

ABAC

**ABAC Complaints Panel
Determination No: 159/08**

**Confidential Complainant
Product: Kahlua
Advertiser: Pernod Ricard Pacific Pty Ltd**

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

22 December 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a banner advertisement for Kahlua by Pernod Ricard Pacific Pty Ltd (“the Advertiser”) and arises from a complaint by a confidential complainant received 11 December 2008.

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 include provisions about the content and placement of Billboard advertising.
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 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 the ABAC Panel on 11 December 2008.
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, the advertisement 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 obtained pre-vetting approval for the advertisements [UL184/08].

The Advertisement

9. The Advertiser has advised that there are two billboard advertisements for Kahlua that the complainant could be referring to.
10. The first advertisement features a bottle of Kahlua flanked on either side by a bottle of French Vanilla and Hazelnut Kahlua. The backdrop is a sunset above the treetops of a jungle. The text at the top of the page above the product reads "Discover for yourself the ancient secret of Kahlua." The text below the product reads "Explore your curiosity." Below that text in smaller print is "www.kahlua.com.au" and "Please drink responsibly".
11. The second advertisement has the same backdrop as the first, but features on the left side of the banner, a bust of Queen Tatb'u, who is believed to have been a Mayan Queen and on the right side of the banner a single bottle of Kahlua with a glass of the product next to it. It features the same text below the product as the first advertisement but features different text above the product, namely, "Hornsby is nowhere near the Yucatan, but they've still discovered the ancient secret of Kahlua".
12. The complainant advises that the advertisement he is complaining about is very large and hung from the roof of the Westfield shopping centre in

Hornby (NSW). It is located directly outside both female fashion and shoe stores and is visible from two separate floors of the shopping centre.

The Complaints

13. The complainant argues that:
- (a) The product is highly popular with underage drinkers, in particular young females, due to its sweet taste.
 - (b) The advertisement is located directly outside both female fashion and shoe stores, all of which are very popular with females under the age of 18.
 - (c) The ad is so large that anyone who passes the area will have no choice but to be exposed to alcohol advertising.
 - (d) The timing of the installation at the beginning of school holidays, being the time of the year the shopping centre will see its highest concentration of youth.

The Code

14. 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:-
 - (ii) must not encourage under-age drinking;
 - (b) not have a strong or evident appeal to children or adolescents.....

Arguments in Favour of the Complaint

15. In favour of the complaints it can be argued that the advertisement breaches section (a)(ii) and (b) by its placement in a shopping centre adjacent to female fashion and shoe stores at the beginning of school holidays.

The Advertiser's Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 18 December 2008. The principal points made by the advertiser are as follows:
- (a) Both of our Kahlua advertisements have been placed on large billboards in the Westfield shopping centre in Hornsby. We have found billboard advertising to be an effective means of advertising many of our brands, including Kahlua. While we were not aware that one of these advertisements was situated outside of female fashion and shoe stores, we are entitled to advertise near these locations. In placing our advertisements in this shopping centre location we have complied with the ABAC Code, the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers

(‘AANA’) and with the AANA Outdoor Advertising Advisory Paper and Checklist. In accordance with this Checklist we have given consideration to potential audiences and possible sensitivities in our placement of these advertisements in shopping centres. Shopping centres attract a diverse range of consumers and we are not obliged to refrain from advertising in such places, simply because there may be children or adolescents at those locations. We would not erect a billboard in close proximity to a school or a playground, or a shop or place which was targeted at children or adolescents. However, we are entitled to have erected this billboard at its location at this shopping centre outside shops that attract a mixed age clientele.

- (b) In relation to the assertion that this advertisement was located outside of stores which are popular with females under the age of 18, we can only state that every shopping centre has stores which appeal to females, both above, and below, 18. We also note that there is nothing in either advertisement which encourages under age drinking – one advertisement includes an image of three Kahlua bottles only and the other includes an image of a bottle, a glass and an image of what is intended to be Queen Tatb’u, who is believed to have been a Mayan Queen. There are no adults in either of the advertisements (unless you include the image of Queen Tatb’u who is definitely over 25). There are no children, adolescents or young adults under the age of 25 in the advertisement and there is nothing in the advertisements to suggest that we are targeting consumers under 18.
- (c) We acknowledge that our advertisement has coincided with the beginning of the summer school holidays. However, this is coincidental. We started our advertising campaign at this time because summer (and in particular Christmas) is the busiest time of year for us for sales of our Kahlua brand. We have found that commencing a distinctive advertising campaign at the commencement of summer is an extremely effective marketing tool which assists in the generation of sales during this peak sales period. Our advertising campaigns are not developed to coincide with school holidays.
- (d) Our Kahlua advertisement features our Kahlua product. This product is a reasonably sweet product and appeals to consumers who wish to drink sweet tasting products. The target consumer audience for our Kahlua product is 25-34 year old women and the main loyal base for this product is 35-44 year old women. We are certainly not targeting adolescents with this product (or any of our other products). The majority of our consumers drink this product in conjunction with milk, lemonade or coke and we would be very surprised if consumers viewed this product as one which they would choose to drink for the purpose of becoming inebriated. If adolescents choose to consume our Kahlua product, it is not because we are targeting adolescents as our intended consumers.
- (e) In conclusion, we are of the opinion that the two Kahlua advertisements comply, in all respects, with the ABAC Code and that there is nothing in the content of either of the advertisements, in the placement of these advertisement at the location in question, or in

the composition of the Kahlua product itself to suggest that PRP is encouraging under-age drinking and appealing to children or adolescents. As part of the worldwide Pernod Ricard Group, we are committed to the promotion of Responsible Drinking through our Sustainable Development Charter and the Pernod Ricard Code for Commercial Communications. We continually act on this commitment by promoting the responsible consumption of our brands.

The Panel's View

17. The complaint raises concerns that the ad is placed in a shopping centre adjacent to female fashion and shoe stores at the beginning of school holidays thereby exposing it to young underage women.
18. The ABAC is a code which is based on the content of ads rather than the placement of ads. This can be contrasted with the television industry code of practice which specifically limits the times at which alcohol ads can be broadcast. The ABAC standard goes to ads not encouraging underage drinking or having a strong or evident appeal to children. The ABAC deals only indirectly with placement through the preamble references to "the class of persons to whom the advertisement is directed" or may be communicated.
19. The issue is whether the ad has "strong or evident" appeal to adolescents or encourages underage drinking. The advertiser argues that there is nothing in the content of the ad that breaches this part of the Code, the placement at the commencement of school holidays is co-incidental as the timing was more about the summer/Christmas season and the target audience for the product is 25 to 44 year old females.
20. In some respects, the complainant's concern is about the characteristics of the product, namely its sweet taste and the implication from this that it is a drink type that will appeal to children. The ABAC does not go to the nature of alcohol products as such, but to the way the product is marketed. The nature of the product is a matter to be considered only in terms of assessing the relevant advertisement.
21. The Panel does not believe that the content of the ad can reasonably be said to have a "strong or evident appeal" to adolescents as opposed to the overall audience of the ad. The Outdoor Media Association has recently approved Alcohol Advertising Guidelines that are to be fully implemented by 31 March 2009. These guidelines limit placement of alcohol advertisements near schools but do not contain any provisions restricting placement during school holidays and within shopping centres.
22. Accordingly, the complaint is dismissed.