

ABAC

ABAC Complaints Panel Determination No: 161/08

In the Complaint of Mrs Suzanne Eckert Product: XXXX Gold Advertiser: Lion Nathan Limited

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

23 December 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a banner advertisement for XXXX Gold by Lion Nathan Limited (“the Advertiser”) and arises from a complaint by Mrs Suzanne Eckert received 20 December 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 and Alcohol Guidelines which include provisions about the content and placement 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 received by the ABAC Panel on 20 December 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. In this case, the advertisement 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. The Advertiser did not obtain pre-vetting approval for the advertisement as it is a venue advertisement only used for promotional events.

The Advertisement

9. The complaint relates to approximately 13 flags fixed to the balcony posts of the Regatta Hotel in Toowong, Brisbane. The flags were erected in late November and feature the text "XXXX Gold" against a yellow background.

The Complaints

10. The complainant argues that:
 - (a) The advertisement greatly detracts from the beauty of the hotel building.
 - (b) Alcohol advertising in this bold format consistently implanting on the minds of people (including children) is contributing to the acknowledged binge drinking and excessive alcohol consumption problems in our society.

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:-

- (i) must not encourage excessive consumption or abuse of alcohol;
 - (ii) must not encourage under-age drinking;
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
- (b) not have a strong or evident appeal to children or adolescents.....

Arguments in Favour of the Complaint

12. In favour of the complaints it can be argued that the advertisement breaches section (a)(ii) and (b) by its placement in view of children and sections (a)(i) and (iii) by its prominent display.

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 22 December 2008. The principal points made by the advertiser are as follows:
- (a) Overall, our strong view is that this complaint does not raise an ABAC issue. The complainant is referring to venue signage, which features the XXXX GOLD logo only.
 - (b) This venue installation promotes XXXX GOLD, a brand which promotes responsible and moderate consumption and has driven the unprecedented growth of the lower alcohol category. The mid-strength brand is now the top selling beer in Queensland, largely due to the support of iconic Queensland venues such as the Regatta Hotel.
 - (c) The banners feature the XXXX GOLD logo only, and are designed to promote brand awareness, not consumption. The prominent placement of the banners is temporary, designed to increase awareness of the XXXX GOLD brand during summer, as well as to promote the Regatta Hotel's support for the XXXX GOLD Beach Cricket tournament, which begins in January.
 - (d) We do not believe that this installation has appeal to children or adolescents. The banners feature XXXX GOLD logos only and are positioned at a licensed venue, where the clear majority of patrons are over the age of 18. Similarly, parents are expected to exercise responsibility over minors in their care in and around such licensed venues.

The Panel's View

14. The complaint raises concerns that the prominent display of the alcohol logo will encourage excessive consumption and underage drinking.
15. The ABAC is a code which is based on the content of ads rather than the placement of ads. This can be contrasted with the television industry

code of practice which specifically limits the times at which alcohol ads can be broadcast. The ABAC deals only indirectly with placement through the preamble references to “the class of persons to whom the advertisement is directed” or may be communicated.

16. The issue is whether the ad has “strong or evident” appeal to adolescents or encourages underage drinking or excessive consumption. The advertiser argues that there is nothing in the content of the ad that breaches the Code and in particular the installation at a licensed venue and in relation to a lower alcohol brand is responsible.
17. The Panel notes that the flags only display the name/logo of an alcohol product and does not believe that the content of the ad can reasonably be said to have a particular appeal to younger viewers or encourage excessive consumption.
18. In some respects it seems that the complainant is complaining about outdoor advertising of alcohol products generally. This is an issue of public policy and not one for the Panel.
19. Accordingly, the complaint is dismissed.