

ABAC

ABAC Complaints Panel
Determination No: 115,119,122,125,134,140&143/13

**Complaint by Shirley Cook, Derek Saunders, Stephen Wilson, Lori Lysaght and
Confidential Complainants**
Product: Tooheys Extra Dry
Advertiser: Lion

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

19 December 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement and billboard for Tooheys Extra Dry by Lion (“the Advertiser”) and arises from complaints received on 18, 19, 20, 25 and 26 November 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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - The Outdoor Media Association Code of Ethics 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by ABAC on 18, 19, 20, 25 and 26 November 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. The complaint was 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 the advertisements.

The Advertisements

Television

9. The advertisement opens at a party as a man walks through with a carton of Tooheys Extra Dry over his shoulder.
10. We see a man and woman talking and the man's mouth starting to twitch from side to side. The man runs out of the room holding his mouth and into the kitchen where he spits his mouth out of his face onto the kitchen sink.
11. The mouth rolls around and then stands up and says "Yuuh you slimy filthball, I had to get off, that was embarrassing". We see the man looking sheepishly at his mouth with the skin around his mouth drawn inwards as if sewn together. The mouth continues "You put me through hell" as we see the man sucking a woman's toe, a dog licking his mouth, something blowing his mouth open, a

tattoo "Bite me" on the inside of his lower lip. The mouth says "Mike, I need something back".

12. We then see the man pick up a bottle of Tooheys Extra Dry and take a long sip. His mouth says "Thank you".
13. In the final scene we see a bottle of Tooheys Extra dry on a table with the tagline "Repay your mouth with the clean crisp taste".

Outdoor

14. The outdoor advertisement includes the line "For Making Me Suck Sweaty Toes" at the top of the page above a picture of a pair of female feet sticking out from a sheet and on top of the sheet a mouth detached from its face with its tongue protruding next to a stubby bottle of Tooheys Extra Dry.
15. The tagline at the bottom of the page is "Repay your Mouth with the Clean Crisp Taste" and in small print the Drinkwise "Get the facts" logo is also included.

The Complaint

16. The first complainant is concerned that the advertisement:
 - suggests that the product will clean or cleanse the actor's mouth;
 - is offensive by:
 - objectifying the body,
 - implying a woman's body is unclean by the mouth needing cleaning after kissing a woman's toes,
 - degrading those people in detention who have nothing but their bodies to protest with and have sewn their lips together which is akin to the imagery of the man without his mouth.
17. The second complainant is concerned that the advertisement:
 - suggests that dirty habits can be cleansed with the product;
 - is disgusting and repulsive;
 - does not portray a useful or worthwhile message and there is no good reason to expose decent viewers to such dreadful images.
18. The third complainant is concerned that the advertisement:
 - is extremely distasteful and offensive;
 - is shown in the evenings when younger people watch television.

19. The fourth complainant is concerned that the advertisement:
- is unsavoury, distasteful and obnoxious;
 - is shown when younger people may be watching;
 - represents an unhealthy attitude when there are increased community concerns regarding the ill effects of excessive alcohol consumption.
20. The fifth complainant is concerned that the advertisement:
- Does not seem to promote normal consumption of a product and distorts the human body; and
 - is disgusting, bad taste, anti-social and out of step with community standards.
21. The sixth complainant is concerned that the advertisement is:
- unhygienic and disgusting; and
 - would only appeal to those under the legal drinking age.
22. The seventh complainant is concerned that the advertisement:
- is disgusting with tongue object and male kissing feet then the beer; and
 - alcohol is a problem in Melbourne at the moment with many violent crimes occurring and if its not on TV ads its up everywhere at public transport stops.

The Code

23. 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 –
- (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...

The Advertiser's Comments

24. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 2 December 2013. The points made by the Advertiser in relation to the advertisement were:

- (a) As the billboard Advertising is closely related and aligned with the Television Advertisement, for the purposes of this response references to 'Advertisement' refer to the Television Advertisement, and our response is intended to be in reply to complaints raised on both executions.
- (b) The Advertisement shows a male (Mike) being confronted by his mouth and later repaying his mouth for all the things he has put him (the mouth) through, with the renowned Clean, Crisp, Taste of Tooheys Extra Dry. It begins at a house party where Mike is talking to a woman. His mouth begins to wriggle on his face. Not knowing what is happening, Mike runs off into the kitchen where his mouth jumps off his face and onto the kitchen bench in front of him. Mike's mouth is now completely separate from him and he obviously looks surprised by what has happened. The mouth then begins to confront Mike about all of the undesirable things he has put him through lately – focusing on activities that clearly do not leave any mouth feeling or tasting 'Clean or Crisp'. These events include Mike sucking toes, having his mouth licked by his poodle, drying his mouth out, and finally having his inner lip tattooed with the words "bite me". This whole flashback sequence lasts approximately four seconds and is intended to be a humorous, hyper-real exaggeration of the mouth's memories. Once the flashback sequence finishes, we see the mouth on the kitchen bench step forward and ask Mike to give him something back as repayment for everything he's put him (the mouth) through. To repay the mouth, at this point we cut and see Mike's hand reaches into a bath of ice to pull out a bottle of the 'Clean, Crisp, Taste' of Tooheys Extra Dry. We then see Mike, with his mouth now back on his face, take a sip of the 'Clean, Crisp, Taste' of the Tooheys Extra Dry and afterwards the mouth thanks Mike for repaying him. The mouth protrudes out a bit to do this, but remains on Mike's face. The Advertisement ends with a frame showing a pack shot of Tooheys Extra Dry with the words 'Repay Your Mouth with the 'Clean, Crisp, Taste' prominently on screen.
- (c) Lion does not consider that the Advertisement breaches any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code. Lion notes that the Advertising Standards Bureau has dismissed all similar complaints regarding this campaign under the AANA Code of Ethics.
- (d) The act of Mike's mouth jumping off his face does not encourage or promote the excessive consumption of alcohol, abuse of alcohol, or offensive behaviour in relation to alcohol. It is presented as a clearly fictional scene set in a responsible socialising occasion and environment. Mike as a character is presented as being clearly sober and of sound mind at the time of this action taking place. At the beginning of the Advertisement, when his mouth begins to move, he appears confused at what is unfolding, and at no point does he appear distressed. Importantly, no alcohol is consumed in the Advertisement prior to or during this event taking place. For story-telling purposes it is

vital that the mouth is shown to jump off the Mike's face so that the audience can clearly see the two having a conversation. The depiction of the mouth as its own character in the Advertisement is entirely relevant to promoting the product and the core brand message as the sense of 'Taste' lies within the mouth and this style of promotion is in line with market standards.

- (e) The Advertisement is clearly positioned around 'Repayment' not 'Cleansing', and strongly linked to the product's signature 'Taste', not specifically alcohol or the perceived effects of alcohol in itself. The intention of the Advertisement is to promote the trademark 'Clean, Crisp, Taste' that Tooheys Extra Dry is known for by contrasting it with tastes that a mouth may experience which are the opposite of this taste – and to execute this in a way that fits with the fun and quirky nature of the Tooheys Extra Dry brand. The flashback sequence showing the mouth's memories lasts approximately four seconds and is intended to be a humorous; hyper-real exaggeration of things the mouth may have been through over time. Importantly, all scenes are clearly depicted as having been at different times of day, and different points in history. As such, there is no suggestion of instant repayment and no alcohol shown in these scenes – they simply show contrasting tastes that are unlike that of Tooheys Extra Dry. This link is reinforced also through the clear positioning of text on the final billboard of the Advertisement 'Repay Your Mouth – with – the 'Clean, Crisp, Taste', which clearly reinforces the link between taste repayment, rather than any suggestion that alcohol itself or any alcohol product can cleanse. This aspect of the campaign positioning was discussed at length with an AAPS pre-vetter during the AAPS pre-vetting process and the decision was taken that it was not in contravention of this section of the ABAC Code
- (f) This Advertisement does not depict or suggest consumption or presence of alcohol in any scene. Further to, the mood of Mike and his mouth are not depicted during an occasion involving or suggesting irresponsible consumption of alcohol. Before and during the period of the Advertisement when the mouth is shown as its own character, it is at no point seen or depicted drinking any alcohol. The Advertisement as a whole does not show any alcohol of any kind until the last four seconds. Further, when the brand is introduced to the Advertisement, Mike is shown taking a single sip before being thanked by the mouth for repaying him with the trademark 'Clean, Crisp, Taste' of Tooheys Extra Dry. In Lion's view, this does not represent an immature, unbalanced or irresponsible approach to the consumption of alcohol.
- (g) While some of the activities shown may be considered risky or undesirable to some members of the community, the activities shown are safe for adults enjoying a normal standard of health. During the flashback sequence showing the mouth's memories, no alcohol is shown being consumed. The scenes are positioned in a way to clearly show that they occur over an extended period of time, rather than on a single occasion. Prior to this Advertisement going into production,

significant market research activity was undertaken by the Tooheys Extra Dry brand team. This research identified the creative elements represented within the Advertisement as identifying most with the brand's target market, and images shown in the Advertisement were the most effective for conveying the brand's 'Clean, Crisp, Taste' product benefit.

- (h) There is no suggestion whatsoever in the Advertisement of alcohol being the cause of or a contributing factor to any of the events depicted. During the flashback sequence it is clear that these activities have taken place over an extended period of time, and alcohol is not seen being consumed before or during these activities taking place. The campaign messaging 'Repay Your Mouth' clearly positions the 'Taste' repayment being a follow-up consideration for these activities shown.
- (i) While some of the activities shown may be considered undesirable to some members of the community, the activities shown are safe for an average adult enjoying a normal standard of health. None of the activities shown are those that might be commonly associated with alcohol or violence that may arise from abuse of alcohol.
- (j) As outlined in ABAC Guidance Note 1: *The ABAC is a code which principally deals with the content and not the placement of advertisements within a particular medium, location or timeslot.* In this instance the Advertisement has been placed abiding by all alcohol advertising placement guidelines and with full consideration to reaching the target audience.
- (k) Prior to this Advertisement going into production, significant market research activity was undertaken by the Tooheys Extra Dry brand team. This research identified the creative elements represented within the Mouth TVC as identifying most with the brand's target market of adults between the ages of 27 and 33, and were the most effective for conveying the brand's 'Clean, Crisp, Taste' product benefit. The scenes are clearly positioned through the use of actors over the age of 25. The adult scenarios selected in these Advertisements are not targeting activities of children or suggesting anything that children may be likely to imitate. The mouth in particular is intended to be a slightly gross character in order to have clear appeal to the targeted adult audience, particularly those who enjoy things in life that are a little quirky and offbeat.
- (l) The Advertisement is positioned around 'Repayment' not 'Cleansing', and strongly linked to the product's signature 'Taste'. The Advertisement is not positioned around alcohol or the perceived effects of alcohol in itself. Clearly, there is no therapeutic benefit suggested. The benefit put forward by the Advertisement is the enjoyment of the taste of the product being promoted. Similarly, there is no enhancement in the levels of relaxation shown before and after consumption of the Tooheys Extra Dry. The intention of the

Advertisement is to promote the trademark 'Clean, Crisp, Taste' that Tooheys Extra Dry is known for by contrasting it with tastes that a mouth may experience which are the opposite of this taste – and to execute this in a way that fits with the fun and quirky nature of the Tooheys Extra Dry brand. The flashback sequence showing the mouth's memories lasts approximately four seconds and is intended to be a humorous, hyper-real exaggeration of things the mouth may have been through over time. Importantly all scenes are clearly depicted as having been at different times of day, and different points in history, so there is no suggestion of instant repayment. Further, there is no alcohol shown in these scenes – they simply show contrasting tastes that are unlike that of Tooheys Extra Dry. This link is reinforced also through the clear positioning of text on the final billboard of the Advertisement 'Repay Your Mouth – with – the 'Clean, Crisp, Taste' clearly reinforcing the link between taste repayment, rather than any suggestion that alcohol itself or any alcohol product can cleanse. This aspect of the campaign positioning approved during the AAPs pre-vetting process and found not to be in contravention of this section of the Code. Prior to this Advertisement going into production, Lion put all proposed ideas through strict internal and external processes including the AAPs pre-vetting service against which any proposed advertisement is considered. The word 'with' was added before the trademark 'Clean, Crisp, Taste' slogan to ensure the target audience would see a clear relation to the taste that Tooheys Extra Dry is known for.

(m) As a responsible advertiser, Lion has demonstrated a long-standing commitment to supporting and adhering to the Alcohol Beverages Advertising Code (ABAC) and Advertising Standards Bureau (ASB). In acknowledgment of Lion's position of support for ABAC and ASB, Lion maintains strict internal and external processes. As well as upholding the standards outlined within these advertising codes, Lion maintains internal best practices which often exceed these requirements. As part of Lion's marketing approvals process, this Advertisement for Tooheys Extra Dry was subject to:

- Review and advice from external creative agencies well-versed and experienced with ABAC and ASB requirements.
- Independent legal review and advice from an external legal team specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation.
- Review by Lion's internal marketing compliance team to ensure its adherence to Lion's internal best practice policies.
- Review and approval through the AAPs pre-vetting service at both concept and final stages to ensure its compliance with community standards and relevant advertising codes.

I can confirm that each of the above requirements was complied with in relation to the Advertisement, prior to its broadcast.

The Panel's View

25. As mentioned in paragraph 2, alcohol advertising is to satisfy a range of standards contained within several codes of practice. The ABAC contains standards which go only to the way alcohol beverages and the use of alcohol is portrayed. In contrast, the AANA Code of Ethics applies to all advertising, irrespective of the type of product or service being promoted. The Code of Ethics contains standards which go to matters such as the portrayal of violence, sex and sexuality, and community standards on health and safety.
26. An alcohol advertisement must satisfy both the generic standards contained within the Code of Ethics and the "alcohol as a product" standards contained in the ABAC. If an advertisement attracts complaints which raise issues under both the ABAC and the Code of Ethics, then two separate processes of assessment and determination will be triggered. This is what has happened in the current case.
27. The Advertising Standards Board on 27 November 2013 made a determination on the issues raised in a large number of complaints about the television advertisement which went to the standards in the Code of Ethics. In this decision, the ASB dismissed the complaints, finding that the advertisement was consistent with the following Code of Ethics standards:
 - Section 2.3: Advertising or marketing communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
 - Section 2.4: Advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.
 - Section 2.6: Advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety.
28. It is fair to say that the vast majority of the concerns expressed about the Tooheys Extra Dry television commercial and associated media advertising have been about the advertisement causing offence and being in bad taste. These concerns were dealt with in the determination by the Advertising Standards Board and will not be canvassed in this determination. Rather, this determination will concentrate only on the standards contained in the ABAC. Even though the complaints considered in this determination raise directly or indirectly concerns about the advertisement's portrayal of alcohol as a product, in large measure the complaints have as their primary concern the same issues of good taste which were central to the decision made by the Advertising Standards Board.
29. The ABAC standards raised by the complaints are as follows:

- Does the advertisement present a mature and responsible approach to the consumption of alcohol beverages?
 - Does the advertisement encourage excessive consumption or abuse of alcohol?
 - Does the advertisement encourage underage drinking or have strong or evident appeal to children or adolescents?
30. The premise of the advertisement, as explained by the advertiser, is that the main character has done things which would have resulted in a bad taste in the mouth, e.g. suck on toes and obtain a tattoo on the inner lip. The mouth takes a life of its own and now asks to be rewarded with a taste of the beer. It is the action of the mouth leaving the man's face and conducting the conversation which has attracted so many complaints. But does an advertisement of this nature contravene the standards in relation to the advertising of alcohol as a product?
31. In assessing the advertisement against the ABAC standards, the Panel is to have regards to the probable impact of the advertisement on a reasonable person taking the content of the advertisement as a whole.
32. The Panel does not believe that the television advertisement breaches any of the ABAC standards in question. In reaching this conclusion, it is noted:
- The television advertisement has been broadcast consistently with the placement requirements contained in the Commercial Television Industry Code of Practice (i.e. after 8:30 p.m. or in conjunction with a live sporting event).
 - The man is shown at a party, but apparently is sober and his consumption of alcohol is shown to be moderate.
 - The advertisement does not suggest that alcohol is required in order to be successful.
 - While the mouth is demanding a taste of the beer to compensate for the other activities the man has undertaken, there is no suggestion that excessive alcohol consumption is required or being implied.
 - The advertisement does not have strong or evident appeal to children or adolescents in particular.
33. The outdoor advertisement features a pair of female feet appearing from under a sheet with the phrases, "For making me suck sweaty toes", and, "Repay your mouth with the clean crisp taste". While the advertisement makes sense when understood in conjunction with the television commercial, the message of the campaign would also be apparent to someone who had not seen the television advertisement.

34. The Panel does not believe the outdoor advertising breaches the ABAC standards for the same reasons advanced for the television advertisement.
35. Accordingly, the complaint is dismissed.