

ABAC

**ABAC Complaints Panel
Determination No: 48/08**

**CONFIDENTIAL COMPLAINT
Product: Thirsty Camel Bottleshops
Advertiser: Liquor Alliance**

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

22 August 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a newspaper and website advertisement for Thirsty Camel Bottleshops by Liquor Alliance (“the Advertiser”) and arises from a confidential complaint received 15 July 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 Advertising Code of Ethics which includes provisions about the content 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 a confidential email received by the ABAC Panel on 15 July 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 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 not obtained for this advertisement. The Advertiser is not a participant in the ABAC Scheme but has co-operated in the complaints process.

The Advertisement

9. The complaint refers to a newspaper advertisement for Thirsty Camel Bottleshops. The advertisement has a green border and features in large print at the top of the page the text: "Free Coke with JD and SC - That's Cool!". Below the text there is an announcement about a new bottleshop and pictures of various alcohol products and their respective prices. Included is a picture of a 500ml bottle of Jack Daniels, a 1.25L bottle of Coca Cola and a 700ml bottle of Southern Comfort. The price for each bottle of liquor is included together with the text "Free 1.25L Coke with each bottle purchased". At the bottom of the ad there is a picture of a camel, the text "Thirsty Camel bottleshops" and small print with terms and conditions.
10. The complaint also refers to a website advertisement offering the same promotion. The website has altered and no longer includes the promotion complained of and the Advertiser is unable to supply a copy of the altered part of the website. The Advertiser has advised that the promotion on the website is in line with the newspaper advertisement. The Thirsty Camel website contains pictures of camels (both photographs and cartoon pictures) and includes interactive elements enabling the user to select various options. One of the options is entitled Store Room Specials which may have led the user to the promotion complained of. The website does not require a confirmation from the user that they are over 18 years of age in order to view the website

but the Advertiser has advised that to register as a 'Cameltarian' and have an opportunity to win prizes a user needs to be at least 18 years of age.

The Complaint

11. The complainant argues that the advertisement:
 - (a) appears to be a particularly cynical response to the Government's "alcopops" tax, aimed at encouraging young people to mix their own "alcopops", with the likelihood of inappropriate and excessive consumption of alcohol.
 - (b) Similar advertising appears on the website www.thirstycamel.com.au where (without even a gesture to requiring some confirmation of appropriate age) one click on, for example, Western Australia presents a similar offer.
 - (c) These advertisements are clearly directed at least in part to young people, with a view to encouraging excessive or "binge" drinking. The imagery and approach of the website advertisement are clearly designed to appeal to adolescents.

The Code

12. 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-
 - (i) must not encourage excessive consumption or abuse of alcohol;
 - (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...

Arguments in Favour of the Complaint

13. In favour of the first complaint it can be argued that the advertisement breaches section (a)(i) and (iii) of the ABAC Code by failing to represent a responsible approach to alcohol consumption, namely:
 - offering a free 1.25L bottle of coke with each purchase of a 500ml bottle of Jack Daniels Whisky or a 700ml bottle of Southern Comfort, thereby encouraging people to mix their own 'alcopops' and engage in excessive consumption or abuse of alcohol.

14. Further, it can be argued that the advertisement breaches section (a)(ii) and (b) of the ABAC Code by having a strong or evident appeal to children or adolescents and/or encouraging under-age drinking by:
- offering a free 1.25L bottle of coke with each purchase of a 500ml bottle of Jack Daniels Whisky or a 700ml bottle of Southern Comfort thereby encouraging young people to mix their own 'alcopops'; and
 - using a website with bright cartoon-like images and interactive elements being an approach and imagery designed to appeal to adolescents.

The Advertiser's Comments

15. The Advertiser responded to the complaint and questions posed by the Panel by way of email and letter dated 31 July 2008. The principal points made by the advertiser are as follows:
- (a) It must be conveyed that at no time did Thirsty Camel look to encourage people to mix their own with the intent of inappropriate, excessive consumption of alcohol or the abuse of alcohol.
 - (b) The bonus offer is a promotional tactic surrounding a complimentary product offer that has been a promotional tool used for many years across FMCG and Liquor markets. The Advertiser has supplied copies of similar promotions by Bottlemart, Liquor Stax and Liquorland.
 - (c) The ad and the product offer targets mature 25 plus consumers and we don't believe that the advertisement would appeal to a lesser category. We don't believe this ad would encourage underage drinking and that this ad would encourage young people to mix their own.
 - (d) We do not believe the ad breaches the Advertising Code Sections a) i) or ii) and b)
 - (e) We believe Thirsty Camel press ad's presents a mature and responsible approach and doesn't promote offensive behaviour or excessive consumption to the younger market.
 - (f) When you go to register on the website you must be over 18 years for the system to accept you. We are in the process now of having on the front page of the website information on responsible drinking and a reminder that you must be over 18 years.

The Panel's View

18. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The issue is that Thirsty Camel bottleshops and Liquor Alliance are not members of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC's adjudication process has no binding effect on the company. Liquor Alliance, however, have stated their commitment to good practice in alcohol product advertising and have fully cooperated in the adjudication process. Given the advertiser's willingness to comply with the ABAC scheme in this instance, the Panel has proceeded to make this determination.
19. The complaint concerns both a specific print advertisement and the advertiser's website. The concerns raised by the complaint are:
 - That the print ad and a similar ad placed on the website are an attempt to circumvent Federal government initiatives to make "alcopops" less attractive to young purchasers
 - That the promotion of linking a free bottle of Coca Cola with a purchase of a bottle of spirits will encourage excessive consumption of alcohol
 - That the print ad and the website use imagery and approach which appeal to adolescents.
20. The backdrop for the first argument raised by the complainant is the decision of the Federal government to change the tax treatment of "ready to drink" (RTD) alcohol products. A subset of RTDs is described as "alcopops" which are considered popular amongst younger adults. A stated policy aim of the change in tax treatment was to use the price mechanism to discourage consumption of "alcopops" by younger drinkers.
21. The ABAC is framed against a backdrop of public policy considerations centered on the responsible use of alcohol. In very broad terms, alcohol advertising should occur in a manner which does not detract from public health policy developed by Australian governments through the Ministerial Council on Drug Strategy. Australian governments are involved in the ABAC scheme and the actual terms of the ABAC have been settled following a process of consultation and negotiation between industry and government.
22. It is a common marketing technique to promote the sale of a product through some form of promotion such as providing a "free" product in conjunction with the purchase of the principal product. In the case in point, the advertiser is promoting the sale of certain brands of spirit through the provision of a bottle of Coca Cola. This promotion is taken by the complainant to mean that the advertiser is endeavoring to circumvent the change in tax treatment on "alcopops". In response, the advertiser rejects that there was any intention that the promotion should encourage inappropriate or excessive consumption of alcohol. Further, it is argued that the spirits being promoted are more attractive to older, rather than younger, drinkers.

23. Section (a) of the ABAC provides both a “positive” and “negative” set of standards for alcohol advertising. Ads are required to present a balanced, mature and responsible approach to the consumption of alcohol. This positive requirement will be breached by ads with images and messages containing the “negative” standards in subsections (i) to (iv). The notions of “balance, maturity and responsibility” need to be understood in the context of the section and the Code as a whole.
24. The Panel does not believe that the ad breaches the Code in terms of the argued intention to circumvent the RTD tax decision. The “motivation” of the ad is disputed by the advertiser, but more importantly, the Panel can only judge the ad on its face and speculation as to whether there was a good or bad intention behind the ad is not able to assist in deciding if a Code provision has been breached. On its face, the use of a “give away” in the form used in the ad is not considered by the Panel as presenting an irresponsible approach to alcohol consumption.
25. The second issue is whether the use of the promotion device will encourage excessive consumption of alcohol. The Panel has considered this point in several previous determinations (e.g. Nos 39/08, 03/07). In these decisions, the Panel noted that promotions which in essence indicate a cost-saving can be achieved do not of themselves mean that a purchaser will consume the purchased product irresponsibly or engage in excessive consumption. Here, a consumer obtains a bottle of Coca Cola with the purchase of a particular brand of spirit. It is common to drink spirits with soft drink and it does not follow that a consumer will consume the alcohol product in a different manner or at an increased rate because a single bottle of soft drink is nominally “free”.
26. The final issue is whether the print ad and advertiser’s website have a strong or evident appeal to children or adolescents. The press ad and the website feature the use of a stylized image of a camel and the website features pop-up pictures of a camel. As stated earlier, the actual element of the website which attracted the complaint was removed prior to the complaint being received by the Panel and the Panel has been unable to view the actual image seen by the complainant. The Panel has proceeded on the basis that the print ad resembles the website element; however, the website most likely would have featured the additional element of the “pop-up” camel picture. The balance of the ad provides product information on price and the promotion element of the “free Coke”.
27. There are two elements of the ad which the Panel considered might give rise to an appeal to adolescents, namely the heading “Free Coke with JD and SC - That’s Cool!” and the use of the stylized camel image. The use of “That’s Cool” might be language with appeal to younger drinkers and the camel image is somewhat similar to children’s cartoon characters.
28. The preamble to the ABAC gives some guidance in how the Code is to be applied and provides that conformity of an ad is to be assessed in terms of its probable impact upon a reasonable person, taking its content as a whole. Applying this guidance, the bulk of the ad consists of pictures of products with

price information and taking the ad as a whole, the Panel does not believe sections (a) (ii) or (b) can be said to be breached.

29. While the Panel has not held the print ad or the element of the website complained of in breach of the ABAC, the advertiser is strongly encouraged to become a signatory to the ABAC scheme and submit its website to pre-vetting review. The advertiser would benefit from independent assessment of its website in terms of its stated intention to deliver high standards in its advertising.
30. The complaint is dismissed.