

ABAC

**ABAC Complaints Panel
Determination No: 34/10**

**Confidential Complaint
Product: Corona
Advertiser: Woolworths Liquor**

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Professor Richard Mattick – Member

20 August 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a poster advertisement for Corona beer by Woolworths Liquor (“the Advertiser”) and arises from a confidential complaint received on 26 July 2010.

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 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 is in the form of an email received by ABAC on 26 July 2010.
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. The Advertiser is not an ABAC signatory and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an A4 size poster of a bottle of Corona above large text "Corona Slabs 2 for \$90 Save \$29.98". The poster was placed on a milk fridge in a Woolworths grocery store.

The Complaint

10. The complainant argues that the advertisement:
 - (a) Encourages excessive consumption of alcohol beverages in excess of NHMRC guidelines and is irresponsible by offering two cases at a discount;
 - (b) Encourages underage drinking by placing the ad at a child's head height on a milk fridge.
 - (c) Has strong appeal to children by associating beer with a milk purchase where milk is promoted for healthy bone development in children.
 - (d) Is a retail advertisement that fails to identify the name of the retailer offering the product.

The Code

11. 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 and adolescents...
 - g) not encourage consumption that is in excess of, or inconsistent with, the Australian Alcohol Guidelines issues by the NHMRC.

Arguments in Favour of the Complaint

12. In favour of the complaints it is alleged that:
 - (a) The advertisement breaches Section (a)(ii) and (b) of the Code by encouraging underage consumption of alcohol and having a strong appeal to children by:
 - placing an alcohol advertisement on a milk fridge inside Woolworths grocery where milk is a product promoted to children; and
 - placing the advertisement at a child's head height.
 - (b) The advertisement breaches Section (a)(i), (iii) and (g) of the Code by presenting an irresponsible approach to the consumption of alcohol beverages, encouraging excess consumption of alcohol beverages and encouraging consumption inconsistent with NHMRC guidelines by offering two cases of Corona beer at a substantial discount.

The Advertiser's Comments

13. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 13 August 2010. The principle points made by the Advertiser are:
 - (a) The Corona material was placed in an unauthorised position (on the milk fridge) by a staff member in the store. The material was removed and the staff member appropriately counselled.
 - (b) Woolworths takes its advertising obligations very seriously. It is Woolworths' submission that the complaint should be dismissed and no further action taken in the matter.

The Panel's View

14. The Panel understands the concern of the complainant in finding an alcohol ad placed on a milk fridge in a major grocery store such as Woolworths. The advertiser's response indicates that it also accepts that it was inappropriate for the ad to be placed on the fridge and it is explained that this occurred because of a mistake. Further, the advertiser advises that the ad was removed and the employee responsible for placing the ad on the fridge was counseled.
15. It is common ground therefore that an alcohol ad should not have been positioned on a milk fridge in Woolworths. The Panel's task, however, is to determine if the ad is in breach of the standards in the ABAC. This is a different exercise and requires different considerations than the question of whether the ad should have been on the fridge in the first place.
16. The ABAC is a code about the **content** of alcohol advertising, rather than the **placement** of ads. It operates so that, irrespective of the medium of advertising *e.g.* television, the internet or a billboard, what is contained within an ad complies with specified standards of responsible alcohol marketing. Some codes applying to alcohol advertising, such as the Commercial Television Industry Code of Practice and the Outdoor Media Association guidelines, do go to the placement of ads *i.e.* generally no broadcast of alcohol ads before 8.30 pm on television and alcohol ads are not to be placed within 150 metres of a school. Unlike these two codes, the ABAC is not a code about placement.
17. This is important in this case because the principal concern of the complainant is less about the ad's content, than its placement on the fridge. The Panel is of the opinion that the ad should not have been placed on the fridge, but this of itself is not a breach of an ABAC standard.
18. The ABAC provisions pointed to by the complainant relate to the ad having a strong or evident appeal to children and secondly, the ad encouraging excessive consumption of alcohol. The first argument is related solely to where the ad was found *i.e.* on the milk fridge at a height easily visible to children. There is nothing in the content of the ad as such which can be said to have particular appeal to children and adolescents. While the fact that children could easily view the ad is relevant in assessing if the content of the ad has appeal to children, the Panel does not believe it can find the ad in breach of this provision of the ABAC.
19. The second argument is that the ad encourages excessive consumption of alcohol. This arises in the complainant's view because the ad is promoting a discounted price for the product. The Panel has on a number of occasions considered ads which promote the sale of multiple bottles or cans of alcohol at a price which is more attractive than the "usual" price if a single bottle or can was purchased.
20. Alcohol is commonly sold in multiples *e.g.* a case of wine or carton of beer. The ABAC standard goes to advertising not promoting excessive **consumption** and **consumption** in excess of NHMRC guidelines. The Panel believes there is a clear distinction between purchasing multiple bottles or cans of alcohol and the subsequent consumption of the product. It does not follow that, if a person buys, for instance, a

case of a dozen bottles of wine, the person will then either endeavour to drink all of the wine alone or in a binge drinking session.

21. In this case the ad does no more than state the discounted price of buying two (2) cartons of the product. There is nothing in the ad which could reasonably be said that it is promoting a person to engage in excessive consumption. At its highest, the ad is encouraging a person to purchase the particular brand over another brand because of its price and to purchase two (2) cartons, as opposed to one (1) carton in order to gain a lower per unit price for the product.
22. The complainant also refers to the ad not mentioning the retailer of the product. The ABAC does contain a protocol about retail advertisements. The importance of the protocol is that if an ad is a "retail advertisement" then the ad is not required to be submitted to pre-vetting of the ad against ABAC standards prior to its broadcast or publication. There is no ABAC standard which requires an ad to identify the retailer of a product.
23. In summary, it is accepted by the advertiser that it was inappropriate for the ad to have been located on the milk fridge and the complainant was quite justified in taking issue with its placement on the fridge. The ad was removed and the staff member who placed it there was counselled about the mistake. The Panel's role, however, is to assess the content of the ad against the relevant ABAC standards. The Panel does not believe the ad's content is in breach of ABAC provisions and the complaint is therefore dismissed.
24. In dismissing the complaint, the Panel notes that Woolworths continues to stand outside of the ABAC scheme. While it has consistently cooperated with the Panel when a complaint has been received about one of its ads, and this allows the Panel to make decisions, its failure to become an ABAC signatory is disappointing. In particular, as a major retailer of alcohol products in Australia, it would be good industry practice for Woolworths to have its advertising submitted to pre-vetting prior to the advertising being used.