

# ABAC

## ABAC Complaints Panel Determination No: 12/10

### Complaint of Dr Marie Deverell Product: BWS Advertiser: Woolworths Limited

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

11 February 2010

#### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for BWS by Woolworths Limited (“the Advertiser”) and arises from a complaint received 28 January 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 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 is in the form of an email received on 28 January 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 has been determined within the 30 day 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 scheme and this advertisement did not receive pre-vetting approval.

### **The Advertisement**

9. The complaint refers to a full page advertisement for BWS on page 33 of the 22 January 2010 edition of The West Australian newspaper.
10. The advertisement features two main promotions. The first promotion is a giveaway with purchase and the second is a discount on slabs and blocks of beer. At the top of the advertisement is a picture of an Australian flag together with large text "Bonus Aussie Car Flag" above smaller text "with any purchase of \$30 or more. While stocks last". Below that text most of the advertisement comprises a picture of different brands of 375ml bottles of beer on ice. In the centre of the picture of the beer the second promotion is featured with large text "20% off all slabs and blocks of beer" above smaller text "Savings are based on BWS standard selling prices". BWS branding and a Qantas frequent flyer/ Everyday Rewards promotion is featured at the bottom of the page.

### **The Complaint**

11. The complainant is concerned about the advertisement's irresponsible promotion of consumption of alcohol via the promotion of a giveaway for a motor vehicle. It is argued that the ad is a "retail advertisement" and should only contain sufficient information for consumers on brand name, type and style of beverage container and retailer location. Further, it is argued that the giveaway breaches section (d) of the ABAC.

## The Code

12. The ABAC provides at Section (d) that advertisements for alcohol beverages must:

- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and motor sports) or potentially hazardous activity and accordingly –
  - i. any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement in the activity in question and must in all cases portray safe practices; .....

13. The ABAC contains a protocol entitled “Retail advertisements” that provides:

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

## The Advertiser’s Comments

14. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 4 February 2010. The points made by the Advertiser in relation to the advertisement were:

- (a) There is no association between the consumption of alcohol and the operation of a motor vehicle.

- (b) The success of the giveaway over the past three years, without complaint until now, reflects our customers' support and positive feedback for the Giveaway, particularly where the flag is an Australian flag to coincide with Australia Day celebrations.
- (c) Even though BWS is not a signatory to the ABAC Scheme it takes its obligations very seriously. Woolworths operates under its own ethical and responsible liquor advertising guidelines consistent with the ABAC Scheme.

### **The Panel View**

- 15. The Advertiser is not a member of one of the peak industry bodies sponsoring the ABAC Scheme, nor is it an individual signatory to the Scheme. The Advertiser has, however, cooperated with the adjudication process and has stated its commitment to good practice in alcohol advertising. As a result, the Panel has proceeded to make this determination.
- 16. Ms Deverell raises two grounds for concern under the ABAC in relation to the ad. Firstly, it is argued that the ad is a "retail advertisement" and should contain only factual information about brands and basic information about the retailer. It is argued that a retail ad should not contain further promotional matters such as the flag "giveaway" component. Secondly, it is argued that the flag "giveaway" of itself sends a wrong message and breaches section (d) of the ABAC.
- 17. The ABAC consists of several components, namely:
  - A Preamble which provides a brief background to the ABAC and importantly contains a guiding statement as to how the conformity of the ad with the ABAC is to be assessed.
  - The Code itself consisting of a definition provision and the substantive sections of the Code which embody the ABAC standards for alcohol beverage advertising.
  - Three (3) protocols dealing with internet advertisements, retail advertisements and the promotion of alcohol at events.
- 18. The protocols provide additional information and explanation on how the ABAC's substantive provisions are to operate in particular circumstances. The purpose of the "retail advertisement" protocol is to describe a category of advertising which is not required to be submitted to the pre-vetting process within the overall ABAC Scheme. In other words, if an ad is a retail advertisement within the meaning of the protocol, the advertiser is not required to gain prior approval of the ad before it is published or broadcast. If the ad does not fall within the scope of the retail advertisement protocol, then it does need to be submitted for approval by the ABAC Scheme pre-vetters.
- 19. As explained, the advertiser is not a signatory to the ABAC Scheme and does not use the pre-vetting component of the Scheme. The Panel has not sought information from the advertiser as to whether it considers the ad to be a "retail advertisement" or not, given that this information is not relevant to the decision which the Panel has to make.

20. The Panel's role is to determine whether an ad complies with the substantive standards set out in the ABAC sections. The Panel does not make decision as to whether ads should or should not have been submitted to pre-vetting. Rather, it makes decisions on whether an ad complies with the ABAC substantive provisions, whether it has been through pre-vetting or not. Accordingly, there is no breach of the ABAC substantive provisions by the failure to submit an ad to pre-vetting.
21. The substantive ABAC provision raised by the complaint concerns section (d). This section provides that alcohol advertisements must not depict any direct association between the consumption of alcohol and the operation of a motor vehicle. Ms Deverell contends that the banner advertising incorporated within the overall advertisement which advises of a "bonus Aussie car flag" breaches this section.
22. The preamble to the Code provides that conformity of an advertisement with the Code standards is to be assessed in terms of the advertisement's probable impact upon a reasonable person to whom the advertisement is directed, taking its content as a whole. The Panel does not believe that the advertisement breaches section (d) of the Code. In reaching this conclusion, the Panel notes:
  - The advertisement does not create a "direct association" between "alcohol consumption" and the operation of a motor vehicle. At best, it associated the car flag with the purchase of take-home alcohol products, not the consumption of the products.
  - It is not reasonable to assume that a viewer of the advertisement would take the ad as suggesting that alcohol consumption occurs then and a motor vehicle operated. Rather, the ad is promoting a give-away associated with the purchase of a product over a certain value. It is a very "long bow" to take the ad as suggesting that a person purchase alcohol, consume it and then operate a motor vehicle on the basis of the provision of a give-away flag.
23. Accordingly, the complaint is dismissed.