

ABAC

**ABAC Complaints Panel
Determination No: 62/11**

**Confidential Complainant
Product: Infused Rush Vodka
Advertiser: VOK Beverages**

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

22 August 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Infused Rush Vodka (“the Advertiser”) and arises from a complaint received 29 July 2011.

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 and Alcohol Guidelines which includes provisions about Billboard advertising.
3. The complaint 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 ABAC on 29 July 2011.
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 was decided within the 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 a signatory to the ABAC and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a print advertisement for Infused Rush Vodka.
10. The left side of the advertisement features a drawn head and shoulders picture of a young attractive woman wearing fashionable sunglasses, pink hoop earrings, pink lipstick and long dark styled hair with a sophisticated expression. The right side of the advertisement features the text "Infused Rush" and a six-pack of Infused Rush lime and Infused Rush Guava. The background to the advertisement is various shades of light blue with sun and palm trees and a lime green stripe at the top of the advertisement.

The Complaint

11. The complainant argues that the advertisement features a drawing of a cool young girl on an alcopops ad that targets teens and encourages them to drink spirits.

The Code

12. The ABAC provides at Section (a) 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 underage drinking;
13. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
- b) not have a strong or evident appeal to children and 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 barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverage.
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel by email received 9 August 2011. The points made by the Advertiser in relation to the advertisement were:
- a. With respect to the Infused Rush advertisement the intent behind the use of the illustration was to deliver a stylish, summer look that is in keeping with the occasion this product fits and the consumer who we believe purchases the product. It was felt actual talent would not deliver this objective. Vok Beverages was mindful of selecting an illustration that depicted a female at least 25 years of age which we feel we have achieved. We also believe the creative meets the Vok Beverages corporate responsibility statement which can be found on our website. Therefore we believe this creative does not contravene the ABAC Alcohol Beverages Advertising (and Packaging) Code.
 - b. It should be noted that Vok Beverages has undertaken a pack refresh on the Infused Rush trademark and as such will be developing new creative for point of sale and other associated mediums. This was being undertaken in any course but has been fast tracked given the concerns raised. Therefore Vok Beverages does not plan on using this creative post November 1 2011.

The Panel's View

15. This complaint raises both substantive and procedural issues.

The Procedural Aspects

16. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:

- Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
17. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means that the advertising was not subject to pre-vetting prior to its publication and the advertiser is not contractually bound to follow a panel decision. That said, the advertiser has cooperated with the Panel in enabling the determination to be made.

The Substantive Aspects

18. The complainant believes the ad is targeting teenagers. This is said to be the case by the use of a drawing of a “cool young girl!” For its part, the advertiser argues that the depiction is of an adult woman over the age of 25 and reflects a “stylish summer look that fits the consumer who we believe purchases the product”.
19. “Alcopops” as a product type have been the centre of governmental and public debate concerning their likely market appeal and the appropriate tax level which should be placed upon them. The Panel’s role however is not to assess if alcopops are or are not a legitimate alcohol product; but to assess the ad against the relevant ABAC standard.
20. Accordingly, the key question is whether the ad as a whole can be fairly considered to encourage underage drinking and/or have strong or evident appeal to children and adolescents. In making this assessment the Panel is to have regard to the probable impact upon a reasonable person within the class of persons to whom the ad is directed or may be communicated.
21. In considering this question in previous determinations, the Panel has noted:
- Each ad has to be assessed on its merits.
 - The intention of the advertiser as to its target audience is not material; rather it is the “probable impact” of the ad which is important.
 - The ABAC standard accepts that an ad might have some residual or incidental appeal to children or adolescents but it is “a strong or evident” appeal which is prohibited.
 - The overall context of the ad is critical.
22. The Panel believes on balance that the ad is in breach of section (b). In reaching this conclusion, the Panel noted:

- While the ad depicts a drawing of an adult woman, it is quite possible that a reasonable viewer would take the woman to be under 25 years of age, in breach of section (b) (i).
 - The overall impression of the ad with regard to the appearance of the woman and the use of colours and imagery is likely to have a strong appeal to adolescent women.
23. Accordingly, the complaint is upheld. The advertiser is strongly encouraged to utilise the ABAC pre-vetting processes in relation to its future advertising.