



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0282/18
2	Advertiser	Merivale
3	Product	Food / Beverages
4	Type of Advertisement / media	Print
5	Date of Determination	20/06/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

This print advertisement features the words "Bottoms up, Sydney! Grab your mates after work and enjoy 49% off drinks*". On the left side of the image two wine bottles have been positioned to resemble the shape of a bottom, and on the right hand side two beer glasses have been similarly positioned.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

Promoting sexual behaviour with alcohol and potential sexual assault by the suggestion of "grab" "bottoms" which is enhanced by the graphics of red wine and beer bottoms. Message being its ok to grab bottoms especially when you are alcohol fuelled.



THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Response to Ad Standards Complaint (reference number: 0283/18 & 0282/18 (Merivale))

We act for Merivale and refer to your letter dated 8 June 2017 to our client regarding a complaint made to Ad Standards about Merivale's advertising for its "Bottoms up" promotion (Complaint).

It is not clear from the copy of the Complaint provided which online advertisement(s) form the subject of the Complaint with reference 0283/18; however, it seems likely that it is the "Bottoms up" sample advertisement in Annexure A to this letter. We have also included in Annexure A a copy of the print advertisement which we believe to be the subject of the Complaint with reference 0282/18.

Background to the Bottoms up Campaign

The advertisements the subject of the Complaint form part of a coordinated advertising campaign to promote the 10th anniversary of Merivale's "March into Merivale" (MIM) festival, which is an annual festival celebrating the range of restaurants and bars which form part of the Merivale Group (Bottoms up Campaign). As stated in the Bottoms up Campaign, Merivale is offering "49% off all drinks (*to the value of \$200 per unit) between 5-7pm in our bars and pubs (available at 37 venues)" (49% Beverage Promotion) as a "thank you" to Sydney and to revive nightlife across the city.*

Every year Merivale is renowned for doing something of this grand scale for MIM which will always reflect Merivale's brand personality traits of imaginative, sophisticated, playful, and genuine. In line with this, Merivale wanted the Bottoms up Campaign to bring MIM to life in a playful and light-hearted manner that was genuine in offer and sophisticated in its execution.

In developing the Bottoms up Campaign, Merivale chose to include the image of two drinking vessels positioned together to create the shape of bottom cheeks (Bottom Motif), which is central to the Complaint made in relation to the Bottoms up Campaign.

The Bottom Motif was created as a means of playing on the use of the Australian vernacular "Bottoms up" in the campaign (being a reference to expressing good wishes/thanks and taking a sip from a beverage – the equivalent to "Cheers"). The Bottom Motif was executed in a cheeky yet sophisticated manner, consistent with



Merivale's brand personality traits, and not as a means of sexualising any person (or any gender) or injecting "sex appeal" into the campaign.

The creative was carefully selected for display across appropriate media. Merivale purchased all relevant media for execution of the campaign.

It should be noted that Merivale has received an enormous amount of extremely positive feedback about its Bottoms up Campaign.

Response to Complaint

Merivale is grateful for the opportunity to respond to the Complaint made concerning the Bottoms up Campaign. Merivale takes its legal obligations very seriously and has in place procedures to ensure all advertising is true, accurate and legally compliant. As part of those procedures, during the development of the Bottoms up Campaign, Merivale:

- 1. submitted a Pre-Vetting Application Form via the Alcohol Beverages Advertising Code (ABAC) Scheme and obtained approval for the full suite of proposed campaign messages and submessages, including "Bottoms up", "half-arsed", "love a cheeky drink" and "no ifs or butts"; and*
- 2. engaged with representatives of Liquor & Gaming NSW to ensure that the Bottoms up Campaign offer elements - in particular, the 49% Beverage Promotion - comply with regulatory limits imposed on such promotions.*

For the reasons set out below, Merivale submits that the Bottoms up Campaign does not breach any relevant part of Section 2 of the AANA Code of Ethics or the ABAC Responsible Alcohol Marketing Code (ABAC Code).

Section 2 of the AANA Code

Merivale submits that it is clear from the advertisements at Annexure A that the Bottoms up Campaign and, in particular, the Bottom Motif, do not involve any of the following:

??discrimination or vilification on gender grounds (2.1) – we note that the use of the Bottom Motif is simply intended as a play on the "Bottoms up" campaign message and the design is not intended to be suggestive of any particular gender, male or female. Accordingly, Merivale considers that the Bottoms up Campaign does not discriminate or vilify on gender grounds.

??use of "sex appeal" in a manner that is degrading or exploitative of women (or any gender group) (2.2) – we note that the Bottom Motif is not designed or presented in



such a way that uses “sex appeal”, nor is the design exploitative or degrading of women. As described above, the Bottom Motif is comprised of inanimate objects, being glasses of various alcoholic beverages, positioned in such a way that creates a visual impression of a bottom (male or female). The Bottom Motif does not employ actual images of human bottoms, nor could they be confused as such by the ordinary viewer. Merivale rejects entirely the assertion made in the Complaint that the Bottom Motif evokes the image of a female’s naked breasts. Accordingly, Merivale does not consider that the Bottom Motif could be considered to have “sex appeal”.

??portrayal of violence (2.3) – we note that there is no content in the advertisement that is suggestive of any form of violence or aggression so as to cause a breach of clause 2.3. In particular, and in response to the concerns raised by the Complaint with reference 0282/18, the suggestion that the reference in the print Bottoms up Campaign to “grab your mates after work” promotes “sexual behaviour and alcohol” or sexual assault by the “grabbing” of bottoms, should be rejected in its entirety. The message “grab your mates” is used in its common sense meaning, as a turn of phrase for collectively coming together as mates to meet up and was in no way intended to be suggestive of sexual assault or any other inappropriate behaviour connected to the Bottom Motif.

??insensitive treatment of sex, sexuality or nudity (2.4) – we note that the use of the Bottom Motif is in no way intended to create the impression of sexuality or nudity. As described above, the Bottom Motif simply portrays a playful visual impression of a bottom through inanimate objects in such a way that is not sexualised and certainly not insensitive.. Accordingly, Merivale considers that the Bottoms up Campaign does not involve an insensitive treatment of sex, sexuality or nudity.

???inappropriate or obscene language (2.5) – we note that the use of the word “bottom” is playful language that could not reasonably be considered inappropriate or obscene by reference to reasonable community standards.

??depiction of material contrary to community standards of health or safety (2.6) – not applicable here.

??ambiguity as to the fact that the Bottoms up Campaign is a form of advertising or marketing (2.7) – not applicable here.

In the circumstances, we do not believe there is any basis whatsoever for a complaint to be maintained, either on the grounds identified in the Complaint (being those addressed at bullet points 2 and 4 above) or any other ground under Section 2 of the AANA Code of Ethics.

ABAC Code



On the basis that the Bottoms up Campaign promotes the consumption of alcoholic beverages, it is necessary for Merivale to address any issues that could arise under the ABAC Code based on the substance of the Complaint.

We do not consider that a complaint could be maintained in relation to the Bottoms up Campaign under the ABAC Code on the grounds that it:

(a) creates an association between alcohol consumption and offensive behaviour (3(a)(ii)), including behaviour of a sexual nature – as discussed above, the Bottoms up Campaign does not suggest violence or aggression, sexual or otherwise. The Bottom Motif, despite portraying a visual impression of a bottom, does not do so in a “sexualised” manner or promote the campaign through “sex appeal”. Further, the message of “grab your mates” included in the print version of the advertisement is used simply to express the common turn of phrase for collectively coming together as mates to meet up and does not, in our submission, create an association between alcohol consumption and offensive behaviour.

(b) suggests that the consumption or presence of alcohol may create or contribute to sexual success by promoting sexual behaviour (3(c)(ii)) – as discussed above, the Bottom Motif does not promote sexuality or sex appeal to its viewers. It simply cannot be said to promote sexual behaviour or an association between the consumption of alcohol and sexual behaviour.

(c) encourages excessive or rapid consumption of alcohol (3(a)(i)) – the portrayal of two glasses in each Bottom Motif is simply a play on the words used in the central message of the campaign, being “Bottoms up”, and is not intended to promote “excessive or rapid consumption of alcohol”. Indeed, Merivale takes its responsibilities in relation to the promotion of liquor very seriously and ensures that appropriate controls are put in place, both in campaigns and in terms of conduct during the implementation of its offers, to ensure the safety of its patrons. The discounted prices on offer are not extreme (including by reference to Liquor Promotion guidelines published by Liquor and Gaming NSW) and the limited and early evening hours of the offer were chosen so as not to allow excessive drinking, including by continuing to drink towards the end of an evening. Further, elements such as the availability of food, free water, and normal RSA practice controls all continue to apply during the conduct of the offer.

Additional Code provisions

Merivale does not consider that the provisions of other codes incorporated by Section 2 of the AANA Code of Ethics apply to the Bottoms up Campaign. In particular:

(i) the Code for Advertising and Marketing Communications to Children does not apply to any part of the Bottoms up Campaign as the campaign is not directed primarily (or



at all) towards children in any way;

(ii) the Food and Beverages Advertising and Communications Code does not apply to advertisements for alcoholic beverages. Rather, the ABAC Code applies and Merivale's response to this is set out above.

Conclusion

We trust that we have responded adequately to any questions which Ad Standards may have but would also be happy to answer any additional questions which arise from our response.

THE DETERMINATION

The Ad Standards Community Panel (the "Panel") considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the "Code").

The Panel noted the complainant's concern that the advertisement promotes sexual behaviour.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Panel noted this print advertisement features the words "Bottoms Up Sydney! Grab your mates after work and enjoy 49% off drinks". The Panel noted that the artwork of the advertisement features a set of beer glasses and a set of wine bottles and that the image depicted by each set of glasses could be interpreted as male and female buttocks.

The Panel noted the complainant's concern that the advertisement promotes sexual behaviour, and encourages sexual assault.

The Panel first considered the complainant's concern that the advertisement promotes sexual assault by using the term "Grab your mates". The Panel considered this to be an unlikely interpretation of the advertisement and that the broad community would not consider the advertisement to be promoting or condoning sexual assault or harassment.

The Panel noted that "bottoms up" is a well-known Australian colloquialism for



“cheers”, and considered that the imagery of the wine bottles and beer glasses in conjunction with the text is a humorous depiction and a humorous play on words of the glasses and bottles positioned to look like buttocks.

The Panel noted it had previously considered a similar issue in case 0251/17 in which:

“The Board noted that the text on the poster was affirmation that the impression that the viewer would get from the image, ie that the lemons were suggestive of breasts was in fact the impression that was intended. The Board noted the double entendre relating to the reduced calories of the beverage and how people sometimes feel guilty about drinking soft drinks. The Board noted that although the overall suggestion was of a pair of breasts, the actual image itself was clearly lemons.”

The Panel noted that in the previous case, the image depicted two lemons were positioned in such a way as to depict women’s breasts. Consistent with the previous determination, the Panel considered that there is no nudity or overt sexual suggestion in the current advertisement and considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel determined that the advertisement did not breach Section 2.4 of the Code.

The Panel then considered the health and safety implications of the advertisement offering 49% off drinks. The Panel noted that the advertisement offers the promotion between the traditional ‘happy hour’ hours of 5pm-7pm, and considered that the advertisement is not promoting or condoning excess consumption within the context of a specific time limited promotion and the broader Responsible Service of Alcohol guidelines and that the advertisement therefore does not breach prevailing community standards on health and safety.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.

