

ABAC

ABAC Complaints Panel Determination No: 28-31 & 33/14

Complaints by Vanessa Kennedy, Vezi Ncube and confidential complainants Product: Canadian Club Advertiser: Beam Suntory

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

19 June 2014

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television/internet advertisement for Canadian Club by Beam Suntory (“Advertiser”) and arises from two complaints received 12 May 2014, one complaint received 13 May 2014, one complaint received 20 May 2014 and one complaint received 6 June 2014.

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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received on 12, 13 and 20 May and 6 June 2014.
7. The Panel endeavour 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. While the first complaint has not been determined within the 30 day timeframe, it was advantageous to combine all of the complaints within a single determination.

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. Pre-vetting approval was obtained for this advertisement (12931).

The Advertisement

9. The complaints refer to a television advertisement that also appears on youtube.
10. The advertisement opens on a bar scene. The advertisement is narrated by way of a male voiceover who commences by stating, "Ah, Tina looks like she's in need of something refreshing" as we see woman walking from a table to the bar and say to the barman "Canadian Club and dry thanks". The woman appears to be in her late twenties or early thirties and is wearing a summer dress.
11. The voiceover continues "I knew it" as we see the barman pour a drink from a Canadian Club tap. We then see the woman take a sip of the drink and sigh. In the background we see a man playing pool look over at the woman as the voiceover says "Bring on the sexy person". The man is wearing a ski jacket and has snow goggles on his head.

12. The woman looks in the direction of the man playing pool and we see the bar scene transformed so it is snowing, the floor is covered in snow and fog and the pool table is covered in icicles and the man is walking toward the woman in slow motion. The man's jacket is undone, showing his chest and he is seen carrying a snowball in one hand. The woman smiles and looks around her as if she is checking whether anyone else is seeing the man or she is imagining the event. The man is then shown throwing a snowball into the woman's face where it shatters and falls off her face as the man looks at her and then walks away during which the voiceover says "Canadian Club tastes refreshing like a snowball in your face from a sexy person".
13. The woman looks surprised and says to the camera "You don't get that from a beer". We then see a snowball thrown at the camera and the scene changes to a snow covered mountain with the man from the bar standing on the snow, a large bottle of Canadian Club and dry placed in the snow in the foreground, the tagline "Over beer?" superimposed on the scene and a "Draw the line Drink Responsibly" message superimposed on the bottom right corner of the scene.

The Complaint

14. The first complainant is concerned that the alcohol advertisement:
 - (a) demonstrates, promotes and trivialises violence by men against women, depicting it as fun with no repercussions; and
 - (b) a big snowball thrown hard by a man at anyone's face would really hurt, yet the advertiser portrays it as not a problem.
15. The second complainant is concerned that:
 - (a) throwing a snowball at a lady's face is inappropriate; and
 - (b) the implication that its ok to throw a snowball at a female's face as long as you are a good looking man is disgusting in this day and age.
16. The third complainant is concerned that the alcohol advertisement that had a man throwing a snowball in a woman's face was violent and offensive.
17. The fourth complainant is concerned that the advertisement is offensive as it:
 - (a) incites violence by depicting a man committing an act of violence against a woman;
 - (b) is sexist; and
 - (c) it degrades women to have a man throw something in her face and portray her as having enjoyed it.
18. The fifth complainant is concerned that the advertisement suggests that by consuming Canadian Club over beer you will have greater success with the opposite sex.

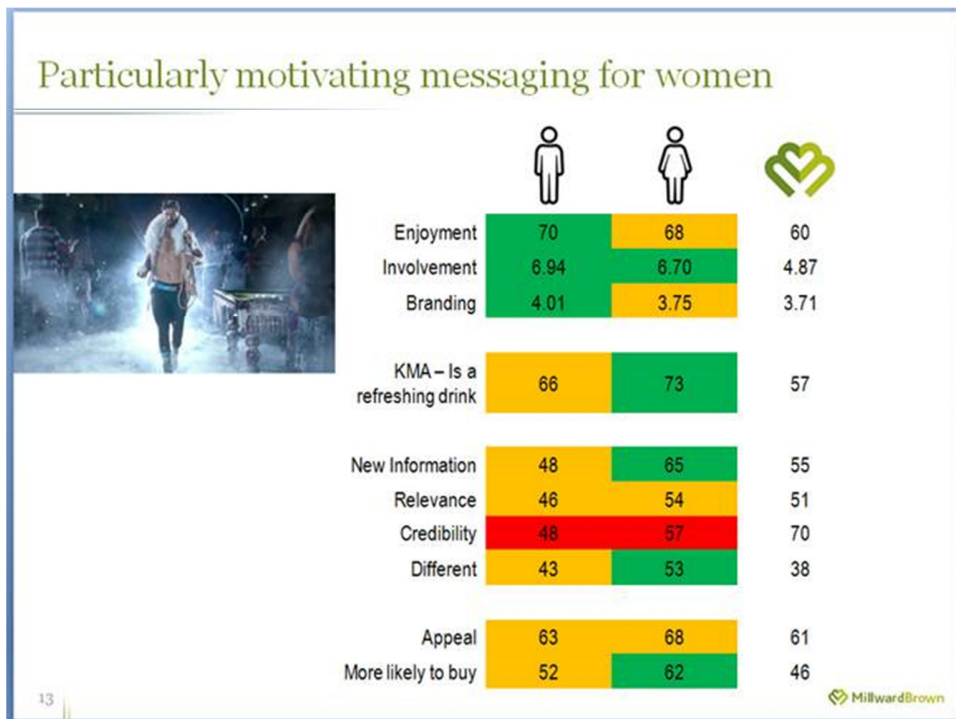
The Code

19. 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:
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
.....
 - (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;

The Advertiser's Comments

20. The Advertiser responded to the complaint and questions posed by the Panel on 20 May 2014 and 6 June 2014. The principal points made by the Advertiser are:
- a. Beam Suntory vigilantly follows all alcohol advertising in Australia laws and codes of practice in particular the AANA, ABAC, CTICP and the OMACE codes.
 - b. The advertisement "A refreshing wake-up call" uses humour to communicate the feeling of refreshment you get when drinking Canadian Club. The complaints express concern at the apparent violence in the TVC. In order for an act to be considered violent there needs to be some sort of physical or emotional harm or distress. This is clearly not the case in the TVC. The snowball being thrown is in no way a hard-packed ball of solid ice. It crumbles and dissolves as soon as it touches the woman's face. The woman is not hurt by the fluffy snowball in any way shape or form. She is also not distressed by the situation. On the contrary she welcomes and enjoys the refreshment given its playful nature, ie as outlined and intended in the original brief, the 'Snowball' is a metaphor for refreshment not a vehicle to cause harm.
 - c. The complaints also express concern at the depictions of alcohol fuelled violence. It is also essential to note the gentleman tossing the snowball does not consume any alcohol during the TVC. Nor does he display any signs of being even remotely intoxicated.
 - d. Finally, we strongly refute that there is any power imbalance between both the female and male depicted in the ads.

- e. Working with the pre-vetting approval process enabled Beam to conform to the code “in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole”. In terms of probable impact it is quite clear to the reasonable person, the fun and good-humoured nature of the advertisement.
 - i. There are no signs of physical or emotional suffering or violence
 - ii. Furthermore, there are no signs of alcohol fuelling any inappropriate behaviour towards women or anyone else
- f. We are confident that Canadian Club is marketed appropriately and has not breached section (a)(iii) of the ABAC and intend to continue responsibly marketing Canadian Club products to consumers above the legal drinking age.
- g. The lead female talent is enjoying a Canadian Club on her own with no suggestion of success with the opposite sex.
- h. Millward Brown ad tracking of the advertisement provides a balanced, reasonable person view of the advertisement by a 3rd party supplier. The research reinforces all the pre-work/ research that the ads are funny, quirky, interesting AND appealing to females (the slide snapshot below clearly illustrates the spots are particularly motivating to females). The sample for this research is 400 consumers, male & female equal split, age range of 18-40 years.



The Panel's View

21. The complaints raise two separate issues for determination. The first four complaints raise a concern about the advertisement promoting or condoning violence towards women. The final complaint argues that the advertisement is suggesting the consumption of the product will result in success with the opposite sex.
22. The Code provides in section (a)(iii) that alcohol advertisements must not promote offensive behaviour. It should be noted that the context of the section and the Code as a whole makes it clear that 'offensive behaviour' here means behaviour which is related with alcohol use. In this case, the suggestion is that the use of the product facilitates or pardons the commission of an act of violence by man to a woman.
23. In assessing if an advertisement is consistent with an ABAC standard, the Panel is to have regard to the probable impact of the advertisement on a reasonable person taking the content of the advertisement as a whole. The notion of a "reasonable person" is borrowed from the Australian common law system and means that the beliefs, opinions and values common in a majority of the Australian community is to be used as the benchmark.
24. If the advertisement can fairly be said to be promoting or condoning alcohol related violence, then it will be in breach of section (a)(iii). The Panel, however, does not believe the advertisement breaches this provision. In reaching its conclusion, the Panel has noted:
 - (a) The scene where the man throws the snowball at the woman is established as a fantasy which does not actually occur (i.e. the woman imagines the event as a reaction to the consumption of the product).
 - (b) The woman's reaction to being hit by the snowball does not indicate any sign of distress or alarm which would be occasioned by a unexpected and random violent act. In fact, the impact of the snowball is shown as having been welcomed by the woman.
 - (c) While the snowball does impact on the woman's face, this scene needs to be understood in the context of the advertisement as a whole, namely the fantasy nature of the scene and the fact that no adverse reaction or injury is occasioned to the woman.
 - (d) Taken in the full context of the advertisement, the snowball scene is illustrative of the brand feature of refreshment and would not be taken as actually condoning violence towards women.
25. The second issue raised by the fifth complaint is that the advertisement breaches section (c) of the Code by suggesting that the product is a cause or contributor to the achievement of sexual success.
26. The key element of section (c) is that of causation. While an advertisement can show attractive and sexually confident individuals, the ABAC standard will be

breached if it is suggested or implied that the reason that a person is attractive or sexually successful is the presence or use of alcohol. In this case, the advertisement establishes that the male is a 'sexy person' in a fantasy setting.

27. On balance, the Panel does not believe the advertisement breaches this section of the Code. The fantasy 'sexy person' character is introduced after the use of the product by the woman, but it is not suggested that the woman or the man will be sexually successful because of the product or that the man is 'sexy' because of the product.
28. Accordingly, the complaint is dismissed.