

# ABAC

**ABAC Complaints Panel  
Determination No: 150/08**

**Confidential Complainant  
Product: BWS Liquor outlets  
Advertiser: Woolworths**

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

22 December 2008

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a radio advertisement for BWS by Woolworths (“the Advertiser”) and arises from a complaint by a confidential complainant received 28 November 2008.

## **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 include provisions about the content and placement of Billboard advertising.
3. The ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
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 by the ABAC Panel on 28 November.
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. In this case, the advertisement 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 the radio ad was not submitted for pre-vetting examination.

### **The Advertisement**

9. The complaint concerns a radio advertisement for BWS. The radio advertisement was broadcast on 97.3FM Radio Station in Brisbane at 3.45pm and was read out by the radio announcer during the "time saver traffic report" which updates motorists on accidents and incidents on the roads.
10. The advertisement was the following announcement by the radio announcer; "Now the spotlight is on Bundaberg Rum and cola cans right now at BWS, just \$60 per carton of 24. 60 bucks till Sunday at BWS."

### **The Complaints**

11. The complainant argues that the advertisement is aired during an inappropriate time of day when children could be listening.

### **The Code**

12. The ABAC provides that advertisements for alcohol beverages must –

- (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:-
  - (ii) must not encourage under-age drinking;
- (b) not have a strong or evident appeal to children or adolescents.....

### **Arguments in Favour of the Complaint**

13. In favour of the complaints it can be argued that the advertisement breaches section (a)(ii) and (b) by encouraging under-age drinking by its broadcast at a time when children may listen to the advertisement.

### **The Advertiser's Comments**

14. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 17 December 2008. The principal points made by the advertiser are as follows:
- (a) Woolworths takes its liquor advertising obligations very seriously, however, submits that the complaint is without merit.
  - (b) The radio advertisement went to air during traffic reports which air after 4pm. Advertising at this time on radio is for the tradesmen audience who finish after 4pm and then the office worker audience leaving for home at the later time slots and into the early evening.
  - (c) Woolworths denies that advertising at this time is in breach of the ABAC but is rather for the purpose of informing the relevant audiences in the manner described above. When you have regard to the in-store compliance systems employed by BWS, including its "ID25" and "Don't buy it for them" programs there is, in Woolworth's view, no link between the advertisement and obtaining or encouraging the purchase of any alcohol at point of sale.

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

15. There is a threshold issue raised by the nature of the advertising and the status of the advertiser which need to be considered before turning to the substantive matters posed by the complaint. The threshold issue is that Woolworths is not a member of an alcohol industry body sponsor of the ABAC, nor is it a signatory to the ABAC scheme. Accordingly, the ABAC's adjudication process has no binding effect on the company. Woolworths, however, have stated their commitment to good practice in alcohol product advertising and have fully cooperated in the adjudication process. Given the advertiser's willingness to comply with the ABAC scheme in this instance, the Panel has proceeded to make this determination.
16. The complaint raises concerns that the ad was broadcast during a weekday mid afternoon timeslot and could therefore be heard by young listeners.

17. The ABAC is a code which is based on the content of ads rather than the placement of ads. This can be contrasted with the television industry code of practice which specifically limits the times at which alcohol ads can be broadcast. The ABAC standard goes to ads not encouraging underage drinking or having a strong or evident appeal to children.
18. The Panel does not believe that the content of the ad can reasonably be said to have a particular appeal to younger listeners. Further, the Commercial Radio Code of Practice does not have any provisions restricting placement of alcohol advertisements at particular times of the day.
19. The complaint raises issues of public policy and the Panel draws to the attention of the ABAC management committee the complainant's concerns about alcohol advertising on radio lacking the placement restrictions that apply to alcohol advertising on television.
20. The Panel dismissed the complaint.