

# ABAC

**ABAC Complaints Panel  
Determination No: 56/12**

**Confidential Complaint  
Product: Vodka Cruiser  
Advertiser: Independent Distillers (Aust) Pty Ltd**

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

3 August 2012

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a facebook page for Vodka Cruiser produced on behalf of Independent Distillers (Aust) Pty Ltd (“the Advertiser”) and arises from a confidential complaint received on 14 June 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 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 ABAC on 14 June 2011.
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 not been determined within the 30 day timeframe due to the complexity of the material complained of and the availability of the Chief Adjudicator.

### **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 complaint refers to a facebook site at [www.facebook.com/cruiserparty](http://www.facebook.com/cruiserparty).
10. The facebook site features at the top of the page a pink yellow and orange graphic with the text "Premium Blend Genuine Double Distilled Vodka Cruiser". Below is the text "Cruiser" "8,324 likes – 237 talking about this" "Food/Beverages" [www.cruiserrange.com.au](http://www.cruiserrange.com.au).
11. The site contains numerous posts by Cruiser and users of the site. The posts referred to in the complaint are all by Cruiser and are described following:
  - (a) 11 June 2012 – "Anyone feelin' a little dusty after the weekend?" followed by a photograph of a female toddler in bathers and floaties struggling with her goggles with a frustrated expression on her face with the following text superimposed on the bottom of the photograph "F\*\*\* THIS SH\*\*".
  - (b) 6 June 2012 – "To celebrate the Queen's Diamond Jubilee you know what you have to do!!!!" followed by a picture of the British flag superimposed with an image of a crown and the text "KEEP CALM AND DRINK VODKA".

- (c) 28 May 2012 – “CRUISER FACT...Barbie got her first car in 1962, what was or is your first car???” followed by a picture of a Barbie in a pink toy car.
- (d) 26 May 2012 – A postcard from someecards.com that features a sketch of a glamorous man and woman dressed in clothing from another era with the woman extending her cocktail glass in a toast with the text “ALCOHOL Because no great story starts with “someone eating a salad...””
- (e) 25 May 2012 – “Can you drink the Cruiser rainbow?” followed by a picture of 5 bottles of Vodka cruiser in red, pink, yellow, green and blue.
- (f) 20 May 2012 – “Who needs one?” followed by a picture of a tube of Berocca.
- (g) 5 May 2012 - A postcard from someecards.com that features a sketch of two women running and passing a baton dressed in clothes of another era with the text “Let’s workout really hard, then rehydrate with margaritas!”
- (h) 22 March 2012 - A postcard from someecards.com that features a sketch of a woman with a cocktail glass turning her head away with the text “Vodka makes it possible for me to tolerate a person like yourself”.
- (i) 17 February 2012 – “A little bit naughty...TGIF!” followed by a photograph of a glamorous woman dressed in clothing of another era holding a glass of clear liquid with the caption “VODKA Just like water, only better!”
- (j) 21 January 2012 – A photograph of a woman talking on the telephone and holding a mug with the caption “I’m not an alcoholic, alcoholics go to meetings. I’m a drunk, we go to parties.”
- (k) 2 January 2012 – “OMG can’t believe it’s the 2<sup>nd</sup>! It’s ok everyone your NYE resolutions can start tomorrow.... In the meantime crack open another Cruiser. There’s no remedy like the hair of the dog.” followed by a photograph of empty vodka cruiser bottles.

## The Complaint

12. The complainant argues that:

- (a) the 11 June post depicts a minor under 18 years of age;
- (b) the 6 June post alludes to consumption of alcohol as an aid to relaxation;
- (c) the 28 May post depicts toys likely to appeal to minors;
- (d) the 26 May post implies consumption of alcohol tied to social success;

- (e) the 25 May post suggests to the drinker to drink their way through the spectrum of colours in one sitting;
- (f) the 20 May post in the context of the website alludes to glorifying overindulgence;
- (g) the 5 May post suggests irresponsible use of alcohol;
- (h) the 22 March post suggests alcohol as a social crutch;
- (i) the 17 February post implies alcohol is a superior option to water;
- (j) the 21 January post glorifies alcoholism;
- (k) the 2 January post promotes inappropriate use of alcohol.

**The Code**

13. The ABAC provides 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
    - ii) must not encourage under-age drinking
  - b) not have a strong or evident appeal to children and adolescents and, accordingly:
    - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages
  - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly:
    - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting sexual or other success  
 .....
    - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

**The Advertiser’s Comments**

14. The Advertiser responded to the complaint and questions posed by the Panel on 25 June 2012. The principal points made by the Advertiser are:

- (a) Independent Distillers, which has recently become a subsidiary of Asahi Group Holdings, takes its responsibilities as a maker of alcoholic products very seriously. Both Independent and Asahi have strict internal guidelines regarding product development and marketing to ensure that no inappropriate product or marketing material is ever released.
- (b) The facebook page which carried the specific posts referred to in the complaint were produced on behalf of Independent Distillers by a public relations agency.
- (c) It is our opinion that the material in question is not an advertisement and is therefore not bound by any advertising code of conduct; however we do of course accept that you have made a different determination. We also wish to note that Independent Distillers is not bound by the ABAC Scheme as it is not a member of DSICA, however they wish to cooperate in every way with your inquiry on this matter.
- (d) Social media is a rapidly changing landscape and cannot be defined as easily as an advertisement. Therefore we do not believe that a company's facebook page falls under the umbrella of advertising. The Cruiser facebook page is run by a "below-the-line" public relations agency and is considered a public relations activity.
- (e) The purpose of our facebook page is to create dialogue about the product, a resource where individuals over the age of 18 who enjoy Cruiser products can share their thoughts and find interesting content such as a cocktail recipe, photographs from a Cruiser event, even fashion tips and celebrity gossip. We treat the facebook page as a tool for community conversation and not a platform for advertising.
- (f) None of the material in question was produced by us or our public relations agency to sell Cruiser product. Most are facebook posts and other trending internet "memes" originating elsewhere online that have been shared with fans of the Cruiser page, content that is shared readily across social media networks by many users.
- (g) While we do not concede that the material falls under your jurisdiction as an alcohol advertising complaints resolution agency, we take our obligations as an alcohol producer very seriously. As such, for the removal of any doubt we have decided that the material in question would be removed from the Cruiser facebook page. This deletion has already occurred.
- (h) We will work closely with our public relations agency to establish a firmer set of guidelines so that the content of the page does not raise further complaints and will monitor the page closely during the transitional period.
- (i) Social media is a changing landscape, which makes the firm application of marketing codes and other regulations more difficult than with traditional advertising. We are in the process of creating a reviewed set of marketing guidelines for all Independent Distillers owned products and

we will consider the evolving role of social media very seriously in these guidelines.

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

15. This complaint raises both substantive and procedural issues which will be dealt with in turn.

#### **The Procedural Aspects**

16. 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.
17. 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.

#### **Are the Facebook pages “advertisements for alcohol beverages” within the meaning of the ABAC?**

18. The complaint concerns a Facebook page for Vodka Cruiser and posts made on that page by a public relations agency on behalf of the Advertiser. The ABAC is a code of practice for “alcohol beverage advertising”. The Advertiser argues that the Facebook pages are not alcohol beverage advertisements but rather a public relations activity that has the purpose of creating dialogue about the product and is a tool for community conversation and not a platform for advertising. This raises the question of whether the Facebook pages are advertisements for alcohol beverages and therefore fall within the ambit of the ABAC scheme.
19. The ABAC provides in its preamble that the industry sponsors of the scheme are committed to the goal of “all advertisements for alcohol beverages” complying with the spirit and intent of this code. “Internet advertisements” are defined in the Code as “internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia...and to banner advertising of such products on third party sites”. The term “advertising” is not defined by the ABAC.
20. The Panel notes that it first considered whether a Facebook page was “an advertisement” for the purposes of the ABAC in Determination 38/09 dated 11 May

2009. After considering the overseas experience and the spirit and intent of the ABAC scheme, as well as the actual characteristics of the Facebook page, the Panel concluded that the particular Facebook page referred to in that complaint was captured by the ABAC scheme.

21. The Panel has considered the Vodka Cruiser Facebook site referred to in the complaint and is of the view that it is an “advertisement” for the purposes of the ABAC. The Panel notes that the site contains the product name, logo and photographs of products in the range and many of the comments relate to the product and consumption or purchase of the product and vodka/alcohol generally. Looking at the facebook site as a whole the Panel is of the view that it is an advertisement for an alcohol beverage within the intended scope of the ABAC Scheme and therefore must comply with the ABAC standards.

#### **Substantive issues**

22. The complaint refers to a number of posts which have been grouped and considered by reference to the ABAC provision they raise.

#### **Section (a)**

23. The complaint suggests that the advertisement is in breach of Section (a) of the Code by failing to present a mature, balanced and responsible approach to the consumption of alcohol by:

- (a) suggesting that alcohol is suitable to rehydrate or to substitute for water:
  - by a post on 5 May 2012 including a postcard featuring two women in old fashioned running clothing passing a baton from one to another with the text “Let’s workout really hard then rehydrate with margaritas!”;
  - by a post on 17 February 2012 stating “A little bit naughty....TGIF!” with a black and white photograph of a glamorous woman in the style of a previous era holding a glass of clear liquid with the caption “Vodka, just like water, only better!”
- (b) making fun of alcoholism and excessive consumption:
  - by a post on 21 January 2012 stating “I’m not an alcoholic, alcoholics go to meetings. I’m a drunk we go to parties” with a picture of a woman talking on the phone and holding a mug in the style of a previous era.
- (c) promoting alcohol as a cure for the effects of overindulgence:
  - by a post on 2 January 2012 with a picture of numerous empty bottles and the caption “OMG can’t believe it’s the 2<sup>nd</sup>. Its ok everyone, your NYE resolutions can start tomorrow...In the meantime crack open another Cruiser. There’s no remedy like the hair of the dog.”

24. The Panel has considered the posts referred to above and believes that while some of the posts are “tongue in cheek” in style and message, none the less on balance the Panel considers the posts in breach of Section (a) of the Code.

**Section (a)(i)**

25. The complaint suggests that the advertisement is in breach of Section (a)(i) of the Code by failing to present a mature, balanced and responsible approach to the consumption of alcohol and encouraging excessive consumption or abuse of alcohol by:

- (a) a post on 21 January 2012 stating “I’m not an alcoholic, alcoholics go to meetings. I’m a drunk we go to parties” with a picture of a woman talking on the phone and holding a mug in the style of a previous era.
- (b) a post on 2 January 2012 with a picture of numerous empty bottles with the caption “OMG can’t believe it’s the 2<sup>nd</sup>. Its ok everyone, your NYE resolutions can start tomorrow...In the meantime crack open another Cruiser. There’s no remedy like the hair of the dog.”
- (c) a post on 25 May 2012 stating “Can you drink the Cruiser rainbow?” with a photograph of 5 different coloured Vodka Cruiser products.
- (d) a post on 20 May 2012 stating “who needs one?” with a picture of Berocca alluding to excessive consumption of alcohol for which Berocca could be used to assist in recovery.

26. The Panel has considered the posts referred to above and believes that posts (a) and (b) above breach Section (a)(i) of the Code. Both these posts strongly suggest that excessive consumption has occurred and is encouraged. In contrast the posts described in (c) and (d) above are not considered in breach of the ABAC. Simply displaying bottles of the product does not imply all of the products will be or should be consumed irresponsibly. Equally it is necessary to imply excessive consumption to find post (d) in breach. The use of a Berocca might or might not be linked to excessive consumption. But simply showing the Berocca alone would not breach the standard in the Code.

**Section (a)(ii)(b)**

27. The complaint suggests the advertisement is in breach of Section (a)(ii) and (b) of the Code by failing to present a mature, balanced and responsible approach to the consumption of alcohol and encouraging underage drinking or having strong or evident appeal to children or adolescents by:

- (a) a post on 11 June 2012 depicting a toddler with a humorous expression.
- (b) a post on 28 May 2012 depicting a barbie doll in a toy car.

28. The Panel has considered the posts referred to above and believes that post (b) breaches Section (a)(ii) and (b) of the Code as the depiction of a barbie doll in a toy car has strong and evident appeal to children or adolescents and is therefore likely to



encourage underage drinking. While the Panel does believe that post (a) does breach Section (b) (ii), of itself it is not considered to have strong or evident appeal to children or adolescents.

#### **Section (b) (ii)**

29. The complaint suggests the advertisement is in breach of Section (b)(ii) of the Code by depicting a toddler in a post on 11 June 2012. The Panel believes that the depiction of the toddler in the alcohol advertisement is in breach of Section (b)(ii) of the Code which provides that children and adolescents may only appear in advertisements in natural situations (eg family barbecue or licensed restaurant) and where there is no implication the depicted children or adolescents will consume or serve alcohol beverages. The featuring of a toddler with a humorous comment on a facebook site for an alcohol beverage is not a natural situation of the type described in section (b)(ii) of the ABAC.

#### **Section (c)(i)**

30. The complaint suggests the advertisement is in breach of Section (c)(i) of the Code by suggesting that the consumption or presence of the product may create or contribute to a significant change in mood or environment and be a cause of or contribute to social or other success by:
  - (a) a post on 26 May 2012 including a postcard with a picture of a man and woman in the style of a previous era holding a glass and the text "Alcohol Because no great story starts with someone eating a salad.." suggesting that alcohol contributes to social or other success.
  - (b) a post on 22 March 2012 including a postcard with a woman holding a glass and looking away and the text "Vodka makes it possible for me to tolerate a person like yourself" suggesting that alcohol changes the mood or environment and contributes to social or other success.
31. The Panel has considered the posts referred to above and believes that they each breach Section (c)(i) of the Code in creating a causal link between the consumption or presence of alcohol and a significant change in mood or environment.

#### **Section (c)(iii)**

32. The complaint suggests the advertisement is in breach of Section (c)(iii) of the Code by suggesting that the consumption or presence of the product may create or contribute to a significant change in mood or environment and suggesting that consumption offers a therapeutic benefit or is a necessary aid to relaxation by:
  - (a) a post on 6 June 2012 stating "To celebrate the Queens Diamond Jubilee you know what you have to do!!!!" and including a picture of the British flag with the text "Keep Calm and Drink Vodka".
33. On balance the Panel does not believe this post breaches Section (c) (iii). While the post does mention, "Keep Calm and Drink Vodka", the language does not suggest that vodka causes a person to be calm. Rather the text states a person is calm and in

addition should drink to celebrate the Diamond Jubilee. Nor does the statement assert that vodka is the reason for the celebration rather it should be used to mark the celebration.

34. For the reason outlined in paragraphs 23 to 33 inclusive the complaint is upheld in some parts and dismissed in other respects.