

ABAC

**ABAC Complaints Panel
Determination No: 79/09**

**Confidential Complaint
Product: Bottle-O
Advertiser: Independent Brands Australia**

Professor The Hon Michael Lavarch – Chief Adjudicator
Elizabeth Dangar – Member
Professor Richard Mattick – Member

2 November 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Bottle-O by Independent Brands Australia (“the Advertiser”) and arises from a confidential complaint received on 28 September 2009.

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 by ABAC on 28 September 2009.
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. These complaints have 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 therefore pre-vetting approval was not obtained for this advertisement.

The Advertisements

9. The complaint refers to a full page print advertisement in the West Australian on 24 June 2009.
10. The advertisement primarily features a range of alcohol products with their prices. In the top right hand corner of the ad is the logo for the Bottle-O with the text "Real Locals. Real Value." In the top left hand corner of the page is the text "Great Mates" above a photograph of 5 hands holding 375ml beer bottles together as if they are toasting one another. At the bottom of the screen is a separate section containing the Bottle-O logo, the text "Thankyou for supporting independent Bottle-Os", Responsible alcohol service and "Don't drink & drive" logos and store details.

The Complaint

11. The complainant argues that the advertisement:
 - (a) breaches the ABAC provision as to retail ads as it contains material relating to the attributes or virtues of alcohol beverages, namely the words "Great mates" and associated picture;
 - (b) breaches section (c)(i) of the ABAC by the words "Great mates" and the associated picture which imply a link between alcohol and mateship, ie

the message to particularly young males that alcohol is associated with being a good or great mate and consequently suggesting that drinking alcohol will increase their social worth/ status among their peers

The Code

12. The ABAC provides 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;

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 supplied a copy of the advertisement and was given an opportunity to respond to the complaint. They advised by email that “We in no way agree that the ads breach any code relating to the advertising of liquor but are more than happy to have the ads reviewed and will take on board any feedback” and indicated they would respond, however, no response was supplied.

The Panel’s View

15. There is a threshold issue raised by the status of the advertiser which needs to be considered before turning to the substantive matters posed by the complaint. The

issue is that the Advertiser 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. However, the Advertiser has provided a copy of the advertisement and agreed to take on board any feedback from the process and accordingly, the Panel is able to make this determination.

16. The first point raised by the complainant concerns the ABAC protocol dealing with "Retail Advertisements". The complainant argues that the ad breaches the ABAC because it is a retail ad which contains material relating to the attributes or virtues of alcohol beverages.
17. 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 an 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 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 for 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 submit its advertising to pre-vetting. The Panel has no information from the advertiser as to whether it considers the ad to be a "Retail Advertisement" or an ad which promotes the virtues or attributes of particular alcohol products, and hence not a retail ad for the purposes of the ABAC protocol.
20. By including the "Great Mates" component within the ad, it is arguable that the ad is not a "Retail Advertisement" and accordingly the ad should have been submitted for pre-vetting prior to its publication. A failure, however, to submit an ad to pre-vetting because it is incorrectly classified as a "Retail Advertisement" is not a breach of the ABAC which is then to be adjudicated upon by the Panel. The Panel is not involved in the pre-vetting system. The Panel's role is to assess if an ad is consistent or inconsistent with a substantive ABAC standard, irrespective of whether the ad was submitted to pre-vetting.
21. The substantive ABAC provision raised by the complaint concerns section (c) (i). This section provides that alcohol advertisements are not to suggest that the consumption or presence of alcohol beverages contribute to a significant change in mood and must not depict the consumption or presence of alcohol as a cause or contributor to the

achievement of social or other success. The complaint takes the photograph of the several hands holding open stubbies of beer juxtaposed with the text “Great Mates” as breaching this provision.

22. The Panel has not had the benefit of any comments from the advertiser on the complaint, beyond a statement that it does not believe the ad breached any code. It is very disappointing that the advertiser has failed to put a view to the Panel within a reasonable time frame.
23. The essence of the section (c) standard goes to the use of alcohol being portrayed as a cause or contributor to a change in mood and the achievement of success. The standard does not prohibit alcohol being depicted as incidental to a friendly or social occasion, but it cannot be suggested that alcohol was the reason for the occasion or the cause of any success.
24. In assessing conformity of an ad with an ABAC standard, the Code preamble provides that the ad is to be assessed in terms of its probable impact upon a reasonable person, taking the content of the ad as a whole.
25. The complainant obviously takes the ad to be implying that it is alcohol which has caused the individuals depicted in the ad to be “great mates”. The Panel, however, finds it difficult to reach the same conclusion as there is nothing beyond the depiction of the five hands apparently conducting a toast to show that alcohol is the cause for the mateship, or that in order for there to be “great mateship” alcohol is a necessary requirement. Simply showing alcohol and individuals together cannot be taken to mean that bar for the alcohol, the individuals would not be together. An ad showing a causal relationship between alcohol and mateship would offend the code, but it is not possible to conclude that simply placing alcohol in people’s hands, and nothing else, is the reason that the people are together.
26. Accordingly, the complaint is dismissed.