

ABAC

ABAC Complaints Panel Determination No: 112/11A

Complaint of McCusker Centre for Action on Alcohol and Youth Product: Midori Party Pourer Supplier: Suntory Australia Pty Ltd

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

12 January 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns the ‘Party Pourer’ packaging for a Midori product. The product is produced by Suntory Australia Pty Ltd (“the Supplier”). This determination results from a complaint by the McCusker Centre for Action on Alcohol and Youth received 9 December 2011 that relates to this and other products and advertising which will be considered in separate determinations.

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 was received by ABAC on 9 December 2011.
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 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 of names and packaging is optional. The Advertiser is a Code signatory but did not obtain pre-vetting approval for the packaging of the relevant product.

Packaging

9. The packaging referred to in the complaint is a "Midori Party Pourer" that contains a 500ml bottle of Midori. The "Party Pourer" is a plastic translucent green 1L container with a removable lid and a tap dispenser that is labeled in white "Midori Party Pourer".
10. The reverse side of the "Party Pourer" has white print which comprises liquid measurement markings, at the bottom of the markings the instructions "Starting with Midori follow the liquid indicators for the perfect mix, then stir, pour over ice & enjoy!", on the side of container the text "For more recipes visit www.midori.com.au Drink Responsibly" and also includes instructions for mixing four cocktails that are named:
 - (a) "Midori Illusion Using Illusion Mix" comprising 150ml Midori, 450ml Midori Illusion Mix and 400ml Ice;
 - (b) "Midori Kingston" comprising 150ml Midori, 150ml White Rum, 450ml soda water, lemon juice and 220ml Ice;

- (c) “Midori Sangria” comprising 120ml Midori, 180ml Red Wine, 360ml lemon squash, lemon juice and 300ml Ice; and
- (d) “Midori Breeze” comprising 150ml Midori, 150ml White Rum, 450ml Cranberry Juice, lemon juice and 220ml Ice.

The Complaint

- 11. The complainant argues that the Midori packaging/promotion which is a large bright green cocktail shaker with a tap on the bottom labeled a “Party Pourer” could be expected to have a strong appeal for children and adolescents

The Code

- 12. Part 2.1 of the ABAC provides that the naming and packaging of alcohol beverages (which is also referred to within these standards as “product material”) 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.
- 13. Part 2.2 of the ABAC provides that these standards (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.

The Supplier’s Comments

- 14. The Supplier responded to the complaints and questions posed by the Panel by letter dated 22 December 2011. The principal points made by the Supplier in relation to the packaging were:
 - (a) The bright green colour of the packaging is a reflection of the liquid colour of the Midori trademark product. It is not our intention to make this product have strong appeal to children or adolescents. We enforce the responsible sale of alcohol to those only aged 18 years and over, and actively communicate the Responsible Drinking message via the use of ‘Drink Responsibly’ on the packaging and the Drink Wise logo. The Midori Party Pourer is to only be sold in licensed retail outlets, whereby it is the responsibility of the licensee to not sell or supply alcohol to minors.
 - (b) The term ‘party’ is widely used within the industry, particularly within the Spirits category, and it’s not our intention to encourage underage drinking. As mentioned above, we do actively promote the ‘Drink Responsibly’ message on all our products including the Midori Party Pourer.

- (c) The design of the pack and the inclusion of the tap dispenser is a reflection of cask wine packaging, however with a smaller volume capacity of only 1.0L. It is not our intention to resemble a water or cordial dispenser. This design has also been used by other alcohol brands, namely Malibu with their limited edition packaging of the Mali Bu'Tube.
- (d) The Midori Party Pourer does not fall within the exception of the above mentioned Code, as the product in question was launched in the Australian market in October 2011. It is in our belief that for the reasons outlined in Point 1 a) and b) above, that the Midori Party Pourer is not in breach of the ABAC code.
- (e) It should also be noted, that the advertising of the Midori Party Pourer was at the discretion of the retailer, Liquor Home Delivery and was not endorsed or paid for by Suntory (Aust) Pty Ltd.

The Panel's View

- 15. The complaint raises a concern under Part 2 of the ABAC which sets out the standards which are to apply to the names and packaging of alcohol beverages available for retail sale in Australia. The ABAC scheme was extended to product names and packaging on 31 October 2009.
- 16. The method adopted in this extension of the ABAC scheme was to in effect allow products already in the market as at the commencement date to continue without having to meet the Part 2 standards, but to require new products coming onto the market after commencement to meet the standards. Accordingly, the first issue to be considered is whether the Midori "Party Pourer" package was available for sale in an Australian State or Territory prior to 31 October 2009.
- 17. The supplier of the product has advised that the product in the "Party Pourer" package was launched on the Australian market in October 2011. Hence the packaging does not fall within the "grandfathering" exemption and the Panel is able to make a determination on the consistency of the packaging with the relevant ABAC standards as raised by the complaint.
- 18. The complainant argues that the packaging is inconsistent with the ABAC standard which provides that product material must not have a strong or evident appeal to children or adolescents. This is argued to arise because of the design of the packaging (a large cocktail shaker with a tap similar to wine casks) and its bright green colour.
- 19. The supplier responds to the complaint by arguing that the colour of packaging reflects the colour of the Midori trademark and is not intended to have a strong appeal to under-age drinkers. The design is argued to reflect a wine cask in terms of a tap dispenser; however, the volume of the container is much less than a wine cask at 1.0l. It is pointed out that the dispenser is available only from licensed retailers and that this design of packaging has been utilised by other alcohol companies.

20. Over time, the Panel has made decisions on the application of the ABAC standards to alcohol beverage advertisements. In advertisements, the context of the ad as a whole is critical. This means that words and images in one ad might be consistent with an ABAC standard, but similar words or images placed into a different context might result in another ad not satisfying an ABAC standard. In contrast, the assessment to be made on a product name or package does not involve context in the same way and is more “absolute” in nature.
21. The Panel does not believe the product material (packaging) in this case can be said to have strong or evident appeal to children or adolescents. In reaching this conclusion, the Panel has noted:
- The colour of the package is a mid-shade of green and, while it might arguably be eye-catching, it does reflect the colour of the alcohol product.
 - While bright colours displayed in a particular fashion might, in an individual case, be said to have strong appeal to children, it is not the Panel’s view that a plastic rectangle container of a green colour would have strong or evident appeal to children or adolescents.
 - The complaint advances no reason why a container with a tap similar to a wine cask, as opposed to a standard bottle with a screw top, would have strong or evident appeal to children or adolescents. The Panel does not believe the use of a tap to gain access to the product, as opposed to pouring the product from a bottle, means that the packaging has strong or evident appeal to children or adolescents.
22. The complaint is dismissed.