

ABAC

**ABAC Complaints Panel
Determination No: 60/11**

**Confidential Complainant
Product: Virgin Wines
Advertiser: Virgin Wines**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Fran Baum – Member

17 August 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an email advertisement for Virgin Wines (“the Advertiser”) and arises from a complaint received 27 July 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 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 27 July 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 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 and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaint refers to an email advertisement sent out as a joint promotion by Moshtix and Virgin Wines.
10. The advertisement features a photograph of a young man wearing a singlet, shorts and sunglasses crowd surfing at a concert with the tag line "Be the king of the 'Kick On' with a little help from Virgin Wines" superimposed on the photograph. Below the photograph the following text appears next to a photograph of 12 bottles of wine;

"When the party is over and acts you so loudly screamed for have gone – do as they do... kick on in style! Make sure you're ready for the post festival party with this amazing 12-bottle case from Virgin Wines for \$119.99 – just \$9.99 a bottle. Drink like a rock-star, pay like a cover band ORDER your \$119.99 case NOW! There is nothing worse than running out of grog after the event – with this special offer, there'll be no excuses! Jump online to see what all the fuss is about:

www.virginwines.com.au/moshtixwines .”

The Complaint

11. The complainant argues that the advertisement:
- (a) is aimed at young people,
 - (b) encourages excessive drinking,
 - (c) encourages bulk purchase of alcohol by young people,
 - (d) encourages people to continue drinking alcohol after being out all day drinking,
 - (e) asks young people to make a correlation between drinking alcohol and being a rock star,
 - (f) asks young people to continue to drink like a rock star,
 - (g) implies there is a negative social impact if you don't have alcohol on hand after being out all day.

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 –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage underage drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
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 ...
14. Section (c) of the ABAC provides that advertisements for alcohol beverages must:
- 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.

The Advertiser's Comments

15. The Advertiser responded to the first complaint and questions posed by the Panel by email received 11 August 2011. The points made by the Advertiser in relation to the advertisement were:
 - a. On the morning of Friday 22nd July Virgin wines received a complaint from a reporter regarding an email promotion that was sent to Moshtix database (a ticket agency for events). This was also reported to ABAC. On review of the campaign the landing page and offer were "pulled" immediately as we agreed that alcohol should not be promoted in that way.
 - b. The creative of that one promotion was put together in keeping with the Moshtix look and feel. However, on reflection we realise that the tone was inappropriate. Virgin wines believes in promoting responsible drinking and adhering to advertising standards and regulations. It is apparent that this one piece of creative fell short of that. We regret that this email promotion fell short of those standards. We have now implemented new internal training and signoff procedure. I am confident that these new measures will ensure a similar breach does not happen again.
 - c. Virgin wines are a member of ADMA – The Australian Direct Marketing Association - and I myself sit on one of the executive councils as a measure to ensure we advertise under the correct codes.

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 advertiser has cooperated with the Panel in enabling the determination to be made.

The Substantive Aspects

19. The complaint raises three broad issues:

- (a) Does the advertisement fail to present a mature and responsible approach to alcohol consumption by promoting or encouraging excessive or irresponsible consumption of alcohol beverages?
- (b) Does the advertisement have strong or evident appeal to children and adolescents or encourage underage drinking?
- (c) Does the advertisement suggest that the consumption or presence of the product may create or contribute to a significant change in mood or environment or may be a cause of or contributor to the achievement of success?

20. The first issue goes to whether the advertisement promotes excessive or irresponsible consumption of alcohol beverages. The complainant is concerned the ad encourages the bulk purchase of wine and encourages people to continue drinking alcohol after being out all day drinking.

21. The Panel has previously noted that alcohol is often supplied in multiples e.g. a case of wine or a carton of beer and alcohol advertising reflecting this fact is not prohibited by the ABAC. What is not permitted is the encouragement of the consumption of alcohol in an excessive manner. The Panel notes the following statements in the ad that suggest that concert goers should consume alcohol at a party after the music festival is over.

- (a) "When the party is over and acts you so loudly screamed for have gone – do as they do... kick on in style!";
- (b) "Make sure you're ready for the post festival party with this amazing 12-bottle case from Virgin Wines for \$119.99 – just \$9.99 a bottle."
- (c) "Drink like a rock-star, pay like a cover band Order your \$119.99 case NOW!"
- (d) "There is nothing worse than running out of grog after the event – with this special offer, there'll be no excuses!"

The Panel is of the view that collectively these statements, together with the picture, promote a suggestion of excessive alcohol consumption and breach section (a) of the code.

22. The second issue raised in the complaint is whether the advertisement encourages underage drinking or has strong or evident appeal to children or adolescents. The Panel believes that the advertisement has strong appeal to adolescents in breach of sections a (ii) and (b) of the ABAC. In particular the Panel notes the advertisement:

- (a) targets music festival goers who will be across a range of ages but are generally regarded to be younger adults or adolescents;
- (b) uses language that appeals to youth such as “Be the king of the ‘kick on’”;
- (c) includes a picture of a young adult or adolescent crowd surfing at a music festival;
- (d) encourages consumption of alcohol to model rock star behaviour which is likely to be strongly appealing to a younger demographic.

23. The final issue is whether the advertisement is in breach of section (c)(i) of the ABAC by suggesting that the consumption or presence of a case of wine from Virgin Wines may create or contribute to a significant change in mood or environment or may be a cause of or contribute to the achievement of success by suggesting that concert goers “Be the king of the kick on with a little help from Virgin Wines”, “Drink like a rock star, pay like a cover band” and “There is nothing worse than running out of grog after the event”. The Panel is of the view that collectively the statements imply that alcohol use is a contributor to a successful and enjoyable occasion. This is inconsistent with the section (c) standard.

24. Accordingly the complaint is upheld. The Panel notes the advertiser accepts the ad was inconsistent with good quality advertising practice and has advised that internal changes have been made to avoid future breaches. While appropriate internal mechanisms are essential, the advertiser would be best advised to become a signatory to the ABAC scheme and vet its advertising via an independent external process.