

ABAC

ABAC Complaints Panel Determination No: 42-43/11

Confidential Complaint Product: Bundaberg Rum Advertiser: West Kempsey Hotel

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Fran Baum – Member

1 July 2011

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print and outdoor advertisement for Bundaberg Rum by the West Kempsey Hotel (“the Advertiser”) and arises from a confidential complaint received on 8 June 2011.

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 by the ABAC Panel on 8 June 2011.
- 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 has been determined within 30 business days.

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 this advertisement.

The Advertisement

- 9 The print advertisement features a photograph of the West Kempsey Hotel with its name, address and telephone number at the top of the page.
- 10 Below the picture in the middle of the page is the text "Husband Day Care Centre. Need time to relax? Need time to yourself? Want to go shopping? Leave your husband with us! We'll look after him for you! You only pay for his drinks!". The text "Husband" is in colour and surrounding the text is a paint handprint and hand drawn and coloured picture of a rainbow and sun that looks to have been drawn by a child. There is also a picture of three blocks marked with the letters A, B and C.
- 11 At the bottom of the page is the Bundaberg Rum logo next to the heading "Bundy Headquarters. Everyday Pricing" followed by price information for Bundaberg Rum products.
- 12 The Panel has not had access to the outdoor advertisement but has been advised that it is similar to the print advertisement.

The Complaint

- 13 The complainant raises concerns on social and health grounds to the advertisement in both the ad's "spirit and wording". The complaint outlines health issues such as alcohol foetal syndrome and social issues such as alcohol factors in domestic violence flowing from the misuse of alcohol. Measures to improve responsible alcohol use in the region are outlined and the ad is seen as inconsistent with those measures.

The Code

- 14 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.

The Advertiser's Comments

- 15 The current manager of the West Kempsey Hotel advised that there is no copy or picture of the outdoor advertisement and the advertisements were placed before a change in management of the hotel and were removed by new management.

The Panel's View

- 16 This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

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 producers and advertisers who are not member 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 that the advertising was not subject to pre-vetting prior to its publication and the advertiser is not contractually bound to follow a panel decision. That said, the complainant has supplied a copy of the print advertisement enabling the determination to be made.

The Substantive Aspects

- 19 Section (a) of the ABAC provides that alcohol beverage advertising must present a mature, balanced and responsible approach to the consumption of alcohol. This is an overall standard for alcohol advertising which will be offended if ads can be considered as encouraging excessive consumption, under-age drinking, offensive behavior or misuse or abuse of alcohol.
- 20 The ad is a parody of what might be expected in an advertisement for a child-care centre. It uses depictions of children's writing and a paint hand-print and the blocks "A, B, C" which also brings to mind the ABC child-care centres.
- 21 The preamble to the Code provides some guidance as to how ABAC standards are to be assessed. The preamble states that the conformity of an ad with ABAC standards is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the ad is directed, taking the content of the ad as a whole.
- 22 The Panel considers the ad to be juvenile and undesirable in terms of its implicit association of child-care with alcohol use. It is noted that the new management of the hotel has removed the advertising. On balance, the Panel believes the ad fails to present a mature approach to alcohol consumption and breaches section (a) of the code.

23 Accordingly, the complaint is upheld.