

# ABAC

## ABAC Complaints Panel Determination No: 4/13

### Confidential Complaint Product: Eristoff Vodka Advertiser: Electric Playground

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

24 January 2013

#### Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a digital advertisement for the Magic Playground NYE Party Eristoff VIP package by the nightclub Electric Playground (“the Advertiser”) and arises from a complaint received on 2 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 2 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. The complaint has been determined within this 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 ABAC Scheme and pre-vetting approval was not obtained for the advertisements.

### **The Advertisements**

- 9 The advertisement was a poster available on various digital media and also offline.
- 10 The advertisement is for a New Year's Eve event and set against a background of a country park including elements from fairgrounds, balloons, bubbles, hot air balloons and fireworks. The text superimposed on the scene is:

"Eristoff presents the ultimate NYE Festival Magic Playground  
NYE 2013 – Monday 31<sup>st</sup>  
Presenting  
CHINGY [USA]  
DJ Tay James Rave Radio ....  
DJ Samrai Gavin Boyd  
Fortafy Wahoo DJ Owie DJ OMG  
DJ Rocket Karma DJ jmixx Epik  
Magiccity Electric Playground  
Eristoff VIP all inclusive package – Tix \$79 (limited)  
Entry, Finger Food & Drinks 8pm-11pm  
4 stages One Massive Event Tickets 1<sup>st</sup> release Tix - \$25 2<sup>nd</sup> release Tix \$35  
Tickets available .... "

### **The Complaint**

- 11 The complainant argues that the advertisement advertises the availability of unlimited drinks in a package for NYE external to the venue itself.

### **The Code**

- 12 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 –
  - i) must not encourage excessive consumption or abuse of alcohol;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages..
- g) not encourage consumption that is in excess of or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

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

13 Bacardi Lion responded to the complaint and questions posed by the Panel by way of letter dated 10 January 2013. The principal points made by the Advertiser were as follows:

- a) Bacardi Lion sponsored this event as part of a long term (12 month) contract with the venue. As part of the sponsorship Eristoff vodka has naming rights to three events – which are determined by the venue owner. Although Bacardi Lion was aware the New Year Eve party would be one of the three events Eristoff was named as a presenting partner, we did not provide input into the format of the event. This was at the venue's discretion. Electric Playground Nightclub did not request approval of the advertisement from Bacardi Lion.
- b) The focus of the advertisement is about the actual event. At no point does the advertisement specify unlimited drinks. The phrasing used refers to the ticket covering – entry, food and drinks. Additionally the inclusion of food within the package meets with DSICA responsible service of alcohol standards. Bacardi Lion does not believe the advertisement promotes unlimited consumption of alcohol to a reasonable person. Numerous events such as gallery openings, fashion shows, VIP launches and racing marquees provide all inclusive packages without the assumption of excessive consumption of alcohol. Phrasing such as “unlimited” or “all you can drink” may have indicated otherwise. We would like to acknowledge that a drink responsibly message should have been included however Bacardi Lion did not have the opportunity to approve the advertisement.

14 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 10 January 2013. The principal points made by the Advertiser were as follows:

- a) We act for the owners of Electric Playground. We are a consultancy practice providing professional assistance in all aspects of gaming and liquor licensing in Queensland and throughout Australia. We offer the following response to your enquiries.
- b) Our client advises that Bacardi Lion was a sponsor of the event, and believes that they were aware of and approved the advertisement. Consultation with Bacardi Lion was via the company's usual sales representative, who was made aware of the content of the advertising and no concerns were raised.
- c) We thank you for bringing the Code to our, and our client's attention. Although we act for numerous licensees we have not had to deal with matters relating to the ABAC Code. It is noted that ABAC deals mainly with advertising carried out by liquor companies (eg tv, radio promotions, packaging etc). Our experience with liquor

advertising deals mainly with the requirements imposed on licensees by the Qld Liquor Act 1992.

- d) Although our client was not previously aware of it, it will support the Code as it conducts its business in a way that is consistent with its initiatives by ensuring liquor is served in a responsible manner and staff are instructed how to identify and control the risks associated with the supply of liquor.
- e) Our client also ensures that the advertising of its promotions complies with the strict requirements of the Qld Liquor Act 1992 and the external advertisement in question is no different. It is noted that it was for a one-off event. It is well known that ticket packages to New Years Eve functions may include all inclusive event entry, entertainment, food and drinks subject to certain restrictions. Our client's advertisement certainly does not have any wording or novelty about it which would encourage excessive consumption of liquor. The package is only a 3 hour period which includes entry worth \$25 - \$35. Therefore it would be unreasonable to assume that \$79 would entitle a patron to unlimited food and liquor.
- f) The facts are that the package was limited. Our client advises that the ticket only authorised VIP entry and entertainment, pizza and 2 standard drinks. However, now that we, and our client, have had a chance to become more conversant with the Code, our client will take additional care to ensure any future advertising of its events falls within the ambit of the Code which, as we note above, has initiatives consistent with those of the Qld Liquor Act.

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

- 15 It should first be noted that Electric Playground 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 and, in this case, Electric Playground has fully cooperated with the Panel in its decision making process and agrees to support the ABAC Code.
- 16 While the Electric Playground nightclub is not a signatory to the ABAC Scheme, the distributor of Eristoff Vodka, Bacardi Lion, is a member of the Scheme. This means if the advertisement was for a product of Bacardi Lion, then the Panel's determination would be binding.
- 17 The two parties have slightly different understandings of the level of Bacardi Lion's involvement in the approval of the actual advertisement, but given the advertiser has accepted the ABAC process it is not necessary to resolve this issue.
- 18 The substantive issue is whether the advertisement is encouraging excessive alcohol consumption. The complainant believes it is because it is contended the advertisement is promoting a package which includes 'unlimited' drinks during the New Year's event.
- 19 The advertiser and Bacardi Lion both say the complainant's interpretation of the advertisement is mistaken. It is argued that the advertisement is promoting an 'all inclusive' package, which is something very different to 'unlimited drinks'. 'All inclusive', it is argued, actually meant entry into the venue, entertainment, food and drinks. The package is said to have been for a 'three hour period' and the food was pizza and liquor supplied as part of the package was no more than two standard drinks.

20 While the advertiser's account of what a subscriber to the package actually received may be accurate, the issue for the Panel is how a reasonable person would view the advertisement. In this regard, the Panel does not believe the advertisement breaches the ABAC standard and in reaching this conclusion the Panel has noted:

- a) the wording 'all inclusive' is quite different in meaning to 'unlimited'
- b) the advertisement sufficiently establishes a context by reference to 'entry, finger food and drinks' and that 'all inclusive' was covering more items than simply the availability of alcohol.
- c) The event was time limited and the price when including food and entertainment does not suggest that 'unlimited' drinks would be supplied.

21 Accordingly, the complaint is dismissed.