

ABAC

**ABAC Complaints Panel
Determination No: 29/07**

CONFIDENTIAL COMPLAINT

**Product: ABSOLUT CUT VODKA
Advertiser: Maxxium Australia Pty Ltd**

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

DETERMINATION 16 April 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a confidential complaint about a bus shelter shed advertisement for Absolut Cut Vodka by Maxxium Australia Pty Ltd (“The Advertiser”).

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The confidential complaint is in the form of an email dated 15 December 2006 which was received by the ABAC Adjudication Panel on 14 March 2007.
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. In this case, it has taken longer owing to the email being forwarded to an incorrect email address for the ABAC Panel.

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 advertisements were subject to pre-vetting and given approval (JB73/06AV).

The Advertisement

9. The complaint concerns a bus stop billboard for Absolut Cut Vodka outside Abbotsleigh School for Girls in Wahroonga NSW.
10. The advertisement has a pale blue background with the words "Cut-Through Taste" in a darker blue on two lines at the top.
11. Underneath these words at a slight angle is (2/3rds of) a clear bottle full of vodka. The words on the bottle say: "Absolut CUT crystal clear refreshment with Imported Absolut Vodka 5.5% alc./vol. 330 ml Alcoholic Beverage".
12. To the left-hand side there is part of a hand (thumb and two fingers) holding a bottle opener which is starting to remove the cap off the bottle.
13. At the bottom right-hand side of the ad is a darker blue panel with the words "The ABSOLUT Ready-to-drink" and three bottles (only half of each bottle is shown) with the word "Absolut" in three different colours – green, orange and dark blue.

The Complaint

14. The Complainant argues the advertisement:
 - Is offensive because it is inappropriately positioned in a school bus stop and is viewed on a daily basis by school children.
 - Could encourage consumption by under age persons.

The ABAC

15. The ABAC provides at section (a) that advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
- (ii) must not encourage under-age drinking

Arguments in Favour of the Complaint

16. In favour of the complaint, it can be argued that:
- The advertisement may breach section (a) (ii) of the Code by encouraging under-age drinking through its placement immediately outside a school.

The Advertiser's Comments

17. The Advertiser responded to the complaint by way of an email dated 11 April 2007. The principal points made by the Advertiser were:
- They acknowledged that the site where this advertisement appeared was subject to an alcohol advertising prohibition.
 - The placing of the advertisement at this site appears to have been caused by human error by Adshell the company responsible for the creative and placement in that the checkbox which prohibited this site being used was overridden hence making the site available.
 - Adshell has issued an apology and has addressed the issue to ensure that this never happens again.

The Panel's View

18. This complaint raises an issue of placement of an advertisement, rather than the actual content of an advertisement. The ABAC is principally concerned with the content of an ad and only indirectly refers to placement by reference in the ABAC preamble to assessments to conformity of an advertisement with the ABAC to be undertaken "in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated".
19. This guidance as to the ABAC's application invites consideration of the location of the advertisement only where the issue of location is material in assessing the class of persons to whom the advertisement "is directed" and "may be communicated". Also relevant in this case are the standards of good practice recommended by the Outdoor Media Association which provide that alcohol advertisements should not be positioned immediately adjacent to schools.
20. The advertiser, in accordance with the ABAC scheme, submitted the advertisement for pre-vetting. Approval was granted to the advertisement, subject to the "understanding that it will not be scheduled to appear in media likely to have a strong or evident appeal to children". The advertisement's

location near a school is the cause of the complainant's concern that the ad may have evident appeal to children.

21. The advertiser has advised that it was not its intention that the advertisement should be located at the particular bus shelter shed which has troubled the complainant. Indeed it appears that the advertiser's agency has admitted a human error in the selection of the site. In short, the ad should never have been located at the site near a school and its positioning outside the Abbotsleigh Girls School was a mistake.
22. The Panel notes the apology of the advertiser and its agency and accepts that the placement in the particular location was an error. The advertisement has been removed and the agency has committed itself to not repeat the mistake.
23. As explained in paragraph two, alcohol advertising is regulated by a variety of laws and codes of practice. The role of the Panel is primarily to consider the application of the ABAC; however, the ABAC scheme's Management Committee has resolved that the ABAC complaints management system should act as a "safety net" to ensure all complaints about alcohol advertising are considered. In this case, the problems relate to the placement of the advertisement in breach of the standards applying to outdoor advertising, rather than the content of the advertisement as governed by the ABAC.
24. Nonetheless, the Panel concludes that the complaint should be upheld on the basis that the standards of the Outdoor Media Association have not been met and the location of the advertisement outside a school raises genuine concern that the ad will be communicated to children. This in turn causes concerns about a potential breach of section (a) (ii) of the ABAC.
25. Accordingly, the complaint is upheld.