

ABAC

ABAC Complaints Panel
DRAFT Determination No: 03/08

CONFIDENTIAL COMPLAINT
Product: Cellarbrations Liquor Outlets
Advertiser: Australian Liquor Marketers Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Liz Danger – Member
Professor Fran Baum – Member

29 February 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Cellarbrations Liquor Outlets by the Australian Liquor Marketers Pty Ltd (“the Advertiser”) and arises from a confidential complaint.

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 Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
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 3 January 2008.
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. Determination of this complaint has been impacted by the Christmas/New Year period and illness experienced by the Panel's Administration Officer.

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 subscriber to the ABAC Scheme and did not submit the advertisement for pre-vetting approval.

The Advertisement

9. The advertisement is a 15 second television commercial. The opening scene shows a man in a Santa Claus suit within an alcohol store. In the background are shelves containing various bottles and in the foreground is a service counter upon which are two displays featuring the "Cellarbrations" logo and Christmas trim. The Santa character is shown taking a step towards the counter while he removes his hat and false white beard. The man's expression shows him to be tired.
10. A voiceover commences as the man removes his hat and beard. The voiceover continues throughout the ad and starts with "left it a bit late for Christmas mate?". The character nods agreement upon being asked this question. The scene then changes to display three separate slides promoting particular alcohol products. The voiceover gives details about the products, specifically the product's price. For each slide, the product is introduced with a Christmas reference by the voiceover, such as "It's never too late", "Stuff your stocking" and "All your wishes will come true at once". Each slide shows a picture of the featured product superimposed over the Cellarbrations logo.
11. At the completion of the product slides the scene returns to show the Santa character listening to the voiceover which states: "How about some tomato juice for Rudolph?". In response the man lifts his eyebrows. The man is then obscured as the Cellarbrations logo reappears to take up the screen. The voiceover states the brand strapline "Cellarbrations – we know how to help you celebrate", which is also displayed on the screen.

The Complaint

12. The complainant argues that the advertisement is irresponsible and has a particular appeal to children. Specifically, the complainant argues:
 - a) Children are encouraged to believe in Santa so this ad, which is on during the school holiday period and peak TV viewing time, would have lots of children watching it;
 - b) The advertisement delivers a bad message to children. Not only is it fine for Santa to drink alcohol, it is even better when you can buy more and save.
 - c) The ad implies that, because Santa will be doing so much work, he will require lots of alcohol to calm him down;
 - d) As Santa is essentially an idol for children, having Santa in an ad for a liquor store is not only in bad taste, it is irresponsible.

The Code

13. The ABAC provides at Section (a)(ii) and Section (b) 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

14. In favour of the complaint it can be argued that the advertisement breaches sections (a) and (b) of the ABAC as follows:
 - Section (a) is breached by the ad encouraging under-age drinking by its use of the Santa character, popular with children;
 - Section (b) is breached by the advertisement having a strong or evident appeal to children through the use of the Santa character.

The Advertiser's Comments

15. The advertiser responded to the complaint and some questions posed by the Panel by way of letter dated 12 February 2008. The principal points made by the advertiser were:
 - (a) The theme of the advertisement is Christmas gift-giving. Accordingly, if there is an implication to the advertisement, it is in favour of giving alcohol to others as a gift: not purchasing 2 cases for the purchaser's individual consumption. The voiceover in the advertisement says, "Left it a bit late?", implying that the customer has been busy playing the role of Santa and left his Christmas

shopping until the last minute - a common theme in Christmas advertising for all types of products.

The advertisement does not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages by promoting the sale of these products (not consumption).

- (b) It does not encourage under-age drinking by use of a "Santa-Like" character, as the character is not trying to imply that he is the "real Santa" as shown by his removal of beard and hat, and the reference to the character as "mate" not "Santa". It is more about the festive occasion and season that is represented by such costumes and the tradition of exchanging gifts, including alcohol.
- (c) In no way does the ad either state or imply that the consumption of alcoholic beverages offers any therapeutic benefit or is a necessary aid for relaxation. It refers only to the sale of products, not the consumption of these products.

The Panel's View

- 16. The advertiser is not a subscriber to the ABAC scheme and has indicated that it "will not voluntarily agree to empower the Panel to make decisions on its behalf with respect to its advertising". The advertiser has, however, cooperated with the Panel in supplying a copy of the advertisement and responding to questions, and the Panel has decided to proceed with its determination. Given the advertiser's commitment to good practice in advertising, it is hoped that it may decide to join other major alcohol retailers such as Liquorland in participating in the ABAC scheme in the future.
- 17. The complaint raises several issues which will be dealt with in turn. Firstly, the complainant argues that children are encouraged to believe in Santa and the ad would have many children viewers. It is then contended that it is a bad message for Santa to drink alcohol.
- 18. The ABAC provides that alcohol ads must not encourage under-age drinking or have strong or evident appeal to children. The complainant's essential point is that an ad featuring a Santa Clause character will have a strong appeal to children. The ad was shown during a limited period prior to Christmas and it is likely that its audience (notwithstanding restrictions on its broadcast times contained in the CTICP) will have included children.
- 19. The issue is whether the ad has a "strong or evident appeal" to children. The ABAC preamble provides that, in assessing conformity of an ad with the ABAC, a "reasonable person" test is to be applied, assessing the ad's "probable impact" and "taking its content as a whole". The Panel has considered the meaning of "strong or evident appeal" in some previous determinations.
- 20. In Determination 11/06 the Panel considered a TVC featuring a polar bear character placed within a party at a private home. In upholding the complaint, it was noted that the main character in the ad did resemble characters which have long been popular in or associated with children's entertainment. The Panel accepted that the character would have some appeal to children and

whether this appeal moved from incidental or residue appeal to strong or evident appeal will depend on the context.

21. In Determination 46/07 the Panel considered a TVC which featured the use of “tallmen” inflatable figures which were brightly-coloured and used smiling expressions. Again, the overall content and context of the ad was considered as important in assessing the consistency with the ABAC standard.
22. For its part, the advertiser contends that the ad makes it clear that the customer depicted is not the “real Santa” as he is shown removing his beard and hat and he is addressed as “mate”, not “Santa”. It is contended that the ad is about the festive season represented by costumes and the exchanging of gifts, including alcohol.
23. Clearly Santa Claus is a character which is entirely associated with the Christmas season and the character is closely associated with children’s folklore, entertainment and marketing. As a result, the use of a Santa Claus character in any advertising, including alcohol advertising, will likely attract the attention of children.
24. On balance, the Panel believes the ad taken as a whole establishes that the character is not purporting to be Santa, but a customer purchasing products during the Christmas period. While the use of a Santa costume will likely attract the attention of children, it is not considered that the ad as a whole, including the substantial section which promotes particular products and their prices, has a strong or evident appeal to children.
25. While the Panel has concluded that the ad does not breach Section (b), it is evident that the use of a Santa character will almost invariably bring into play the issue of the ad’s appeal to children. In the Panel’s view, it would be advisable to simply avoid the issue by not using Santa or like reference in alcohol advertising, but at least the ad should be discussed through the pre-vetting process so that the potential appeal to children can be squarely considered in advance of the ad being used.
26. The second issue is whether the ad encourages excessive consumption. The complainant raises a point about the ad referring to savings from buying multiple products and that it is better to drink more. The Panel has previously considered the use of discounts in advertising and concluded that this point alone does not suggest excessive consumption will occur. The context of this ad does not, in the Panel’s view, breach the standard regarding excessive consumption.
27. The final point raised in the complaint is that the ad implies that, because the Santa character is doing so much work, he will require lots of alcohol to “calm him down”. Section (c)(iii) of the ABAC states that ads must not suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation.
28. The ad does not depict the consumption of alcohol and makes no claims about the benefits of alcohol consumption. While the character depicted does appear to be weary, the context of the ad does not credibly imply that he is purchasing alcohol to gain a therapeutic benefit. The voiceover and the product descriptions reasonably clearly establish that the products are

proposed for Christmas and not for immediate consumption to aid in relaxation.

29. Accordingly the complaint is dismissed.