

ABAC

**ABAC Complaints Panel
Determination No: 80/09**

**Confidential Complaint
Product: Cellarbrations
Advertiser: Independent Brands Australia**

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

29 October 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Cellarbrations 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. 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 member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement. However, the advertiser has co-operated with the ABAC processes.

The Advertisement

9. The complaint refers to a full page print advertisement in The West Australian on 19 August 2009.
10. The advertisement features various alcohol products with their prices together with the Cellarbrations logo and store details. Three of the products feature promotions or giveaways with purchase. Two x 4 packs of the Jack Daniels Premix range are advertised for \$30 with a bonus limited edition "Jacks Birthday Stubby Cooler". A carton of Tooheys Extra Dry stubbies is advertised for \$37.99 with a bonus 6 pack cooler bag. A carton of Hahn Superdry stubbies is advertised for \$34.99 with a chance to win a Nintendo Wii. A picture next to the promotional caption shows a man doing a handstand on a carton of Hahn Superdry with the text "Win a fitness kit".

The Complaint

11. The complainant argues that the advertisement includes promotions that will have a strong or evident appeal to younger drinkers and those that are underage and will encourage excessive consumption. Excessive consumption is promoted, it is argued, in order to obtain the giveaways; and the appeal to under-age drinkers is argued to arise because of the chance to win a Nintendo Wii.

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 –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage under-age drinking;
 - iii) must not promoteexcessive consumption.....
 - b) not have a strong or evident appeal to children or adolescents...

The Advertiser's Comments

13. 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

14. 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 has proceeded to make this determination.
15. The complaint raises two (2) issues. The first is the argument that the ad's use of "giveaways" with the purchase of particular products will encourage excessive alcohol consumption in order to obtain the giveaway items. The items mentioned in the ad as being given away are:
 - A stubbie cooler with 2x4 Jim Beam pre-mixed products
 - A cooler bag with a carton of Tooheys beer
 - Entering into a draw to win a Nintendo Wii with the purchase of a Hahn beer product.
16. The argument of the complainant appears to be that a consumer will react to the giveaways by purchasing, and then consuming, more alcohol products than would be the case if the giveaway items were not provided. The advertiser has not responded to the complaint, except to say that it does not agree that the ad breaches any code.

17. It is very disappointing that the advertiser has failed to provide substantive comments. Cellarbrations are a major liquor retailer and on previous occasions have provided a full response to complaints considered by the Panel. The failure of the advertiser to be a signatory to the ABAC scheme and to respond substantively to the complaint on this occasion within a reasonable timeframe reflects poorly on the outlet's corporate responsibility.
18. The ABAC preamble provides some guidance in how the conformity of an advertisement with the Code's standards is to be assessed. The preamble provides that an ad is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, taking its content as a whole.
19. The Panel does not believe that the ad can fairly be said to be encouraging excessive consumption. It is highly questionable whether the giveaways could reasonably be expected to lead to multiple purchases of the product being promoted. It might reasonably be expected that the giveaway might influence a consumer to choose a particular retailer and a particular brand or product over alternatives, but it does not follow that a person would likely purchase more alcohol than would otherwise be the case, simply to obtain the giveaways.
20. More critically, however, even if it was accepted that the impact of the advertisement was to increase the purchase of the particular products being promoted, it does not follow that a consumer will modify their consumption pattern to consume more alcohol. It is very common for alcohol to be purchased in multiples *e.g.* a case of wine or a carton of beer. Simply because a case or carton of a product is purchased does not mean that the product is then consumed on a single occasion or in an excessive manner. In other words, there is an obvious distinction between the purchase of multiple products for "take away" use and the rate of consumption of the product. At its highest, the ad might be encouraging the purchase of more of the promoted products, but it cannot be said that it is encouraging excessive consumption of the products which have then been purchased.
21. The second issue raised by the complaint relates to the ad's appeal to children or adolescents. The argument advanced by the complainant is that the promotion of entry into a draw to win a Nintendo Wii with the purchase of a Hahn beer product will have a strong appeal to younger drinkers and will encourage under-age drinking.
22. The Panel does not believe the ad can be said to have strong or evident appeal to children or adolescents or to be encouraging under-age drinking. In reaching this conclusion, the Panel has noted:
 - The layout and design of the ad primarily focuses on product prices and store locations and could not be said to have visual aspects which would strongly appeal to children or adolescents
 - The ad shows a woman examining some bottles of wine. This woman is clearly an adult and is not dressed or otherwise presented in a manner which could be said to strongly appeal to children or adolescents.

- The Nintendo Wii is a product which could reasonably be taken to be popular amongst children or adolescents, but equally would be popular amongst a broad age group of the population. The part of the ad which refers to entry into the draw for the Nintendo Wii, however, is not overly prominent and is one component of quite a cluttered layout.
23. Examining the ad as a whole, it is the Panel's view that a reasonable person could not take it as having strong or evident appeal to children or adolescents or encouraging under-age drinking.
 24. Accordingly, the complaint is dismissed.