

ABAC

ABAC Complaints Panel
Determination No: 29/08, 30/08 & 34/08

CONFIDENTIAL COMPLAINT
Product: Cockatoo Ridge Wines
Advertiser: Cockatoo Ridge Wines

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

23 May 2008

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns billboards for Cockatoo Ridge Wines by Cockatoo Ridge Wines Limited (“the Advertiser”) and arises from a complaint by Mr John Dundovic received 16 April 2008, a complaint by Mrs Cathryn Gallagher received 18 April 2008 and a confidential complaint received on 22 April 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 which includes provisions about 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint is in the form of an email from Mr John Dundovic received 16 April 2008, an email from Mrs Cathryn Gallagher received 18 April 2008 and a confidential email received on 22 April 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. The 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. Pre-vetting approval was not obtained for these advertisements.

The Advertisement

9. The complaints refer to two (2) separate billboard advertisements that are different executions of the same advertising campaign.
10. The first and second complaints relate to a billboard located in the car park of the West Pennant Hills Liquorland (546 Pennant Hills Road, West Pennant Hills). The complainants advise that the billboard is around the corner from a primary school and on the primary school fence.
11. The advertisement is a head-and-shoulders photograph of an attractive young woman with a cockatoo on her shoulder. The woman is wearing what appears to be a blue and white gingham blouse. The woman is looking directly at the photographer with a sultry and provocative expression on her face. The woman is on the left side of the photograph and on her right side is the tagline in large text "She loves a cockatoo". Below the picture a further statement in smaller text reads "Cockatoo Ridge Wines. Why wouldn't you.". To the right of the picture a bottle of Cockatoo Ridge Wines is featured.

12. The third complaint refers to a variation on the first billboard. This billboard is located on the corner of Bourke Street and Swanston Street in Melbourne.
13. This billboard features a head-and-chest photograph of the same attractive young woman with a cockatoo on her shoulder. The woman is wearing a blue and white gingham blouse that is unbuttoned to below her chest and shows part of her bra. The woman is looking directly at the photographer with a sultry and provocative expression on her face. The woman is in the centre of the photograph and on the bottom right side of the photograph there is a photograph of a bottle of Cockatoo Ridge wine. Below the photograph is the tagline in large text "She loves a cockatoo" and below that smaller text that reads "Cockatoo Ridge Wines. Why wouldn't you."

The Complaint

14. The first complainant argues that the placement of the advertisement on a primary school fence encourages consumption by underage persons.
15. The second complainant argues that:
 - (a) The model featured on the billboard looks about 18 and is wearing blue and white gingham suggesting a school uniform; and
 - (b) The advertisement is inappropriate in its proximity to a West Pennant Hills public school
16. The third complainant argues that the words on the billboard are clearly meant to suggest "she loves a cock or two" and the model has been arranged to look sultry and provocative but compliant as well, thereby breaching alcohol advertising rules about not associating sexual matters with alcohol.

The Code

17. 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 and accordingly-
 - (i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - (ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and

- (iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.
- (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.

Arguments in Favour of the Complaint

- 18. In favour of the complaint it can be argued that the advertisement breaches section (a)(ii), of the ABAC Code by placement of the advertisement on a primary school fence and in close proximity to a primary school, thereby encouraging under-age drinking.
- 19. Further, it can be argued that the advertisement breaches section (b) of the ABAC Code by featuring a model wearing blue and white gingham (similar to that used in school uniforms) who looks to be under the age of 25 years or is over 25 years of age but not clearly depicted as an adult.
- 20. Further, it can be argued that the advertisement breaches section (c)(i) of the ABAC Code by depicting the presence of alcohol beverages as a cause of or contributing to the achievement of sexual or other success, by a combination of:
 - (a) Its use of a strongly sexual image of a woman with her bra revealed under a partly-unbuttoned shirt, with a cockatoo on her shoulder and a sultry, provocative and compliant expression in her eyes and on her face as she looks straight at the camera; and
 - (b) The use of the tagline “She loves a cockatoo” and below in smaller print “Cockatoo Ridge Wines. Why wouldn’t you”. This seems to be a reference to the model’s love of Cockatoo Ridge Wines and also suggestive of an alternate meaning “She loves a cock or two”.

The Advertiser’s Comments

- 21. The Advertiser responded to the complaint and questions posed by the Panel in relation to the first two complaints by way of letter received 23 April 2008. The principal points made by the advertiser are as follows:
 - (a) Our target market is young women who enjoy drinking our product.
 - (b) The photograph depicts our model Erin McNaught (26 YO) as the face of our target market in a blue gingham shirt borrowed by our stylist from her mother for the shoot. A country girl look is what we were after. It was never intended to be a portrait or reflect a school uniform.

- (c) The line 'She loves a cockatoo', describes our models intent for a glass of Cockatoo Ridge wine.
- (d) We are intending our brand to reflect the independence and personality of Australian women who enjoy Cockatoo Ridge Wines.
- (e) The Cockatoo on her shoulder further builds our brand recognition from the label on all our wines.
- (f) This 12 week National Billboard campaign is in its 8th week and has a number of differing captions across the photographs. The other captions are "McNaughty but nice", referring to Erin's media profile and the taste of the wine, and "Who's a Cheeky Girl then", referring to a play on our Cockatoo name and again, Erin's media profile. These captions are interchanged across the six photographs used (including the attached) on a four week cycle. We have now pulled the "She Loves a Cockatoo" caption from the remaining billboards. I feel that displays the commitment my company has in conforming to our industry's efforts of maintaining advertising codes. Cockatoo Ridge Wines Limited will accept the panel's decision in relation to the complaint.
- (g) Notwithstanding the above, I strongly disagree to the two points raised.
 - Clearly the positioning of the Billboard is out of our control and was not mentioned as being near a school fence by the advertising company or could any school be seen in the vicinity by the sample photos supplied.
 - Our use of a high profile model was meant to clearly define her age and a country look of the shirt has been achieved.

22. The Advertiser responded to the complaint and questions posed by the Panel in relation to the third complaint by way of letter dated 24 April 2008 and received on 5 May 2008. The principal points made by the advertiser are as follows:

- (a) We strongly refute the claim that the image as being portrayed as strongly sexual, sultry, provocative or compliant.
- (b) The tagline, "She loves a Cockatoo" does refer to the models love of Cockatoo Ridge Wines and does not refer to any other meaning.
- (c) Cockatoo Ridge Wines Limited defends the advertising campaign as being directly targeted to adult drinkers with the focus being on name recognition of our brand, Cockatoo Ridge.
- (d) The billboard has been located on the corner of Bourke Street Mall and Swanston Street in the Melbourne CBD for the past 4 weeks. The advertising firm contracted to erect the Billboards conservatively

estimates in excess of 40,000 people passing this billboard during that time. Whilst one complaint is one to many, we feel the “over the top” insinuation of the double meaning of the company’s Cockatoo name in this instance as being excessive and mischievous.

The Panel’s View

23. The Cockatoo Wine billboards considered in this determination attracted a large number of public complaints. In most cases the complaints raised matters of taste and decency and the objectification of women. These are issues which trigger consideration under the AANA Code of Ethics and will be dealt with by a determination handed down by the ASB. In contrast, the three (3) complaints dealt with in this determination raise issues under the ABAC dealing with concerns about whether the ad is promoting under-age alcohol consumption and whether it is suggesting that alcohol consumption will contribute to the achievement of sexual success.
24. The first and second complaints raise concerns about the billboard encouraging under-age drinking and having a strong appeal to children and adolescents. This is argued to arise because of:
 - The placement of the billboard immediately adjacent to a school;
 - The use of a model who appears to be under the age of 25; and
 - The clothing of the model featured on the billboard being suggestive of a school uniform.
25. The ABAC is a code which is principally concerned with the content of an ad and not the placement of an ad in a particular medium or in a particular location. The ABAC Preamble does indirectly refer to placement by providing that assessments as to the conformity of an advertisement with the ABAC standards are to be undertaken “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”.
26. This means that the placement of an ad is material in assessing the class of persons to whom the advertisement “is directed” and “may be communicated”. This can be contrasted with the code applying to alcohol advertising on commercial television which specifically provides that alcohol ads are to be broadcast only after 8.30 pm or in conjunction with sports broadcasts on weekends.
27. In this case the billboard which attracted the first two complaints is located immediately adjacent to a school. This means that the ad will be obviously communicated to children. The advertiser states that the target market for the campaign is “young women” and that the use of a billboard adjacent to a school was not intentionally selected by the advertiser. In fact, the advertiser argues that the positioning was “out of our control” which the Panel takes to mean that the advertiser placed this matter into the hands of its advertising agency and that a block booking of various billboard sites occurred.

28. The Panel believes that the advertiser must take responsibility for its advertising campaign and placement of the alcohol advertisement next to a school heightens concerns that section (a) (ii) of the ABAC could be breached.
29. The argument as to a breach of section (a) (ii) and section (b) is then further advanced by the second complaint which goes beyond the location of the billboard to include concerns about the apparent age of the model and the clothing worn by the model. It is argued that the model “looks about 18” and she is “wearing blue and white gingham suggesting a school uniform”.
30. Section (b) of the ABAC provides that alcohol ads are not to have a “strong or evident appeal” to children or adolescents and specifies that adults appearing in ads “must be over 25 years of age and be clearly depicted as adults”. This means that an ad will be in breach of the ABAC standard if it features a model who is, as a matter of fact, under the age of 25 or, irrespective of the model’s actual age, appears not to be an adult. The ABAC defines “adult” as a person who is at least 18 years of age.
31. Judging the age of a person shown in an advertisement can be quite fraught and a perception of age will be influenced by factors such as dress, make-up and the setting in which the person is depicted. In this case, the advertiser advises that the model featured in the billboard is aged 26.
32. In previous determinations involving billboard advertising, the Panel has noted that a reasonable and common viewing of the billboard will be from a moving vehicle and that the average viewer will not stop and examine the ad in minute detail. This means that the impression created by the ad is important.
33. The advertiser rejects that the model does not appear to be an adult and it argues that the top worn by the model seeks a “country girl” look. It is asserted that it was never intended that the clothing would reflect a school uniform.
34. On balance, the Panel does not believe the advertisement can fairly be said to breach the ABAC on this point. The model does appear to be over the age of 18 and the clothing worn is not a school uniform. The Panel believes that it is undesirable for any alcohol advertising to be located on billboards adjacent to schools; however, the ABAC does not go to the actual placement of ads – only to the content of the ad.
35. The third complaint raises a separate issue, namely whether the ad featured on the second billboard is consistent with section (c) of the ABAC. This is the section which provides that alcohol ads are not to suggest that alcohol contributes to the achievement of sexual success.
36. The complaint argues that the model has been arranged to look sultry and provocative and this, combined with the *double entendre* meaning of “she loves a cockatoo” breaches the section (c) standard. For its part, the advertiser argues that the ad is not sexual or provocative and that the cockatoo reference is only about brand recognition and does not have a sexual overtone.

37. In applying the ABAC standards, the Code's preamble provides that conformity is to be assessed in terms of the probable impact of the ad upon a reasonable person, taking the ad's content as a whole. The Panel has previously considered section (c) and has noted that alcohol ads can be sexy and individuals can be portrayed as sexually confident. What is not allowed is the suggestion that alcohol results in a significant change in mood which contributes to the achievement of sexual or other success.
38. The decision about whether an ad which uses sexual imagery contains the elements which would lead a reasonable person to believe that the achievement of sexual success was being suggested through the presence or use of the product is invariably a judgment about which different people might disagree. In this case, the Panel notes:
- The sexualised expression of the model
 - The unbuttoned top revealing her bra
 - The *double entendre* strapline,
- and concludes on balance that this execution of the ad does breach section (c) (i) of the ABAC.
39. Accordingly, the first two complaints are dismissed in relation to the first billboard and the third complaint is upheld in relation to the second billboard ad.