

ABAC

ABAC Complaints Panel Determination No: 83/12

Complaint by Chris Clague
Product: Hix Beer
Advertiser: Hickinbotham of Dromana

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Louisa Jorm – Member

21 December 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Hix beer produced by Hickinbotham of Dromana (“the Advertiser”) and arises from a complaint received on 22 November 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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - 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 22 November 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 has been determined within the 30 business 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. The Advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an outdoor advertisement in a city bound train from Footscray.
10. The advertisement features three bar taps labeled "Hix Beer Brown Ale", "Hix Beer Pale Ale" and "Hix Beer Pilsener". Superimposed over the image is the text "Girls Love Hix Beer", "No Added Anythings" "www.hickinbotham.biz ph: 03 5981 0355".
11. To the left of the image of the bar taps is a smaller photograph of two women sitting at a bar, one of whom is holding up a partially consumed glass of beer.

The Complaint

12. The complainant objects to the following elements of the ad that may have strong or evident appeal to children or adolescents and may encourage underage drinking:
 - The use of the word "girls" in the statement "Girls Love Hix Beer". The "girls" referred to in the ad could be the complainant's 15 & 17 year old nieces who travel to school by train each day and could easily see the ad.
 - One of the female images in the ad who from a reasonable distance could be of school age, or upon closer inspection in her early twenties.

The Code

13. The ABAC provides 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 under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents and, accordingly:
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.

The Advertiser's Comments

14. The Advertiser responded to the complaint on 23 November 2012. The principal points made by the Advertiser are:
- Both females shown in the ad are in their late twenties or early thirties.
 - A director of the advertiser is in her fifties and still referred to as being "one of the girls".
 - The idea for the ad stemmed from a beer tasting event with the female contingent providing some of the most cognisant tasting evaluations throughout the day. The brewers were all quite effusive over how well they managed to describe most precisely the characteristics of each beer style. This ad was supposed to recognise this attribute and in no way seeks to infer or promote underage drinking.

The Panel's View

15. This complaint raises both substantive and procedural issues which will be dealt with in turn.

The Procedural Aspects

16. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:

- Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
17. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol suppliers and advertisers who are not members of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means the advertiser is not contractually bound to follow a panel decision. That said, the ABAC Adjudication Panel considers relevant complaints regardless of whether the advertiser or supplier is a signatory to the ABAC Scheme.

Substantive issues

18. The complainant is concerned that the advertisement by the use of the tagline “Girls Love Hix Beer” and the depiction of a female who appears to be under 25 years of age or from a distance could be a schoolgirl could have strong appeal to children or adolescents and may encourage underage drinking.
19. The advertiser responded to the complaint with the assertion that the females depicted in the ad are in their late twenties or early thirties and that the use of the term girl is applied to females of any age. Further the ad was recognition of the ability of females to understand and describe the characteristics of different beer styles as demonstrated at a tasting event held by the advertiser.
20. The complaint has two elements. Firstly, the apparent age of the women depicted in the advertisement is raised, as the complainant believes one of the women shown is younger than 25 years of age, either of school age or in her early twenties. Section (b)(i) provides that adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
21. The section (b)(i) standard has two limbs. Firstly, as a matter of fact, persons shown in advertisements must be over 25 years old. Secondly, irrespective of a person’s actual age, if the person is depicted as an adolescent (i.e. under 18), then the advertisement will be in breach of the standard. In this case, the advertiser advises the two women are aged in their late twenties or early thirties. The Panel has no option but to accept the advertiser’s advice on this point.
22. The apparent age of the women is more problematic, as this involves forming an opinion on how old the women appear to be. The Panel’s job has been made more difficult as the advertiser supplied a very poor quality copy of the advertisement and it was not possible to make any assessment of the women’s age based on this copy. The complainant supplied a better quality picture of the advertisement, but even this picture was not entirely clear, given the reflection of light in the photograph. Through an internet search, the Panel was able to locate a clear picture of the two women.
23. In the Panel’s best judgment it is concluded that the women are depicted as adults and the section (b)(i) standard is not breached. While the age of the women is open to

some conjecture, they do appear to be clearly adult women and there is nothing in their clothing or general demeanour to indicate they are not adults.

24. The second element of the complainant's concern is about the use of the term 'girl' in the advertisement. The complainant takes the term to mean that the advertisement is encouraging younger females (children or adolescents) to drink the product. The advertiser contends that the term 'girl' has a wider usage and includes females of all ages.
25. There is no doubt that, depending on the context of its use, the term girl often refers particularly to young females. In other contexts, the term can be used in a demeaning and sexist manner. In other contexts again, the term may not have any negative sentiments and might be describing females more generally.
26. The preamble to the ABAC provides that consistency with ABAC standards is to be assessed by considering the probable impact of the advertisement on a reasonable person, taking the context of the advertisement as a whole.
27. On balance, the Panel believes the advertisement does not breach section (b) of the Code. In reaching this conclusion, the Panel has noted:
 - while there appears to be little other reason to use the term 'girl' in the advertisement as opposed to 'women' other than to pitch the advertisement at younger adult females, the advertisement does not, through its overall tone and content, have strong appeal to children or adolescents.
 - in the particular context of the advertisement, the term 'girl' is a description of women more generally, although its use has sexist overtones.
 - the use of the term and its juxtaposition with the picture of adult women lends weight to the term having a general meaning applying to all females.
28. The advertiser is not an ABAC scheme member and clearly it would benefit its ongoing advertising if it joined the scheme and used the pre-vetting service. The aim of the advertisement could have been achieved without raising the concerns legitimately raised by the complainant.
29. Accordingly, the complaint is dismissed.