

ABAC

**ABAC Complaints Panel
Determination No: 38/10**

**Confidential Complaint
Product: Aphrodope Elixir
Advertiser: Naked Chef Pty Ltd**

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

16 September 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Aphrodope Elixir by Naked Chef Pty Ltd (“the Advertiser”) and arises from a complaint received 30 August 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 on 30 August 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. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a website advertisement at www.aphrodope.com.au.
10. Users are taken first to an age verification page with the heading Aphrodope and with a link entitled "Find out about responsible drinking" that takes users to the NHMRC "Australian guidelines to reduce health risks from drinking alcohol".
11. On verifying that they are 18 or over, users are taken to the Aphrodope website. The centre of the page features a bottle of the product. The label features a drawing, in a style reminiscent of classical Greek depictions, of a naked couple embracing in a sexually intimate position. The woman is holding up a beverage glass. The Label also features the text "Aphrodope Elixir. To

Health Long Life and Pleasure”. The drawing on the label is also featured on the website on either side of the bottle above the menu items. There is text below the bottle and the heading “Aphrodope” that changes every 5 seconds to one of the following statements; “Aphrodope Elixir is not just another drink – It is an Experience!”, “Enjoy the best that life has to offer!”, “You haven’t experienced all the pleasures life has to offer until you have tried Aphrodope Elixir!”, “Enjoy the mysterious and complex world of Aphrodope Elixir and experience its effects!”, “Life is a beautiful experience! Allow yourself to live it to the fullest!”, “To Health, Long Life and Pleasure”.

12. On selecting the Home page from the menu the following text appears on the left side of the bottle. “Love in a bottle! Is it possible?...Absolutely! One should try it to believe it! Aphrodope recipe is based on an ancient Herbal Elixir recipe, thus our logo depicts "ancient lovers", who perhaps 2,000 years ago used to drink it on special occasions. We believe that Aphrodope, like any other Luxury Spirit, when consumed in small doses is able to elevate your mood. Is it tasty? Yes! ... It tastes like **Love.**” On the right side of the bottle the following text appears “How to use it? Neat on ice, in coffee, with beer, Champagne, wine, vodka or any fruit juice. Make your parties memorable by using Aphrodope as a “naught ingredient” in cooking. See Recipes. Aphrodope Elixir, A Luxury Spirit!” Then there are links to “History of Aprodope Elixir” and “Who’s behind the Aphrodope brand”
13. By selecting the link for “History of Aphrodope Elixir” the following disclaimer appears on the left side of the bottle “Aphrodope Team and Management do not suggest at any point that:
 - Alcohol can contribute to an individual’s popularity or confidence, or that refusal is a sign of weakness. Nor we suggest that alcohol can enhance personal qualities;
 - The success of a social occasion depends on the presence or consumption of alcohol;
 - Alcohol is linked with daring, toughness, aggression or anti-social behaviour, sexual activity or success or imply that alcohol can enhance attractiveness;
 - Regular solitary drinking is acceptable or that drinking can overcome problems;
 - Alcohol has therapeutic qualities nor offer it as a stimulant, sedative, mood-changer or to boost confidence;
 - Physical or other performance may be improved by alcohol or that it might be indispensable;
 - A drink is to be preferred because of its alcohol.”
14. To the right of the bottle the following text appears: “The History of Aphrodope Elixir: About 30 years ago Dr Zeltser, a young medical doctor and keen old-

book collector, bought an old book. It was bound in a beautiful red silk and gold-leaf case, but was in very poor condition. While restoring his new acquisition, the lucky book-lover found, in the middle of the book, an old hand-written paper. On it was a recipe for a very potent aphrodisiac herbal potion, the name of which was "Aphrodope Elixir". The list of ingredients for Aphrodope Elixir counts 18 historically proven aphrodisiacs. Further research of them, revealed that these aphrodisiac herbs, berries and fruits had been carefully selected and balanced for their chemical composition, which is able to provoke Physical & Emotional Effects, Long-term Sexual Vigour, Enhance Feelings of Pleasure & Desire, and strengthen Immune System. The excited doctor decided to make this aphrodisiac potion and try it on himself and his wife. However, he couldn't find all of the ingredients needed, and those that he found were very expensive and of poor quality. It took him three years to source and collect all of the aphrodisiac ingredients for his small batch of Aphrodope Elixir, but it was definitely worth it as the result was Phenomenal! Within 5 minutes after drinking the first 30ml of Aphrodope Elixir, one can feel its magic aphrodisiac effect of wakening strong desire & libido, pleasant boost of energy, clear & sharp mind, but most of all, the sweet feelings of happiness & satisfaction! Another valuable fact was that it worked its aphrodisiac magic on both, men & women! The young Doctor and his wife decided to keep Aphrodope Elixir as their family secret until all the tests would be complete and all of the necessary aphrodisiac ingredients were sourced at affordable prices for boutique production of Aphrodope Elixir. Preparations took almost 30 years, but thanks to Dr Zeltser's life-long efforts, the wait is now over! Aphrodope Elixir, which would have been very expensive to make before and therefore only available to the privileged and noble, is now available for everyone to enjoy!"

15. By selecting the link "See Recipes" users are taken to a page which lists a number of recipes and cooking techniques either side of a photograph of a man and woman enjoying dinner for two with the woman feeding the man a spoonful of food. On selecting the recipe for "Aphrodoped Strawberries" the photograph changes to a man and woman kissing while eating a strawberry.
16. By selecting the "Product" menu item the users are taken to a page featuring a bottle of the product and a list of the products together with the following text. "Aphrodope Elixir is a Natural Luxury Spirit with 35.0% Alc/Vol It's simply ... Love in a Bottle!... Ideal gift for friends and lovers, parties, romantic evenings, Hen's nights, Bachelor Parties, etc. Sparks conversations. Serve neat, on ice, in cocktails, coffee, or as a "naughty" ingredient in cooking. Create your own signature drink or meal, send it to us and we might publish it on our recipe page. Aphrodope Elixir is a strong 35% Alc/Vol Luxury Spirit. In small doses it is able to elevate your mood and lower your inhibitions, raise libido and enhance sexual pleasure. Aphrodope Elixir is a true Luxury Spirit. Its recipe is based on distillation of herbs, berries and seeds. Some of the herbs used in the Aphrodope Elixir recipe contain essential natural oils. Its very pleasant fragrance, colour and taste compliment most cocktail mixes."
17. By selecting "Aphrodope Elixir 50ml" the following text appears next to a picture of the product. "50ml cute collectible bottle. It holds just enough to make you feel good. Ideal size for memorable gifts, hampers, mini bars, on the pillows of

newly-weds and lovers, etc.” By selecting “Aphrodope Pouting Blossoms” the following text appears next to a picture of the product “Liquored Edible Blossoms 12 blossoms in liqueur per jar. Directions for use: Place one Pouting Blossom into a Champagne flute, together with some of its liquor. Top up with your favourite bubbly. The flower will gracefully open its hot-red flesh sending a slight pink blush to your cocktail... And then, the ultimate experience ... the delicious and tangy taste of the Aphrodope Blossom.”

18. By selecting the menu item “Recipes” cocktails are listed under the heading “Beverage recipes” next to a cherub drinking from a flask. The names of the cocktails include “Belgian love affair, Black lover, Casanova, Ecstasy, Erotique, Excite me!, French aphrodisiac, Oh! Yes!, Pleasures of harem, Romance/Passion and Seven Veils”.
19. By selecting the menu item “Meet Aphro” a musical cartoon video clip is shown about the product and its effects.
20. By selecting the menu item “Guest Book” there is both user-generated material and also comments by the advertiser. One of the comments by the advertiser includes the following statement: “Aphrodope, it turns out, also contains a lot of phenylethylamine, so perhaps that may be why people like Aphrodope so much . . . because it makes them feel like they're in love.”
21. By selecting the icon “Shop” a list of products is displayed. By Selecting “Aphrodope Six Pack” a picture of the product is displayed next to the following text: “6 convenient and fun to use 50 ml shot bottles, plus a gift of 6 Aphrodope Coasters. Cute 50ml bottle fits into any bag or pocket and provokes lots of fun when placed on the bed or slipped into a glass of Juice or Champagne. It adds a delicious naughty twist not only to cocktails and fruit salads, but to relationships!

The Complaint

22. The complainant argues that the website clearly links consumption of alcohol to sex and elevated mood:

The Code

23. The ABAC provides at Section (c) that advertisements for alcohol beverages must 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;

Arguments in favour of the complaint

24. The advertisement breaches section (c)(i) of the ABAC by depicting the consumption of Aphrodope Elixir as causing or contributing to a significant

change in mood or environment and the achievement of social or sexual success by the statements and pictures on its website referred to in paragraphs 11 to 21 above.

The Advertiser's Comments

25. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 13 September 2010 as follows:

- (a) This is the only complaint received after receiving thousands of complimenting letters from customers from around the world.
- (b) Our website is designed for 18+ y.o and incorporates a link to Responsible Drinking web-site and has a lot of alcohol related warnings. However we respect your suggestions and are happy to modify or re-word where it is possible:
 - 1.1. Change to : Love in a bottle!
 - 1.2. Change to: We believe that Aphrodope, like any other Luxury Spirit, should be consumed in moderation
 - 1.3. No changes as we believe that using liquor in cooking is "naughty".
 - 1.4. The images on the home page are our logo, which is an example of the fine art, same art as at the art galleries & museums. The composition is not explicit, but just a silhouette (outline) of statues representing ancient sign of "Elixir of Life". These were originated in ancient Greece over 2,000 years ago.
 - 1.5. Will take off "To Health, Long Life and Pleasure".
 - 1.6. Will change to: Aphrodope Elixir is a very potent herbal potion which uses 18 herbs, berries and fruits selected and balanced for their properties & chemical composition!
 - 1.7. Change to: Love in a Bottle.
 - 1.8. Change to: Ideal gift for friends and valentines, parties, romantic evenings, Hen's nights, Bachelor Parties, etc. Sparks conversations. Serve neat, on ice, in cocktails, coffee, or as a "naughty" ingredient in cooking.
 - 1.9. Change to: Aphrodope Elixir is a strong 35% Alc/Vol Luxury Spirit.
 - 1.10. Change to "Exotique".
 - 1.11. The written statements below the video clip will be deleted or modified.

- 1.12. There is no nudity or vulgar images on the pin board. All pictures that we receive from our customers are carefully examined before they get displayed on our pin board.
- 1.13 Can not change as these are the comments of the consumers. They are entitled for their opinion. Phenyl ethylamine is a well-known chemical found in chocolate.
- 1.14. Change to: Cute 50ml bottle is a collector's item or a perfect small present.
- 1.15. Facebook is not controlled by us.

The Panel View

26. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The issue is that Naked Chef Pty Ltd is not a member of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC's adjudication process has no binding effect on the company. However the advertiser has responded to the complaint, thereby co-operating with the ABAC process, and accordingly the Panel is able to make a determination.
27. The concern of the complaint is that the advertisement links consumption of alcohol to sex and elevated mood. Section (c) (i) of the ABAC relevantly provides that alcohol advertisements must not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment and must not depict alcohol as a cause or contributor to sexual success.
28. It is perfectly evident that much of the material contained on the website is in breach of the ABAC standards, particularly section (c). The entire thrust of the advertiser's approach is to not simply imply, but to state outright, that the use of the product will aid feelings of love, increase libido and sexual desire and generally have a beneficial impact on mood. The advertiser notes that the website is designed for adults, incorporates a link to a responsible drinking website and includes alcohol related warnings. The Panel notes that the ABAC prohibits the suggestion that consumption will lead to sexual success being directed to any age group and that the inclusion of the disclaimers and links to responsible drinking websites do not save the website from being in breach of the ABAC standards.
29. The advertiser, in response to the complaint, endeavours to nominate specific changes it proposes to the website content. It is not the role of the Panel to provide advice to the advertiser as to how its advertising posture can be made consistent with the ABAC provisions. This is because the Panel's role is to deal with complaints and it is possible that further complaints might be received in relation to a modified advertisement and website for the product.
30. Rather, the ABAC scheme pre-vetting service is the appropriate venue for the advertiser to consult for advice. It is a matter for the advertiser as to how it proposes to meet the consequences of this decision and comply with ABAC

standards. Clearly the approach adopted at the moment will require very substantial re-thinking. Engagement in the pre-vetting process should assist the advertiser in achieving acceptable practices in alcohol marketing.

31. The complaint is upheld.