

ABAC

**ABAC Complaints Panel
Determination No: 97/08**

**CONFIDENTIAL COMPLAINT
Product: Coopers Vintage Ale
Advertiser: Coopers Brewery Limited**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Professor Richard Mattick - Member

25 September 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a newspaper advertisement for Coopers Brewery Limited (“the Advertiser”) and arises from a confidential complaint received 8 September 2008.

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 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 received on 8 September 2008.
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. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an advertisement featured in The Age Newspaper dated 3 September 2008 on page 3.
10. The advertisement features a six pack of Coopers Extra Strong Vintage Ale with a tag with the text "Happy Father's Day". Above the beer is the text "Make Dad almost as excited as when he made you". Below the beer in smaller print is the text "Each year a new, very limited batch of Coopers Extra Strong Vintage Ale graces the shelves of selected liquor outlets. Though this premium, 7.5% alcohol ale makes great drinking now, it actually improves with age for up to two years. Why not give Dad the pinnacle of the brewer's art for Father's Day? It'll probably be the best thing he's had in ages. Hand-made by the Cooper family. Est. 1862."

The Complaint

11. The complainant argues that:

- (a) the ad is offensive due to its overtly sexual connotations namely “make dad almost as excited as when he made you” and “it’ll probably be the best thing he’s had in ages”; and
- (b) the ad associates alcohol with sex and pleasure which is inappropriate.

The Code

- 12. The ABAC provides that advertisements for alcohol beverages must-
 - (a) 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.

Arguments in Favour of the Complaint

- 13. In favour of the complaint it can be argued that the advertisement breaches section (c)(i) of the ABAC Code by depicting the presence of alcohol beverages as a cause of or contributing to the achievement of sexual or other success, by the suggestion that purchasing Cooper’s Vintage Ale for Father’s Day will “Make Dad almost as excited as when he made you” and “It’ll probably be the best thing he’s had in ages”.

The Advertiser’s Comments

- 14. The Advertiser responded to the complaint and questions posed by the Panel in relation to the first two complaints by way of letter received 17 September 2008. The principal points made by the advertiser are as follows:
 - (a) Coopers did not intend the advertisement to be overtly sexual or offensive and do not consider that reasonable members of the public would view it as such. There advertisement does not show anything that is sexually explicit nor does it show any nudity. The headline “Make Dad almost as excited as when he made you” while using subtle sexual innuendo, is not overt or explicit and is in good taste. Further, it could also refer to the excitement a father experiences when having a child.
 - (b) The intention of the advertisement was to attract attention and generate consumer engagement with the brand in a humorous manner using a cheeky, fun tone, in accordance with the Cooper’s usual style of advertising which is well known and largely appreciated by viewers.
 - (c) The premise of the advertisement is that a case of Cooper’s Vintage Ale would be a great present for Father’s Day.

- (d) The feedback received suggests that most people find the advertisement clever and funny and we do not consider the advertisement to be inappropriate based on current community standards and attitudes. The public response to the ad has been overwhelmingly positive.
- (e) Cooper's submit that the advertisement does not breach the ABAC since nothing in the advertisement suggests that the consumption of alcohol would contribute to sexual success.
- (f) Cooper's regrets if any members of the public were offended by the advertisement as this was never their intention.

The Panel's View

- 15. This complaint raises the ABAC issues outlined above and also matters of taste and decency which are issues which trigger consideration under the AANA Code of Ethics and will be dealt with by a determination handed down by the ASB.
- 16. The ABAC issue raised in this complaint is whether the ad featured in The Age newspaper is consistent with section (c) of the ABAC. This is the section which provides that alcohol ads are not to suggest that alcohol contributes to the achievement of sexual success.
- 17. The complainant argues that the use of the phrases "Make Dad almost as excited as when he made you" and "It'll probably be the best thing he's had in ages" links alcohol with sex and pleasure and accordingly the issue is whether the use of these phrases leads to a suggestion that the presence or consumption of the product would contribute to the achievement of sexual success.
- 18. In applying the ABAC standards, the Code's preamble provides that conformity is to be assessed in terms of the probable impact of the ad upon a reasonable person, taking the ad's content as a whole. The Panel has previously considered section (c) and has noted that alcohol ads can be sexy. What is not allowed is the suggestion that alcohol results in a significant change in mood which contributes to the achievement of sexual or other success.
- 19. The decision about whether an ad which uses sexual innuendo contains the elements which would lead a reasonable person to believe that the achievement of sexual success was being suggested through the presence or use of the product is invariably a judgment about which different people might disagree. In this case, the Panel notes there is a subtle innuendo that the presence or consumption of the product might lead to sexual excitement, but there is no suggestion that this would lead to sexual or other success.
- 20. Accordingly, the complaint is dismissed.