

ABAC

**ABAC Complaints Panel
Determination No: 29/12**

**Confidential Complainant
Product: Wild Turkey Bourbon
Advertiser: Campari Australia Pty Ltd**

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

16 April 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a radio advertisement for Wild Turkey Bourbon by Campari Australia Pty Ltd (“the Advertiser”) and arises from a complaint received 26 March 2012.

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 includes provisions about Billboard advertising.
3. The complaint 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 26 March 2012.
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 was decided 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. The Advertiser is not a signatory to the ABAC but did obtain pre-vetting approval for the script supplied to the radio station for this advertisement.

The Advertisement

9. The complaint refers to a radio advertisement for Wild Turkey Bourbon.
10. The dialogue of the live read advertisement was as follows:

“Look we at the Grill team we love helping out junior sporting clubs. We get...how many emails a day, boys, do you think we get emailed to from clubs doing it hard?”

“One a day” (Laughter)

“Yeah [indistinct] actually”

“No, no, your safe, can you get rid of this, there's this bloke that hangs around the sidelines, he hasn't got a kid in the team he just turns up.”

“We've got concerns”

“No, no, we get probably half a dozen a day” (Laughter)

"It's actually half a dozen"

"Ok we'll try to build suspense"

"Well we get contacted by at least half a dozen a day, they ask for our help and we can't help everybody but the good people at Wild Turkey can, well they can try to help at least one club. Listen up if you need help. Is your local sports team big on heart, light on wins and strong on team spirit, we're hooking up with Wild Turkey Bourbon to sponsor a local sport team, you get over \$10 grands worth of sponsorship support including new player kits, cash, coaching which Matty Johns will help you with to help claw your way up the ladder. All you've got to do to win over \$10,000 worth of gear, any junior club this'd be so good for, head to the win page at triplem.com.au."

"That's fantastic, good on you Wild Turkey"

"And the reason we help these clubs, its very very simple, is that the junior football clubs used to get subsidised and get their registrations and equipment and all that paid by the clubs around the place such as Panthers and whatnot, they used to give huge money. The problem now is with the poker machine tax and with the smoking laws and all that the clubs are under the pump massively, so what's the first thing they do? Cut back on their sponsorship. I know clubs that used to get \$10-12 grand, now they're getting about \$1,000-\$1,500 so every little bit helps."

"Good on you Wild Turkey Bourbon, you, good drop, you make our day"

"Enjoy responsibly"

"That's Lawsy's favourite drink isn't it?"

"Yes, he loves it, he's going all right"

"Bloody oath he is, he's still kicking"

"Wild Turkey Bourbon, give em the bird, enjoy responsibly, we gotta go boys."

The Complaint

11. The complainant argues that the advertisement promotes alcohol sponsorship of a junior sporting club and that an alcohol brand shouldn't be able to sponsor people under 18.

The Code

12. The ABAC provides at Section (a) 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 underage drinking;
13. The ABAC provides at Section (b) that advertisements for alcohol beverages must:

- b) not have a strong or evident appeal to children and adolescents and accordingly:
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverage.
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.

The Advertiser's Comments

- 14. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 2 April 2012. The points made by the Advertiser in relation to the advertisement were:
 - a. Campari takes all complaints about any aspect of our business very seriously and pride ourselves on high levels of corporate integrity and responsible marketing compliance. Campari fully supports the ABAC and takes utmost care when developing and executing advertising and promotions to ensure we abide by all aspects of the ABAC as well as other Australian advertising and liquor licensing laws, regulations, codes and guidelines.
 - b. The complaint relates to the current Wild Turkey Bourbon Turkey 10 promotion offering amateur adult sporting teams the opportunity to be part of the Promotion and subsequently receive one of 10 sponsorship packages worth more than \$10,000 each. Once the 10 winners are selected they will be part of the Turkey 10 which will see teams competing for additional special activities and prizes. The selection phase of the promotion commenced on Monday, 26 March 2012; the official Promotion with the 10 selected teams will run from 16 April through to 31 October 2012. The promotion is being run in conjunction with the Southern Cross Austereo (SCA) radio network.
 - c. The promotion is open to amateur adult sporting teams, where all team members are 18 years and over. This is clearly stated in the approved radio scripts, on the Turkey 10 website plus in the Terms & Conditions and the official Sponsorship Agreement, both of these documents can also be viewed on the Turkey 10 website.
 - d. The promotional materials, including radio scripts, copy for the website and electronic direct marketing materials were developed by Campari in association with its advertising agency and SCA. All the above-the-line advertising, that is radio scripts, were reviewed and approved by AAPS.
 - e. Campari strongly believes that the Promotion in itself and all Promotional materials approved by Campari do not breach any sections of the ABAC.

- f. There is a very clear mandatory condition for entry in the promotion, namely both the nominator and all team members must be 18 years of age and over.
 - g. The complaint is in response to comments made on Triple M Sydney which were one-off ad lib unauthorised comments made by two (2) announcers, namely Mark Geyer and Matthew Johns. The comments went to air on Triple M Sydney on Monday, 26 March 2012 at approximately 8:58am. Campari was not aware these announcers were going to make these comments and definitely did not authorise or approve any scripts which contained any references to “junior” teams or anyone under the age of 18 years. In fact, all radio scripts approved by Campari and subsequently approved by AAPS make it very clear that all teams, and respective team members, must be 18 years of age or over.
 - h. Campari is fully aware that the comments and references to “junior” teams made by both Mark Geyer and Matthew Johns were completely incorrect and totally inconsistent with both approved Promotional materials and the ABAC. As soon as we were notified of this complaint we immediately contacted SCA and took the decision to put the entire Promotion on hold while the matter was investigated internally and, at the same time re-iterated to the SCA team our expectations throughout the Promotion and immediate remedial actions required by their team to avoid a similar unintended incident in the future.
 - i. We strongly believe that Campari cannot be held liable or accountable for this unauthorised miscommunication as the comments made by the individual announcers were unauthorised, completely out of Campari’s control and in no way represented the entry requirements of the Promotion.
 - j. Campari undertook immediate and significant steps to ensure that such an error will not occur again during the promotion
 - k. Triple M’s target audience is men over 30 years and survey data shows that more than 90% of listeners are over 18 years of age.
 - l. A copy of the live read scripts provided to Triple M prior to 26 March 2012 clearly scripts dialogue that the promotion is only available to over 18s twice during each script.
15. The Advertiser supplied a copy of a letter it had received from Southern Cross Austereo dated 27 March 2012 apologising for the error by its announcers and acknowledging that all marketing material clearly states that the promotion is aimed at people over 18 years of age and noting the action taken by Campari and SCA prior to the promotion to ensure that it was clear that it was only available to adults and further steps taken after the error.

The Panel’s View

16. This complaint raises both substantive and procedural issues.

The Procedural Aspects

17. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by three (3) peak alcohol industry bodies, namely the:
 - Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.
18. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol suppliers and advertisers who are not members of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means the advertiser is not contractually bound to follow a panel decision. That said, the ABAC Adjudication Panel considers relevant complaints regardless of whether the advertiser or supplier is a signatory to the ABAC Scheme.

The Substantive Aspects

19. The complainant was concerned that the ad took the form of a conversation between the radio announcers which featured the proposed sponsorship by the advertiser of junior sports clubs as the outcome of the promotion being run by the advertiser. The complainant does not believe that an alcohol company should sponsor a junior sports team; nor should it be advertising itself via promotion of its sponsorship of a junior sports team.
20. For its part, the advertiser has provided the actual scripts supplied to the radio station which demonstrate that the “ad” was not intended to have any reference to junior sports clubs; but rather the sponsorship promotion is directed towards adult sports teams in which all players are over the age of 18.
21. The ABAC scheme covers the “advertising” of alcohol beverages. It does not purport to provide a set of standards about the appropriate circumstances as to when, if ever, an alcohol company should be involved in sponsorship arrangements. Accordingly, the Panel cannot make a finding on the actual proposed sponsorship agreement. What the Panel is to do is to assess the actual radio ad against the relevant ABAC standards.
22. In this regard, the ad is to be assessed as it was broadcast, and not on the intention of the advertiser. It seems clear enough that the two announcers, namely the former rugby league players Mark Geyer and Matthew Johns, went on a frolic of their own in the live broadcast which comprised the ad. As well as making the references to the promotion being directed to junior sports clubs, they made references to “poker machine taxes” and controls on smoking in clubs as the backdrop as to why the advertiser’s sponsorship proposal was particularly worthwhile to junior clubs. The advertiser’s script made no mention of these

matters and it appears that the statements are subjective and highly-contested personal opinions, at best.

23. The ABAC provides that an ad must not promote under-age drinking nor have strong or evident appeal to children or adolescents. The Panel believes the ad does breach both of these standards, given the clear linkage between the product and junior sports and the way in which two well-known former footballers promoted the product.
24. Accordingly, the complaint is upheld.

Chief Adjudicator's Addendum to Determination 29/12

The Advertiser has expressed disappointment at this adverse ABAC Determination in circumstances where the statements made during the 'live read' radio advertisement that were in breach of the ABAC were not authorised or intended by the Advertiser but were an error by the radio announcers. The Chief Adjudicator acknowledges that the Advertiser has demonstrated a commitment to the ABAC Code by pre-vetting its advertisements and co-operating with the ABAC adjudication process and that the actual broadcast that was found by the Panel to be in breach of the ABAC was not authorised or intended by the Advertiser.