

ABAC

**ABAC Complaints Panel
Determination No: 60/07**

COMPLAINT of Kevin Paley

**Product: Tooheys New
Advertiser: Lion Nathan**

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

3 September 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a television advertisement for the alcohol beverage “Tooheys New” by Lion Nathan (“The Advertiser”).

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 in specific locations e.g. near schools.
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 pro forma reply-paid card dated 20 June 2007 which was received by the ABAC Adjudication Panel on 28 June 2007.
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. Advertisers are required to respond to questions to answer within 10 days. In this case the Advertiser's response was received 11 days late. Accordingly, this complaint has been determined outside 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 granted to the advertisement (UN37/07).

The Advertisement

9. The complaint refers to a television advertisement.
10. The advertisement features a street party with a range of people and brightly coloured inflatable "tallmen" which dance in a synchronised dance routine to the soundtrack of Tom Jones's "Just Help Yourself".
11. A Toohey's New truck drives down the street and the operators of the "tallmen" push them into position to surround the truck, where they continue to dance, then bend over and rise up clutching Toohey's New beer.
12. Men climb into the truck and unload kegs of beer, watched by the Toohey's New stag.
13. Beer is poured from the kegs and the people in the street drink and dance.
14. The final scene is a giant inflatable glass of Toohey's New which is inflated on the front lawn. The ad concludes with the strap line "For the love of beer".

The Complaint

15. The complainant argues that the advertisement:
 - a) Does not present a mature, balanced and responsible approach to drinking (for example, it encourages excessive consumption or underage drinking);

- b) Has a strong or evident appeal to children or underage young people;
 - c) Suggests that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment (for example, alcohol contributes to sporting, sexual or social success, or is a necessary aid to relaxation);
 - d) Depicts a direct association between the consumption of alcohol (other than low alcohol beverages) and the operation of a motor vehicle, boat or aircraft, or the engagement in any sport or particularly hazardous activity;
 - e) Challenges or dares people to drink or sample a particular alcohol beverage (other than low alcohol beverages) or contains an inducement to prefer an alcohol beverage because of its higher alcohol content.
16. The suggestion that the advertisement encourages underage drinking is the subject of the ABAC combined determination 46/07, 47/07 & 52/07 dated 16 May 2007 and will not be considered in this determination.
17. The complainant has not supplied any reasons to support his contention that the advertisement breaches each of these sections of the ABAC Code.

The ABAC

18. The ABAC provides that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to consumption of alcohol beverages and accordingly-
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii)
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages;
 - b) ...
 - 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;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement;...
 - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor

vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) 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;..
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content;

Argument in Favour of the Complaint

- 19. The complainant has not supplied any reasons to support his contention that the advertisement breaches each of the sections of the ABAC Code listed in the complaint.

The Advertiser's Comments

- 20. The Advertiser responded to the complaint by way of letter dated 23 July 2007 and denies the advertisement is in breach of the ABAC Code.

The Panel's View

- 21. The Panel has now dealt with several recent complaints which have been received by means of a "postcard" which invites a person to tick a box nominating a section of the ABAC which it is contended is breached by an advertisement. The card provides no space for complainants to actually describe the element of an ad which has concerned them. Accordingly, the Panel does not have the benefit of being able to specifically address the points of concern troubling a complainant.
- 22. In this case Mr Paley has ticked every box relating to a section of the ABAC. This, in effect, is asking the Panel to "post vet" the advertisement against the ABAC standards. As explained earlier, an important feature of the ABAC scheme is a "pre-vetting" of an advertisement by an independent assessor prior to the advertisement being broadcast or published. The aim of the pre-vetting process is to identify and overcome difficulties that may exist in alcohol advertising before the ad is used.
- 23. The complaints process is intended to provide an avenue for a particular element of an ad to be looked at again when an ad causes a concern for a member of the viewing public. Initiating a complete review of all aspects of an advertisement against each of the ABAC standards is, of course, possible, but would be very unusual. Indeed, this appears to have been the only time the Panel has been called upon to do this task due to a complaint identifying each section of the ABAC as a ground of concern.
- 24. It is useful to explain, therefore, the relationship between the pre-vetting process and the complaints process as part of the wider ABAC scheme. Pre-vetting is conducted by an assessor who is separate and independent of the members of the ABAC Adjudication Panel. The role of pre-vetting is to provide advice to advertisers and their advertising agencies on the consistency of a proposed advertisement with the ABAC and the AANA Code of Ethics. Unless approved by

the pre-vetting process, an ABAC scheme member will not proceed with an advertisement.

25. The pre-vetting process is separate and distinct from the complaints process. While the Panel considers if pre-vetting clearance has been given to an advertisement, the decision of the pre-vetting assessor does not finally settle an issue where a complaint has been made. The Panel's role is to consider a public complaint, take account of the nature of the concern expressed by the complainant and the advertiser's response; and then make a determination on whether the complaint should be upheld or dismissed.
26. The Panel convened a hearing to canvass what position it should take in relation to the complaint. The Panel will be seeking a ruling from its Management Committee as to the future handling of complaints which in effect seek a post-vetting of an entire advertisement, without indicating any actual grounds of concern about the advertisement. At this point, the Panel has resolved to act consistently with the overall structure of the ABAC Scheme by not engaging in a post-vetting exercise. Rather, the complainant will be invited to lodge a fresh complaint which specifies actual concerns upon which the Panel can make a decision.
27. This means that the Panel is dismissing the complaint in its current form, but will consider a further complaint if Mr Paley wishes to proceed.