

ABAC

ABAC Complaints Panel Determination No: 76/08

In the **COMPLAINT** of Mr John Coady
Product: XXXX Gold Beer
Advertiser: Lion Nathan Limited

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

15 September 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for XXXX Gold Beer by Lion Nathan Limited (“the Advertiser”) and arises from a complaint by Mr John Coady received 19 August 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 Advertising Code of Ethics which includes provisions about the content of 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 an email by Mr John Coady received by the ABAC Panel on 19 August 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 that 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 obtained for this advertisement (JB47/074XG).

The Advertisement

9. The complaints refer to a television advertisement. The advertisement begins with a man walking into a forested area with an open lawned area behind him. He is holding a golf club and an open stubbie of beer. As a voice is heard saying "Hurry up PJ", he sees a golf ball inside a grassy plant. The man looks annoyed but then he is seen chuckling while placing his stubbie inside the plant and resting the golf ball on the opening of the stubbie as if it were a golf tee. The man lifts his golf club as if to swing at the ball when he hears someone say "Oi". He stops and looks toward a group of men all holding open stubbies of beer and standing with golf clubs and bags. One of the men says "Can't do that" and another says "Yeah, you haven't finished your Gold". The man nods, chuckles and seems to lower his club. Then the group of men is shown with several sipping their stubbies and several are then heard laughing as an image of the partially consumed stubbie of XXXX Gold sitting in a grassy plant with a golf ball on top is shown with the caption "Good as Gold".

The Complaint

10. The complainant argues that the advertisement:
 - (a) shows a dangerous activity such that if a person attempted to do this it would probably see the bottle broken and either endanger the hitting golfer or others using that area later due to broken glass on the ground;

- (b) the advertising of a person affected by alcohol engaged in dangerous activities is irresponsible such that a person could have several drinks which impairs their judgment (or a non drinking child) and thinking this is a funny thing to do could be seriously injured.

The Code

- 11. The ABAC provides 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 promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the.....engagement in any sport..... or potentially hazardous activity and, accordingly-
 - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices..

Arguments in Favour of the Complaint

- 12. In favour of the complaint it can be argued that the advertisement's depiction of a group of men drinking beer while playing golf, one of whom proposes to use a partially consumed stubbie of beer as a golf tee:
 - (a) breaches section (a) of the ABAC Code by failing to represent a mature, balanced and responsible approach to the consumption of alcohol beverages; and
 - (b) breaches section (d) by depicting a direct association between the consumption of alcohol beverages and a potentially hazardous activity and depicting consumption as taking place before and during the engagement of the activity.

The Advertiser's Comments

- 13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 1 September 2008. The principal points made by the advertiser are as follows:
 - (a) The 'Tee' execution is part of the long-running, award-winning *Good As Gold* campaign that helped XXXX Gold drive the unprecedented growth of the lower alcohol category. In highlighting the brand's characteristics beyond its function as a lower-alcohol choice, namely

taste credentials, we are able to continue to improve the desirability of the lower-alcohol segment.

- (b) The campaign is clearly tongue-in cheek and reflects good-humoured mates living the good life and not taking themselves too seriously. The characters make the mature and responsible choice to consume a lower alcohol product while enjoying a social game of golf and having a laugh with their mates.
- (c) At 3.5% ABV, XXXX Gold is considered a 'low alcohol beverage' under the ABAC.
- (d) This said, the 'Tee' execution is not designed to connect a dangerous or risky activity with the consumption of the product. In the same vein as other executions in the *Good As Gold* series, the 'Tee' advertisement features a light-hearted joke demonstrating the quality of XXXX Gold beer.
- (e) Our golfer PJ, true to character, is taking the game a little too seriously and wants to make his way out of a sticky situation. He's stopped by the cricket legends - not for cheating or using a 'tee' to hit his ball out of the rough, but because in doing so he would waste a XXXX GOLD. The effectiveness of the advertisement relies on the consumer understanding the joke, and recognising that using a bottle as a tee as a clearly ridiculous thing to do.
- (f) It is not expected that a reasonable person would deem this advertisement contrary to community standards on health and safety, as the light-hearted delivery of the physical joke communicates the message in an entertaining and engaging way. This is certainly the resounding response we have received from the majority of consumers since first taking this campaign to market – more than twelve months ago.

The Panel's View

- 14. The complaint raises issues about the depiction of alcohol consumption in conjunction with the pursuit of a sporting activity namely, golf. The ABAC provides in Section (d) that ads are not to depict any direct association between the consumption of alcohol, other than low alcohol beverages, and the engagement in any sport and other potentially hazardous activity. The section goes on to provide that any depiction of alcohol consumption must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices
- 15. In this case the ad does clearly depict the consumption of the product taking place during the playing of a golf game. The product however is a "low alcohol beverage" within the meaning of that term as defined in the ABAC ie. it is a beer with a alcohol/volume percentage of less than 3.8%.

16. The panel has considered the application of Section (d) in several previous decisions. In determination 43/07 the panel found an ad which showed the consumption of alcohol as occurring while two persons were standing waist deep in water at a surf beach was in breach of Section (d). Determination 49/07 considered the operation of Section (d) and the panel noted that an ad will be in breach of the ABAC if the association between sport, hazardous activity and alcohol is:
- direct;
 - involves consumption; and
 - the consumption takes place before or during the engagement in sport.
17. In this case the ad features a group of friends playing golf. The players are each seen with opened bottles of the product and at the conclusion of the ad one of the players is seen as raising the bottle towards his mouth and is clearly about to physically consume the product. Therefore the ad is depicting a direct association between the engagement of the sport of golf and the consumption of the product.
18. The advertiser contends however that the ad is not in breach of the ABAC principally on two grounds. Firstly, the product is a “low alcohol beverage” and hence is covered by what is in effect an “exception” to Section (d). Secondly, the ad is light-hearted and a reasonable viewer would share the humour being displayed in the ad and would not take the activity being depicted, particularly the use of a bottle as a golf tee as seriously advocating that this behaviour be replicated.
19. The panel has not previously had to consider the purpose and scope of the “low alcohol exception” to Section (d). The policy intent of Section (d) appears to be that alcohol should not be used if a person is going to engage in activity where the impairment of the person’s reactions and judgement as a result of alcohol consumption could potentially be dangerous. The most obvious example of this is the combination of alcohol consumption and the operation of a motor vehicle.
20. The exception in Section (d) is presumably designed to allow the promotion of the use of low alcohol products as a responsible alternative to full strength alcohol products. To assist in understanding the meaning of ABAC provisions, the Scheme’s Management Committee has produced guidance notes on each section of the Code. The note on Section (d) states that “there is no intention to exclude the consumption of alcohol prior to or during engagement in every sport, only engagement in sports where a prior or concurrent moderate consumption of alcohol could be perceived as hazardous”. The note is silent on the low alcohol exception. Presumably the exception is not intended to allow the depiction of alcohol consumption in conjunction with inherently dangerous activities irrespective of the strength of the alcohol product being consumed eg. drinking while mountain climbing.
21. In this case the sport portrayed is golf which would not be regarded as inherently dangerous. The part of the ad which has concerned the

Complainant was the intended use by one of the players of a bottle as a golf tee. The advertiser responds to this concern by arguing that it is apparent that the use of the bottle for this purpose is “a clearly ridiculous thing to do” and that the overall humorous context of the ad makes this apparent.

22. The preamble to the ABAC provides that in assessing if an ad is consistent with an ABAC Standard regard is to be had to the ad’s probable impact upon a reasonable person within the class of persons to whom the ad is directed taking its content as a whole.
23. It is quite common for advertising to use humour. As the panel has previously noted, the use of humour is not an antidote which immunises an ad from the ABAC standards, however, it is a relevant factor in assessing the impact the ad as a whole will have on a viewer. In this case the panel does not believe that the ad breaches the ABAC. Taken as a whole, the panel does not think that the behaviour being portrayed could be regarded as “offensive” within the meaning of that term in Section (a) nor does it appear that the ad is contrary to the intended operation of Section (d).
24. Accordingly, the complaint is dismissed.