

ABAC

**ABAC Complaints Panel
Determination No: 61/12**

**Confidential Complaint
Product: Tooheys Extra Dry
Advertiser: Lion**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

3 August 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Tooheys Extra Dry produced on behalf of Lion (“the Advertiser”) and arises from a confidential complaint received on 26 June 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 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 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 26 June 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. The complaint has been determined within the 30 day 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.

The Advertisement

9. The television advertisement comprises the following series of scenes of deer in and around a city:
 - (a) a female deer standing in a high rise apartment looking out over a city as night falls;
 - (b) a group of three stags and other groups of deer running along suburban streets and joining a larger herd that is seen running toward a city at night as background music starts and gets louder;
 - (c) two female deer in a train;
 - (d) groups of deer running in herds through city streets in amongst traffic;
 - (e) three female deer walking along a pavement and passing two stags who turn to look at them;
 - (f) a group of deer milling around cars in front of a bar or nightclub;
 - (g) groups of deer walking and standing in a nightclub including a scene where a group of female deer are looking into the mirror in a washroom;
 - (h) a group of deer in the high rise apartment from the first scene;

- (i) a group of deer running in front of a large moon;
- (j) a large group of deer in a nightclub with the camera focusing on a stag and then a female deer staring at one another;
- (k) a group of deer waiting at a fast food van and one eating a pie off a plate;
- (l) a female deer leaning out of a high window and kissing a stag that is standing up on his back legs outside the window to reach the female deer at dawn before running away;
- (m) groups of deer walking slowly down the streets as the sun is rising and the text "The beer for the nocturnal migration" is superimposed on the screen;
- (n) a stag stopping and turning toward the camera as a bottle of Tooheys Extra Dry is superimposed so the stag head on the bottle covers the stag's head and its body fades away and the tagline "The clean Crisp Taste"

The Complaint

10. The complainant argues that:

- (a) The advertisement shows a number of scenes where deers are put into an urban setting to reflect the common night out experienced by young people. The deers are filmed in a way that depicts them as having human like characteristics. The advertisement does not contain any talking, just music leaving the advertisement open for interpretation by the viewer.
 - A female deer at home looking out the window
 - A group of three male deers leave home and meet other deers in the street all heading out for the night
 - A group of females catch the train to go out
 - The group of males catch have brief eye contact with the group of females in the street
 - Both groups of deers go to a night club and there is a scene of the girls in the bath room
 - Both groups then go to a house party, then leave and walk the streets to another night club
 - The group of male and female deers have a late night burger
 - The lead male and female deer kiss through a house window early in the morning
 - The male deer walks home

- (b) The kiss outside the window between the male and female deer implies they have spent the rest of the night together at her place. In relation to human life this implies they have slept together and that drinking Tooheys Extra Dry helps males and females have a great night socially as well as have sexual relations. The Alcohol Beverages Advertising Code outlines advertisements for alcohol beverages must not; c) suggest that consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and accordingly – 1) must not depict the consumption or presences of alcohol beverages as a cause of or contributing to achievement of personal, business, social, sporting, sexual or other success.
- (c) The advertisement should be restricted from being screened on Australian television or at least the kissing scene be taken out of the television advertisement.

The Code

- 11. The ABAC provides that advertisements for alcohol beverages must:
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly:
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting sexual or other success.

The Advertiser's Comments

- 12. The Advertiser responded to the complaint and questions posed by the Panel on ? June 2012. The principal points made by the Advertiser are:
 - a. We do not believe the advertisement depicts the consumption or presence of alcohol beverages as a cause of or contributing to social or sexual success. The Tooheys Extra Dry 'nocturnal migration' TVC explores the idea that every night is an adventure waiting to happen - a chance for friends to spend time with each other and to collect new stories and share experiences. The stag is part of the Tooheys Extra Dry logo and is an existing and well-known part of the brand identity. This is why stags and does were used as part of the TVC. The group of stags and does are a true reflection of a group of friends enjoying a night out. It is an observation that groups of friends do not like to stay in one place when enjoying a night out, they migrate.
 - b. The stags and does do not drink alcohol during the TVC and the presence of alcohol is incidental to how they behave.
 - c. We do not believe that the stags having eye contact and mixing with female does suggests social success. It replicates a normal behaviour that would take place among a group of people in a social environment, regardless of the presence of alcohol. We do not believe that the scene where a stag reaches up to a does

window and kisses her before walking away, suggests sexual success. The scene reflects a goodbye kiss between friends and signifies the end of a night out together.

- d. Furthermore, Lion is confident the advertisement is compliant with the Code of Ethics as the ASB assessed the above complaints as not raising any issues.

The Panel's View

13. The Complainant argues that the Ad breaches Section (c) (i) of the Code through the scene in the ad where a stag is kissed by a female deer. The Complainant believes this scene suggests that alcohol contributed to the pair having had sex. In contrast, the advertiser contends that this scene 'reflects a goodbye kiss between friends and signifies the end of a night out together'.
14. Section (c) of the ABAC is a widely framed provision. Its intent is to describe the manner in which alcohol within advertisements can be portrayed with depictions of success. If an ad suggests that alcohol causes or contributes to the achievement of success, then the ad is inconsistent with the ABAC. It is not a breach of the standard however, to associate or place alcohol with attractive or seemingly successful people provided it is not suggested that a reason for the person being attractive or successful was alcohol. The concept of causation is the key to the provision.
15. In assessing ABAC standards the preamble to the Code provides that the Panel is to consider the probable impact of the ad upon a reasonable person taking the content of the ad as a whole. Often this means, the Panel is called upon to make judgements which can be finely balanced and upon which fair minded people might disagree. This is one of these cases.
16. It is common to both the complainant and the Advertiser that while the ad shows the activities of deers, the behaviours depicted are to be taken of that of men and women having a night out. Various scenes show both crowd and individual behaviour which might be commonly associated with a night of clubbing.
17. The scene of particular concern to the Complainant is toward the end of the ad and shows a female deer leaning out of a window to kiss a stag standing up on its hind legs to reach the female deer. From this scene, the complainant takes that the pair have spent the night together, had sex and that alcohol was a contributor to the achievement of sexual success.
18. The Panel however does not believe that the ad breaches Section (c) of the Code. In reaching this conclusion it is noted:
 - The product is not portrayed in the ad until the final scene and consumption of alcohol is not depicted in the ad at all;
 - The ad does not indicate the nature of the relationship between the two deers nor does it suggest the role if any that alcohol played in the relationship;
 - Accordingly there are a number of assumptions built on further assumptions which are required to be accepted before the complainant's argument could be supported.

19. Accordingly the complaint is dismissed.