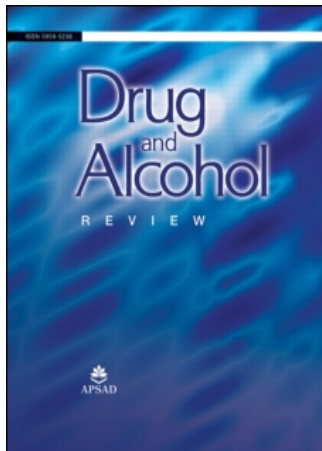


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How effective is the revised regulatory code for alcohol advertising in Australia?

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Abstract

Introduction and Aims. Australia, like several other countries, has a self-regulatory approach to advertising. However, in recent years the effectiveness of the regulatory system has been questioned, and there have been increasing public calls for an overhaul of the system. Following a formal review in 2003, the Ministerial Council on Drug Strategy proposed a revised Alcoholic Beverages Advertising Code (ABAC), which came into operation in 2004. **Design and Methods.** The purpose of the present study was to examine the effectiveness of this revised system. From May 2004 until March 2005 television and magazine advertising campaigns were monitored for alcohol products. Over this period 14 complaints against alcohol advertisements were lodged with the self-regulatory board, and the authors recruited an independent expert panel to assess the advertisements and complaints. **Results.** In eight of the 14 cases a majority of the judges perceived the advertisement to be in breach of the code, and in no cases did a majority perceive no breach. Conversely, however, none of the complaints were upheld by the Advertising Standards Board (ASB) and only one by the ABAC Panel. **Discussion and Conclusions.** The results of this study suggest that the decisions made by the ASB in relation to complaints against alcohol advertisements are not in harmony with the judgement of independent experts, and that the ASB may not be performing an adequate job of representing community standards or protecting the community from offensive or inappropriate advertisements. Further, it appears that the revisions to the ABAC code, and associated processes, have not reduced the problems associated with alcohol advertising in Australia. [Jones SC, Hall D, Munro G. How effective is the revised regulatory code for alcohol advertising in Australia? *Drug Alcohol Rev* 2008;27:29–38]

Key words: alcohol advertising, complaints process, effectiveness, regulation.

Introduction

Alcohol advertising regulation in Australia

The Alcohol & Public Policy Group report that countries with greater restrictions on advertising have fewer alcohol-related problems. Further, they conclude that industry self-regulation tends to be largely ineffective, and that an effective system requires an independent body with the power to veto advertisements, rule on complaints and impose sanctions. Of 119 countries surveyed in 1996, five have a complete ban on alcohol advertising, 45 restrict alcohol advertising by statutory legislation, 21 combine statutory legislation with self-regulation, 17 are solely self-regulated, and the remainder (primarily developing countries) have no or limited controls [1,2].

Australia, along with the United Kingdom, is one of those which utilise only industry self-regulation.

Self-regulation of advertising is the favoured option of industry groups in most countries, with self-regulatory systems being proposed readily by industry groups whenever there is a fear of tighter or stronger government regulation [3–5]. The International Centre for Alcohol Policies (which describes itself as a not-for-profit organisation supported by 11 major international beverage advertising companies) reports that ‘one sign that the beverage alcohol industry prefers self-regulation to government controls is how it behaves when it is threatened with government intervention’ [2]. Kuunders provides an explanation of why the industry is a proponent of self-regulation of alcohol advertising:

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'...they are very keen on a form of regulation that evaluates the way a single marketing practice is promoted and published, rather than regulation that in general restricts the volume of commercial communication of alcohol marketing... as soon as either government or society at large call for time limits or bans on advertising, the advantages of "self regulation" as opposed to "legislation" are mobilized' [6].

In Australia, two industry self-regulation codes apply to alcohol advertisements. Following the demise of the Advertising Standards Council in 1996, the major industry body, the Australian Association of National Advertisers (AANA) developed the Advertiser Code of Ethics—which applies to all forms of advertising and covers issues such as taste and decency, and established the Advertising Standards Board (ASB) and the Advertising Claims Board (ACB) to deal with complaints and breaches of the code. Section 2 of the Australian Association of National Advertisers (AANA) advertiser code of ethics, which covers advertising across all product categories, states that advertisements shall:

- 2.1 not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

- 2.2 not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.3 treat sex, sexuality and nudity with sensitivity to the relevant audience, and where appropriate, the relevant programme time zone.
- 2.4 for any product which is meant to be used by or purchased by children not contain anything which is likely to cause alarm or distress to those children.
- 2.5 use only language which is appropriate in the circumstances and strong or obscene language shall be avoided.
- 2.6 not depict material contrary to prevailing community standards on health and safety.
- 2.7 comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles.

The AANA additionally allowed the alcohol industry to separately develop its own code, the Alcoholic Beverages Advertising Code (ABAC) (see Table 1), and its own complaints management system, the Alcohol Beverages Advertising Code Complaints Adjudication Panel.

Both the Alcohol Beverages Advertising Code and the complaints management system operate under the

Table 1. *The Alcohol Beverages Advertising Code*

-
- (a) Must 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
 - (iv) must only depict the responsible and moderate consumption of alcohol beverages
 - (b) Must not have a strong or evident appeal to children or 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
 - (iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene
 - (c) Must 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
 - (iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation
 - (d) Must 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
 - (ii) any claim concerning safe consumption of low-alcohol beverages must be demonstrably accurate
 - (e) Must 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
-

structure developed by the AANA. However, in recent years the effectiveness of the regulatory system has been questioned [7,8] and there have been increasing public calls for an overhaul of the regulatory system [9,10]. Following a formal review of the ABAC by the Ministerial Council on Drug Strategy (MCDS) in 2003, the code was revised to improve its responsiveness and general accountability [11].

Consumer protection groups such as the Australian Drug Foundation argue that clauses (b) and (c) of the ABAC are regularly breached by advertisers, largely because there are no penalties for non-compliance [12], and that alcohol advertising promotes drinking to young people as cool, sexy and fun. Australian research with teenagers and young adults has shown that some advertisements are perceived by these groups to be targeted toward young drinkers and to convey the message that alcohol consumption offers 'self-confidence', 'sexual relationship success' and 'social success' [7].

The complaints process

Individuals who are concerned about an alcohol advertisement can lodge a complaint with the Advertising Standards Board, either in writing or via e-mail. All complaints received by the ASB against alcohol advertisements must be forwarded to the ABAC Complaints Adjudication Panel for determination. However, only 59% of advertisements complained against went before the full panel in 2005, with the remainder determined by the Chief Adjudicator to address issues 'solely within' the AANA Code [13]. Alternatively, complainants can forward their objection direct to the ABAC Panel.

In 1999, prior to changes in the ABAC, a study was conducted whereby decisions made by the Advertising Standards Board were compared to decisions made by an independent panel of experts recruited for the purpose of examining the effectiveness of the self-regulatory system. This review (of all nine alcohol advertisements against which complaints were lodged with the ASB between May 1998 and April 1999) found that a majority of the independent judges perceived seven of the nine advertisements to be in breach of one or more clauses of the code; however, none of the complaints were upheld by the ASB [8].

The present study

The present study was designed to examine whether the introduction of the revised ABAC code, and the stated industry position, resulted in improvements in the degree to which the self-regulatory system protects consumers from offensive or inappropriate alcohol advertisements. The objectives of the study were

to monitor alcohol advertising campaigns and to evaluate:

1. the extent to which industry ratification of the code and the existence of the pre-vetting system prevents the dissemination of advertisements which appear to breach the code;
2. the extent to which the new code is applied by the ABAC in response to complaints about alcohol advertisements, and results in the removal of campaigns which appear to breach the code; and
3. the extent to which the AANA code is applied by the ASB in response to complaints about alcohol advertisements which fall outside the ABAC (but within the AANA code of ethics), and results in the removal of campaigns which appear to breach the code.

Method

Monitoring of alcohol advertising campaigns

From May 2004 until March 2005 television and magazine advertising campaigns (national and regional) were monitored for alcohol products. The television advertisements were monitored via a national commercial media monitoring service, which has been operating since 1981 to capture and catalogue the first execution of all new advertisements in Australia and has a library of over 5 million advertisements. The magazine advertisements were monitored by manually examining all issues of the top 20 magazines in Australia, based on circulation figures for the preceding 6 months, compiled by the Audit Bureau of Circulation [14].

A research assistant collated all advertisements and commercials [for the first three months these were also independently coded by one of the authors (D. H.)]. The research assistant was provided with detailed training on the content of the code and instructed to identify any advertisements that could be considered to be potentially in breach in any way. The research assistant and D. H. then prepared a monthly summary for the other two authors, comprising advertisements and commercials which potentially breached the codes of the ABAC and the ASB. The authors reviewed these summaries independently, and determined which advertisements warranted complaints.

Lodgement of complaints

For those advertisements identified that were considered in breach of the codes by the authors during the monitoring period, written complaints were lodged

with the Advertising Standards Board. An equal number of complaints were made by the authors and by laypeople recruited specifically for this purpose. The laypeople were a convenience sample of adults who were not involved in the study or in any public health or alcohol-related research. They were provided with a copy of the advertisement and the codes and asked to write a complaint *if* they felt the advertisement was inappropriate, using their own words and opinions, and to provide a copy of the complaint letter and response to one of the authors (D. H.). Where possible, a complaint was made by the authors and a layperson for similar advertisements to determine if there were any differences in application of the ABAC or AANA code by the relevant bodies in response to alcohol advertisement complaints from the general public versus recognised experts. Seven complaints were made by the authors and seven complaints were made by laypeople.

Expert assessment of the advertisements and decisions

The authors recruited a panel of six expert judges to independently review the advertisements and complaints. This panel consisted of two public health academics, two advertising/marketing academics and two communications/media academics; the deliberate recruitment of academics from a range of disciplines was undertaken to reduce bias in the assessments as a function of judges' academic backgrounds. Academics were recruited at the level of Associate Professor or above from both metropolitan and regional universities throughout Australia. The judges were provided with copies of the advertisements as well as copies of the complaints and where available, information or feedback from the ASB and ABAC. They were *not* informed of the decisions made by the ASB and ABAC, but provided merely with all possible information available such as manufacturers' responses to complaints and other deliberations of the ASB/ABAC in relation to the advertisements.

The expert judges completed a questionnaire independently to determine whether any of the advertisements breached clauses of either code and to what extent. They were also given the opportunity to provide written comments on the reasons for their decisions on the advertisements.

Results

Monitoring of alcohol advertising campaigns

Magazine advertisements. A total of 260 alcohol advertisements were found in magazines, including 118 repeats of advertisements (i.e. a total of 142 different advertisements) during the 6 months of data collection.

Advertisements were coded for product category, advertisement type, brand, magazine source and date as well as frequency/repeats. For product category there were 128 advertisements for wine, 109 for spirits and 23 advertisements for beer. For advertisement type there were 154 coded as direct advertisements, 47 coded as competitions, 36 coded as advertorial, 19 coded as product promotion and four coded as product placement. The largest number of advertisements was recorded in November (59 advertisements), followed by December (40), August (34) and September (33); and the month immediately following the introduction of the revised code had the lowest number (18).

Television advertisements. There were 65 advertisements identified over the tracking period (these were primarily launch advertisements, i.e. they were broadcast for the first time, as the brief to the media monitoring agency was to record each advertisement once). These were coded in a similar manner to magazine advertisements. For these television advertisements, 27 were for beer, 20 for spirits and 18 for wine.

Lodgment of complaints

A total of 14 advertisements were identified that were considered in breach of the codes by the authors during the monitoring period: eight television commercials and six magazine advertisements.

Description of the advertisements and the complaints

Table 2 provides a brief description of each of the advertisements and the reason for the complaint. In the majority of instances the description and the complaint is taken verbatim from the ASB's decision record (i.e. the advertisement is described in the ASB's words and the case number provided); where the ASB did not provide a description or decision record, we have provided such as per the complaint letter sent to the ASB (in these instances, the description is *not* contained within quotation marks).

Outcomes of the complaints

For each advertisement that is the subject of a complaint, there are three parties who may be required to make a decision or take an action in response to the complaint. These are the two regulatory bodies (the Advertising Standards Board and the Alcohol Beverages Adjudication Committee) and the advertiser themselves.

Of the 14 advertisements, the ASB upheld *none* of the complaints. Seven of the complaints were dismissed (i.e. the Board determined that they did not breach any clauses of the AANA Code); five were not adjudicated

Table 2. Descriptions of the advertisements and complaints

Advertisement	Description	Complaint
Toohey's New 'Fan Cam' (television)	At a football match, fans make comments to the 'Fan Cam'. A range of people while drinking the product make comments such as giving tips to the players as well as some silly antics. The final comment is from a man who is asking 'Have you got the car keys?'	'We believe that this television commercial breaches the Alcohol Beverages Advertising Code Section D Part (i) as it depicts consumption of alcohol beverages before the operation of a car'
Toohey's New 'Cane Toads' (television)	Three young men approach the Queensland Border (from the NSW border) and use golf clubs to hit cane toads back over QLD border	'We believe that this television commercial breaches the Alcohol Beverages Advertising Code Section A part (iii) as it promotes offensive behaviour, and that it breaches the Australian Association of National Advertisers Code of Ethics Section 2.2 as it is an unnecessary portrayal of violence'
XXXX 'Boat on the Beach' (television)	'The advertisement depicts a group of male friends on a moored boat drinking 'Golds'. They invite a male and female backpacker onto the boat to join them. The male backpacker advises that the attractive female backpacker speaks no English. At the same time, the men are distracted by her climbing aboard in her bikini. One of the males on the boat wonders why the male backpacker would go out with her if she doesn't speak English and in response one of his friends pushes him off the boat'. ASB 18/04	'I find this ad offensive because it is sexist. The woman in this ad is treated by the group of men as a sex object' 'In a time in society where breast cancer is very prevalent, and young women struggle with their appearances and identities, is this the kind of blatant sexism, what represents Australian men?'
Victoria Bitter 'Kebab' (television)	'The advertisement features a group of male friends out in the pub drinking Victoria Bitter. They end the night in hospital from the garlic in the lamb kebabs they ate after drinking'. ASB 353/04	'This advertisement shows that it is ok for men to neglect their wives (or partners) while they drink a beer or many. This is one of the main areas that causes domestic violence. . .' '...the advertisement promotes binge drinking and domestic violence in a light hearted manner'
Boag Premium 'Lady on a Car' (television)	'The advertisement features a woman leaning up against the bonnet of a male's Mercedes-Benz motor vehicle. The male deliberately uses the car aerial to lift and undo the woman's dress. She is wearing a bikini underneath and proceeds to get a bottle of Boags beer from a nearby bar, before walking over to the car and using the Mercedes car tag to open the bottle. She then climbs up onto the bonnet of the car in her bikini to drink the beer'. ASB 333/04	'The ad communicated that offensive male sexual behaviour is appropriate when/after/ because of this beer (i.e. inappropriate sexual advances)' 'The ad featured sexual exploitation of a compliant woman. . . fetching beer for a man that had appeared to be accosting her in a car. It also shamed the female by making her walk in public in a state of undress for the obvious gratification of males' 'What really disturbs me is the implication that if a man is in an expensive car then a woman will allow him to behave badly and will respond favourably in a sexual fashion' '...I find this ad offensive on the grounds that it portrays the woman in the ad in a sexually objective and explicit manner. The woman does not speak and is only there to provide sexual titillation for the man'
Victoria Bitter 'Spectator Sports' (television)	'This television advertisement depicts two men walking into the living room of a modest home. The voiceover explains that the remote control is the greatest sporting apparatus ever invented and that it goes hand in hand with the 'best cold beer'. The men are then shown to sit down on the	'The women are portrayed as sex-objects, while the other sporting scenes in the commercial portray men in a serious, competitive nature. . . The commercial is sexist and discriminating'

(continued)

Table 2. (Continued)

Advertisement	Description	Complaint
	couch and cycle through the range of sporting programs displayed on the television, repeatedly retuning to a channel that shows women in an aerobics class' ASB 63/05	
Carlton Midstrength 'Removalist' (television)	'This television advertisement features a removal truck backing into a driveway. One of the removalists stands behind the truck directing the driver as an elderly couple look on. The removalists then raise the hydraulics on the truck causing the couple's possessions to be strewn across the driveway. The elderly couple looks on in shock. The truck then drives away with more possessions falling out of the back. The song 'stay just a little bit longer' plays in the background. The advertisement then cuts to a scene showing the removalists enjoying a Carlton Mid-Strength beer' ASB 53/05	'The advertisement denigrates and demeans older persons. It's insulting and discriminatory against persons of a mature age. This ad sends clearly the message that anyone . . . can bully and discriminate against them' 'At the best, if this were to promote anything it would be irresponsible drinking and abuse and disrespect of the elderly. . . .The idea 'even as a fictional narrative' of victimizing the elderly in order to sell alcohol is just plain wrong'
Carlton Midstrength 'Funeral' (television)	'The advertisement depicts the closing of a funeral. The pall bearers raise the coffin onto their shoulders and proceed to carry it out of the church. As soon as they leave the church the pall bearers start to run (with the coffin still on their shoulders). The final scene shows the pall bearers sitting down to enjoy a beer. The song "Stay just a little longer" plays in the background' ASB 52/05	'I find this ad disrespectful and insensitive to anyone who has lost a loved one in the past . . . it is humour of the worst taste' ' . . .this commercial shows absolutely no respect for the situation it is representing' 'I find this advert extremely disrespectful and offensive to the church, people's beliefs and to those having recently lost family and/or friends. This advert must cause those people a great deal of distress as it makes a mockery of their feelings in such a situation, showing great disrespect to the deceased' 'Those ads condone thoughtless drinking and give alcoholics what they want—approval to keep on drinking'
Tiger Beer 'Easy Tiger' (magazine)	The promotion outlines in a cartoon form how to modify a vehicle so it becomes totally illegal by removing and adding bits. Then describes stocking the modified van with alcohol and driving it to place as a 'ready made party' The promotion then offers readers the chance to have a 'Kombi packed to the gunnels with Tiger. . .' beer turn up to their backyard for a ready made party that 'will be cranked for the whole suburb to hear'. And a 'troupe of delightful lady-folk to come serve the party'	'If I was to enter this contest and win in all probability I would be visited by the Police and may even end up in a Court. Anybody attempting to create the mobile bar and use it would undoubtedly end up with a real if not serious legal issues. Encouraging this sort of activity is irresponsible'
St Agnes Brandy 'Give it Your Best Shot' (magazine)	'The advertisement is a print advertisement which features a man standing against a wall with a woman standing in front of him holding a shot glass of St Agnes Brandy. The tag line is "Interested? Give it your best shot"' ASB 371/04	'This advertisement could be considered in breach as it suggests that by drinking St Agnes Brandy that you would have greater confidence to go after what you want, and implies that by drinking the product you would have greater sexual/social success'
Kahlua 'Alluring Kahlua' (magazine)	This is a competition to win Kahlua product and merchandise, however to enter the competition they ask their audience to 'just tell us in 25 words or less why Kahlua helps you to pick up chicks'	'We believe that this magazine commercial is a breach of the ABAC section (c) depicting the consumption or presence of alcohol as contributing to social/sexual achievement.'

(continued)

Table 2. (Continued)

Advertisement	Description	Complaint
Frangelico 'Make it a habit' (magazine)	This advertisement features two women drinking cocktails in a summer and outside setting, standing behind a table with a bottle the product on it. The tagline of the advertisement is 'Make it a habit'	'This advertisement could be considered in breach of the Alcohol Beverages Advertising Code (a) section (i). . . Moreover, the advertisement describes the product as: "the ultimate accompaniment to good times" and "a bottle of Frangelico is this summer's essential ingredient" which is in breach of the Code part (c) section (iii) . . .'
Galliano 'Ralph promotion' (magazine)	This print promotion for Galliano Sambuca includes a series of photographs, where one of the photographs portrays a group of very young men certainly under age (the Famous Five). . . the prize of the promotion include a party 'where they (presumably the young men) will enjoy themselves alongside plenty of babes'	'Well, I feel a little bit concerned that Galliano is quite a strong liquor and I think it should not be promoted among teenagers. Moreover I found quite offensive the reference to "babes". And a thought comes to my mind. What are we really teaching our children? Is it to drink alcohol and consider girls only as "babes"?'
Frangelico 'Cosmo promotion' (magazine)	This print advertisement for Frangelico uses strongly sexual language ('sexy bed hair', 'leaves you feeling. . . irresistible') and images (lots of upper thigh, cleavage, and a suggestive expression, all while holding a glass of Frangelico) to make its point that Frangelico will be the turning point for really getting into a party mood. In fact, the text speaks for itself, 'to truly get in the mood, unwind with the heavenly taste of a Frangelico cocktail'	'The fact that on first glance this ad appears to be an article in <i>Cosmopolitan</i> , as it uses the same layout as the journalism (but in small type is identified as a 'Cosmopolitan Promotion') angers me further, as it is no doubt hoped that readers may interpret this ad as <i>Cosmo</i> advice I think we have enough concerns about young women's use and abuse of alcohol in our society without ads like this creating the impression that only Frangelico-drinking ladies will be sexy, irresistible, and in the true party mood'

(two because the advertisements were no longer running and three because they were 'once-off' promotions); and we did not receive a response on the remaining two (both once-off promotions). Note that some of the decisions regarding advertisements were based on complaints made previously to the ASB (i.e. not the complaints sent as part of the study) and that the ASB will only make a determination on an advertisement once (i.e. will not consider subsequent complaints or the number of complaints made about an advertisement). For example, in a letter dated 3 December 2004, in response to a layperson complaint, the ASB states: 'The Board has considered this advertisement previously, and determined that the complaint should not be upheld. I enclose a copy of the case report for your information. Having already considered this advertisement, the Board will not reconsider it' [15].

In the ASB correspondence, we were advised formally that five of the study complaints they received were referred to the Alcohol Beverages Adjudication Committee (although we have subsequently been informed that this occurred in all cases) who dismissed two of the complaints (Victoria Bitter 'Kebab' and Boag Premium 'Lady on a Car') and upheld one (St Agnes

Brandy 'Give it Your Best Shot'). Determinations from the ABAC on the other two complaints (Carlton mid-strength advertisements) were not received by the authors; however, one of these advertisements ('Funeral') was withdrawn by the advertiser.

Interestingly, the two advertisements withdrawn by the advertisers ('Funeral' and 'Cane Toads') were withdrawn due to the large number of complaints received (30+ and 210 complaints, respectively).

For the only advertisement within the study against which a complaint was upheld (i.e. the St Agnes Brandy magazine advertisement), the advertiser agreed to modify the advertisement.

Expert judges' decisions

As shown in Table 3, of the 14 advertisements there were two which *all* the judges perceived to be in breach of one or more clauses of the codes; eight which the majority of the judges perceived to be in breach and four on which the judges were divided evenly as to whether or not there was a breach. That is, in none of the 14 cases did the majority of judges perceive that the advertisement was not in breach of one or more clauses of the AANA or ABAC codes.

Table 3. Comparison of decisions

ASB ref.	Advertisement name	ASB outcome	ABAC outcome	Advertiser response	No. judges reporting breach
N/A	Tooheys New Fan Cam	Not known	N/A	Discontinued	5/6
N/A	Tooheys New Cane Toads	Not adjudicated: advertisement not current	N/A	Withdrawn	4/6
18/04	XXXX Beer Boat on the Beach	Dismissed: not considered due to previous complaint	N/A	Continued	4/6
353/04	Victoria Bitter Kebab	Dismissed	Dismissed	Continued	5/6
333/04	James Boag Premium Lager	Dismissed: not considered due to previous complaint	Dismissed	Continued	6/6
63/05	Lady on car Victoria Bitter	Dismissed	N/A	Continued	3/6
53/05	Spectator sports Carlton Mid-strength Bitter	Dismissed	N/A	Continued	3/6
52/05	Removalist Carlton Mid-strength Bitter	Dismissed: not considered due to previous complaint	Not known	Withdrawn voluntarily due to no. of complaints	3/6
N/A	Funeral Tiger Beer	Not adjudicated: not current and one-off promotion	N/A	One-off promotion	4/6
371/04	Easy Tiger St Agnes Brandy	Dismissed	Upheld	Modified advertisement	5/6
N/A	Give it your best shot Kahlua	Not adjudicated: advertisement not current	N/A	One-off promotion	4/6
N/A	Alluring Kahlua Frangelico	Not known	N/A	One-off promotion	3/6
N/A	Make it a habit Galliano	Not adjudicated: not current and one-off promotion	N/A	One-off promotion	5/6
N/A	Ralph promotion Frangelico	Not adjudicated: not current and one-off promotion	N/A	One-off promotion	6/6
N/A	Cosmo promotion	Not adjudicated: not current and one-off promotion	N/A	One-off promotion	6/6

Unanimous breaches

Two of the advertisements were perceived to be in breach of one or more clauses of the codes by *all* the expert judges. These advertisements were: James Boag 'Lady on a Car' television advertisement and Frangelico 'Suits me at the Weekend' magazine advertisement/promotion.

Majority breaches

Four of the advertisements were perceived to be in breach of one or more clauses of the codes by *five of the six* expert judges. These advertisements which were seen to be in breach were: Tooheys New 'Fan Cam' television advertisement; Victoria Bitter 'Kebab' television advertisement; St Agnes Brandy 'Give it your best shot' magazine advertisement/promotion; and Galliano 'Ralph promotion' magazine advertisement/promotion.

A further four of the advertisements were perceived to be in breach of one or more clauses of the codes by

four of the six expert judges. These advertisements which were seen to be in breach were: Tooheys New 'Cane Toads' television advertisement, XXXX Beer 'Boat on Beach' television advertisement; Tiger Bitter 'Easy Tiger' magazine advertisement; and Kahlua 'Alluring Kahlua' magazine advertisement/promotion.

Hung jury

Finally, four of the advertisements were perceived to be in breach of one or more clauses of the codes by *three of the six* expert judges. These advertisements were: Frangelico 'Make it a Habit' magazine advertisement/promotion; Victoria Bitter 'Spectator Sport' television advertisement; Carlton Midstrength 'Funeral' television advertisement; and Carlton Midstrength 'Removalist' television advertisement.

As discussed above, the reason for having half the complaints lodged by the authors and the other half lodged by laypeople was to ascertain whether there were any differences in the decisions made by the regulatory

boards based on the perceived expertise of the complainant. However, as none of the complaints were upheld by the ASB and only one by the ABAC, such a comparison was not possible.

Discussion

Limitations

The limitations of the study need to be acknowledged. First, the independent judges saw only the advertisements against which complaints had been lodged; that is, they did not have other advertisements against which to compare those included in the study (for example, more innocuous alcohol advertisements or advertisements for other products). However, we believe that this is likely to have resulted in more moderate judgements rather than more punitive ones, as seeing only these (in our view) non-compliant advertisements would potentially have created a 'norm' of fairly extreme advertisements. Secondly, this study took place during a period when the regulatory authorities, and the industry, were under more scrutiny than normal and thus both the advertising and the responses to complaints may have been influenced by this situation. Thirdly, some may question the ethicality of submitting complaints with the intention of using the responses as part of the study (without notifying the advertising standards board of our intention). However, we would, in all likelihood, have submitted the complaints in our normal course of business without the study (as both CHI and ADF constantly monitor alcohol advertising and lodge complaints where breaches are detected); and more importantly, the Board was aware (as were alcohol advertisers) that the process was being monitored by the government.

It is interesting to note that when the then Commonwealth Minister for Health launched the ABAC, he said he would be 'monitoring advertising closely to ensure that the spirit of the code is upheld so that all alcohol advertising is responsible and reflects community expectations' [16].

The results of this study suggest the decisions made by the Advertising Standards Board, at least in relation to complaints against alcohol advertisements, are not in harmony with the judgement of independent experts, which is consistent with the findings from our earlier work [8]. Further, it appears that the revisions to the ABAC code, and associated processes, have not reduced the problems associated with alcohol advertising in Australia.

Similar to the process following the Alcohol Summit in Australia, when the Minister for Health in the Netherlands raised the prospect of a ban on alcohol advertising between 6.00 a.m. and 9.00 p.m., the industry agreed to strengthen the provisions of the code

to protect young people. This outcome has been described as 'certainly effective in what it set out to do: protect the freedom of commercial communication. . . the promised "stricter self regulation code" was mainly a rephrasing of several articles in the code' [6].

We are not alone in calling for a completely independent review process for complaints about alcohol advertising, while the US Federal Trade Commission is clearly a proponent of self-regulation of alcohol advertising, their 1999 review reported that 'the beverage alcohol industry's enforcement mechanisms fall short of the advertising industry's model for effective self-regulation. . . does not provide for an impartial, objective consideration (of complaints). . . (and) does not ensure that code standards are applied consistently. . .' [17]; and recommended that the industry create independent external review boards to address complaints regarding alcohol advertising [18]. In 2003 they reported that, in relation to third-party review, there had been a particularly poor response from the beer and wine industries: 'some members of the industry have taken modest steps. . . others have not, citing that it is unreasonably expensive or redundant. . .' [19].

The assessments by experts in marketing and communications reported in this paper suggest that the current system may not be performing an adequate job of representing community standards or protecting the community from offensive or inappropriate advertisements. However, a more definitive answer to this question requires research with members of the community to determine the extent to which they perceive such advertisements to be in breach of the self-regulatory codes (the authors are currently undertaking a programme of consumer-based research to address this important question).

One important issue with the current complaints process is the lack of consideration of the number of complaints received. The regulatory board does not distinguish adequately between an advertisement which receives one complaint and an advertisement which receives 100 complaints; this is an important distinction, and surely a reasonable measure of the extent to which an advertisement breaches community standards. It is interesting to note that the advertisers themselves concede this point: two of the advertisements in this study were withdrawn voluntarily by the advertisers due to the number of complaints received.

Another issue with the current process is the lack of regulation of once-off promotions. While the Advertising Standards Board states publicly that this is not the case, the decision letters we have received have stated clearly that it is not their policy to adjudicate complaints against once-off promotions (such as advertorial promotions or competitions in magazines). For example, in a letter dated 17 December 2004, in response to

a layperson complaint, the ASB states: 'Your complaint raises issues appropriate for consideration by the Board. I should point out, however, that the Board does not usually consider advertisements that have been withdrawn or discontinued and our enquiries indicate that this commercial is a Cosmopolitan advertorial for one issue only and will not appear again, it is deemed withdrawn (discontinued)' [20]. This is an important loophole in the process, as it means that a message which would be deemed inappropriate were it to be part of an ongoing campaign is not reviewed where it is a limited-term promotion; thus allowing the advertiser to continue to utilise potentially inappropriate messages to promote alcohol products.

There is clear potential for this to be even more problematic in the case of non-conventional forms of advertising, such as ambient advertising and the internet, where messages are, by their nature, changing constantly and thus difficult to regulate under the current system.

It is also problematic to have a regulatory system which is entirely dependent on members of the general public lodging a complaint before consideration is given to whether an advertisement breaches the advertising code. It is likely that a substantial proportion of members of the public who may be offended by, or concerned about, an alcohol advertisement may not have sufficient knowledge of the complaint process and/or may not feel confident to make a complaint.

Further, under the current self-regulatory system there are no penalties for advertisements which breach the code and compliance with the recommendations of the regulatory boards is voluntary. This means that, on the rare occasion that a complaint is upheld, the advertiser is not legally obliged to remove or amend the advertisement.

Finally, we believe there is a clear need for further research to investigate consumer views of appropriate messages and images in advertising. As there is no definitive definition or updated specification of community standards, there remains no yardstick against which compliance with, or breach of, community standards can be judged. Without a sound understanding of what consumers perceive to be acceptable and unacceptable, it is clearly not possible for the regulatory board to ensure that advertisements are consistent with community standards, particularly in terms of taste and decency.

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