

ABAC

**ABAC Complaints Panel
Determination No: 22/06**

COMPLAINT OF MR BRENDAN BALL

**Product: Woodstock Bourbon
Advertiser: Independent Distillers**

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

25 July 2006

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a radio advertisement promoting the alcohol beverage ‘Woodstock Bourbon’ produced by the company Independent Distillers (“The Advertiser”) and arises from a complaint by Mr Brendan Ball (“The Complainant”).

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; and
 - (c) certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast;
 - (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 ABAC Adjudication 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 Adjudication Panel 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 the form of an email dated 20 April 2006 and was received by the ABAC Adjudication Panel on 24 April 2006.
7. The Panel endeavours to determine complaints within 30 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 advertiser is not a member of a relevant industry association and considerable delay was encountered in endeavouring to elicit a response to the complaint.

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. As the advertiser is not a member of an ABAC Scheme participating organisation, the advertisement was not submitted for pre-vetting approval.

The Advertisement

9. The complaint concerns a radio advertisement that was aired on GOLDFM 104 promoting the alcohol beverage 'Woodstock Bourbon'. The advertisement commences with the sounds of birds and a banjo playing. The voiceover, which features a 'deep American southern' accent, cuts in stating that: "Here in Kentucky we've been producing Bourbon since the 1700's, heck we invented it! So we think we know a good bourbon when we taste it."
10. The voiceover continues: "When I tasted Woodstock's blend of cola with our straight Kentucky bourbon in their new stubbie bottle it made me real proud that our bourbon was being enjoyed so far away in Australia".
11. The advertisement concludes with the voiceover stating that: "In fact, to celebrate the new Woodstock stubbie, you can win a trip for two to Kentucky just by logging onto Gold104.com.au...and bring some of them new Woodstock stubbies with you."

The Complaint

12. The Complainant points out that the consumption of alcohol has a devastating impact on thousands of families across Australia.

13. Mr Ball identifies two principal grounds of concern, namely that:
- The advertisement appears to promote excessive consumption of bourbon. The advertisement deliberately targets families, and via a competition of this nature, aims to entice families to purchase the alcohol in order to win an overseas holiday.
 - The advertisement may also appear to encourage under-age drinking by normalising alcohol and linking it to family activity and family life.

The ABAC

14. 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:
- (i) must not encourage excessive consumption or abuse of alcohol;
 - (ii) must not encourage under-age drinking;
 - (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages; and
 - (iv) must only depict the responsible and moderate consumption of alcohol beverages.

Arguments in Favour of the Complaint

15. In favour of the contention that the advertisement promotes excessive consumption of alcohol beverages, it could be argued that the advertisement links a competition to win an overseas holiday with the purchase of the product which will increase sales and hence consumption of the product. Further, the placement of the advertisement on family-focussed radio station will increase the advertisement's exposure to young people and possibly increase under-age drinking.

The Panel's View

16. The advertiser is an alcohol company which is not a member of one of the four peak industry associations which sponsor the ABAC Scheme and whose corporate members are committed to compliance with the standards contained in the ABAC. As compliance with the ABAC by alcohol beverage advertisers is based on a commercial commitment, as opposed to legislative compulsion, there is no enforceable obligation on behalf of the advertiser to comply with the ABAC or to participate in the processes of this Panel.
17. The vast majority of alcohol advertising conducted in Australia is by companies which have made the commitment to comply with the ABAC and abide by determinations made pursuant to the public complaints process. In most instances this commitment flows from the advertiser's membership of the sponsoring industry associations and, in some cases, non-members of an industry association have independently committed their company to the ABAC Scheme.

18. To members of the public like Mr Ball, the background underpinnings of the ABAC Scheme are probably of little interest. What Mr Ball and the public generally are interested in is knowing that there is a set of standards which guide alcohol advertising and, if it is felt by a person that an advertisement is not appropriate, then there is a mechanism which will assess this concern and take action to stop or modify the advertisement to meet valid and reasonable concerns.
19. The Management Committee of the ABAC Scheme has determined that all complaints, whether about an advertisement from an ABAC Scheme participant or not, should be subject to assessment either by the ASB or this Panel, as appropriate. This means the Panel has considered Mr Ball's complaint although there is no commitment on behalf of the advertiser to have any regard to the conclusions reached.
20. The advertiser was invited to respond to the complaint and to answer questions posed by the Panel and the advertisement. In light of third party advice about changes in the management of the advertiser, a much longer period than usual was allowed for the advertiser to respond to these questions and the complaint. Unfortunately no response from the advertiser has been received.
21. This means that the Panel is obliged to make its decision based solely on the complaint and script of the advertisement. The Panel has not had the benefit of actually listening to the ad or having the advertiser's explanation of the issues. This can only be provided if the advertiser cooperates in the Panel process.
22. Based on the script and taking account of the complainant's views, the Panel does not believe the ad breaches the ABAC. The relevant provision of the ABAC goes to the responsible use of alcohol and the requirement that advertisements not encourage excessive consumption or under-age drinking. The complainant believes this will be a consequence of linking the product to a competition for an overseas trip and the fact the advertisement was broadcast on a family-orientated radio station.
23. It is not unusual for competitions to be used as a marketing device to promote a product. While alcohol is no ordinary product and specific provisions go to its marketing, there is nothing in the ABAC which indicates that promotion of these kinds is not allowed. In fact the ABAC goes to the promotion of alcohol at events and this part of the Code assumes "give-aways" and "competitions" will occur, but this must be done in a way which is consistent with the broader ABAC standards.
24. The script of the ad merely refers to the fact that the competition is occurring. There is no other reference which the Panel can interpret as indicating the competition is being used improperly to promote excessive alcohol consumption or suggest the product is necessary for social or other success. Rather, the competition is entered by accessing the radio station's website; not through the purchase of the product as such.

25. Mr Ball's second point goes to the fact that "Gold FM104" is a radio station with "family" programming and that its audience will presumably include a large number of children and adolescents. In essence, this raises the question of the placement of the advertisement as opposed to its content. The complainant implies that alcohol advertising *per se* and particularly that with a "competition" promotion element should not be broadcast on a "family" radio station.
26. The ABAC is primarily concerned with the content of alcohol advertisements. It makes only incidental reference to placement via the preamble which states that "conformity of an advertisement with this code is to be assessed 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".
27. The Panel has interpreted the preamble's guidance in applying the ABAC as allowing consideration to be given to placement insofar as it is relevant to assessing the impact of an advertisement. The ABAC does not restrict alcohol advertisements to particular media or timeslots etc. Placement restrictions are part of the code applying to advertising on commercial television, but there is no code applying to the type of advertising allowable on radio stations based on program format.
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30. The Panel does not find the placement of the advertisement on "Gold FM" as a ground upon which it is open to find the advertisement in breach of the ABAC. The nature of the advertisement as featuring a "competition" does not change this conclusion.
31. In dismissing the complaint, the Panel urges the advertiser to commit itself to the ABAC Scheme.