers to a television 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 strap line "For the love of beer".

The Complaint

15. The complainant makes three (3) arguments, namely:

- That the advertisement suggests that the consumption or presence of alcohol changes the mood depicted from happy to euphoric
- That the product is portrayed as an aid to being socially accepted, and
- That the ad will be a “trigger” for persons with an addiction to alcohol and it fails to warn of the potential harm of alcohol consumption.

The ABAC

16. The ABAC provides that advertisements for alcohol beverages must:

- 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;
 - ii. if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement;...

Argument in Favour of the Complaint

17. It might be argued that the advertisement is in breach of section (c)(i) & (ii) of the ABAC by depicting:

- a) a significant mood change from happy to euphoric after the arrival of the beer truck;
- b) an innocent, family oriented street party changing to pandemonium with people singing and dancing in the street after the arrival of the Toohey's New Truck;
- c) large inflatable rubber men being erected to welcome the beer truck; and
- d) people clamouring to applaud the man delivering the beer;

therefore suggesting that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment. It further suggests that the product is an aid to being socially accepted.

The Advertiser's Comments

18. The Advertiser responded to the complaint by way of letter dated 25 September 2007. The Advertiser has advised that:

- a) at the commencement of the ad, a spinning record label indicates the cause of the celebration is New Year, indicating it is a 'Monster New Year Street

Party'. The party mood is consistent throughout the ad. There are cheers from the crowd well before the truck arrives in the street and there is very clearly a constant and continuous party atmosphere throughout the ad.

- b) Even if you wrongly accept that the atmosphere in the ad is solely a product of the arrival of the Toohey's New Truck, there is nothing in the Code that requires that an advertiser cannot place their brand on a pedestal. Taking the complainant's argument to its logical conclusion an ad would not be able to depict someone entering a pub and expressing pleasure at the availability of their favourite beer or wine brand. To do so would not "conflict(s) with nor detract(s) from the need for responsibility and moderation in liquor merchandising and consumption, (or) encourage consumption by underage persons" as outlined in the pre-amble which governs how the Code should be interpreted. There is nothing in the ad that suggests that other beverage types and brands are not available prior to the arrival of the Toohey's New truck – it is very clearly a Tooheys New Truck with very obvious livery to that effect. A reasonable person would interpret that any sentiment displayed relates to the brand, not to the substance of alcohol.

The Panel's View

19. The complainant raises three (3) issues which will be addressed in turn. The first and major issue turns on the standard established in section (c) of the ABAC. This standard deals with the relationship between the presence and/or consumption of alcohol and the mood or environment with which the alcohol beverage is associated. In simple terms, an advertisement should not depict that alcohol contributes to a significant change in mood, such as being the cause of the achievement of success. The key concept is whether the ad suggests a causal relationship between alcohol and success and a significant change in mood.
20. The Preamble to the ABAC provides guidance in assessing ads against the Code standards with regard to be had to:
 - The probable impact of the ad upon a reasonable person; and
 - The content of the ad as a whole.
21. The Panel has made a number of determinations dealing with section (c). Each of these decisions turns on its own terms and requires an individual assessment of the ad against the ABAC standard. This same assessment has to be undertaken in this case.
22. The complainant contends that the arrival of the product changes the mood of the street party from happy to euphoric; and further, that the product is portrayed as an aid to being socially accepted. The advertiser rejects this interpretation and argues that the mood of the ad, namely as a New Year's street party, was established before the introduction of the product and that this mood was not altered by the arrival of the product. In the alternative, it is argued that if the mood did alter with the arrival of the product, then it was because of issues of brand recognition and "not the substance of alcohol".
23. It can be accepted that the ad does set its "party" mood from the beginning and that a celebration was underway prior to the introduction of the truck carrying the product. The issue is whether the introduction of the product created or

contributed to a significant change in mood. The complainant argues that the presence of the product did cause a change from happy to euphoric.

24. The arrival of the truck carrying the product is the trigger for the rather fanciful "truck-jacking" by party-goers using the tallman inflatable figures. Upon some kegs of the product being liberated from the truck, a large cheer is heard; and the ad features more scenes of people dancing, and somewhat less of the tallman figures. It is arguable that the party becomes more "active" upon the introduction of the product, but is more difficult to confidently conclude that a "significant" change in mood has occurred, as contended by the complainant.
25. On balance, the Panel believes the ad does not breach the ABAC in terms of its depiction of alcohol contributing to a change in mood. Further, the Panel does not believe the product is depicted as a cause of the street party celebration.
26. The complainant secondly raises whether the ad suggests that the product is an aid to being socially accepted. The Panel does not believe the ad can be said to breach this standard as it depicts a party and social interaction occurring before the introduction of the product and this interaction is not significantly altered by the presence or consumption of the product.
27. Finally, the complainant notes that the ad is a "trigger" for alcohol-dependent persons and it should be accompanied with a warning about the potential harm of alcohol and a message to use the product responsibly. While the Panel acknowledges the points made, the ABAC does not require a "drink responsibly" message to be included in advertisements.
28. Accordingly, the complaint is dismissed.