

ABAC

ABAC Complaints Panel Determination No: 135/13

Complaint by Jason Thompson
Product: BWS (various)
Advertiser: Woolworths Liquor Group

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 two television advertisements for BWS (“the Advertiser”) and arises from a complaint received 25 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 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 25 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. This complaint was considered 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 these advertisements.

The Advertisements

9. The complaint refers to two television advertisements. The background music for the ads includes the lyrics "This is going to be the best day of my life".
10. The first advertisement opens with a man smiling as he mows a backyard lawn and then stops and admires what he has done as a voiceover says "Today you finally mowed the pitch" as animated graphics of stylised arms performing a Mexican wave appear on the screen.
11. The next scene is set in an open plan office where a man in a suit is talking closely to a male and female as graphics of mint leaves emanate from a bowl of mints alongside the man in a suit and he leans back and shifts the bowl as a voiceover says "Today your boss discovered mints".
12. We then see a man waving to a person leaving with a trailer loaded with household items, going inside the house and smiling at a woman waiting excitedly with a bottle of champagne and two glasses with graphics of kisses around her as a voiceover says "Today you finally emptied the nest".

13. The next scene is set in a private home where a woman walks up to a table of three women who act surprised and excited as we see the woman also excited with graphics of scissors around her as a voiceover says "Today you debuted a fringe". The three women at the table each have partially filled glasses of wine at their dinner place settings.
14. We then see a man sitting on a couch taking a sip of beer from a stubby touching his face and smiling as he sits back between two males with beards and the voiceover says "Today you grew a beard" as graphics of fireworks emanate from his face.
15. In the final scene we see someone shopping at a BWS outlet as the text "Hi!" appears around a female shop attendant and a voiceover says "We believe today's special and to celebrate you'll find specials on beer, wine and spirits, today and every day. Enjoy responsibly". The final screen is the BWS logo with the tagline "Today's Special".
16. The second advertisement opens with a man in an outdoor bush setting showing a stick to his dog and then throwing it for the dog to fetch as we see the dog run straight past the stick and graphics of dog paw prints following the dog as a voiceover says "Today your dog nearly fetched".
17. In the next scene a woman in a suit is waiting nervously outside of an office as a voiceover says "Today you asked for that payrise" as a man opens the door and nods to the woman and graphics of champagne corks appear.
18. We then see a man sitting on a couch taking a sip of beer from a stubby touching his face and smiling as he sits back between two males and the voiceover says "Today you grew a beard" as graphics of fireworks emanate from his face.
19. In the next scene an older man is cooking on a barbecue in a backyard and laughing as a voiceover says "Today they laughed with you" and we then see a younger woman and man holding a glass of white wine and laughing and two younger males holding stubbiest also laughing as the text "Ha Ha Ha Ha Ha Ha" appears.
20. In the final scene we see someone shopping at a BWS outlet as the text "Hi!" appears around a male attendant and a second shop attendant in one of the aisles smiles at the camera as the text "Hi!" appears around her while a voiceover says "At BWS we believe today's special and to celebrate you'll find specials on beer, wine and spirits, today and every day. Enjoy responsibly". The final screen is the BWS logo with the tagline "Today's Special".

The Complaint

21. The complainant argues that:
 - the ad links alcoholic consumption to success and changes in mood, by way of the graphics in the ad and the idea that consumption of alcohol is linked with very minor celebrations such

as getting home from work, sitting on a couch, taking a swig of a stubby and animated glee comes out of his head;

- the people are not clearly over 25 as required by the standard;
- the ads are encouraging more alcohol use, extending the types of situations that are appropriate to have a drink in or for; and
- the ads are making a link between alcohol and relaxation.

The Code

22. 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;
 - 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 and, accordingly-
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;

.....
 - c) 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;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;

The Advertiser's Comments

23. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 29 November 2013. The points made by the Advertiser in relation to the advertisements were:

- a) Woolworths is Australia's most responsible retailer of alcoholic beverages and this year formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. As such, the television advertisement and its concepts have been subject to pre-vetting processes and approvals from a storyboard stage. Prior to becoming a signatory, Woolworths has demonstrated a long-standing commitment to supporting and adhering to the ABAC and Advertising Standards Bureau. Woolworths also maintains strict internal and external processes in addition to those required by the ABAC Scheme. As part of BWS's marketing approvals process, this television advertisement was subject to review by Woolworths internal marketing compliance team to ensure its adherence to internal best practice policies.
- b) While ABAC does not require a "drink responsibly" message to be included in advertisements, BWS has included support for DrinkWise Australia, as well as its *ID25* and *Don't Buy It For Them* initiatives that seek to prevent the underage service of alcohol.
- c) The advertisement is a new brand campaign for BWS called "Today's special". "Today's special" works in two ways. One is that we recognise that everyday can be special in small ways and the other relates to specials on the price of alcohol in-store at BWS. The advertisements are very clearly related to the drinks specials on offer at BWS stores and special moments in everyday life. The ads at no point encourage the consumption of alcohol and can no way be viewed by the reasonable person as encouraging the excessive consumption of alcohol. Each scene in which alcohol is depicted or being consumed shows the beverage being consumed responsibly and within NHMRC guideline advice. The ABAC adjudication panel has recently considered advertisements (80/13) that promote the availability for purchase of alcohol and concluded as follows:

The Panel has previously held that simply offering a discount for the multiple purchase of an alcohol product does not amount to the encouragement of subsequent excessive consumption of the purchased products.

Alcohol is often purchased in multiples and then consumed over a period of time or by numerous individuals. By their nature, most alcohol products have a reasonably long shelf life and making alcohol available at a cheaper price during a particular time period might encourage a person to purchase alcohol during that time to secure a better price, but it does not follow that the alcohol will then be consumed in an irresponsible manner such as in binge drinking.

In terms of the content of the advertisement itself, it contains pictures of various alcohol products and their pricing. It does point to the fact that alcohol can be purchased at a cheaper rate than might otherwise be the case if purchased outside of the discount offer. There is, however, nothing in the content which can be fairly said to be encouraging a purchaser of the products to then consume them in an irresponsible or excessive manner

- d) We can confirm the BWS brief to the creative agency clearly stated the requirement for all actors to be over the age of 25. We can confirm that all actors engaged in the ad are (and appear to be) over the age of 25 whether they are depicted in a scene as serving, consuming alcohol or not. Actor bios can be provided if the panel requests these be made available.
- e) The advertisements are very clearly related to the drinks specials on offer and available at BWS stores and at no point speak to any encouragement to consume alcohol. As previously submitted, the availability and promotion of price 'specials' or discounts is not linked to alcohol consumption. The ads do not suggest the presence or the consumption of alcohol as a contributor to success or a change in mood or as necessary to aid relaxation. Each scene in which alcohol is depicted or being consumed shows the beverage as being incidental to these circumstances.
- f) While recognising that the ABAC Guidance Notes are not binding to the Adjudication Panel, they do suggest that the advertisement is structured in way that is in keeping with its advice, namely: "this Clause is not intended to prevent the depiction of alcohol as being incidental to any of these circumstances or attributes" In each of the scenes in which alcohol is depicted, there is no suggestion that it is the alcohol transforming an occasion or directly contributing to its success. In each of the scenes in which alcohol is depicted, there is no suggestion that it is the alcohol that is contributing to or aiding in relaxation. The scenes are all snapshots or vignettes of everyday life that are inherently 'special' in their own right without the presence of alcohol.
- g) The key element of the ABAC Section (c) standard is causation. The section does not prohibit attractive or happy people being depicted within an alcohol advertisement, but the advertisement cannot suggest that a reason why a person is happy or regarded as attractive is the use or presence of alcohol. The scenes include a range of people, with only a minority shown to be consuming an alcoholic beverage. In each of the scenes the people shown appear relaxed and/or enjoying themselves for a variety of reasons. The vignettes of everyday special moments could not be considered by the reasonable person as to have been caused by the consumption or presence of alcohol. Each scene has no suggestion that alcohol has altered the mood of the gathering or that alcohol has caused or contributed to the people appearing relaxed and happy. The alcohol is incidental to the mood in each vignette rather than the cause of the mood. While alcohol use is depicted in the ad, it does not appear that alcohol is changing the mood or environment established in each vignette. The ad is light-hearted and is focused on the relationship between the friends, family and life situations and not alcohol use as such.

The Panel's View

- 24. The complaint relates to a television campaign for the liquor retailer, BWS. BWS is an outlet controlled by the major retailer, Woolworths. This determination is the first occasion which the Panel has considered a complaint about advertising from a Woolworths controlled alcohol retailer since the

decision of Woolworths to become a signatory to the ABAC scheme. While previously Woolworths has cooperated with Panel processes in making decisions, the significance of the company becoming a signatory is that the Panel's decisions are now binding on the retailer. This is a welcome development and bolsters the coverage of the ABAC standards into a wider area of alcohol marketing beyond that undertaken by the owners of particular alcohol product brands.

25. The determination is considering two individual executions of the BWS brand campaign which the advertiser has described as "Today's Special". Both executions are being reviewed against the complainant's concerns as it is not entirely clear which particular execution the complainant saw when watching a live cricket broadcast. In any event, both executions follow a similar theme and format, although the individual vignettes which make up the advertisement vary in each execution.
26. In essence, the complainant is concerned that the advertisements are encouraging greater levels of alcohol consumption in the community by stating that everyday activities, such as mowing the lawn or getting a new hairstyle, are a reason to consume alcohol. The complaint also raises some specific concerns, namely:
 - That the characters depicted within the advertisement are not clearly 25 years of age or older in all instances;
 - The advertisement links a change in mood and suggests that alcohol consumption is related to the achievement of success; and
 - The advertisement portrays alcohol use and relaxation.
27. This determination will consider each of these concerns against relevant ABAC standards. In doing so, the Panel is to have regard to the probable impact of the advertisement upon a reasonable person taking the content of the advertisement as a whole. The notion of the 'reasonable person' is a concept borrowed from the Australian common law system and means that the test to be applied is not whether the complainant genuinely believed the advertisement breached the standards, but whether this would be the view of a majority of people in the community sharing attitudes, values and life experiences found widely in Australian society.
28. It is convenient to deal firstly with the specific concerns before considering the broader argument of the advertisements failing to depict a responsible approach to alcohol consumption. Section (b)(i) of the Code provides that advertisements must not have a strong or evident appeal to children or adolescents and, accordingly, adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
29. This section of the Code has two elements. Firstly, all persons featured in an alcohol advertisement must be over 25 years of age as a matter of fact. Secondly, irrespective of a person's actual age, the way in which characters are portrayed within advertisements must depict them clearly as adults.

30. The advertiser has provided brief biographical information on each of the actors used in the advertisements and these actors have ages ranging from 26 to 66. Accordingly, this means that the advertisements do satisfy the first limb of section (b)(i).
31. The Panel has also reviewed each of the individual vignettes which collectively make up the advertisements. The vignettes depict a number of everyday situations found either in households or in work settings. In none of the vignettes does it appear that the characters are portrayed as anything other than adults (i.e. a person over the age of 18). Accordingly, the Panel does not believe the advertisements breach section (b) of the ABAC.
32. The next issue to be considered is whether the advertisements breach section (c)(i) of the Code. This provision provides that advertisements are not to suggest that the consumption of alcohol may create or contribute to a significant change in mood by depicting alcohol as a cause of or contributing to the achievement of success. The complainant argues this section is breached as the advertisements suggest that alcohol is causing a change in mood through the minor life events being celebrated and the use of graphics when alcohol is used.
33. The advertiser contends that in each scene within the advertisements, alcohol is incidental to the moment being marked and is not the cause of the mood, the success achieved or the celebration. It is pointed out that the ABAC does not prohibit the association of alcohol with success, but rather it cannot be suggested that alcohol is a reason for the success achieved.
34. The key element of section (c) is whether the advertisement is suggesting that alcohol plays a causative role in the achievement of success or in the change of mood. The advertisements depict a range of individual life experiences, all of which record a minor success or milestone, e.g. getting a pay rise, finishing mowing the lawn, growing a beard successfully and gaining a new hairstyle. In some of these individual vignettes, alcohol is present and in one case consumed, while in the others alcohol is not shown.
35. In the Panel's view, it is reasonably clear that in each vignette that the 'success' being noted or celebrated has not been caused by the presence or consumption of alcohol. Alcohol is present in the following vignettes:
 - growing a beard;
 - backyard barbeque;
 - empty nest;
 - new hairstyle,

but in each case, the vignette, within its own terms and taking the vignettes collectively within the advertisement as a whole, establish that alcohol as a product is introduced after the mood is set and the success is achieved.

36. The complainant makes specific reference to the vignette of growing a beard in which the overlaid graphics appear after the man is seen consuming a sip of beer. While this marks out this vignette as being a little different from the others in that the graphics appear in association with the actual use of alcohol, it is still apparent from the context that the graphics are highlighting the man's success in growing a beard and is not suggesting that the man's success has been caused by the use of alcohol.
37. The complainant then makes a specific reference to alcohol being an aid to relaxation. Section (c)(iii) provides that advertisements must not suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. The Panel does not believe that either advertisement breaches this standard, as in all instances alcohol is not suggested as being required in order for the characters depicted to enjoy a period of recreation or relaxation.
38. While the complaint raises the specific concerns outlined above, in essence, the underlying argument advanced is that the advertisements are irresponsible because they encourage alcohol consumption by "extending the types and situations that are appropriate to have a drink in or for". Section (a) of the ABAC provides that alcohol advertisements must present a mature, balanced and responsible approach to the consumption of alcohol. The issue is whether the advertisements breach this standard.
39. The premise of the advertisements, as explained by the advertiser, is "Today's Special". This is to be interpreted at two levels, namely, "the recognition that everyday can be special in small ways and the other relates to specials on the price of alcohol in store". In response to the complainant's argument, the advertiser contends that the advertisements do not encourage excessive consumption and all scenes which depict alcohol consumption do so in a manner which is consistent with National Health and Medical Research Council guidelines.
40. In reality, both the complainant and the advertiser are making the same point, i.e. the advertisements encourage alcohol use in everyday settings. The complainant believes that this is irresponsible, while the advertiser would argue that, provided responsible levels of alcohol use are promoted, then of course an alcohol advertisement would promote the use of alcohol.
41. The complainant raises a perfectly valid and important point about alcohol use within Australia. It is well recognised that alcohol misuse is a cause of considerable social, health and economic harm to individuals, families and the community as a whole. Governments quite rightly endeavor to respond to this problem through a range of policy initiatives, which in part go to the approach which should apply to the marketing of alcohol.
42. The point is, however, that at the present stage alcohol advertising and marketing is permitted. The form of the marketing is subject to a particular set of standards, as contained in the ABAC and related codes, but the standards presume that alcohol can be promoted and that alcohol use does occur throughout the community. Provided that an advertisement does not suggest that alcohol should be consumed in an irresponsible manner, in excessive

volumes, in a way that will appeal to children and adolescents, or imply that alcohol is required to be successful in life, etc., then the advertisement is able to be used.

43. In the current instance, the Panel cannot conclude that the advertisement is in breach of section (a) of the Code. While the advertisement is suggesting that alcohol might be used in a range of everyday settings, it is not suggested that alcohol is to be consumed in an excessive or irresponsible way in these circumstances. In each vignette, the level of alcohol consumption, either shown or implied, is moderate and there is no suggestion that any of the characters depicted in the advertisements have been affected by alcohol use. Accordingly, the advertisements are not inconsistent with the section (a) requirements.
44. The complaint is dismissed.