

ABAC

ABAC Complaints Panel Determination No: 61-62/14

Complaints by Jo Cookes & a confidential complainant Product: Various Marketer: Dan Murphys

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

22 September 2014

Introduction

1. This determination by the ABAC Adjudication Panel (“The Panel”) concerns two outdoor marketing communications by Dan Murphys (“the Marketer”) and arises from complaints received 27 August and 1 September 2014.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice which regulate and guide 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 marketing as quasi-regulation. The most important provisions applying to alcohol marketing 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 ABAC Responsible Alcohol Marketing Code “ABAC”) 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 advertising 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 Code, 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 Code, it will be dealt with by the ABAC Panel. If the complaint raises issues under both the ABAC Code 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 Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by the ABAC Scheme on 27 August and 1 September 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 complaints have 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. Pre-vetting approval was not obtained for either advertisement.

The Marketing Communications

Outdoor # 1

9. The first billboard includes the Dan Murphy's logo and branding at the top of the page, namely the words "Dan Murphy's", followed by a drawn image of a mature man's face and the words "Lowest Liquor Price Guarantee" against a green backdrop.
10. In large print in the centre of the billboard "WHEN WORDS FAIL give WHISKY".
11. At the bottom of the page in the same colour scheme as the logo the words "FATHER'S DAY – 7 SEPTEMBER".

Outdoor # 2

12. The second billboard is a photographic image of a scene of a small river in a green valley superimposed with the words "OVER 350 WHISKIES Give Dad what he really wants."
13. To the right of the scene is the Dan Murphy's logo and branding, namely, a drawn image of a mature man's face above the words "Dan Murphy's" against a green backdrop.
14. At the bottom of the page in the same colour scheme as the logo the words "FATHER'S DAY – 7 SEPTEMBER" followed by the ID 25 logo.

The Complaint

15. The first complainant is concerned that the first billboard is irresponsible as it:
 - Promotes alcohol as the ideal gift (presumably for Father's Day) and in doing so makes alcohol seem a good gift choice for a child to give; and
 - Does nothing to encourage healthy communication within families.
16. The second complainant is concerned that the second billboard is irresponsible as it promotes alcohol to children and unhealthy lifestyle choices.

The Code

17. Part 3 of the ABAC provides that:
 - (a) A Marketing Communication must NOT:
 - (ii) show (visibly, audibly, or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
 - (b) A Marketing Communication must NOT:
 - (i) have Strong or Evident Appeal to Minors;
18. A Definition in Part 5 of the ABAC provides that Strong or Evident Appeal to Minors means:
 - (i) likely to appeal strongly to Minors;
 - (ii) specifically targeted at Minors;
 - (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
 - (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Marketer's Comments

19. The Marketer responded to the complaints and questions posed by the Panel on 15 September 2014.
 - (a) This response addresses advertising, marketing and retail activities under the control of Woolworths Liquor Group (WLG). WLG is Australia's most

responsible retailer of alcoholic beverages. Last year we formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. Prior to becoming a signatory, WLG demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. WLG maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context. WLG has also instigated a range of industry-leading initiatives to ensure that children are not served alcohol, including:

- ID25 (ask for ID from anyone who looks under 25)
 - Don't Buy It For Them (stopping secondary supply to minors)
 - Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses, and implementation of the award winning training program "Safe".
- (b) In marketing alcoholic products, WLG has been fully aware of the requirement not to encourage under-age drinking or to appeal to children or adolescents. We have been careful to observe this, including by ensuring that our marketing has been strictly limited to promotion of an adult beverage to be given as a gift to adult fathers in the lead up to Fathers Day. Clearly alcohol can only be purchased by adults so the advertisement intended audience is members of the Australian public over the age of 18.
- (c) These advertisements have been used historically by Dan Murphy's and were not subject to pre-vetting approval on this occasion. Previous executions did not gain pre-vetting approval as they occurred ahead of WLG becoming a direct signatory. Both of these campaigns have now ended and they are no longer in the market. Outdoor came down on 7 September 2014.
- (d) Dan Murphy's advertisements present a mature, balanced and responsible approach to the consumption of alcoholic beverages and do not in any way encourage under-age drinking or have strong or evident appeal to children or adolescents; or encourage irresponsible behaviour.
- (e) The line "When Words Fail Give Whisky" refers to a common situation in which many people have difficulty verbally commencing a conversation that fully communicates their love and appreciation to their fathers and instead demonstrate it through the giving of a suitable gift. The giving of a gift often becomes the social approval mechanism for a conversation to then take place and 'enables' communication about feelings within a family unit. The advertisement line is limited to "When Words Fail". It makes no mention of the status of a family unit nor whether there exists either poor or effective communication within a family or for that situation to change as a result of consumption or presence of an alcoholic beverage. WLG would dispute that encouraging the avoidance of a conversation is encouraging irresponsible behaviour, but leaving that aside, there is nothing in the sentence that a reasonable person would consider as "encouraging" the avoidance of a conversation that involves words. The leading use of "When" refers to a pre-existing situation in which words have already failed.

- (f) The lines “When words fail give whisky” and “Over 350 whiskies Give dad what he really wants” contain no elements that a reasonable person could assume encourage under-age drinking or have strong or evident appeal to children or adolescents. There is no depiction of Minors or people of any kind are shown either directly or incidentally. No iconography, designs, motifs, or youth culture symbolism or imagery is used. Nothing could be seen as being particularly attractive for a Minor in the advertisement design or wording than what would be general attractiveness to an Adult. The advertisements are general outdoor advertising with the “Give Dad what he really wants” being located near an airport that is predominately frequented by adults. The outdoor advertising placement has been consistent with outdoor advertising placement restrictions and is not nearby any schools. There is nothing in the advertisements that could be seen as appealing to young people over a general appeal to the general population.
- (g) Purchasers of alcohol in Australia are legally required to be over the age of 18 and Dan Murphy’s works hard with their staff in upholding this commitment through our *ID25* and *Don’t Buy It For Them* initiatives and training programs. It would, therefore, be futile trying to advertise to an age-group of Australians that are not the legal purchase age. This does, however, still leave a large customer base who wishes to give their father an alcoholic beverage as a special gift for Fathers Day. Dan Murphy’s competes with a large range of goods and services given as gifts for Fathers Day. As the attached news article demonstrates, the gifting of high quality premium alcoholic beverages for Fathers Day has grown in significance.
- (h) There is quite simply no encouragement for alcohol to be consumed by underage persons and nothing to appeal to children or adolescents who are not legally entitled to purchase alcohol in the first place or for the provider of alcohol to serve to them. Accordingly, the complaint should be dismissed, and the Panel should determine that there has been no breach of the Code.

The Panel’s View

- 20. On 1 July 2014, a substantially revised ABAC came into operation. While the standards of good marketing practice contained in the new Code are essentially the same as those in the predecessor Code, there have been some significant changes to both the reach of the ABAC Scheme and in the detail provided in how some standards are to be understood.
- 21. Most notably, the new Code provides greater detail in relation to the standard applied to alcohol beverages and persons under the age of 18. Previously, the Code standards provided that advertising must not:
 - (a) Encourage underage drinking; and
 - (b) Have strong or evident appeal to children or adolescents.
- 22. The provisions regarding this standard are now laid out within the ABAC with greater particularity. The standards provide that a marketing communication must not:

- (a) specifically target minors; or
 - (b) have a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - (c) have strong or evident appeal to minors.
23. In addition, the Code definition section gives illustrations of how a marketing communication might breach the standard regarding minors, such as the use of imagery, designs, motifs and animations likely to appeal to minors. Equally, the prospect of the marketing creating confusion with confectionary or soft drinks or alcohol branding on merchandise used primarily by minors is also specifically mentioned as potential breaches of the standard.
24. The complaints raise concern with two different billboards from the Marketer, which it is contended, encourage children to purchase alcohol beverages. This arises from the Marketer using Fathers' Day as the basis for suggesting that alcohol would be a suitable gift to give to a father. In essence, the concern is that under 18 year olds will seek to purchase alcohol as a Fathers' Day gift.
25. The Marketer responds to the complaints on this point by making several arguments, but essentially it is contended that the style, tone and message of the billboards are entirely adult in nature.
26. The Panel does not believe the billboards have strong or evident appeal to minors. The message of the billboards is directed at adult children of fathers, not young children or adolescents. The marketing is not particularly eye catching nor does it have features which are likely to entice a minor to consume or purchase alcohol.
27. A second point is raised by one complaint and that is that the 'When words fail. Give whisky' billboard is an irresponsible message which does not encourage healthy communication within families. Part 3 (a)(ii) of the Code refers to irresponsible or offensive behaviour that is related to the consumption or presence of alcohol, but the Panel does not believe that this provision is breached by the marketing communication. The Panel believes, given the Fathers' Day reference on the billboard, a reasonable person would take the message as suggesting that alcohol can be a suitable gift when words alone are insufficient to convey appreciation.
28. Accordingly, the complaints are dismissed.