

ABAC

ABAC Complaints Panel Determination No: 151/08

In the COMPLAINT of Mr Terry Croser Product: XXXX Gold Advertiser: Lion Nathan

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Fran Baum – Member

22 December 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for XXXX Gold developed for Lion Nathan (“the Advertiser”) and arises from a complaint by Mr Terry Croser received 28 November 2008.

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 and Alcohol Guidelines which include provisions about the content and placement of Billboard advertising.
3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the

ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of an email by Mr Terry Croser received by the ABAC Panel on 28 November 2008.
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. This complaint has been determined within that timeframe.

Pre-vetting Clearance

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this advertisement [UL172/08].

The Advertisement

9. The ad is a television commercial which has been broadcast in a 60 second and 30 second version. The longer version commences with a scene of three men in a waterfront outdoors setting. One man is sitting along side a barbecue and is reading a paper which turns out to be a set of instructions. The other two men are next to an object (a bedside table) which they appear to be attempting to construct. The context is established when one of the men ask the question to the man with the instructions: "So Dave, is this B7 or J6?". Dave (the man with the instructions) replies: "We've lost our way, we should be following our instincts, not instructions".
10. The two other men exchange glances as Dave forcefully puts his hand with the instructions into the opening of a garden mulcher which is now seen to be along side him. The shredded instructions are seen to fly out of the mulcher as the other two men watch the event unfold. The scene then moves entirely to another location which is set alongside a riverbank. In this scene a group of men are fishing. The men are having a conversation. One man says: "Seagull, mermaids don't even exist". The man, nicknamed Seagull responds: "No one can know for sure". One of the men is shown holding an open stubby of the product with his fishing rod. A third man then is heard to say: "Well, if they do, we're going to need a boat".

11. The scene then moves to a third location which is a private backyard next to an inground pool which has an outlook over open bush leading up to mountains. The men who were previously seen fishing are now standing around a large covered item. Each man is seen to be holding a bottle of the product. One of the men then says: "Right-o fellas, time for a new project". He then pulls the cover off the object to reveal an outboard motor and then he announces: "We're going to build a boat".
12. The scene then moves back to the original location with the three men first seen at the beginning of the ad. One of the men who was located next to the item being constructed says: "A boat – do you have any idea how difficult it is to build a boat?". Dave smiles at this comment and nods his head. The scene then moves back to the second location of the men fishing alongside the river where one of them is heard to say: "Just so that I've got this right, we build the boat first and then we find the mermaids". One of the other men then lifts his stubby of the product to his mouth and says: "This is going to take a very long time". At the conclusion of the ad is a shot of a screen with the text: "XXXX Gold Building Project". Below this text is smaller text which reads: "Search for XXXX Gold Boat". The screen is accompanied by a voiceover which states: "If you and your mates want to build a boat, look us up on line".

The Complaint

13. The complainant argues that several people sitting around drinking alcohol in the vicinity of a dangerous garden shredder and then simulating the pushing of the paper into the mouth of the machine in order to shred it is unsafe and will encourage stupid behaviour.

The Code

14. The ABAC provides that advertisements for alcohol beverages must-
 - (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages...
 - (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and potentially hazardous activity and, accordingly-
 - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices.

Arguments in Favour of the Complaint

15. In favour of the complaint it can be argued that the advertisement by associating alcohol consumption with the hazardous activity of using a garden shredder:

- (a) breaches section (a) of the ABAC Code by failing to represent a mature, balanced and responsible approach to the consumption of alcohol beverages; and
- (b) breaches section (d) of the ABAC Code by associating alcohol consumption with a hazardous activity.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 10 December 2008. The principal points made by the advertiser are as follows:
- (a) This execution is part of a new campaign to promote XXXX GOLD, a brand which developed and drove the unprecedented growth of the lower alcohol category. The launch advertisement introduces the viewer to three separate groups of men, who, for different reasons, each end up deciding to build a boat with their group of mates.
 - (b) In the two scenes involving this particular group of men (building a bedside table), there is no alcohol present. Nor is there any reference to or suggestion that the characters consumed alcohol prior to the gentleman putting the instructions into the shredder.
 - (c) The action is designed to be a metaphor for rejecting a ready-made, flat-packed world, and the effectiveness of the advertisement is this idea being brought to life. It is not expected that a reasonable person would deem this action contrary to community standards of health and safety, nor would they assume this action has been caused or influenced by the consumption of alcohol, given there is no product in the scene.
 - (d) The character is not shredding branches, foliage or similarly solid objects which would require the use of safety equipment. Paper shreds easily through a garden shredder and doesn't present the hazard risks of shredding other solid objects, much in the same way putting paper through an electric paper shredder isn't deemed hazardous. Therefore, the action does not require extra safety equipment.
 - (e) There is no association between this action and alcohol consumption, nor is there any association between these three characters and alcohol consumption. As such, we believe this execution is in line with the ABAC, as well as community standards of health and safety.

The Panel's View

17. The complainant contends the ad encourages stupid and unsafe behaviour by associating alcohol use with the operation of a garden mulcher. The ABAC has two standards which are potentially raised by the complaint, namely Section (d)

which deals with alcohol consumption and the engagement in potentially hazardous activity; and the overarching requirement contained in Section (a) that ads present a mature, balanced and responsible approach to alcohol consumption.

18. The ad in part does depict three men engaged in activity of constructing a bedside table. During this activity one of the men in a state of mild frustration shreds paper instructions in a garden mulcher. In doing this, he is seen putting the instructions into the mouth of the mulcher with a bare hand.
19. The Section (d) standard has several elements. To be in breach of the standard, an ad must:
 - Depict a direct association between alcohol and engagement in potentially hazardous activity;
 - Involve the consumption of alcohol;
 - Depict the consumption as having taken place before or during the engagement of the activity.
20. In this case the ad consists of three quite distinct scenes depicting several men in three distinct locations at different times of the day. Alcohol consumption is shown in two of the scenes *i.e.* the fishing scene and the scene where the outboard motor is unveiled. Alcohol use is not shown in the scene where the garden mulcher is operating.
21. The preamble to the ABAC provides that, in assessing the consistency of an ad with the ABAC standards, the ad is to be taken as a whole. This means that the overall impression of the ad is important, rather than dissecting the ad into a series of individual shots and scenes. Accordingly it is possible that the complainant has placed the alcohol consumption shown in the ad with the use of a garden mulcher, even though no alcohol use is depicted in the scene where the mulcher is operated.
22. The Panel, however, does not believe the ad breaches Section (d) of the code. The ad does reasonably clearly depict three quite separate scenes which are set at different locations and at different times of the day. Further, given the different clothing worn by the men in each scene, presumably each of the events recorded is occurring on a different day. The scenes which involve alcohol consumption are quite distinct from the scene involving the mulcher. This means that alcohol consumption is not being depicted either before or during the operation of the mulcher, and hence the elements of Section (d) are not contravened.
23. The Panel also believes that the ad does not breach the general standard contained in Section (a). Alcohol consumption depicted in the ad is moderate and there is no evidence in any of the scenes that the men's behaviour has been affected by alcohol. Alcohol does not appear to be a cause in driving the men's behaviour and its use appears to be incidental to the events being depicted. The scene involving the use of the mulcher is consistent with the

theme of the ad which shows the men rejecting a highly regulated means of working together in favour of a more instinctive communal means of undertaking an activity. To this extent, the use of the mulcher is somewhat a symbol of the men's rejection of highly structured behaviour and an introduction to their decision to undertake the major activity of building a boat. The Panel does not believe this is inconsistent with the standards set out in the ABAC.

24. Accordingly, the complaint is dismissed.