

ABAC

ABAC Complaints Panel Determination No: 30/10

Complaint by Ms Naomi Smith Product: Catholic Mission Wine Aid Advertiser: Cork Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Richard Mattick – Member

8 July 2010

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Catholic Mission Wine Aid by Cork Pty Ltd (“the Advertiser”) and arises from a complaint received 21 June 2010.

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 is in the form of an email received on 21 June 2010.
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 30 day 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 member of the scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to a printed advertising material distributed to Catholic Mission supporters.
10. The complainant has supplied two flyers, both in a similar format. The first advertisement features a box at the top of the page with the text "Mission" and "Wine Aid...work of human hands" over a map of the world above further text "Through Wine Aid YOU CAN HELP! \$12.00 from Every case is Donated to Catholic Mission" and next to a photograph of children in a building with their hands up and holding pencils. Below the box is a diagram showing donations to date next to the following text "Quality Wine, Free Delivery. Celebrate Today...Help bring "Life for all" More than 2.6 million children worldwide receive healthcare, nutrition programs, education and of course – hope. Your support means that we can help more. By purchasing from Wine Aid today you are helping us bring real change to people in 160 countries around the world. Enjoy a fabulous drop of wine knowing that you are also helping children and communities around the world live a better life. Wine Aid is an initiative of

Catholic Mission and Cork Pty Ltd". The page concludes with practical information about ordering. The reverse side of the flyer features a picture and description of the advertised wines and an order form.

11. The second flyer is similar to the first but the picture in the box at the top of the first page is of a family under a thatched roof. The "Donations to Date" part and text below the box is also different and reads "Quality Wine, Free Delivery. Reach out and give life. Health Care, education and nutrition programs are just some of the ways Catholic Mission helps communities throughout the world. Your support means that we can help more. By purchasing from Wine Aid today you are helping bring hope to people in 160 countries. You can responsibly enjoy a glass of fine wine knowing that you are also reaching out to give others a better life. Wine Aid is an initiative of Catholic Mission and Cork Pty Ltd".

The Complaint

12. The complainant argues that the advertisements use children's images to assist in the sale of alcohol in breach of section (b) and do not depict children in a 'natural situation' where alcohol is consumed and so it seems to me to be inappropriate that their images be used to sell alcohol.

The Code

13. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
 - b) not have a strong or evident appeal to children or adolescents and, accordingly;
 - ii) children and adolescents may only appear in product material in natural situations (eg. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages.

The Advertiser's Comments

14. The Advertiser responded to the complaint and questions posed by the Panel on 6 July 2010 as follows:
 - (a) The advertisement was not submitted for pre-vetting against the ABAC code as I would never have imagined photos of disadvantaged families and children of 3rd world nations would require vetting.
 - (b) The ad does not breach section B (ii) of the ABAC by it's inclusion of children and adolescents as these photos are not advertising the alcohol but are depicting the recipients of the charity of Wine Aid.

- (c) I have operated Catholic Missions Wine Aid for 8 years now and each year I produce a brochure for the Catholic Mission to distribute to its' existing supporters and donors. The procedure to supply the new brochure begins with Catholic Mission providing an image to be used for that particular campaign. That image is generic and is used for any number of the Catholic Mission's fundraising ventures. It is not specific to Wine Aid. Consequently, I strongly believe the images in question come within the Standards of Advertising, namely Part 1 B (ii). The scenes are merely depicting the results of the contribution made by the Mission.
 - (d) I have held various managerial positions in the liquor industry for 30 years and have held various licences without blemish. At no time, past present or future would I ever design a brochure with the aim to promote underage drinking. This initiative has raised in excess of \$220,000 to donate to the areas in greatest need in the Catholic missions all over the world. It must be noted that it is to benefit people in dire need in third world countries. A fact of which I am very proud!
15. The Advertiser also supplied a response from the Fundraising and Public Relations Manager of Catholic Mission as follows:
- (a) Catholic Mission appreciates the financial benefit received from Cork Pty Ltd as part of its WineAid agreement where \$12 from every case sold through WineAid is donated by Cork to Catholic Mission. However in no way would Catholic Mission want to promote underage or irresponsible consumption of alcohol.
 - (b) The WineAid promotional brochures do not have a strong or evident appeal to children or adolescents and were not created to have such an appeal. The children included in the WineAid promotional brochures are not used in a context that promotes underage consumption or use of alcohol beverages. They are in a natural setting where there is no implication that the depicted children will consume or serve alcohol beverages. The photos of children (or children as part of a family or community) are shown simply as an example of how WineAid supporters help to benefit disadvantaged children throughout the world. The WineAid brochures are distributed to a very select audience who are already supporters of Catholic Mission, and WineAid presents simply another means of extending their support.
 - (c) Catholic Mission would be happy to support Cork Pty Ltd in abiding by the decision of the Panel regarding this complaint.

The Panel View

16. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The

issue is that Cork Pty Ltd is not a member of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC's adjudication process has no binding effect on the company. However the advertiser has responded to the complaint and co-operated with the ABAC process and accordingly the Panel is able to make a determination on this complaint.

17. The complaint raises the operation of section (b)(ii) of the ABAC. This section provides that alcohol ads are not to have a strong or evident appeal to children and adolescents and accordingly children and adolescents may only appear in ads in natural situations and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages.
18. In this case both flyers show pictures of families and/or children representative of the recipients of the aid work undertaken by the Catholic Mission. There is no suggestion that the children will be served or will consume alcohol from the photos. The advertiser explains that the photos are "file footage" used in material explaining the work of the Mission.
19. This is a slightly unusual case. Generally the Panel considers section (b) in the context of a concern that a form of advertisement has the affect of encouraging children or adolescents to drink alcohol, or that children will be attracted to an alcohol product. In this instance, the point is whether a photograph featuring children should be placed on a flyer promoting a method to purchase wine, the proceeds of which in part go to funding the work of the Catholic Mission.
20. The ABAC does not deal with whether it is appropriate or not for a charitable organization to use alcohol sales as a means to fundraise. This is an issue for the Catholic Mission to determine and not the Panel. The Panel's role is to assess if the ABAC standard has been breached.
21. In assessing if an ad meets an ABAC standard, the Panel has regard to the probable impact of the ad on a reasonable viewer to whom the ad may be communicated, taking its import as a whole. The Panel also is mindful of the spirit and intent of the ABAC standards and endeavours to use a common sense and not overly legalistic approach in applying the code.
22. The Panel does not believe the flyers breach the code. While children are shown on the flyer, there is no reasonable suggestion that the ad is endeavouring to encourage young people to drink alcohol or that the ad would appeal to children. The children are shown to illustrate the intended beneficiaries of the fundraising efforts of the Mission. Further, it is fair to say that the children are depicted in a 'natural situation' albeit not in a way the drafters of the code probably envisaged the provision being used.
23. The complaint is dismissed.