



ABAC Adjudication Panel Determination No. 67/14

Product: Canadian Club
Company: Beam Suntory
Media: Television
Complainant: Chris Ryan
Date of decision: 27 October 2014
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Canadian Club by Beam Suntory (“the Company”) and arises from a complaint received 24 September 2014.

The Quasi-Regulatory System

2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. 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) State Liquor Licensing Legislation;
 - (b) a generic code (the AANA Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - (c) an alcohol specific code (the ABAC Responsible Alcohol Marketing Code (the ABAC Code)) and complaints mechanism established under the ABAC Scheme;
 - (d) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when advertisements for alcohol beverages may be broadcast; and

- (e) The Outdoor Media Association Code of Ethics, which includes provisions about Billboard advertisements.
- 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 marketing 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 AANA 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 AANA 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 AANA Code of Ethics issues.
- 5. The complaint raises concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

- 6. The complaint was received on 24 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 complaint has been determined with this timeframe.

Pre-vetting Clearance

- 8. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication (12931).

The Marketing Communication

- 9. The complaint refers to a television advertisement.
- 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 complainant is concerned that the television advertisement breaches sex and feeling good after drinking standards as it depicts a woman getting white stuff in her face by a “sexy” person and feeling better after drinking Canadian Club.

The ABAC Code

15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment; or
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company’s Response

16. Beam Global responded to the complaint and questions posed by the Panel on 8 October 2014 and made the following principal points:
 - a. Beam Suntory vigilantly follows all Alcohol advertising in Australia laws and codes of practice in particular the AANA, ABAC, CTICP & the OMACE codes. Beam Suntory advocates that self-regulation and the ABAC scheme can be a powerful guidance system for the alcohol industry when the concepts behind the scheme are applied with proper diligence and fair evaluation of relevant evidence.

- b. The advertisement “A refreshing wake-up call” portrays a female actress (Tina) whom orders a Canadian Club from the bar. After taking her first sip, she encounters a refreshing snowball in her face. The aid of the snowball communicates the refreshment you get from drinking Canadian Club.
 - i. This advertisement shows no change to the environment
 - ii. This advertisement shows no change in Tina’s mood or behaviour after the snowball is thrown
 - iii. The snowball is purely a symbolic way of dramatising a product feature, the refreshing quality of the liquid which is not normally expected from this whiskey product, hence the over dramatic snowball drama
 - iv. The “snowball in the face” is not a symbolic act of sex. It is a symbolic act of physical refreshment.
 - v. Tina does not show any signs of therapeutic benefit or relaxation. Tina simply comments that you do not get “that” from a beer. “That” representing the level of physical refreshment.
- c. The advertisement does not breach section 3(c)(i).
 - i. There is absolutely no change to the environment.
 - ii. There is no change of mood. Tina’s demeanour and behaviour remain the same before and after consuming the liquid. She simply comments that you do not get “that” from a beer. “That” representing the level of physical refreshment. She does not state or imply that she feels significantly better or worse.
 - iii. The “snowball in the face” is purely a creative and dramatizing way of capturing an “ahhhhh refreshment moment”. Any persons natural reaction to consuming cool liquid in a hot environment.
- d. The advertisement does not breach section 3(c)(ii).
 - i. The “snowball in the face” is not a symbolic act of sex. It is a symbolic act of physical refreshment.
 - ii. The only interaction between “sexy man” and Tina is physical refreshment. There is no indication of sexual success.
- e. The advertisement does not breach section 3(c)(iv).
 - i. Tina does not show any signs of therapeutic benefit or relaxation. As stated above, Tina simply comments that you do not get “that” from a beer. “That” representing the level of physical refreshment.

- f. The pre-vetting approval process enabled us to work closely with ABAC to give us the guidance to ensure the consistency of the advertisement aligns to the prescribed standards of good marketing practice and the ABAC code. Whilst approval through the pre-vetting process by ABAC does not guarantee preclusion from alternative determinations as a result of consumer complaint, it did ensure Beam conformed 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”.
- g. In terms of probable impact it is quite clear to the ‘reasonable person’, the fun and good-humored nature of the advertisement. There are no signs of change in mood or environment. No signs of sexual success or symbolisms of a sexual act. Furthermore does not show any signs of therapeutic benefit or relaxation. Given our thorough understanding of the ABAC code, the comprehensive approval process we followed and the valid points noted above we are extremely confident we have not breached Section 3(c)(i), 3(c)(ii) and 3(c)(iv) of the ABAC code and that this TVC aligns with the existing approval ruling from the ABAC pre-vetting process.

The Panel’s View

- 17. The ABAC scheme consists of three different components, namely:
 - (a) The Code which contains twelve separate standards of good alcohol marketing practice;
 - (b) A pre-vetting service which assesses proposed marketing against each of the twelve standards (and in some cases the generic standards contained in the AANA Code of Ethics); and
 - (c) The public complaints process in which the Panel considers the consistency of marketing against the specific standard raised by the complainant.
- 18. The complaints process is focused on the issues raised by an individual complainant and is not a rerun of the pre-vetting process. As a result, it is possible for a single advertisement to be subject to more than one Panel determination because subsequent complaints raise different issues to those considered in an earlier determination.
- 19. This is the case in relation to the current Canadian Club television commercial. The Panel first considered the advertisement in a determination dated 19 June 2014. The earlier determination dealt with the issues of whether:
 - (a) The advertisement promoted or condoned violence towards women; and
 - (b) Suggested that the consumption of the product contributed to the achievement of sexual success.

20. The current complaint also raises the issue of the advertisement implying that alcohol use leads to the achievement of sexual success. As this issue was dealt with in the earlier determination, it will not be considered again in this determination. In the earlier determination, the Panel concluded that the advertisement did not breach the ABAC standard in this regard. This determination, therefore, will deal with the issue raised by the complainant and not dealt with previously, namely that the advertisement suggests that the consumption of the product leads to the consumer 'feeling good'.
21. Part 3(c)(i) and (c)(iv) of the Code provide that an advertisement must not suggest that the consumption of the presence of an alcohol beverage may create or contribute to a significant change in mood or that the consumption of the product offers any therapeutic benefit or is a necessary aid to relaxation.
22. In assessing whether an advertisement breaches an ABAC standard, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person, taking its content as a whole. The notion of a 'reasonable person' is a reference to the Australian common law and means that regard is to be had to the attitudes, opinions and beliefs that are common in a majority of the population. A person who holds a different view is not 'unreasonable', but their view point may not be shared by a majority of the community.
23. The Panel does not believe the advertisement breaches Part 3(c)(i) or (c)(iv) of the Code. In reaching this conclusion, the Panel has noted:
 - (a) Suggesting the product is 'refreshing' is a description of its characteristics and does not amount to a claim of a 'therapeutic benefit';
 - (b) The mood established in the bar scene remains constant throughout the advertisement;
 - (c) The scene involving the man and the snowball is established as a fantasy and the woman's reflection on the product in the phrase "You don't get that from a beer" relates the product's taste and would not be considered by a reasonable person as showing a significant change in the woman's mood.
24. Accordingly, the complaint is dismissed.