

ABAC

**ABAC Complaints Panel
Determination No: 74/13**

**Confidential Complaint
Product: Coopers Mild Ale
Advertiser: Coopers Brewery**

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

9 August 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a radio advertisement for Coopers Mild Ale by Coopers Brewery (“the Advertiser”) and arises from a complaint received 1 July 2013.

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 includes provisions about Billboard advertising.
3. The complaint systems operated under the ABAC scheme and the ASB are separate but inter-related in some respects. Firstly, for ease of public access, the ASB provides a common entry point for alcohol advertising complaints. Upon

receipt, the ASB forwards a copy of the complaint to the Chief Adjudicator of the ABAC Panel.

4. The Chief Adjudicator and the ASB independently assess the complaint as to whether the complaint raises issues under the ABAC, AANA Code of Ethics or both Codes. If the Chief Adjudicator decides that the complaint raises solely issues under the Code of Ethics, then it is not dealt with by the ABAC Panel. If the complaint raises issues under the ABAC, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC and the Code of Ethics, then the ABAC Panel will deal with the complaint in relation to the ABAC issues, while the ASB will deal with the Code of Ethics issues.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 1 July 2013.
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 was decided within the 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 group of advertisements.

The Advertisement

9. The complaint refers to a group of three radio advertisements for Coopers Mild Ale. The advertisements were broadcast on Sunday 30 June 2013 at around 7.30am.
10. The first advertisement is referred to as "Solar Car":

Male voice over (MVO):

If you could hear flavour, ordinary mid-strength beer would probably sound like a solar powered car, at midnight...

Sound effects (SFX):

Silence with a few distant cicadas.

MVO: Hmmm. Alternatively, Coopers Mild Ale would sound like...

SFX: Revving of a V8 Supercar.

MVO: Lower alcohol, louder flavour...

3.5% Coopers Mild Ale. The full-flavoured mid-strength beer.

11. The second advertisement is referred to as “One Hand Clapping”:

MVO: If you could hear flavour, ordinary mid-strength beer would probably sound like one hand clapping...

SFX: Silence with a few soft hand noises.

MVO: Hmmmm. On the other hand, Coopers Mild Ale would sound like...

SFX: Huge roar of a massive crowd in a grandstand.

MVO: Lower alcohol, louder flavour...

3.5% Coopers Mild Ale. The full-flavoured mid-strength beer.

12. The third advertisement is referred to as “Paper Plane”:

MVO: If you could hear flavour, ordinary mid-strength beer would probably sound like a low flying paper plane...

SFX: Silence with a faint paper rustle.

MVO: Yeah. By comparison, Coopers Mild Ale would sound like...

SFX: Sonic boom of a jet fighter pass.

MVO: Lower alcohol, louder flavour...

3.5% Coopers Mild Ale. The full-flavoured mid-strength beer.

The Complaint

13. The complainant argues that the advertisements are loudly and fiercely promoting the appeal of this brand of beer normally at a time when young families are having their breakfast and impressionable young children hear tacit approval for this kind of selling.

The Code

14. 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 –
 - ii) must not encourage underage drinking;
15. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
- b) not have a strong or evident appeal to children or adolescents ...

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by letter received 31 July 2013. The points made by the Advertiser in relation to the advertisement were:
- a. The advertisement was booked to run anytime between 7.30am and 6.30pm on Monday to Saturday and only 1 of the 3 scenarios for this advertisement was broadcast at approximately 7.30am on Sunday 30 June. The other two advertisements aired Monday to Saturday.
 - b. The ABAC is a code principally regulating the content of the advertisement and not the placement of the advertisement within a particular medium, location or timeslot. This can be contrasted with the Commercial Radio Code of Practice and the AANA Code for Advertising & Marketing Communications to Children, which do contain provisions restricting the placement of advertisements.
 - c. While we understand that the complaint only raises issues under the ABAC and our response is generally limited to a consideration of this code, we also contend that neither the Commercial Radio Code of Practice nor the AANA Code for Advertising & Marketing Communications to Children regulate the placement of the advertisement in question. The Commercial Radio Code of Practice does not restrict the placement of this advertisement at particular times on certain days. The AANA Code for Advertising & Marketing Communications to Children also does not appear to apply to this advertisement as, having regard to the theme and language used in the advertisement, it is not directed primarily to children (persons aged 14 years or younger) and is not for a product targeted toward or with principal appeal to children.
 - d. In this regard we refer to ABAC Determination 150/08, in which the complainant argued that a radio advertisement was aired during an inappropriate time of the day (3:45pm) when children could be listening. The Panel dismissed this complaint, noting the following:
 - “The ABAC is a code which is based on the content of advertisements rather than the placement of advertisements. This can be contrasted with the television industry code of practice which specifically limits the times at which alcohol advertisements can be broadcast. The ABAC standard goes to advertisements not encouraging underage drinking or having strong or evident appeal to children.”
 - “The Panel does not believe that the content of the advertisement can reasonably be said to have a particular appeal to younger listeners. Further, the Commercial Radio Code of Practice does not have any provisions restricting placement of alcohol advertisements at particular times of the day.”
 - e. We therefore submit that the airing of the advertisement at approximately 7.30am on a Sunday morning does not contravene the ABAC or any other

applicable code, such as the Commercial Radio Code of Practice nor the AANA Code for Advertising & Marketing Communications to Children.

- f. We are nevertheless aware that the Panel will take the advertisement's placement into account for the purpose of assessing compliance with the ABAC to the extent of "its probable impact upon a reasonable person within the class of persons to whom the advertisement or product material may be communicated, and taking its content as a whole.
- g. We do not accept that the advertisement fails to present a mature, balanced and responsible approach to the consumption of alcohol by loudly promoting the appeal of this brand of beer in a way that would attract the attention of young families having their breakfast at the time the advertisement was broadcast. There is no suggestion whatsoever in the content of the advertisement that the "class of persons" to whom the advertisement is intended or designed to appeal includes persons aged under 18 years. Further, simply because the advertisement was aired during a breakfast slot does not automatically suggest that it is directed towards children. We note that breakfast is not a regular family activity occurring during a set time period in the morning, given the lifestyle and time constraints of the modern family. The advertisement is aimed at a broad "class of persons", being consumers of legal age generally, hence the advertiser's decision to book the advertisement at any time between 7.30am and 6.30pm. A "reasonable person" within this broad class of persons would also, if they were concerned about the advertisement generally avail themselves of a number of options, including turning the radio off or down.
- h. Further, we do not consider the allegation raised by the complainant that the advertisement is "loudly and fiercely" promoting the appeal of this brand of beer to be in any way regulated by an advertising code in Australia. The contrasting sounds from soft to loud in the advertisement in order to simulate taste cannot of itself present an immature, imbalanced or irresponsible approach to the consumption of alcohol.
- i. We reiterate that the advertisement is for a mid strength beer and that the key tagline for this advertisement is "Lower alcohol, louder flavour..." The "loud" and "fierce" nature of the advertisement is reflective of the tagline and evocative of the strength of flavour of the lower strength alcohol product. We note that the consumption of alcohol is not in any way referenced or alluded to in the advertisement. We therefore submit that the advertisement presents a mature, balanced and responsible approach to the consumption of alcohol by legally aged consumers in compliance with section (a) of the ABAC. Generally the promotion of mid-strength alcohol products is a positive alternative to full-strength alcoholic products.
- j. We do not accept that the advertisement encourages underage consumption of alcohol or has a strong or evident appeal to or is targeted at persons aged under 18. No children or adolescents are referenced in the advertisement and the "loud" and "fierce" nature of the advertisement is symbolic of the advertisement's tagline "Lower alcohol, louder flavour..." and the full flavour of the lower alcohol product.

- k. We refer to ABAC Determination No 2/12, in which the Panel dismissed a complaint concerning a television advertisement that aired at around 9:40pm on Christmas day, noting the following:
- “For its part, the ABAC is a code concerned about the content of alcohol advertisements, irrespective of where the advertisement might appear e.g. print, television, billboards, internet. The ABAC does not limit or prohibit the placement of advertisements....”
 - “...What will breach the ABAC is an advertisement which can be said to have strong or evident appeal to children or adolescents. This “strong or evident appeal” is to be assessed from the content of the advertisement, rather than the time of day the advertisement was broadcast...”
 - “...The ABAC does not say that alcohol advertisements cannot be engaging, clever or otherwise appealing. What it does say is that an advertisement cannot have strong or evident appeal to children to adolescents. This means an advertisement might have some appeal to younger viewers, if this appeal is a residual or coincidental appeal, as opposed to an appeal which is strong or evident to children or adolescents as a group.”
- l. We accordingly consider that the advertisement in question does not have “strong or evident” appeal to children or adolescents in compliance with sections (a)(ii) and (b) of the ABAC. Any appeal to younger listeners due to the “loud” and “fierce” nature of the advertisement in promotion of its tagline is, at most, only residual or coincidental and is not readily manifest from the content of the advertisement itself. It does not reasonably follow from this advertisement that children or adolescents would be induced to consume alcohol.
- m. There has only been one complaint made in relation to the advertisement and the public response to date has been overwhelmingly positive. Coopers Brewery regrets if any listeners were offended by the advertisement and would like to take this opportunity to assure the Panel and the listeners that this was never our intention and that we take our responsibilities in regard to responsible alcohol consumption seriously.

The Panel’s View

17. The complainant’s principal concern is that the radio advertisements were broadcast loudly in the morning when children and adolescents would be exposed to the advertisements.
18. The Commercial Radio Association Codes of Practice do not restrict the placement of alcohol advertisements to specific times.
19. For its part, the ABAC is a code concerned about the content of alcohol advertisements, irrespective of where the advertisement might appear e.g. radio, television, billboards, internet. The ABAC does not limit or prohibit the placement of

advertisements. Rather, its approach is to say – regardless of where a viewer comes across the advertisement – it needs to meet particular standards.

20. Accordingly, it is not a breach of the ABAC for an alcohol advertisement to be broadcast on radio in the morning. What will breach the ABAC is an advertisement which can be said to have strong or evident appeal to children or adolescents. This “strong or evident appeal” is to be assessed from the content of the advertisement, rather than the time of day the advertisement was broadcast or the type of program the advertisement was broadcast in conjunction with. The issue of where the advertisement was found only indirectly comes into play by the fact that the vehicle for an advertisement will shape the likely audience of the advertisement.
21. In assessing the advertisement’s conformity with a relevant ABAC standard, the Panel is to have regard to the probable impact of the advertisement upon a reasonable person taking the advertisement’s content as a whole.
22. The complainant contends that the “loud” and “fierce” nature of the advertisement heard was appealing to “impressionable young children”. While the Panel respects the opinion of the complainant, it does not believe the content of these advertisements breaches the ABAC standard. The use of loud noise is properly contextualised in terms of the advertisement’s message, and while it may bring attention to the advertisement, this is not considered “strong or evident” appeal to young children.
23. Accordingly, the complaint is dismissed.