

ABAC

**ABAC Complaints Panel
Determination No: 21/13**

**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 Cellarbrations and various alcohol products by Australian Liquor Marketers Pty Ltd ("the Advertiser") and arises from a complaint received on 17 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 17 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 goal timeframe, due to the large volume of complaints requiring determination in February and March.

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 did not obtain pre-vetting approval for this advertisement.

The Advertisement

- 9 The advertisement was on the right hand side of page 27 of the West Australian Newspaper on 16 January 2013 and was the full length of the page set against a yellow background. At the top of the advertisement is the "Cellarbrations" logo. Directly below the logo is the tagline "Make everyday a celebration!" above images of various alcohol products and their prices. Immediately below the tagline is an image of four bottles of spirits and price information.

The Complaint

- 10 The complainant refers to the use of the words "Make everyday a celebration" above an image of four bottles of spirits. The complainant notes that while the name of the company is 'Cellarbrations', the word 'celebration' has quite a different meaning and alleges that section (a)(iv) of the ABAC has been breached.

The Code

- 11 The ABAC provides at Part 1 that advertisements for alcohol beverages must:
 - (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly-
 - (iv) must only depict the responsible and moderate consumption of alcohol beverages;

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 Cellarbrations 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 letter asks 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.

The Panel's View

- 14 This is the second of two determinations flowing from complaints lodged with the ABAC Adjudication Panel by the Commissioner of the Western Australian Police Force. The first determination also concerned a newspaper advertisement for the alcohol retailer 'Bottle – O', while this determination concerns the outlet 'Cellarbrations'. Both retailer brand outlets are owned by ALM.
- 15 ALM is not a signatory to the ABAC Scheme. Mostly, the members of the scheme are alcohol producers and distributors, rather than liquor retailers. Nonetheless, the Panel receives and considers all complaints about alcohol beverage advertising, irrespective if the advertisement is from an ABAC signatory or not. In this case, ALM has cooperated with the Panel process, but declined to provide a substantive argument about its advertisement's consistency with the ABAC standard.
- 16 Commissioner O'Callaghan essentially argues that the tagline, "Make Every Day a Celebration", when combined with the advertisement as a whole, providing price information on various alcohol products is inconsistent with section (a) and (a)(iv) of the ABAC. Section (a) provides that advertisements must present a balanced and responsible approach to the consumption of alcohol and (a)(iv) must only depict the responsible and moderate consumption of alcohol beverages. The advertiser denies the advertisement is in breach and states the complaint is without merit. It declines to argue why this is the case.
- 17 The advertisement does not depict alcohol consumption, but rather shows various alcohol products and their pricing. The tagline also does not expressly refer to alcohol consumption. Rather, if the advertisement is to be found in breach of section (a), it will need to be on the basis of implication alone.
- 18 The section (a) standard sets out a positive requirement that alcohol advertisements present a responsible approach to alcohol consumption. It is presumed that Commissioner O'Callaghan believes the tagline, "Make Every Day a Celebration", means the advertisement is advocating that a person should consume alcohol every day and this is not consistent with a responsible approach to alcohol consumption.

- 19 The Panel is unable to accept this argument. Firstly, the advertisement does not advocate alcohol consumption or go to the issue of consumption. The advertisement provides price information and this goes to the purchase of alcohol products.
 - 20 There is a clear distinction between the purchase of alcohol and its consumption. For instance, a person might buy a carton of beer, but it does not follow that the person will drink all of the beer by themselves, in an irresponsible manner. It might be that the beer is consumed gradually over a period of time, or by numerous people.
 - 21 The tagline of, "Make Every Day a Celebration" clearly is a play on the outlet's brand name and it seems a long bow to contend that the tagline is advocating the daily consumption of alcohol in an irresponsible manner. At its strongest, it might be said that it is advocating that persons should purchase alcohol daily, but even this seems not to be the probable impact of the advertisement on a reasonable person.
- 22 The complaint is dismissed.