

ABAC

**ABAC Complaints Panel
Determination No: 48/07**

COMPLAINT of Sarah Jaggard

**Product: Jagermeister
Advertiser: Mast-Jagermeister AG**

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

30 May 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a website advertisement for the alcohol beverage “Jagermeister” by Mast-Jagermeister AG (“The Advertiser”).

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 a pro forma reply-paid card dated 7 March 2007 which was received by the ABAC Adjudication Panel on 20 April 2007.
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. In this case, consideration of the complaint was delayed due to a late referral of the matter from the ASB and difficulty in locating contact details for the overseas-based Advertiser.

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 website advertisement was not subject to pre-vetting.

The Advertisement

9. The complaint concerns a website for the Advertiser. The website contains a large number of pages and links and the ad appeared on one of the pages. The homepage of the website clearly indicates that the site is international.
10. Once entering the site, a video appears of a bar which features loud music, group dancing and one young woman dancing on a bar. Beneath the video are links to other parts of the website and one of these links is entitled "Drinks". Using the "Drinks" link takes a viewer to a page from which further navigation can lead to a list of cocktails made using the product.
11. One of the long list of drink recipes is a cocktail entitled "Extremely Drunk". This item consists of the drink ingredients and a picture of a beverage in a martini glass.

The Complaint

12. The Complainant argues that due to the inclusion of a cocktail named "Extremely Drunk" the advertisement does not present a mature, balanced and responsible approach to drinking.

The ABAC

13. The ABAC provides at section (a) that advertisements for alcohol beverages must 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;

- (iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
- (iv) must only depict the responsible and moderate consumption of alcohol beverages.

Argument in Favour of the Complaint

14. The complaint raises issues under the ABAC, namely promoting excessive consumption in breach of section (a) (i),(iii) and (iv). In favour of the complaint, it can be argued that the description of a cocktail as “Extremely Drunk” presents an immature and irresponsible approach to the consumption of alcohol and encourages the misuse and abuse of alcohol.

The Advertiser’s Comments

15. The Advertiser responded to the complaint by way of email dated 14 May 2007. The Advertiser has apologised for the inclusion of the cocktail named “Extremely Drunk”. They have advised that Mast-Jagermeister AG held a competition where Jagermeister fans were asked to send in their favourite cocktail recipes, together with their own user generated names for their drink creations. One of these recipes was the cocktail named “Extremely Drunk” which was automatically posted on the Jagermeister website and which the Advertiser advises was an oversight on their part. The advertiser has advised that on being alerted to the complaint they immediately removed the drink named “Extremely Drunk” as well as other drinks from their website.

The Panel’s View

16. The ABAC complaints management scheme was extended to include internet advertising in 2004. This was an important expansion of the scheme, given the reach of internet marketing, but the nature of the internet also poses particular challenges for the Panel.
17. For instance, internet sites for alcohol products and advertisers are invariably multi-layered and viewers can navigate to pages containing advertising materials by different routes. This complicates the assessment of the advertisement, as the ABAC Preamble indicates that conformity of an ad to the ABAC standards is to take into account the context of the ad and its content as a whole.
18. Equally, the dynamic nature of the media means that a site can be changed instantly and hence an ad or part of a site attracting a complaint may have varied from the time it was viewed by a complainant to when it is examined by the Panel. It can be very difficult for the Panel to be confident that it is assessing the same material viewed on pages in the same order as was witnessed by a complainant.
19. In this case, a further complication arose as the site is one which is able to be readily accessed in Australia, but the Advertiser is based in Germany. The Advertiser’s products are available for sale in Australia, but unlike a number of other countries where the product is marketed, the website does not specifically mention Australia as part of the Advertiser’s network countries on its homepage. Nonetheless, given that both the product is available in

Australia and the website can be viewed from Australia, the Panel considers that *prima facie* its jurisdiction has been triggered.

20. The complaint goes to a particular entry on the website which is accessed through links on earlier pages. It would seem that at least three (3) pages need to be navigated before the part of the site which sparked the complaint can be viewed. Having found the relevant page, the element complained about is the title and ingredient description of a single cocktail in a long list of cocktails. This particular cocktail is entitled "Extremely Drunk".
21. It is the title of the drink, rather than other elements of the entry on the list of cocktails, which concerns the complainant. In respects other than the name, the actual information contained about the drink is unexceptional. The complainant is concerned that the title of the drink suggests excessive consumption of alcohol and breaches section (a) of the ABAC.
22. For its part, the Advertiser accepts that the entry of the drink recipe entitled "Extremely Drunk" was inappropriate and advised that the entry arose as a result of a competition of consumers' favourite cocktails. The entry has been removed from the website, following advice about the complaint.
23. The ABAC is not a specific code about responsible naming and packaging of alcohol beverages. The Panel must decide the complaint on the terms of the ABAC and the relevant provision provides that advertising must present a mature, balanced and responsible approach to the consumption of alcohol beverages and must not encourage excessive consumption. The essential issue is whether the title "Extremely Drunk" breaches this standard in the context of its use on the Advertiser's website.
24. The Panel believes the complaint should be upheld. The title "Extremely Drunk" implies that excessive consumption has occurred or that the alcohol content of the beverage will result in intoxication upon consumption. This, combined with the context of the pages required to be navigated to reach the advertisement, such as the depiction of the partying at a bar, would lead a reasonable viewer to conclude that excessive consumption is being encouraged.
25. Accordingly, the complaint is upheld.