

ABAC

ABAC Complaints Panel Determination No: 108/09

Confidential Complaint Product: Go Vodka Advertiser: Contract Marketing and Trading Co (Moon Star Trading (Int'l) Pty Ltd)

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

2 December 2009

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a mobile outdoor advertisement for Go Vodka by Contract Marketing and Trading Co (Moon Star Trading (Int'l) Pty Ltd (“the Advertiser”) and arises from a confidential complaint received on 29 October 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 the ABAC Panel on 29 October 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 30 business days.

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. This advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

- 9 The mobile outdoor advertisement is painted on a PT Cruiser vehicle that was seen driving around beach suburbs and a Westfield Shopping Centre in Adelaide.
- 10 The vehicle is a bright blue colour. The front of the vehicle depicts splashes of water either side of the hot pink and white text "Go Anywhere. GO-VODKA." There is also a bright orange line under the text. The right side of the front bumper features the hot pink and white text "GO-VODKA.COM.AU".
- 11 The rear of the vehicle features a picture of four oversized tubes of the product which is shown splashing out of the tubes and is labeled "GOVODKA EXTREME" together with a fruit flavour. The lemon lime flavoured tube of product is coloured lime green, the wild berry is red, the raspberry is hot pink and the mandarine is orange. Below the tubes is the green, orange and white text "Go Anywhere. GO VODKA.COM.AU".
- 12 The left side of the vehicle features a picture of an oversized black, white and hot pink tube of the product which is shown splashing out of the tube and is labeled "GOVODKA EXTREME Raspberry". Above the tube is the hot pink text "THE WORLD'S FIRST VODKA IN A TUBE!". Below the tube is the hot pink and white text "GO-VODKA.COM.AU".
- 13 The right side of the vehicle is painted the same as the left except that the tube featured is the Lemon Lime flavour of the product and the colour theme is lime green, black and white.

The Complaint

- 14 The complainant argues that the ad features an alcohol product in a tube that is in fruit flavours on a bright eye catching vehicle that was driven around shopping centres in suburbs and beachside. The complainant is concerned that schoolchildren are able to

view it, it is targeted at young drinkers and the fact it is packaged in a tube suggests irresponsible drinking.

The Code

15 The ABAC provides at Sections (a)(ii) and (b) 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 under-age drinking;
- b) not have a strong or evident appeal to children and adolescents...

Arguments in Favour of the Complaints

16 In favour of the complaint it can be argued that the advertisement:

- (a) fails to present a mature, balanced and responsible approach to the consumption of alcohol beverages in breach of section (a) of the ABAC by depicting the product in a tube which may be associated with irresponsible drinking.
- (b) encourages under-age drinking and has a strong or evident appeal to adolescents in breach section of (a)(ii) and (b) of the ABAC by:
 - i using bright, eye catching images and colours on a PT Cruiser vehicle to draw attention to the product;
 - ii using colours and signage that highlight the fruit flavours used in the product;
 - iii depicting an alcohol product in a tube similar to that used for food products;
 - iv using the term “extreme” next to the product name which is a term popular among adolescents;
 - v driving the advertisement around shopping centres in the suburbs and beachside where school children are able to view it.

The Advertiser’s Comments

17 The Advertiser responded to the complaint and questions posed by the Panel by way of email dated 16 November 2009. The principal points made by the Advertiser were as follows:

- (a) Our packaging is one of its kind that is designed to Eliminate Drink Spiking and to counter prevalent Glassing issues.
- (b) Our target market is the drinking age population like any other alcoholic product on the market, where the product is retailed through licensed venues with minors not having access to the product.
- (c) Colour being a common element in promoting and branding of a product, in this instance it is utilized in keeping with the products standard packaging as produced and marketed in other parts of the world.

- (d) All our advertising does display the necessary health and social warnings alike.
- (e) The word Extreme is chosen ahead of more thought provoking words that are common within the English language.
- (f) Our mobile advertising is not specifically driven to and from any destination but a vehicle utilized for sales staff to commute from point "A" to "B" when servicing customers.

The Panel's View

- 18 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 fully cooperated in the adjudication process. Accordingly, the Panel has proceeded to make this determination.
- 19 The complaint concerns a mobile outdoor advertisement which features brightly coloured pictures of the product which is packaged in a tube and is available in fruit flavours. The complainant is also concerned that the advertisement may be seen by children and adolescents as it drives around the Adelaide suburbs and beaches.
- 20 The Advertiser argues that the packaging was specifically designed to eliminate drink spiking and glassing, is not aimed at underage drinkers and the vehicle is used by sales staff to commute between customers rather than being driven to particular areas for solely advertising purposes.
- 21 The Panel's role is to make decisions on the consistency of individual alcohol ads against the standards contained in the ABAC. The Panel is not empowered to make a free-standing judgment as to whether alcohol ads should be placed in a particular medium or not. The ABAC is a content code, which goes to what is contained within an ad, irrespective of where the ad is placed *e.g.* TV, print, radio, billboards, websites. Whether the ad, irrespective of its content, should or should not have been placed in the medium in the first place is not a decision the Panel is given responsibility to make.
- 22 There are restrictions on the placement of alcohol advertising in some of the codes which apply to particular mediums. For instance, the Outdoor Media Association code & guidelines applying to billboards restricts alcohol ads appearing on an outdoor site within a certain distance from a school. This policy applies to providers of outdoor media sites but excludes transit buses and taxis. It would not apply to the Go Vodka vehicle as it is a private vehicle used by company sales staff and it is also not the intention of the guidelines that they would apply to a mobile vehicle.
- 23 The ABAC applies across all forms of media and goes to the content of the ads and not to the placement of the ads. The issue of placement is indirectly raised by the ABAC's preamble in that the conformity of an ad with an ABAC standard is to be assessed with regard to "the class of persons to whom the advertisement is directed". This means that the ABAC does not prescribe the type of media within which an alcohol ad can be placed but, in assessing the standards as to the ad's content, the likely audience of a particular ad is relevant.
- 24 This means that the Panel has to examine the content of the alcohol ad for which a complaint has been lodged and determine whether the ad contains elements which are

inconsistent with the relevant standard set out in the ABAC. In this case, the relevant ABAC provisions are found in sections (a) (ii) and (b). These provisions provide that the content of an alcohol ad must not present an irresponsible approach to alcohol consumption and not encourage under-age drinking or have strong or evident appeal to children or adolescents.

- 25 There is little doubt that the ads on the vehicle would have been seen by children and adolescents and it is not material that the advertiser may not have the intention to specifically drive the vehicle around shopping centres as a deliberate marketing action. The fact is that the ads on the vehicles will have a wide audience, including younger adults and children.
- 26 The vehicles are presented in an eye-catching manner, with bright colours and the active imagery of the product flowing from its container. The question for the Panel is whether this combination of colour and imagery gives the advertising “strong and evident” appeal to children or adolescents.
- 27 The preamble to the ABAC provides guidance on how the Code standards are to be applied. The preamble states that conformity of an advertisement with the Code is to be assessed in terms of its probable impact upon a reasonable person, taking its content as a whole.
- 28 The Panel believes the ad is appealing to a wide audience and on balance believes that it does have a strong and evident appeal to children or adolescents. In reaching this view, the Panel has noted:
 - The use of colours combined with the design features of the liquid flowing from the container is reminiscent of children-focussed products such as pureed fruit or tubes of paint
 - The graphic design of the ad appears to be directed towards a younger, rather than older, demographic.
 - The use of vehicle ads would have a wide potential audience and would be communicated to children and adolescents.
- 29 The Panel notes in passing that an extension of the ABAC scheme to labelling and packaging occurred after the receipt of the complaint. This means that the Panel did not consider the issue as to the packaging of the product as the complaint went to the ad on the vehicle, and the ABAC scheme at the time of the receipt of the complaint did not extend to packaging.
- 30 The complaint is upheld.