

ABAC

**ABAC Complaints Panel
Determination No: 161/13**

**Confidential Complaint
Product: Thirsty Camel
Advertiser: Thirsty Camel**

Professor The Hon Michael Lavarch – Chief Adjudicator
Ms Debra Richards – Member
Professor Louisa Jorm – Member

23 December 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement produced by Thirsty Camel (“Advertiser”) and arises from a complaint received 2 December 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 which includes provisions about Billboard advertising.
3. The complaints 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 on 2 December 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 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 alcohol beverage advertisements against the ABAC prior to publication or broadcast. The Advertiser is not a signatory to the ABAC and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The advertisement is an outdoor sign for the Thirsty Camel retailer, located at the entry of a Thirsty Camel bottle shop.
10. The advertisement is a large, dominantly green and red sign. The text "Need a drink?" appears at the top of the sign with "Bottleshop this way" and an arrow appearing below. Underneath this reads, "Mind the camel humps". An image of the Thirsty Camel logo is at the bottom left of the sign.

The Complaint

11. The complainant is concerned that it is highly irresponsible to pose the question "Do you need a drink?" in large red text in the advertisement as it is associating alcohol with need, dependence or abuse of alcohol.

The Code

12. The Preamble to the ABAC states that the Australasian Associated Brewers, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages produced for publication or broadcast in Australia **other than point of sale material** produced by alcohol beverage retailers, comply with the spirit and intent of this Code. The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.
13. The ABAC Part 1 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

The Advertiser's Comments

14. The Advertiser responded to the issues raised in the complaint and questions posed by the Panel by way of letter dated 12 December 2013. The principal points made by the Advertiser are as follows:
 - (a) The complaint details that the signage says 'Do you need a drink?' in large red text over the picture of a camel (the brand logo). The actual text displayed is 'Need a drink?' and what the complaint fails to mention is that the signage also contains the text 'Bottleshop this way' with a directional arrow, and the text 'mind the camel humps' as an alert to speed humps in the drive through. The text in question actually takes up less than 1/5th of the total sign's area with the majority of the sign being reserved for directional information (please see image).
 - (b) The advertisement is not point of sale material, it is a direction sign located at the entrance to the drive through bottleshop.
 - (c) We do not believe the advertisement in question contravenes any element of the code and in no way fails to present a mature, balanced and responsible approach to the consumption of alcohol. The phrase 'Need a drink?' is singular and does not promote excess consumption or abuse of alcohol; instead it is a literal explanation of the products sold in retail venue and is located on a directional sign, which is placed less than 1 metre from the entrance to the drive through bottleshop. It is also worth noting that Thirsty Camel bottleshops sell a wide range of non-alcoholic 'drink' products including water and soft drinks.

- (d) Thirsty Camel bottleshops takes the responsible promotion and consumption of alcohol very seriously and this is clearly detailed on our marketing communications and website.

The Panel's View

15. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers of alcohol beverages to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by several direct signatories together with three (3) peak alcohol industry bodies, namely the:
- Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.

While the Advertiser is not a signatory to the ABAC, it has previously cooperated with ABAC's determinations in the past and, accordingly, a determination will be made in this instance.

16. Although the ABAC applies to alcohol advertising, the preamble to the Code outlines that it does not apply to point of sale materials produced by alcohol beverage retailers. The Panel considered the meaning of 'point of sale materials' in Determination No: 18/08. The Panel concluded that point of sale material:
- Is displayed adjacent to the point at which the alcohol beverage is purchased
 - Is a fixture or akin to a fixture *i.e.* not intended to be taken away from the premises by a customer
 - Has limited exposure to a wider audience beyond the clientele of the premises from which the alcohol beverage is purchased.
17. Given the size and placement of the advertisement, it is clear that it is a fixture of the Thirsty Camel premises. However, the advertisement's placement directly outside the entrance to the bottleshop means that it is not immediately adjacent to the point at which an alcohol beverage may be purchased and has the potential to be viewed by passersby, as well as customers. Further, the Panel notes that in its response the Advertiser advised that it does not consider the advertisement to be point of sale material, but rather a sign directing people to the bottle shop's entrance. The Panel is therefore of the view that the advertisement is not point of sale material but rather an "alcohol advertisement" subject to the provisions of the ABAC.
18. This determination will consider the complainant's 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.

19. The complaint itself focusses on the text, "Need a drink?". The complainant is concerned that alcohol abuse and excessive consumption is a widespread issue and it is therefore highly irresponsible for an alcohol retailer to pose such a question to any alcohol consumer. The Panel notes that the complainant's recollection of the wording of the question is, "Do you need a drink?". It is assumed that the actual wording would not change the complainant's view of the intended effect of the advertisement, namely that the question appeals to alcohol consumers on the basis of a 'need' for alcohol.
20. The Panel is of the view that the advertisement does not breach the ABAC standard. Firstly, a distinction is to be made between the purchase and consumption of alcohol. As pointed out by the Advertiser, the reference to "drink" indicates to a customer or passers-by the products sold at Thirsty Camel. While the sign may inform customers or passers-by where to enter the store to buy alcohol products, it is not reasonable to assume that customers will then excessively consume or misuse alcohol which might be purchased.
21. Secondly, the advertisement does not depict any alcohol products or beverages, or the consumption or misuse of alcohol. Taking the content of the advertisement as a whole, in addition to advertising the Thirsty Camel bottleshop, the advertisement has a practical purpose. The sign clearly indicates to customers and passers-by where to enter and alerts drivers entering the bottleshop of speed humps with the phrase, "Watch out for the camel humps". Simply directing customers and passers-by into the store clearly does not promote alcohol misuse.
22. Accordingly, the complaint is dismissed.