

ABAC

**ABAC Complaints Panel
Determination No: 85/12**

**Complaint by Peter Cain
Product: Bottlemart
Advertiser: Liquor Marketing Group**

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

7 December 2012

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Bottlemart by Liquor Marketing Group (“the Advertiser”) and arises from a complaint received on 26 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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - 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 26 November 2012.
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. The 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. Pre-vetting approval was obtained for the script of the advertisement. This script varied somewhat from the final version of the advertisement which was broadcast.

The Advertisement

9. The advertisement opens with a man walking toward the front door of a house. As he is about to open the door a woman comes out of the house pushes past him holding a lamp and says to him in an angry voice "It's over". The man looks at her walk away with a shocked expression and after a delay says "What?" and we see the back of the woman walking away around a corner.
10. We then see the man walk through the empty house looking distressed. He sees a set of golf clubs some of which have been snapped or bent in an otherwise empty room.
11. We then see the man looking into another room with the same distressed expression until he looks to the other side of the room and slowly his expression changes and he smiles. We then see an empty fridge as the voiceover says "Time to get your mates over?". The screen and voiceover then change to a blue and yellow backdrop with the strapline "Better get to

Bottlemart". The screen also includes the Bottlemart logo and Facebook address and the voiceover continues to say, "Better get to Bottlemart".

The Complaint

12. The complainant is concerned that to suggest that an emotional shock can be militated by a visit to the local Bottlemart store is both irresponsible and offensive to both recovering alcoholics and the community at large.

The Code

13. 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.....
14. 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 –
 - (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;
 - (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

15. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 30 November 2012. The points made by the Advertiser in relation to the advertisement was:
 - (a) By way of an overview, the 'Leaving You' scenario shows a man being left by his girlfriend/wife. As he walks through the house he is initially surprised to see that she has taken everything apart from the golf clubs. He then enters the kitchen and smiles as he's relieved/happy to find that she has left him his trusty old beer fridge. So, yes, he is surprised, at first, to find he's been left by his girlfriend/wife and the house is all but empty, but life's good because she's left him one of his prized possessions, his trusty old beer fridge. The voiceover then

comes in saying, *"Time to get mates over? Better get to Bottlemart"*. He's been left his fridge and it's time to celebrate this fact with his mates. The fact that it's empty requires the visit to Bottlemart. An equally plausible interpretation for the cause of celebration might be the fact that his girlfriend/wife had left.

- (b) We believe that the reasonable viewer would be able to appreciate this overtly obvious and exaggerated treatment. From feedback we have received to date regarding the advertisement, most people find the advertisement humorous and do not take it seriously, nor do they consider that it infers that alcohol is a solution to a shocked state.
- (c) As Liquor Marketing Group strongly supports the responsible service and consumption of alcohol we duly sought and received interim approval through ABAC's AAPS despite not falling under the jurisdiction of the scheme nor having to obtain pre-vetting. In discussions with AAPS this specific issue was raised and addressed to their satisfaction. The TVC also went through the necessary FACTS/CAD approval process as well as abiding by the required alcohol airtime regulations.
- (d) It is our firm view that the advertisement breaches neither sections (a) nor (c)(iii) of the ABAC.

The Panel's View

- 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.
- 18. The advertisement depicts a narrative where a man arrives home to find his partner is leaving him and has emptied the home of furniture and possessions. The man is shown as shocked, but his mood changed when he comes to the kitchen and discovered the fridge, while emptied, is still there. At this part of the

advertisement a voiceover states, "Time to get your mates over. Better get to Bottlemart".

19. The complainant explains that he is a recovering alcoholic and that he found the advertisement irresponsible and offensive as it is suggesting that alcohol is an answer to a problem and offers a therapeutic benefit. Section (c) of the ABAC provides that an alcohol advertisement must not suggest that the consumption or the presence of alcohol may create or contribute to a significant change in mood and must not suggest that the consumption of alcohol offers any therapeutic benefit.
20. For its part, the advertiser accepts that the advertisement does depict the mood of the male character changing, but argues that this change does not occur because of alcohol, but because he finds that one of his prized possessions - "his trusty old beer fridge" - has been left. The advertiser contends that the fact that the fridge is empty means that a trip to Bottlemart is required so that the man can celebrate the survival of his fridge with his mates. The advertiser contends that an "equally plausible interpretation" for the change in the man's mood might be the fact that his partner had left.
21. The Panel sometimes has found it useful to describe advertisements it has to assess as falling within three categories of 'green', 'red' and 'amber'. Advertisements which fall into the green category are very clearly both within the letter and the spirit of the ABAC and while a complaint might be received, it is relatively straightforward to assess the advertisement as consistent with ABAC standards and to dismiss the complaint. Advertisements which fall into the red category are equally easily determined, as it is evident that they contain elements which are in breach of an ABAC standard. The far more difficult category of advertisements are those which fall within the amber category because reasonable people might disagree if the advertisement is consistent with an ABAC standard or not. The current advertisement falls within the amber category.
22. There is no doubt that the advertisement depicts a change in mood of the male character and that this change occurs at the point when the man comes across the fridge. What is ambiguous is why the man's mood has altered and what role, if any, alcohol plays in this change of mood.
23. In assessing an advertisement against the ABAC standards, the Preamble of the Code provides that the Panel is to assess the likely impact of the advertisement on a reasonable person to whom the advertisement has been communicated, taking its content as a whole.
24. The advertisement does not directly depict either the presence or the consumption of alcohol. Rather, the issue turns on the implication to be taken from the change in the man's mood, arising from a combination of him finding the fridge and the voice over question, "Time to get your mates over?", and the conclusion suggested, namely, "Better get to Bottlemart".
25. The advertisement relies heavily on implications. For instance, as alcohol is not depicted or even mentioned in the advertisement, certain implications have to

be made to even place the advertisement as marketing an alcohol retailer. In the same vein, if a reasonable person would likely take the man's change of mood to be caused or contributed by future consumption of alcohol, then the advertisement breaches section (c). Alternatively, if the implication is, say, that the change in mood is caused by meeting up with friends ("Time to get your mates over?"), then the advertisement will not breach section (c).

26. On balance, the Panel believes the advertisement does not breach section (c)(iii). In reaching this conclusion, the Panel has noted:

- Section (c)(iii) is a provision which prohibits alcohol advertisements suggesting alcohol beverages offer any therapeutic benefit. This means the benefit derived need not be solely gained by alcohol, but alcohol must play a causal link in gaining of the benefit.
- A reasonable implication to be drawn from the scenario depicted is that the man will meet up with his mates and commiserate about his partner leaving him.
- The change in the man's mood appears to be triggered by thoughts invoked by seeing the fridge, and while one conceivable chain of assumptions leads to alcohol consumption causing the changed mood, this is by no means the only explanation.
- Rather, the Panel takes the likely scenario is that the man's spirits were lifted by thoughts of getting together with his mates, with any consumption of alcohol being incidental to the gathering of friends and not the cause of the friends coming together.
- It is regarded likely that a reasonable view will take the humorous undertone of the advertisement as not actually advocating the use of alcohol as a solution to the distress caused by the partner leaving.

27. Further, the Panel does not believe that the advertisement breaches section (a) of the ABAC. Section (a) provides that alcohol beverage advertisements must present a mature, balanced and responsible approach to the consumption of alcohol beverages. For the reasons set out in the preceding paragraph the Panel believes that the advertisement is consistent with this standard.

28. Accordingly, the complaint is dismissed.