

ABAC

**ABAC Complaints Panel
Determination No: 2/12**

**Confidential Complaint
Product: Heineken
Advertiser: Heineken Lion Australia**

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

14 January 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Heineken by Heineken Lion Australia (“the Advertiser”) and arises from a complaint received 3 January 2012.

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 includes provisions about Billboard advertising.
3. The complaint 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 complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 3 January 2012.
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 was decided within the 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 (10656).

The Advertisement

9. The complaint refers to a television advertisement for Heineken. The ad was viewed by the complainant on channel "Go" at around 9:40pm on 25 December 2011 during the movie "Stormbreaker" which has an "M" classification.
10. The advertisement opens with a man in a suit entering a building via a red carpet with the doorway flanked by two men in tailed suits with top hats and photographers taking pictures of him as he enters. As the man enters the room a female singer begins singing a song entitled "Golden age" and we see that he has entered a formal party and everyone's attention is drawn to the man as he is shown hugging an older man as a younger woman watches. We then see a waiter offer the man a tray with glasses of champagne and water which he refuses. He then sees a second waiter with a bottle of Heineken and walks smiling with hand held out toward the tray when another man draws him away and shakes his hand. The man then engages in a gun fight mime with a large man in a Texan hat and the two men then hug. Another man is shown entering the party with an acrobatic flip followed by a martial arts move which the man responds to with a parody of martial arts moves.

11. A waiter appears with a bottle of Heineken on a tray between the two men. The man picks up the bottle and juggles it with the man that just arrived and then offers the bottle to that man. The man changes into a white suit jacket and grabs a bottle of Heineken from a tray and jumps onto the stage where the band is playing and holds up his bottle of Heineken. We then see the female singer and then the whole party including the man who is dancing to the music holding up his bottle of Heineken. The final screen is the Heineken logo with the tagline "Open your world", the text "facebook.com/Heineken" and an "Enjoy responsibly" logo.

The Complaint

12. The complainant argues that the advertisement should not be shown during an M rated movie that has a plot aimed at school aged children particularly when it was shown on Christmas Day and when there is the ability to record and timeshift viewing. Further, the ad parodies the action movie genre which makes it all the more likely that the viewers of the movie would engage with the ad.

The Code

13. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - ii) must not encourage underage drinking;
14. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children or adolescents ...

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by email received 7 December 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. All of our TV activity is bought within the time parameters of post-2030, in line with regulations, and does not appear in any movies rated PG (or lower). Stormbreaker is rated M and is clearly targeted at an adult audience.
 - b. The latest Heineken TV commercial, "The Entrance", was approved by AAPs and features a lead character making the 'ultimate' party entrance. During his entrance he encounters many characters from all over the world, which helps to demonstrate the worldliness of Heineken as a brand and its appeal to men of the world. It is not a parody of an action movie. The TVC features adults in adult scenarios with no components that would present a strong or evident appeal to children.

The Panel's View

16. The complainant's principal concern is that an alcohol ad was broadcast in conjunction with the M-rated movie "Stormbreaker" which was aired on Christmas Day 2011.
17. The Commercial Television Industry Code of Practice (CTICP) provides that alcohol ads are not to be broadcast before 8.30 pm, unless the broadcast is in conjunction with live sport on weekends or public holidays. It would seem that the ad was broadcast consistent with the CTICP and after 8.30 pm.
18. For its part, the ABAC is a code concerned about the content of alcohol ads, irrespective of where the ad might appear *e.g.* print, television, billboards, internet. The ABAC does not limit or prohibit the placement of ads. Rather, its approach is to say – regardless of where a viewer comes across the ad – it needs to meet particular standards.
19. Accordingly, it is not a breach of the ABAC for an alcohol ad to be broadcast on television with an M-rated movie. What will breach the ABAC is an ad which can be said to have strong or evident appeal to children or adolescents. This "strong or evident appeal" is to be assessed from the content of the ad, rather than the time of day the ad was broadcast or the type of program the ad was shown in conjunction with. The issue of where the ad was found only indirectly comes into play by the fact that the vehicle for an ad will shape the likely audience of the ad.
20. In this case, it can be accepted that the Heineken ad would have been viewed by children and adolescents, even though the timeslot and M-rating may have convinced some parents that the movie was not suitable for younger children. The key issue for the ABAC is the content of the ad. On this point, the complainant points out that the ad parodies the action movie genre and this makes it more likely that viewers of the movie would engage with the ad, although this is only a sub-point to the principal concern about the ad appearing with the M-rated movie.
21. A majority of the Panel cannot accept the complainant's argument. The ABAC does not say that alcohol ads cannot be engaging, clever or otherwise appealing. What it does say is that an ad cannot have strong or evident appeal to children or adolescents. This means an ad might have some appeal to younger viewers, if this appeal is a residual or coincidental appeal, as opposed to an appeal which is strong or evident to children or adolescents as a group. A majority of the Panel does not believe the ad, taken as a whole, breaches the section (b) requirement.
22. Accordingly, the complaint is dismissed.