

ABAC

**ABAC Complaints Panel
Determination No: 83/10**

**Complaint by Cancer Council WA
Product: Agwa de Bolivia
Advertiser: Babco Europe Ltd/Le-Shack**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Fran Baum – Member

24 December 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for Agwa de Bolivia by its brand owner Babco Europe Ltd and/or importer, Le-Shack (“the Advertiser”) and arises from a complaint received 14 December 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 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 14 December 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 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 company website for the product, www.agwa.com.au.
10. Viewers are taken to a page that features a picture of a monkey wearing a baseball cap in a city alley with the product logo in the centre of the page "Agwa de Bolivia Coca Leaf Liqueur" above the text "Open for business". In the top right hand of the page is the text "Agwa Yacht Club" and at the bottom of the page the text "Agwa Australia Website. Enjoy Agwa responsibly. Win an Agwa Snowboard promotion".
11. On selecting the logo viewers are taken to a page that features a man's silhouette on a red carpet in a city alley leading to what looks to be a nightclub with a neon light above the club flashing.
12. On selecting the man or nightclub entrance a card appears in the middle of the page with the heading "Nacional Bolivia Licencia" above the text "Are you 18 years old?" followed by various numbers and dates and the option to select "Yes" or "No".

13. When selecting "No" viewers are taken to a faux web page headed "TroubledYouth.com", "Together we can make a world of difference!" followed by the narrative "Living on the wrong side of the tracks? Finding life tough? Trying to get into Agwa's controversial website despite being underaged? First session free. Call Now! 1800-Throw-A-Dog-A-Bone". Next to the narrative is a cartoon picture of an angry child.
14. When selecting "Yes" viewers are taken to the inside of an opulent building at the bottom of a red carpeted staircase with a wooden crate of the product at the bottom of the stairs next to a baseball cap carrying the product's logo. At the bottom of the page is the text "the good life". There is a menu at the top of the page.
15. When selecting "Story" from the menu or by selecting the rest rooms in the building viewers are taken to a room covered in a rainforest theme with paper birds hanging from the ceiling and a potplant with the label coca and a bottle and glass of the product on a ledge. When selecting the Coca pot plant a box of text appears under the heading "The Agwa Story" and reads:

"HISTORY

In 1820 the first Bolivian coca leaf liqueur, was manufactured by the De Medici in Bologna, Italy and sold throughout Europe. Rudyard Kipling described the powerful elixir as being made "from the clippings and shavings of angels wings", the product was removed from the market with the banning of cocaine.

But well before that, the native South American Indian population had used the coca leaf for ancient rituals for over 4000 years. Leading authorities for Mayan and Inca studies have challenged Agwa's claim to be the world's first "Psycho-Active" spirit drink.

Neither the claims nor the effect are disputed but a leading Mayan Foundation contends that, "Herbal based beverages were at the centre of practices by Mayan elders. Among their people these elders were great men and visionaries. The visions gave direction to the tribe and were the result of taking a spirit fermented from herbs and then flavoured with honey."

This may indeed be a precursor to Agwa, however, the Mayan elders didn't actually drink the spirit. They filled a funnel shaped gourd (shell of a fruit) with the liquid and inserted it where the sun doesn't shine. This is not among the recommended ways to use Agwa...

INGREDIENTS

COCA LEAF

Today bales of Bolivian Coca leaf are shipped under armed guard to Amsterdam where they are distilled. An extremely distinctive peppery herbal base is then blended with other herbs like guarana & ginseng to balance the taste and augment the effect.

Coca leaf today is drunk as a tea and chewed for hours by farmers and miners in South American countries such as Bolivia. The result is similar to a prolonged caffeine or tobacco buzz. But it's more than that. It improves stamina and provides essential nutrients. The World Health Organisation, the UN's Inter Regional Crime and Justice research institutes cocaine project ALL maintain that coca users show none of the classic signs of addiction.

GUARANA

Guarana is the extract from the seeds of the common Amazonian climber Paullina Cupana. The South American Guarani Indians make a paste from the crushed seeds, cassava flour and water. The paste is rolled into cylinders and dried. The residue is then grated and the shavings are dissolved in hot sweet water. Typically the resultant brew contains about 5% caffeine.

Caffeine has a stimulating effect on the central nervous system, heart, blood vessels and kidneys. The positive effects that have been described in people who use caffeine include motor skills, decreased fatigue, enhanced sensory activity and increased alertness. However, caffeine intake may also produce such negative effects as irritability, nervousness or anxiety, headaches and insomnia.

GINSENG

True Ginseng is the source of a stimulant and supposed aphrodisiac that is extracted from the roots of the plant. It is native to China. Ginseng has a sweetly aromatic flavour. The basis of Ginseng's effect is believed to be due to chemical agents that increase the brains adrenocorticotrophic hormone (ACTH) activity without involving the adrenal glands. A generalised mental arousal is thereby effected.

WHY THE LIME

Check out the Bolivian Kiss (as well as other recipes) in the rituals section... We recommend using lime to get maximum effect out of your Agwa experience.

Biting the lime first works in the same way as the South American practice of chewing Coca leaves with limes. The lime changes the PH of the mouth, which activates the alkaloids in the leaf to produce a powerful oxygen buzz.

Coca leaf alkaloids work by speeding up the rate of absorption of oxygen into the body's capillary system. It is a natural 'rush' and naturally controversial."

16. By selecting the rest room sign or "Reviews" on the menu viewers are taken to a male and female door. On selecting the female or male door viewers are taken to walls of graffiti that feature various comments including the following:

"If Redbull gives you wings then Agwa & Redbull is like a jet powered backpack to the edge of the stratosphere – Irish Times"

“It’s a powerful jolt of energy that will get you drunk and may enhance your sexual stamina – Lake Tahoe Times”

“Thanks to Agwa I have that hot guy’s number!!”

“I had a threesome tonight thanks to Agwa”

“Are they twins?”

17. When selecting “Rituals” from the menu or by selecting a half open doorway in the building viewers are taken to a Mayan ruin with three windows. By selecting each window a different cocktail recipe appears, such as:

“Bolivian Kiss The original ritual. Works every time. Squeeze one wedge of lime into a shot of Agwa then bite the second wedge & shoot the Agwa.”

“Agwa Bomb Also called the supercharger....We wonder why! Drop a shot of Agwa into a glass of energy drink or try one of the special Agwa bomb glasses.”

18. When selecting “Dealers” from the menu or by selecting another door in the building viewers are taken to a pictures of a man sitting at the head of a table in a room with a sunset scene behind him. The man is dressed in a white suit, silk shirt and is wearing a shiny watch and his head is obscured. On the table in front of him is a bottle of Agwa, a shot glass, wads of money, a revolver, bullets, knuckleduster, razor blade and mobile phone. By selecting the bottle of Agwa a dealer’s list appears.
19. When selecting “Trade” from the menu or the crate of Agwa sitting at the base of the staircase viewers are taken to a pictures of a graffiti’d delivery van with the logo “Hell”. On selecting the door of the van the door disappears and viewers see crates of Agwa in the back of the van. On selecting a bottle of Agwa sitting on top of one of the crates a list of wholesalers appears.
20. When selecting “Merchandise” from the menu viewers are taken to a different website that sells Agwa bomb glasses, Agwa lanyards and Agwa caps.

The Complaint

21. The complainant argues that:
 - (a) The gateway mechanism for the advertisement is inadequate as doesn’t require birth date to be entered;
 - (b) The direction of underage users to a fake support website for troubled youth is inappropriately makes light of the serious issue of underage drinking and undermines the requirement that alcohol advertising is directed to people of legal age to drink;
 - (c) Depicts or suggests violent drug related criminal activity;

- (d) Depicts handgun, knuckleduster and illicit drugs which are illegal activities;
- (e) Statement that “It’s a powerful jolt of energy that will get you drunk..” is not mature, balanced and responsible and encourage excessive consumption;
- (f) Suggestion that Agwa contains cocaine on “The Story” & “Dealers” page is promoting offensive behaviour;
- (g) Comments in the “Reviews” section of the website connect Agwa with the achievement of sexual success.

The Code

- 22. 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 excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
- 23. The ABAC provides at Section (c) that advertisements for alcohol beverages must:
 - c) 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.

The Advertiser’s Comments

- 24. The Advertiser (Babco Europe Ltd) responded to the complaint and questions posed by the Panel by letter dated 23 December 2010. The points made by the Advertiser in relation to the advertisements were:
 - (a) We have instructed our Australian Importer, Le-Shack that the Australian website Agwa.com.au be taken down with immediate effect and can confirm that this has happened.
 - (b) We will ensure that a new site under development that should be launched early 2011 is compliant with industry standards and will submit same for your comment before going live.

- (c) It is worth noting that World Brands are not official Importers or distributors of Agwa and have no agreements in place with us to represent the brand. We have no input into their website or marketing materials.
- (d) We appreciate very much your letter in bringing these issues to our attention and if you have any issues please don't hesitate to make direct contact.

The Panel's View

25. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

26. 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.

27. 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 showing. Further, this decision by the Panel does not have any binding force on the advertiser. That said, the advertiser has co-operated with the Panel in enabling the determination to be made and has expressed their commitment to responsible alcohol advertising.

The Substantive Aspects

28. The first issue raised in the complaint is whether the advertisement breaches sections (a), (a)(i) and (iii) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages and/or promoting or encouraging excessive consumption and offensive behaviour.
29. The complainant refers to the features of the website noted in paragraph 21 (a) - (f) above.
30. The Panel is of the view that the advertisement is in breach of sections (a), (a)(i) & (iii) of the ABAC and notes the following features of the website:

- (a) The direction of underage users to a faux website for troubled youth, thereby making light of the problem of underage consumption of alcohol;
 - (b) Suggesting a link between Agwa and the illicit drug, cocaine and also criminal activity via a combination of the statements in the “Story” part of the website and the pictures and statements in the “Dealers” and “Trade” part of the website; and
 - (c) Quoting a statement from the Lake Tahoe Times: “It’s a powerful jolt of energy that will get you drunk”.
- 31. The second issue is whether the advertisement breaches section (c)(i) of the ABAC by suggesting that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and depicting the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of sexual or other success;
- 32. The complainant is concerned that the comments in the “Reviews” section of the website connect Agwa with the achievement of sexual success.
- 33. The Panel is of the view that the “Reviews” section of the advertisement is in breach of section (c)(i) of the ABAC, in particular the following statements:
 - (a) “It’s a powerful jolt of energy that will get you drunk and may enhance your sexual stamina – Lake Tahoe Times”
 - (b) “Thanks to Agwa I have that hot guy’s number!!”
 - (c) “I had a threesome tonight thanks to Agwa”; “Are they twins?”
- 34. In finding the ad in breach of the ABAC, the Panel notes the Advertiser has withdrawn the advertisement and intends to ensure any future advertisements are compliant with industry standards. The Panel recommends that the Advertiser use the Alcohol Advertising Pre-vetting Service for all future alcohol advertisements. This process assists in identifying potential problems with the consistency of ads with ABAC standards.