

ABAC

ABAC Complaints Panel Determination No: 80/12

Complaint by Dr Karl O'Callaghan
Product: Spiced Rum
Advertiser: First Choice Liquor

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

3 December 2012

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for various spiced rum products by First Choice Liquor (“the Advertiser”) and arises from a complaint received on 15 November 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 the ABAC Panel on 15 November 2012.
- 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 was determined within that 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 did not obtain pre-vetting approval for this advertisement.

The Advertisement

- 9 The advertisement features at the top of the page the tagline "Spice Up Your Life" followed by the following message "Spice Up Your Life by trying a selection of Spiced Rums available in store. Adding spices to rum is an old sailor's tradition. They would add whatever spice they had available to reduce their rums harsh flavour. Although today's rum is no longer harsh, the tradition of adding and mixing spices continues. The blending in of spices has become part of the distillers work of art, placed into a bottle for you to experience."
- 10 Below the text the advertisement features images and descriptions of seven different spiced rum products. The description of "Rebellion Bay Spiced Rum" is "Imported from Trinidad Rebellion Bay Spiced Rum inspires adventure. Established in a time when tall tales and shady deals were all part of an honest night's work. This premium Spiced Rum is aged for two years and provides a complex and well balanced flavour to be enjoyed straight on ice or mixed with Cola".

The Complaint

- 11 The complainant refers to the words "Spice up your life" and argues that the advertisement is in breach of section (c) of the ABAC.

The Code

- 12 The ABAC provides at Part 1 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 ...
 - (c)(i) 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

13 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 26 November 2012. The principal points made by the Advertiser were as follows:

- a) While not a signatory to the scheme sponsoring industry bodies were happy to provide feedback on the complaint.
- b) In addition to complying with relevant legislative obligations and industry codes, Liquorland Australia (Liquorland) has a long-standing commitment to the responsible service of alcohol. Liquorland also maintains compliance measures and expectations of its liquor advertising materials. Liquorland considers its materials accord with all of these commitments which are generally consistent with the spirit of ABAC.
- c) Whilst acknowledging the importance of the aims of the ABAC Scheme, Liquorland considers that it has acted responsibly at all times and that it is reasonably apparent that the relevant advertising does not amount to a breach of ABAC when assessed taking the content as a whole.
- d) Liquorland does not consider that the advertisement breaches the Code by suggesting the consumption or presence of spiced rum may create or contribute to a significant change in mood or environment. The products featured are rum with spices added as a flavouring – these products are known within the industry as “Spiced Rums”. The use of the tagline “Spice Up Your Life” in conjunction with the pictorial representations of spiced rum products is a play on words to describe the spices in the product and does not in any way suggest that a consumer’s mood or environment would be enhanced if they were to consume this product.
- e) In respect of the description of the Rebellion Bay Spiced Rum we advise that this information was provided by the supplier of this product Vok Beverages Australia and the same product description is also featured on the supplier’s website. The phrase “inspires adventure” should be considered with the rest of the product description as it refers to the time and environment when the distillery was established rather than the consumption of the product.
- f) Liquorland remains very committed to the responsible service of alcohol and considers that its marketing has an important part to play in that process. Although it would be inappropriate for the ABAC to make a determination in relation to a non-signatory we hope the above information will satisfy the complainant’s concerns and the Panel that the advertisement is being conducted responsibly, consistent with the Code.

The Panel’s View

14 The complainant is concerned that the advertisement’s use of the tagline “Spice up your life” is a breach of section (c) of the ABAC.

15 The section (c) standard provides that alcohol advertisements must not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment, and that the achievement of success is not caused or contributed by alcohol.

16 The Preamble to the Code provides guidance in how the Panel is to assess an ad against ABAC standards. The Panel is to have regard to the probable impact of the ad upon a reasonable person, taking its content as a whole.

- 17 The concept of the “reasonable person” is borrowed from the traditions of the Australian common law system. Essentially, it means that an “objective” as opposed to a “subjective” test is to be applied. This means that what is important is not that a complainant personally formed a view about the ad, but whether a person who held the ideas, perceptions and attitudes common within the clear majority of the community would hold the same view.
- 18 The complainant believes “Spice up your life” would be taken to mean that the product will have a mood changing effect. The Advertiser argues that taken as a whole, the advertisement establishes that the ‘spice up’ reference is about a characteristic of the product and would not be taken by a reasonable person in the way the complainant has interpreted the advertisement.
- 19 While the Panel sees the complainant’s point and possibly the tagline could have been better worded, the overall context is sufficiently well established by the advertisement and is not considered by the Panel on balance to breach section (c). In reaching this conclusion, the Panel has noted:
- the advertisement as a whole is featuring rum products with the addition of ‘spices’;
 - the graphics of the advertisement only feature pictures of the products;
 - the text as a whole establishes the tradition of adding spices to rum and hence creates a context to the tagline.
- 20 The advertiser would have benefited from the advertisement going through the independent pre-vetting service for the advertisement. This service may well have suggested a better way to express the point of the advertisement without raising considerations of consistency with ABAC standards. Further, use of the tagline runs a risk of breaching the Code if not placed into a clear context. As a non-signatory to the ABAC Scheme, the advertiser does not utilise the pre-vetting service, which does not sit easily with its assertions of good practice in alcohol advertising.
- 21 The complaint is dismissed.