

# ABAC

## ABAC Complaints Panel Determination No: 80/10

**Complaint by Ms Myra Robinson, Public Health Advocacy Institute of WA**  
**Product: Liquor Barons**  
**Advertiser: Liquor Barons**

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

7 January 2011

### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Liquor Barons (“the Advertiser”) and arises from a complaint received 9 December 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 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 9 December 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 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 a full page print advertisement in The West Australian Newspaper on 24 November 2010.
10. The left side of the advertisement features a photograph of a soldier carrying a gun on his shoulder in desert terrain above the tagline in large text "Bernard keeps his fridges at 0C, because his regulars would kill for an ice cold beer after work."
11. The right side of the advertisement features a small bottle of Crown Lager next to a narrative in smaller text:

"Reckon you had a tough day at work? Spare a thought for [blank] who has just come back from active service in Afghanistan. There, walking through 45C heat, carrying a 50-kilo pack, is the least of your worries.

A tour of duty is no Playstation game. The ability to keep your mental and physical cool can save your life. [Blank] does it by using a clever trick an army

shrink taught him years ago. It's called creative visualization. It's pretty simple really – think of something that makes you feel cool and calm (well as calm as you can be in hostile territory).

When [blank] starts feeling the heat he conjures up the icy cold beer that will be waiting for him in the Sergeant's mess when he gets back home. Bernard, who owns Liquor Barons Claremont, supplies the Mess and keeps the beer achingly cold, straddling that delicate line between pleasure and pain. (His fridges are calibrated to stay at 0C no matter how hot the day.) [Blank] can just about taste the freezing amber fluid sliding down his throat; which is a bonus because he's often forced to go months without a real one.

For [blank] that first step back onto Australian soil is cause for celebration. There will be beers a plenty in the Mess. But the night he really looks forward to is the Regimental Dinner. It's a chance to let your hair down (what little of it the army lets you keep) with brothers who understand exactly what you've been through.

Once again Bernard will be hard at work behind the scenes. He considers it an absolute privilege to be able to serve Australia's bravest men and will make deliveries through the night to ensure their events don't run dry.

While Bernard could tell you a story or two about these nights, he'd probably be court-martialled. He can reveal however, that our fiercest warriors have something in common with little old ladies. They're partial to a tippie of sherry and port after their meal. It appears even tough guys have a sweet spot.

If you're planning a killer party of your own, your local Liquor Barons can organise everything for you with military precision. In addition to making sure you have the perfect mix of beer, wine and spirits, they'll supply and deliver ice, tubs and glasses free of charge (you only pay for the casualties). Afterwards they'll come back and take away your empties, as well as give you a refund on any unopened bottles so long as they're in good condition.

We may be called Barons, but we are here to serve. We'll track down the obscure, co-ordinate the logistics for any sized event and reward you for your loyalty with a Liquor Barons card.

We aren't some big eastern states chain or soulless franchise; we are a co-operative of independent stores that fight tooth and nail to secure you great prices."

12. At the bottom of the narrative is the Liquor Barons logo.

### **The Complaint**

13. The complainant argues that:
  - (a) The advertisement breaches section (a) by encouraging excessive alcohol consumption through the statements: "For [blank], the first step back on Australian soil is a cause for celebration. There will

be beers aplenty in the mess.” This implies the supply of beer at the celebration will be unlimited and excessive.

- (b) The advertisement breaches section (c) by suggesting the stress of working in heat is reduced by imagining drinking beer and that being forced to go without a beer is a stressful situation

### **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 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;
- 15. The ABAC provides at Section (c) 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 –
    - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
    - 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**

- 16. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 24 December 2010. The points made by the Advertiser in relation to the advertisements were:
  - (a) While Liquor Barons is a liquor retailer, as distinct to a wholesaler or manufacturer, and is therefore not a signatory to the ABAC Scheme, we do endeavour to sell alcohol responsibly and consequently agree to abide by the findings of the adjudication panel.
  - (b) In our view, the first part of the complaint deals with the copy where we have described a soldier thinking about beer. We believe a reasonable person would not indeed imply that mentally visualising a beer is mood altering in a way associated with alcohol consumption. We have clearly stated that the soldier is conjuring up a beer for its physical property of

coolness, rather than it's alcohol content and the effects of inebriation. This is reiterated in both the headline and body copy where we specifically refer to the Liquor Barons' fridges being set to 0° Celsius. We also point out that even after imagining the beer the soldier still stays at a high level of alertness, as he is on patrol in very dangerous surrounds. We further point out that the soldier will willingly go without alcohol for several months at a time.

- (c) However, on reflection, we accept that where we could have been more responsible is in the use of language like "beers aplenty" and "never run dry". As this advertisement was based on a true story, we were trying to accurately relay our customers' experiences. This advertisement was only ever intended to run once. In the unlikely event it runs again, we will edit the above phrases and remove all reference to excessive alcohol consumption.
  - (d) In all future advertising and communications we will seek to abide by the ABAC Scheme guidelines.
17. Both the Advertiser and Fosters Group advised that despite a Foster's product, Crown Lager, being featured in the advertisement, Fosters Group did not have any involvement in the advertisement, financial or otherwise.

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

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

##### *The Procedural Aspects*

19. 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.
20. 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 showing. Further, this decision by the Panel does not have any binding force on the advertiser. That said, the advertiser has cooperated with the Panel in enabling the determination to be made and has agreed to abide by the Panel's findings.

### *The Substantive Aspects*

21. The first issue raised in the complaint is whether the advertisement breaches sections (a), (a)(i) and (iii) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages and/or promoting or encouraging excessive consumption.
22. The complainant refers to the statement in the advertisement “For [blank] the first step back onto Australian soil is cause for celebration. There will be beers a plenty in the Mess” as implying that the supply of beer at the celebration will be excessive and unlimited.
23. The Advertiser advised that they were accurately relaying a customers’ experience but would not use the language complained about in future.
24. The Panel believes that a reasonable reader of the ad would take that the language:
  - “There will be beers a plenty in the Mess”;
  - “the Regimental Dinner. It’s a chance to let your hair down...”; and,
  - “make deliveries through the night to ensure their events don’t run dry”.

collectively suggests that excessive alcohol consumption occurs and is encouraged to occur. This breaches sections (a) (i) and (iii) of the Code.

25. The second issue is whether the advertisement breaches section (c), (c)(ii) & (c)(iii) of the ABAC by:
  - (a) suggesting that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment;
  - (b) depicting alcohol beverages as part of a celebration and implying or suggesting that the beverage was a cause of or contributed to success or achievement; and
  - (c) suggesting that the consumption of alcohol beverages offers a therapeutic benefit.
26. The concern arises from the language in the ad involving the “visualisation” of drinking a cold beer and the later statements around the celebration of the soldiers return to Australia involving alcohol use. The advertiser refutes that a reasonable person would take the text in the way argued by the complainant.
27. The essential part about the section (c) standard is the prohibition on the implication that alcohol is a cause or contributor to success or that it is needed for a celebration or that it is an aid to relaxation or has other therapeutic

benefits. In assessing if the standard is breached, the Panel has regard to the content of the ad as a whole and how a 'reasonable person' would likely be impacted by the ad.

28. In this case, the Panel believes that the advertisement makes clear that the celebration which takes place upon the soldier's return to Australia is not caused by alcohol but by the return home – "the first step back onto Australian soil is the cause for celebration." In this regard, the Panel finds the ad does not breach section (c). The Panel believes, however, that the ad does suggest that alcohol is a contributor to the soldier remaining cool and calm in the heat of service in Afghanistan and this suggestion is inconsistent with and a breach of the section (c) standard.
29. Accordingly, the complaint is upheld in relation to sections (a) (i), (a) (iii), and section (c) as discussed above.
30. The Panel acknowledges that the advertiser has fully co-operated with the ABAC process and has confirmed that it will not run the ad again. It is strongly recommended that the advertiser take advantage of the ABAC pre-vetting service to assist it in ensuring future advertisements meet standards of good practice.