

ABAC

**ABAC Complaints Panel
Determination No: 59/14**

**Confidential Complaint
Product: Asahi
Marketer: Asahi Premium Beverages**

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

18 September 2014

Introduction

1. This determination by the ABAC Responsible Alcohol Marketing Code (“ABAC”) Adjudication Panel (“The Panel”) concerns marketing communications for Asahi beer produced on behalf of Asahi Premium Beverages (“the Marketer”) and arises from a complaint received on 10 July 2014.

The Quasi-Regulatory System

2. Alcohol marketing 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 marketing communications. 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 marketing 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 ABAC Responsible Alcohol Marketing 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 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 complaints about alcohol marketing. 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 the ABAC Scheme on 21 August 2014.
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 beverage marketing features independent examination of most proposed marketing communications against the ABAC prior to publication or broadcast. The Marketer is not a signatory to the ABAC Scheme and pre-vetting approval was not obtained for the marketing communication.

Marketing Communication

9. The television advertisement opens with a shot of an Asahi bottle top on a table. We then see an attractive woman pick up the bottle top, look around and pick up two bottles of Asahi from an ice bucket. There is a backing track with music and lyrics, by Van Hoorn, named, Birdy with the following lyrics "I caught a little birdy and I let it fly away I caught a little birdy and I let it fly away oooh pretty birdy won't you come back to me."
10. The next scene establishes that the woman is at a party or similar social event. She is shown holding the bottles of Asahi in front of her and looking around the room. We see her eyes narrow as the shot changes to a man in front of her talking with two other men as the words "Is He?" are superimposed next to the male. The man and woman make eye contact and then the man looks down and makes a trigger gesture with his hand and points to her. The woman rolls her eyes and moves away.
11. The woman continues walking through the room still visibly holding the two bottles of Asahi and looks up a set of stairs toward a second man. He looks down at her as the words "Is He?" are superimposed next to the man. The woman smiles up at him and starts walking up the stairs toward him. He smiles back with a visible gold covered tooth. The woman notices this, cringes and walks past him.

12. We then see the woman standing on a rooftop balcony. We see her look to one side and move the Asahi bottles from in front of her to behind her. The scene continues as it is established that the woman has seen a third man who turns to face the woman and makes eye contact with her as the words “Is He?” are superimposed next to him. The woman smiles at the third man while bringing the Asahi bottles to prominent view and raising her eyebrows.
13. We then see the man take a sip from a bottle of Asahi as the woman watches him smiling and holding a bottle of Asahi near her lips.
14. The final scene is a bottle and glass of Asahi with the Asahi logo and the words “Is he Asahi” superimposed next to the glass and also spoken by a voiceover.

The Complaint

15. The complainant is concerned that:
 - The advertisement represents sexual success as a result of consuming alcohol;
 - The gentleman in the advertisement is clearly shown to be the ‘successful’ male in an adult night environment with the consumption of Asahi in close proximity.

The Code

16. Section 3 of the ABAC provides that:
 - (c) A Marketing Communication must NOT:
 - (ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

The Marketer’s Comments

15. The Marketer responded to the complaint and questions posed by the Panel on 4 September 2014. The principal points made by the Marketer are:
 - a. The Marketer takes the responsible promotion of alcohol very seriously. Whilst not strictly bound by the ABAC Code, the Marketer is aware of the Code requirements and does all it can to ensure advertisements and marketing campaigns are in compliance with them. The Marketer has policies in place to ensure compliance with all relevant alcohol and marketing codes.
 - b. The Marketer disagrees that a reasonable person would view the Asahi TVC, when taken as a whole as suggesting that the presence or use of alcohol is a contributor to the achievement of success for the following reasons:
 - i. The Asahi TVC tells a reverse Cinderella story of a female’s quest at a party to find the man who epitomizes the Asahi Super Dry brand (“Mr

Asahi"); a man of discerning taste and just the right level of sophistication. Hence the tagline "IS HE ASAHI?".

- ii. The female picks up 2 bottles of the product not to lure a man or with the intent of attracting or being socially successful with a man at the party but rather to share with Mr Asahi when she finds him. There is no suggestion that the alcohol will make her more attractive or that she will be more successful because of the product.
- iii. When she makes eye contact with the two potential male companions there is no suggestion that the product has caused or contributed to the rejection. The female assesses the 2 males in the absence of the men being associated with alcohol.
- iv. When taken as a whole, it is clear to a reasonable person that the advertisement portrays a party and a number of people are enjoying alcohol but this in no way causes or contributes to the romantic connection between the female and Mr Asahi.
- v. None of the 3 males in the TVC are consuming alcohol or holding alcohol while the female is searching for Mr Asahi.
- vi. Mr Asahi is actually away from the main party (where alcohol is being consumed) when he catches the female's eye.
- vii. The female only offers Mr Asahi the product after they experience a romantic connection and she has already established that he is the man that epitomizes the Asahi Super Dry brand. The TVC in no way suggests that the romantic connection is as a result of consumption of alcohol. The scene in the TVC where the female meets Mr Asahi frame by frame (from 20 seconds to 27 seconds) demonstrates that there is no visual or verbal inference that the product is used as a lure or invitation:
00.20: bottles hidden.
00.21: bottles are behind her back and Mr Asahi can't see them.
00.22: he looks at her, 'Is he?' super.
00.23: she looks at him, but with no perceptible raising of eyebrows.
00.24: she shows the bottles.
00.25: he drinks.
00.26: she smiles.
00.27: pack shot.
- viii. It is only after the romantic connection (evident through the eye contact and her smile) that she brings the bottles in front of her so that he can see them and then the female and Mr Asahi consume alcohol. The male and female have a romantic connection and demonstrate their attraction prior to any alcohol being observed by the male or offered by the female and the product is clearly behind the female's back and the female has not used it to attract the man. The alcohol has not been the catalyst for their romantic connection. The TVC was depicted so there would be no doubt in the mind of a reasonable person that there is mutual attraction before she presents him with the product. In fact, this is also the first time that

the female drinks the product. As none of the 3 males are holding or drinking alcohol while the female is searching for Mr Asahi the reasonable person would not view the TVC as suggesting that the female has chosen Mr Asahi on the basis of his choice of alcohol. Rather, the female chooses Mr Asahi on instinct because of his charisma and genuine qualities.

- ix. The TVC does not promote offensive behavior, or the excessive consumption, misuse or abuse of alcohol. The setting of the TVC is a relaxed and controlled environment. The TVC does not suggest that alcohol will help with personal, business or social success or that it has benefits that are necessary to unwind. The key issue here is that of causation and, simply said, the advertisement does not suggest that alcohol has caused any success. The Asahi TVC simply associates the product with success which has been achieved without a contribution by alcohol. This is consistent with the ABAC standard. In the original script Mr Asahi was supposed be drinking the product but this was changed in the TVC due to ABAC alerting the Marketer that this could be interpreted as attracting the female. On ABAC's advice the Marketer removed the product from all 3 males to avoid any inference that the product caused or contributed to the achievement of success.
- x. The Marketer rejects any suggestion that a reasonable viewer would interpret the Asahi TVC, when taken as a whole, as conveying that the female used the product as a means for her to achieve social success. There is no suggestion that alcohol has caused or contributed to the man or the female's circumstance. The Asahi TVC simply associates the product with success which has been achieved without a contribution by alcohol. This is consistent with the ABAC standards.

The Panel's View

- 17. This determination turns on the ABAC standards contained in section 3 (c) of the Code. These standards go to the general proposition that alcohol marketing must not suggest that alcohol products cause or contribute to success in life.
- 18. The advertisement is focused upon a woman at a party or social event. The woman is shown collecting two bottles of the product and then moving through the party, engaging to some extent with three different men. It is clearly established that the woman wishes to socialise with a man she meets at the party and the alcohol product plays a role in her fulfilling her intentions.
- 19. In the complainant's opinion, the message from the advertisement is that the woman uses the product to assist her successfully socialise with the 'successful' man. The complainant takes her intent may be sexual and the product hence leads to the achievement of sexual success beyond the social success which is evident in the advertisement.
- 20. For its part, the Marketer contends that while the woman does pick up the bottles of the product to share with the man she meets at the party, this is to occur after the meeting and a connection between the woman and the 'chosen' man has taken place.

In other words, the product does not cause or contribute to her social success, but follows on from her success in meeting someone new.

21. The ABAC in its current form came into operation on 1 July 2014, but prior to this the predecessor Code contained standards of the same intent and effect as section 3 (c). As a result, the Panel is able to draw on its earlier decisions as to how these standards should be understood and applied.
22. Section 3(c) provides that marketing communications must not show the consumption or presence of an alcohol beverage as a cause or contributor to the achievement of success. In assessing if this standard has been breached, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person to whom the material is likely to be communicated and taking its content as a whole.
23. The key element of the standard revolves around the concept of causation. It is allowable for alcohol marketing to show attractive and successful people utilising alcohol products. What is not permitted is the implication that the alcohol product played a role in the achievement of an individual's success, or the broader success of the social event.
24. The Panel believes that the current marketing communication does breach the section 3(c) standard. In reaching this conclusion, the Panel has noted:
 - The theme of the advertisement is centered upon the woman meeting a man who 'is Asahi' (i.e. a man who satisfies the woman's expectations and personifies the characteristics which the alcohol product brand is wishing to reflect).
 - In the pursuit of meeting this man, the woman utilises the product which she carries with her with the aim of attracting or sharing with the chosen man.
 - In selecting the Asahi man (i.e. the third person she considers) the woman displays and offers the product as part and parcel of the meeting and the successful interaction between them.
25. Taken as a whole, the Panel believes a reasonable person would conclude that the product was a contributor to the woman's social success. The Panel does not accept the argument of the Marketer that a reasonable person would take the advertisement as conveying that the woman had already established a successful interaction with the man prior to the introduction of the product.
26. Accordingly, the complaint is upheld.