

# ABAC

## ABAC Complaints Panel Determination No: 17/13

### Complaint by Commissioner O'Callaghan Product: Various Advertiser: Australian Liquor Marketers Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator  
Jeanne Strachan – Member  
Professor Louisa Jorm – Member

14 March 2013

#### Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Bottle-O and various alcohol products by Australian Liquor Marketers Pty Ltd (“the Advertiser”) and arises from a complaint received on 16 January 2013.

#### 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 the ABAC Panel on 16 January 2013.
- 7 The Panel endeavour 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 was not determined within the goal timeframe due to a large number of complaints requiring processing and decision in the February/March period.

### **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 is not a signatory to the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

- 9 The advertisement was on the right side of page 25 of the West Australian on 16 January 2013 and was the full length of the page set against a green background. At the top of the advertisement is the "Bottle-O" logo which depicts the two letter T's in the middle of the word "bottle" as bottles with corkscrews in them. Directly below the logo is the tagline "Good Times With Mates" above images of various alcohol products and their prices.

### **The Complaint**

- 10 The complainant refers to the slogan "Good Times with Mates" in connection with the advertising of alcohol and alcohol promotions and argues that the advertisement is in breach of section (c)(i) of the ABAC by pointing to the social success of drinking alcohol.

### **The Code**

- 11 The ABAC provides at Part 1 that advertisements for alcohol beverages must:
  - (c) 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;

### **The Advertiser's Comments**

- 12 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 31 January 2013. The principal points made by the Advertiser were as follows:

- a) Australian Liquor Marketers Pty Ltd (**ALM**) is part of Metcash Trading Limited, the owner of the Bottle-O brand and the publisher of the advertisement which led to this complaint. ALM is not currently a signatory to the ABAC Code. However, ALM is firmly committed to its legal and social responsibilities, and in particular, is committed to its participation in a number of programmes which further the objective of minimising the harm caused by the misuse of alcohol. I can also assure you that, in making decisions about the marketing and advertising of our brands, we already do frequently take into account the principles that underpin the ABAC Code. ALM's objectives are therefore aligned with those of ABAC in relation to this matter.
- b) ALM has considered the complaint, but, in this case does not believe that the advertisement is contrary to the terms of the ABAC Code. We note that your letters also ask a number of questions that go beyond the scope of the original complaint. As, in this case, we believe the complaint is without any merit, we have declined to answer the questions in any further detail at this time.
- c) I can also advise you that, for other reasons, entirely unrelated to the ABAC process, ALM has decided that it does not intend to use the slogan "Good times with mates" in future advertising materials. This might be relevant to your decision as whether to continue to review the complaint in relation to this advertisement.

### **The Panel's View**

- 14 The Advertiser is not a signatory to the ABAC Scheme. This means that it is not contractually bound to follow a Panel's decision, in contrast to signatories to the Scheme or members of the peak alcohol industry bodies who are the sponsors of the Scheme. The Panel does, however, consider all relevant complaints regardless of whether the advertiser or supplier is a signatory to the Scheme. In this case, ALM has cooperated with the Panel in its decision making process, although it declined to provide a rationale as to why the advertisement was consistent with the ABAC standard in issue.
- 15 The complainant is the Western Australian Police Commissioner. Commissioner O'Callaghan argues that the advertisement is in breach of section (c)(i) of the ABAC by use of the tagline, "Good Times With Mates", which the Commissioner believes "points to the social success of drinking alcohol". For its part, the advertiser refuted that the advertisement was inconsistent with the ABAC standard, but declined to submit an argument in support of its contention.
- 16 Section (c) of the ABAC provides that alcohol advertisements must not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood and must not suggest that the achievement of social success is caused or contributed by alcohol.
- 17 The critical aspect of section (c) is the notion of causation. The section does not prohibit the association of success with alcohol, but it is not permitted to suggest that alcohol was a reason as to why the success was achieved. Making a judgment on whether a particular advertisement is or is not suggesting alcohol causes a change in mood or the achievement of success can be fraught and often might see reasonable people disagree.
- 18 In the current case, the critical issue is how a reasonable person would take the message, "Good Times With Mates", when placed above pictures of alcohol products. If it is to be taken that the advertisement is saying something like, "In order to have a good time with your mates, consume alcohol", then the advertisement is in breach of the ABAC standard. Alternatively, if the take out message is something like, "Because you're

with your mates and you're having a good time, so enjoy a drink as well", then it will not be in breach of section (c).

- 19 In assessing the consistency of the advertisement with the standard, the Panel is to have regard to the advertisement as a whole and its probable impact upon a reasonable person. The 'reasonable person' test is a concept borrowed from the Australian common law system and relates to the attitudes, opinions and values commonly held in the community.
- 20 The advertisement as a whole provides price information on various alcohol products, combined with the advertiser's logo and tagline. While the Panel acknowledges the point being made by Commissioner O'Callaghan, it does not believe the advertisement can be said to breach section (c), as the advertisement does not create a causal link between alcohol and the enjoyment of "good times".
- 21 The complaint is dismissed.