

ABAC

ABAC Complaints Panel Determination No: 140/08

In the complaint of Ms Anne Dalton Product: Lion Nathan Beer Products featuring “the Natural Beer Promise” Advertiser: Lion Nathan

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

23 December 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Natural beer by Lion Nathan (“the Advertiser”) and arises from a complaint by Ms Anne Dalton received 25 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 received by the ABAC Panel on 25 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 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. The television ad was submitted for pre-vetting examination and approval was given to the ad (BH290/08).

The Advertisement

9. The advertisement is one in a series of three television commercials for the product. In this execution a male character is seen standing against the base of an enormous tree located in a beautiful mountain setting. The character is dressed wearing a chequered "lumber jacket" shirt, jeans and boots. Bird song is heard in the background.
10. The character talks in a North American accent as he looks upwards at the tree. He says "Every morning when I wake up those cute little birds are singing" "and singing" "and singing". He continues talking as he bends over to pick up an axe - "well tomorrow they'll be singing somewhere else". He swings the axe into the base of the tree. He continues speaking and says "and to celebrate that fact I'm going to drink this when I'm done". The man is shown reaching for a stubby of the product of which is featured in close-up. The stubby is unopened. The camera focuses on the label on the neck of the stubby.
11. The man points to the stubby's neck and the wording "natural beer promise" is clearly seen. The man continues talking by stating "beer made with the natural beer promise means its made with natural ingredients and brewed naturally and free from artificial additives and preservatives". The shot then zooms away to a wider view of the man against the tree as he looks upwards again and states "bye birdie". Text is then superimposed on the screen which features the natural beer logo and the wording www.naturalbeer.com.au.

The Complaint

12. The complainant is concerned:
- (a) It somehow suggests that drinking beer and chopping down trees with an axe while you're under the influence is ok;
 - (b) The ad encourages anti-environmental and 'redneck' attitudes and behaviour. ie destroying trees and the habitat of birds;
 - (c) This ad is promoting alcohol during a timeslot when children under the age of 18 would still be watching television ie during Sunday night movies.

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;
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - (b) not have a strong or evident appeal to children or adolescents...
 - (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the engagement in any sport..... or 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

14. In favour of the complaints it can be argued that the advertisement:
- (a) breaches section (a) and (a)(iii) of the ABAC Code by;
 - Suggesting it is acceptable to fell a substantial tree in order to destroy the habitat of birds and hence stop the birds singing in the area;
 - Encouraging "red neck" attitudes and behaviour;
 - Promoting a hostile attitude to the natural environment.

- (b) breaches section (a)(ii) of the ABAC by its broadcast during a time while children will be viewing television and hence encouraging under-age drinking.
- (c) breaches section (d) of the ABAC by associating alcohol consumption with the dangerous activity of felling a tree with an axe.

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 11 December 2008. The principal points made by the advertiser are as follows:

- (a) Overall, our strong view is that the majority of these complaints do not raise an ABAC issue. Previous decisions of the ABAC Complaints Panel have interpreted the offensive behaviour component of the Code as relating to behaviour "related to or influenced by the misuse of alcohol".
The Panel said: The expression 'offensive behaviour' in ABAC is not a freestanding standard like to section 2 of the AANA Code of Ethics. Within ABAC, *'offensive behaviour' means unacceptable behaviour related to or influenced by the misuse of alcohol* eg. Drunken loutish behaviour.
- (b) We agree with the position of the Panel on this, because in relation to issues that are common to all advertising (i.e. not special to alcohol products) there is no reason for alcohol companies to take a different approach to other companies. There is absolutely no suggestion that the alleged "offensive behaviour" in this campaign is caused or influenced by the misuse of alcohol, which is why we do not believe this is within the mandate for ABAC. Beyond that, we do not agree that the behaviour depicted is offensive for the reasons outlined below.
- (c) The Natural Beer Promise advertisements are part of a campaign, which aimed to promote a new natural platform for Lion Nathan mainstream beers in a way that would resonate with mainstream beer drinkers. The advertisements are clearly fictional and hyper real and are certainly not designed to offend. Each execution is designed to contrast a fictional character who believes he is 'at one' with nature, yet displays very little awareness about himself or his environment, with an initiative which is solely focussed on education and awareness about the product, which features the best nature has to offer. The humour lies in the protagonist's obvious lack of self awareness, rather than his actions. This is very much in line with the same vein of humour as contemporary Australian comedies such as *Kath & Kim* and *Summer Heights High*. The protagonist's behaviour is presented as clearly ridiculous and the character himself was cast with an accent, so that he would seem foreign, fictional and 'other-worldly' to an Australian audience. The audience is supposed to disconnect and be surprised by, rather than identify with, his ridiculous behaviour. The ironic and impossible situations include the character trying to cut down an enormous tree, hunting huge wild pigs with his bare hands, and 'marking his territory' in an overtly over-the-top and physically impossible way.

- (d) These executions are set up to contrast a man who lacks self awareness. In the 'Tree' instalment, the character takes a small hand-held axe to a fantasy-like tree, so enormous it would be impossible to bring down. The humour lies in the audience understanding the character's behaviour is not only irreverent and surprising, but clearly fictional, outrageous and physically impossible.
- (e) All iterations of the Natural Beer Promise campaign advertisements were aired in line with regulations around alcohol advertising, i.e. in a post 8.30pm timeslot set aside for mature audiences. During that timeframe it is assumed that people will make their own decisions as to the kind of content of programmes and advertisements that they may wish to watch. Equally, parents are expected to exercise reasonable responsibility over the viewing habits of their children.
- (f) The character does not consume the product prior to this action, nor after he takes a swing. He clearly says 'to celebrate that fact, when I'm done, I'm gonna drink this...' Further to this point, the action itself is clearly ridiculous and impossible – the joke lies in the fact that he takes such a small hand-held axe to the base of an impossibly large tree.
- (g) Understandably, Lion Nathan does not expect these executions to be to every consumer's taste. That said, the tone and treatment of the physically impossible actions convey these advertisements as clearly fictional and outrageous. The humour lies in the protagonist's complete lack of self awareness rather than his clearly ridiculous behaviour, in the same style as mainstream television programs currently appearing in the same timeslots as these advertisements.
- (h) There is also the further argument that there is no suggestion that his behaviour is caused by, or influenced by alcohol consumption, and as such, we do not believe these executions contravene the ABAC.

The Panel's View

The ABAC and The Code of Ethics

- 16. The advertisement is one of a series of tvcs from the advertiser which are respectively entitled 'Territory', 'Tree Birdy' and 'Pig'. Collectively the series has attracted a large number of public complaints. The Panel will be making separate determinations on each of the advertisements.
- 17. In most cases the public complaints have raised matters which in essence canvass issues of taste and decency which fall squarely under section 2 of the AANA Code of Ethics and will result in decisions on the ads by the ASB.
- 18. The AANA Code of Ethics is a generic code which applies to advertising irrespective of the type of product being promoted. In contrast, the ABAC is a set of standards which go to alcohol and its responsible use. A complaint might raise issues under the ABAC or the Code of Ethics or both codes. In this case, the complaint dealt with in this determination has raised an issue

about alcohol as a product as well as more general concerns. This means there will be separate determinations by this Panel and the ASB.

19. While both the ASB and this Panel operate against the backdrop of 'community standards' in assessing complaints and ads, both bodies are applying quite distinct codes which go to different matters and accordingly different conclusions might be reached on a particular ad.

Section (a)(ii) and (b)

20. The complaint raises concerns that this ad is promoting alcohol during a timeslot when children under the age of 18 would still be watching television ie during Sunday night movies. The advertiser advised that this ad always screened after 8.30pm.
21. The ABAC is a code which is based on the content of ads rather than the placement of ads. This can be contrasted with the CTVI Code of Practice which specifically limits the times at which alcohol ads can be broadcast. The ABAC standard goes to ads not encouraging underage drinking or having a strong or evident appeal to children.
22. The Panel does not believe that the content of the ad can reasonably be said to have a particular appeal to younger viewers and was broadcast in line with the CTVI Code of Practice.

Section (a) and (a)(iii)

23. The next issue raised by the complaint is the ad's hostile attitude to the natural environment.
24. As previously explained, the starting point is the fact that the ABAC does not go to the general issues of good taste, decency and violence and community safety. These are standards which alcohol advertising, like all advertising, should satisfy, however these standards are laid down in the AANA Code of Ethics and compliance with the standards is assessed by the ASB. The ABAC standards go to more specific issues related to the use of alcohol.
25. The relevant ABAC standards are found in section (a). This requires that advertising of alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol and must not promote offensive behaviour, or excessive consumption, misuse or abuse of alcohol beverages.
26. Section (a) is a combination of both 'positive' and 'negative' standards. Ads must be positive in terms of being balanced, mature and responsible and must not be negative in terms of promoting offensive behaviour. In assessing if an ad meets this standard, the ABAC preamble provides that an ad is to be assessed with regard to its probable impact upon a reasonable viewer taking its content as a whole.
27. The Panel has on previous occasions examined the operation of section (a) and (a)(iii) including:
 - Determination 18/05;

- Determination 40/05;
- Determination 56/05 and 04/06;
- Determination 55/06;
- Determination 43/07;
- Determination 12/08;
- Determination 15/08 and 24/08; and
- Determination 65/08, 68/08, 72/08, 87/08 & 94/08.

28. From a review of these decisions, the following general observations can be made on how the Panel has interpreted section (a) and (a)(iii):

- the section is concerned with a 'responsible approach' to alcohol consumption which is a wider concept than consumption;
- the expression 'offensive behaviour' used in section (a)(iii) must be understood within the context of the section and ABAC as a whole and is not a freestanding standard akin to section 2 of the AANA Code of Ethics;
- within the context of ABAC, 'offensive behaviour' means unacceptable behaviour related to or influenced by the misuse of alcohol eg. Drunken loutish behaviour;

29. That said an ad must be assessed on its own merits against the relevant standards of the ABAC. The complainants' concern is that the ad encourages environmentally hostile attitudes and behaviours.

30. For its part, the advertiser strongly rejects that the advertisement is in breach of section (a) and (a)(iii) of the ABAC. The advertiser contends the character's behaviour is not only irreverent and surprising, but clearly fictional, outrageous and physically impossible. Further, there is no suggestion that the character's behaviour is caused by, or influenced by alcohol consumption and the character in the ad clearly states he will consume the product after he has chopped down the tree.

31. The Panel does not believe that this ad is in breach of section (a) as:

- The character does not appear to be under the influence of alcohol;
- No alcohol consumption is depicted and a statement is made by the character that the beer will be consumed later when the behaviour has concluded;
- While many people will find the behaviour 'offensive' this relates to the 'redneck' social attitudes displayed and not to behaviour related to alcohol use.

- It is for the ASB to determine if the ad breaches the Code of Ethics standards, which are at the heart of this part of the complainant's concern.

Section (d)

32. The complaint also raises an issue about drinking beer and chopping down trees with an axe while you're under the influence. The ABAC provides in Section (d) that ads are not to depict any direct association between the consumption of alcohol, other than low alcohol beverages, and a hazardous activity. The section goes on to provide that any depiction of alcohol consumption 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.
33. To breach the standard, the ad needs therefore to depict:
 - (a) A direct association between alcohol and the hazardous activity;
 - (b) Alcohol consumption occurring before or during the activity; and
 - (c) A hazardous activity.
34. In this case the ad does not depict the actual consumption of the product taking place before or during the use of the axe, nor is there any suggestion that the character has consumed alcohol prior to engaging in the activity. There is also a clear statement by the character that he will enjoy the beer after the activity is concluded and it is noted that the bottle of the product held by the character is unopened.
35. In the Panel's view the ad associates the product with a hazardous activity, but to breach Section (d) this association needs to involve alcohol "consumption". In essence, the advertiser's response to the complaint is that consumption is not portrayed and the action itself is clearly ridiculous and impossible and would not be taken seriously.
36. The ad does quite clearly establish that the man will not consume any alcohol until after he has finished the improbable task of chopping down the tree. Accordingly, the section (d) standard cannot be said to be breached, as no 'alcohol consumption' takes place prior to or during the engagement of the hazardous activity.
37. Accordingly, the complaint is dismissed.