

# ABAC

**ABAC Complaints Panel  
Determination No: 42/14**

**Complaint by Gail Hester  
Product: Tooheys New  
Advertiser: Lion**

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

12 August 2014

## **Introduction**

1. This determination by the ABAC Responsible Alcohol Marketing Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Tooheys New produced on behalf of Lion (“the Advertiser”) and arises from a complaint received on 10 July 2014.

## **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 ABAC Responsible Alcohol Marketing 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 the ABAC Scheme on 10 July 2014.
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 the advertisement.

### **The Advertisement**

9. The television advertisement was broadcast during the third game in the 2013 'State of Origin' rugby leagues series. It opens with a shot of a Canterbury-Bankstown Bulldogs flag. We then see a sign on a shed with the Bulldogs logo and the text "Davo's Man Cave" and then shots of the inside of the shed where a man is wearing and surrounded by Bulldogs paraphernalia as a voiceover says "It doesn't matter if you do it in a man cave".
10. We then see a van with the Parramatta Eels logo painted on the side and its owner wearing team colours standing in front of the van as the voiceover continues "in your van".
11. The scene changes to a living room where three people are watching an NRL game on television wearing Manly Sea Eagles scarves and jerseys. They cheer and celebrate as their team scores a try on the television and the voiceover continues "on your couch".
12. We then see a South Sydney Rabbitohs supporter. His face and beard are painted in their colours, and he wears a team jersey as the voiceover continues "with a painted face". He is then shown walking with another Rabbitohs fan holding the team flag as they chant 'South Sydney'.

13. The scene changes to a crowd of Penrith Panthers fans in supporter clothing, waving flags and cheering '*Panthers*' as they walk towards a game. The voiceover continues "Whatever it is just get behind your team".
14. We then see several fans in succession, dressed in supporter clothing and saying '*Newcastle*' and '*Go the Knights*'. Then we see the Parramatta Eels fan with his van who cheers '*Go Parra*' and then back to the fan in his Bulldogs man cave who pulls a Tooheys New out of his fridge as the voiceover continues "with your favourite cold one in your hand".
15. We then see a close-up of a bottle of Tooheys New being held by someone on the sidelines of a sporting game and then a crowd on the sidelines and a player in the goalposts and a close up of a man drinking Tooheys New from a can as we hear the game continuing in the background and the voiceover continues "our passion, our game, our beer".
16. In the final scene the background is a shot of an empty footy field. The voiceover says "Tooheys New for the love of footy" as a schooner of Tooheys New appears with the tagline '*For the love of footy*'. The logos of the six NRL clubs of which Tooheys New is an official sponsor also appear across the screen.

### **The Complaint**

17. The complainant is concerned that:
  - Young rugby league players stay up late to watch the State of Origin telecast (one of the biggest rugby league games of the season) and are drowned in beer advertising in the advertisement identified and on player's jerseys and on-field signage, telling them its good to drink beer and play footy;
  - Their footy heroes are encouraging them to continue the anti-social behaviours associated with booze and footy culture, ie "Tooheys Blue – for the love of footy";
  - All alcohol advertising should be banned in the same way cigarette advertising was banned.

### **The Code**

18. Part 3 of the ABAC provides that:
  - (a) A Marketing Communication must NOT:
    - (i) show (visibly, audibly, or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
    - (ii) show (visibly, audibly, or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
  - (b) A Marketing Communication must NOT:

- (i) have Strong or Evident Appeal to Minors;
14. A Definition in part 4 of the ABAC provides that Strong or Evident Appeal to Minors means:
- (i) likely to appeal strongly to Minors;
  - (ii) specifically targeted at Minors;
  - (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
  - (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
  - (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

#### **The Advertiser's Comments**

15. The Advertiser responded to the complaint and questions posed by the Panel on 1 August 2014. The principal points made by the Advertiser are:
- a. The Advertisement that is the subject of this complaint is a Television Advertisement for Tooheys New beer. It features a montage of imagery of adult fans from senior rugby league and NRL clubs in New South Wales, the home of the Tooheys brand, expressing their passion for their club. We open with a shot of a Canterbury-Bankstown Bulldogs flag. It belongs to a passionate supporter who has built an entire man cave dedicated to his club. We see him standing in his man cave surrounded by Bulldogs paraphernalia. We then cut to the shot of a Parramatta Eels logo. It's painted on the side of a van. We see its owner standing in front of the van which is painted with his club logo as a sign of his pride in his NRL club. We cut to a living room where three friends are watching an NRL game on television. They are Manly Sea Eagles supporters, decked out in the scarves and jerseys of their club. They cheer and celebrate as their team scores a try on the television. We see a South Sydney Rabbitohs supporter. His face and beard are painted in their colours, and he wears his team jersey as a sign of his passion for his team. We cut to him walking with another Rabbitohs fan holding the team flag. They chant their support of their team '*South Sydney*'. We see a crowd of Penrith Panthers fans in supporter kit, waving flags and cheering '*Panthers*' as they walk towards a game. We cut briefly to a series of fans at the stadium, dressed in their supporter gear and cheering on their teams. '*Newcastle*'. '*Go the Knights*'. We then cut back to our Parramatta Eels fan with his van who cheers '*Go Parra*'... ...and back to our fan in his Bulldogs man cave who pulls a cold Tooheys New out of his fridge. We cut to a close-up of a bottle of Tooheys New being held by a fan on the sidelines of a local footy game in Oberon. We see the crowd of fans who have come down to this local ground to cheer on their local senior football team. We cut to one of the local senior rugby

league players standing in the goalposts. We then cut to a close-up of a man drinking Tooheys New from a can with the sound of the game in the background. We roll to the end frame. The background is a shot of an empty footy field. A schooner of Tooheys New appears with a lock-up that says 'For the love of footy'. The logos of the six NRL clubs which Tooheys New is an official sponsor of appear across the screen.

- b. Lion does not consider that the Advertisement breaches any section of the ABAC Responsible Alcohol Marketing Code (ABAC Code) or any other advertising code.
- c. The Guidance Notes for the ABAC Code, outline that alcohol marketing cannot show or encourage:
  - i. Excessive or rapid consumption of alcohol;
  - ii. misuse or abuse of an alcohol beverage;
  - iii. alcohol related irresponsible or offensive behaviour;
  - iv. a challenge or dare to consume alcohol; or
  - v. emphasise the strength or intoxicating effect of an alcohol beverage to encourage higher consumption.
- d. Nowhere within the Advertisement are any of the behaviours and activities listed above depicted. All of the people shown in the Advertisement are clearly over 25 years of age, and it is not implied or depicted that any adult will consume more than two standard drinks per day. All of the activities and behaviours by the sports fans depicted would be deemed by a reasonable member of the community not to be 'offensive' and to be in line with normal activities for an adult supporting their sports team to partake in – regardless of the presence of alcohol. Additionally, for the first half of the Advertisement there is no alcohol shown to be consumed at any stage, and where it is consumed in the second half of the Advertisement it is depicted with an adult enjoying a responsible occasion.
- e. The Advertisement is focused around Tooheys New as a brand sharing its passion for local senior NSW football with adult fans, and celebrating the great moments that make up supporting your local footy club – with or without a 'cold one in your hand'. Tooheys New as a brand is a well-known and long-standing supporter of senior rugby league clubs and teams in New South Wales, including very long-standing partnerships with the senior clubs shown:
  - i. Manly Sea Eagles – More than 25 years;
  - ii. Parramatta Eels – More than 30 years;
  - iii. Penrith Panthers – More than 30 years;
  - iv. South Sydney Rabbitohs – More than 25 years.

Tooheys New also sponsors a number of regional senior rugby league clubs and teams. In the context of this significant brand sponsorship history, it is appropriate for Tooheys New to promote and celebrate 'sharing its passion for senior football' with consumers. This was also relevant to the context of the broadcast placement for the Advertisement during State of Origin 2014.

- f. It is not implied at any point within this Advertisement that you must consume alcohol to be a rugby league supporter, and in fact there is a strong balance of fans supporting their teams with and without the presence of alcohol shown. During the entire first half of the Advertisement no alcohol is consumed at all, and where it is consumed it is depicted with an adult enjoying a drinking occasion responsibly.
- g. The 'spirit' and 'intent' of Section A of the ABAC Code is to ensure the 'Responsible and moderate portrayal of Alcohol Beverages'. The benchmark for consumption provided is the *2010 Australian Guidelines to Reduce Health Risks from Drinking Alcohol*. None of the behaviour featured by players or supporters in this Advertisement breaches the letter, intent or spirit of Section A of the ABAC Code – there are no depictions of irresponsible or anti-social behaviour around the rugby league occasions shown. All scenes shown, with and without alcohol present, demonstrate a fun and social environment where behaviour is in line with social standards and drinking is in moderation. It is beyond the rightful scope of the letter, spirit or intent of the ABAC Code to consider whether the consumption of alcohol 'fosters a culture of irresponsible and anti-social behaviour by prominent football players'.
- h. Considering the Advertisement as a whole it is very clearly targeted to appeal to its target audience – adult rugby league supporters in New South Wales. The Guidance Notes for the ABAC Code outline the following tests for determining 'Strong and Evident Appeal to Minors':
  - i. Likely to appeal strongly to Minors;
  - ii. specifically targeted at Minors;
  - iii. having a particular attractiveness to Minors beyond the general attractiveness it has for an Adult;
  - iv. using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; and
  - v. using brand identification, including logos, on clothing toys or other merchandise for use primarily by minors.
- i. The content shown with the Advertisement does not breach any of these tests. All of the fans depicted are clearly presenting as individuals who are 25 years age or over. When some are depicted in their supporters gear they are shown in a way that would not give them strong appeal to Minors and in the company of other adults shown in the context of an adult occasion. Those adult fans dressed in supporters gear are shown wearing their club colours, that a reasonable

member of the community would deem a natural and regular activity for showing their support. Nowhere are there 'imagery, designs, motifs, animations or cartoon characters' shown that would appeal strongly to Minors. Additionally no Minors whatsoever are depicted, including in incidental roles, in any of the scenes showing fans supporting local senior football. The couple of senior football players who are depicted are not identifiable to anyone watching the Advertisement but they also clearly present as adults over 25 years of age.

- j. There are no depictions within this Advertisement of sponsorship items or clothing bearing the Tooheys New brand logo or name.
- k. The Advertisement was appropriately placed to reach the intended target audience of adult NSW rugby league supporters. Across the 2014 State of Origin Series, 85 per cent of the television audience in NSW were over 18 years of age, and 86 per cent of the national television audience was over 18.
- l. As a responsible advertiser, Lion has demonstrated a long-standing commitment to supporting and adhering to the ABAC Responsible Alcohol Marketing Code (ABAC) and Advertising Standards Bureau (ASB).
- m. In acknowledgment of Lion's position of support for ABAC and ASB, Lion maintains strict internal and external processes. As well as upholding the standards outlined within these advertising codes, Lion maintains internal best practices which often exceed these requirements.
- n. As part of Lion's marketing approvals process, this Advertisement for Tooheys New was subject to:
  - i. Review and advice from external creative agencies well-versed and experienced with ABAC and ASB requirements;
  - ii. independent legal review and advice from an external legal team specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation;
  - iii. review by Lion's internal marketing compliance team to ensure its adherence to Lion's internal best practice policies; and
  - iv. review and approval through the AAPs pre-vetting service at both concept and final stages to ensure its compliance with community standards and relevant advertising codes. I can confirm that each of the above requirements was complied with in relation to the Advertisement, prior to its broadcast.

### **The Panel's View**

- 19. The State of Origin rugby league series is a major annual sporting event, which attracts an extensive television audience. While watching the broadcast of the third game of the series in 2014, the complainant became concerned about the sheer volume of various alcohol brand advertisements, including a television commercial from Tooheys under the name of the strapline, "For the love of footy".

20. The ABAC expressly recognises that alcohol companies sponsor sports teams and the Code provides that the terms of sponsorship arrangements, and the display of brand names and logos on team uniforms and signage at venues is beyond the scope of the Code. Other advertising and marketing communications which reflect the existence of sponsorship arrangements, however, such as the Tooheys television commercial are within the scope of the Code and must meet Code standards.
21. While the complainant nominates the specific television commercial for complaint, it seems the underlying concern is less with the content of the advertisement than with the fact that alcohol advertising occurs at all during the State of Origin games. In the complainant's view, it would be desirable that alcohol advertising was banned outright, as occurred with cigarette advertising some decades ago. This is, of course, a valid opinion for the complainant to hold, but it is beyond the jurisdiction of the ABAC Panel to make such a public policy decision. Rather, it is a matter for government to determine if advertising of alcohol products should be prohibited.
22. The Panel has a much more specific role and that is to assess the advertisement complained about against Code standards in light of the concerns expressed in a complaint. In this case, the concerns can be summarised as:
  - a. Under 18 year olds are watching the State of Origin game; and
  - b. The advertisement contributes to a "booze and footy" culture which the complainant associates with anti-social behaviour.
23. It is not a breach of the Code for alcohol advertisements to be shown in conjunction with live sports events. While the generic free to air television code does place restrictions on when alcohol advertising can be broadcast, it is clear that these restrictions were not breached by broadcasting the commercial while the State of Origin game was being played. The issue for the Panel, therefore, is whether the content of the "For the love of footy" advertisement breaches the relevant Code standards dealing with appeal to minors and the responsible and moderate portrayal of alcohol beverages.
24. The Code provides that a marketing communication (which includes a television advertisement) must not have strong or evident appeal to minors (a person under the age of 18). Strong or evident appeal will occur if an advertisement can be said to likely appeal strongly to minors, or specifically target minors, or a have a particular attractiveness for minors beyond what it has for an adult.
25. The Panel does not believe the advertisement can be said to have strong or evident appeal to minors. In reaching this conclusion, the Panel has noted:
  - a. Each individual featured in the advertisement as a committed football fan is mature and generally well in excess of 18 years of age;
  - b. No person in the advertisement appears to be under the age of 25, or engages in activities or behaviors which could be reasonably said to be strongly appealing to minors;

- c. While rugby league as a sport is played across many age groups and is popular with younger people, the theme of the advertisement is not directed towards the players of football but the supporters of senior level rugby league and a number of specific teams;
  - d. Taken as a whole, the advertisement does not have strong or evident appeal to under 18 year olds.
26. The second specific concern raised by the complaint is that the advertisement encouraged a “booze and footy” culture which has contributed to anti-social behaviour. While it is true that there have been a number of high profile incidents involving well known footballers engaging in anti-social behaviour where it appears that alcohol misuse has been a factor, it would be unreasonable to take the current advertisement as endorsing, encouraging or contributing to such behaviours. The context of the advertisement depicts only limited and moderate use of alcohol by fans and no use by players. It would therefore be a very long bow to draw to say that the advertisement was inconsistent with the requirement that an alcohol advertisement not encourage irresponsible or offensive behaviour related to the consumption or presence of alcohol.
27. Accordingly, the complaint is dismissed.