

# ABAC

**ABAC Complaints Panel  
Determination No: 83/09**

**Confidential Complaint  
Product: Premix King  
Advertiser: Premix King Holdings**

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

21 October 2009

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Premix King by Premix King Holdings (“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. Premix King Holdings 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 television advertisement.
10. The advertisement opens with two men wearing red Premix King uniforms and looking directly at the camera. One of the men says, "This is cheap" and the other says "Damn cheap as they point to the camera. The screen then changes to a picture of Jim Beam cans and cartons with the cans rolling around while in the background we hear car tires screeching before a crashing sound and also the sounds of people cheering and laughing as if at a boisterous party.
11. During this part of the advertisement the Premix King logo with the words "This week only.." and also intermittently the text "10 for \$25" are superimposed on the screen while the commentary continues "Hey, you there, what's this? Get to the Premix King this week and grab a ten pack of Jim Beam cans for 25 bucks. That's right a ten pack of Jimmy's white cans for 25 bucks. This deal's a balltearer. So what the hell are you waiting for. Come on boys."
12. The screen then changes to four men wearing red Premix King uniforms looking at the camera as the men shout "That's why we're called...The Premix King" as they jump around and cheer. The last screen is the Premix King logo with six towns listed below it.

## The Complaint

13. The complainant argues that the advertisement:
- (a) pushes a product known to have harmful effects using an immature manner;
  - (b) encourages excessive consumption;
  - (c) uses the lewd word “balltearer”.

## The Code

14. 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;
    - iii) must not promote .....excessive consumption.....

## The Advertiser’s Comments

15. The Advertiser responded to the complaint by way of email received 8 October 2009. The points made by the Advertiser in relation to the advertisement were:
- (a) My company strongly refutes the assertion that we have breached any code and that we have in anyway undermined the responsible use of alcohol. I would hope that the panel will agree, that this complaint is bordering on sensationalism and we feel there may be a hidden agenda from the complainant. I must also note that this commercial has CAD approval via Prime T.V.
  - (b) The assertion that the commercial in question is unbalanced is unfounded. I am also unaware that maturity (or lack of it, as alleged) constitutes any breach of any advertising code. All alcoholic products sold via our stores are done so under the strict regulations, guidelines and policies set out by Liquor Licensing Victoria.
  - (c) Our company has advertised alcoholic products in a responsible manner over a 10 year period without one single known complaint! In addition, the multi pack price advertised (in this particular commercial) is equivalent to the single can price. The expression ‘what are you waiting for’ is a common advertising expression. This practice is known as “spoofing” and is a very common advertising practice used daily in thousands of T.V commercials throughout Australia. Furthermore, discounting of alcoholic products via the media is a common daily practice in this country from ALL RETAILERS OF LIQUOR.

- (d) Whilst I understand that the A.B.A.C has a job to do in regard to complaints, I must admit that I am disappointed that such a frivolous complaint would be considered. Please note that the commercial in question was 'pulled' from air immediately after we received the complaint. This was considered the best course of action by our Management team.

### **The Panel View**

16. 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 Premix King 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, Premix King have stated their commitment to good practice in alcohol product advertising and have provided a response to the complaint and fully cooperated in the adjudication process. Accordingly, the Panel has proceeded to make this determination.
17. This complaint raises three concerns about the advertisement. One of the concerns is that a lewd word was used in the advertisement. This concern raises an issue under the AANA Code of Ethics. Section (f) of the ABAC provides that advertisements for alcohol beverages must comply with the Code of Ethics. This means that complaints about alcohol ads which raise Code of Ethics issues will be adjudicated; however, through agreement between the Management Committee of the ABAC scheme and the Advertising Standards Bureau, the adjudicative body for Code of Ethics issues is the ASB and not this Panel. Accordingly, this determination does not deal with this concern and the ASB will be making a determination on this matter.
18. The essence of the complaint is that the ad is immature in its approach to alcohol consumption and encourages excessive consumption, contrary to section (a) of the ABAC. The advertiser contends that the complaint "borders on sensationalism" and that the ad is consistent with good advertising practice. It is pointed out that the "discount" price for Jim Beam cartons featured in the ad equates to the single can price and discounting of alcohol products is a common practice of all retailers.
19. In applying the ABAC standards, the Code's preamble provides that an ad is to be assessed in terms of its probable impact upon a reasonable person, taking its content as a whole.
20. The Panel has previously considered the question in determinations, such as 26/06, 5/07 and 39/08 whether ads which offer multiple bottles or cans of a product at a discounted price of itself amounts to an encouragement of excessive consumption. It is noted that it is common for alcohol products to be purchased in multiples *e.g.* a case of wine, but it does not follow that all of the product will be consumed on a single occasion. In other words, the ABAC standard goes to the prohibition of the encouragement of excessive consumption and not the prohibition of purchase of multiple alcohol products.
21. The current ad promotes a discount price for the product but the manner in which it does this raises the overall standard contained in section (a) *i.e.* is the advertisement presenting a mature, balanced and responsible approach to the consumption of

alcohol beverages. The ad does not depict the consumption of alcohol, but the section (a) standard goes to the wider notion of the “responsible approach” to the consumption of alcohol.

22. The Panel believes the ad does breach the section (a) standard. In reaching this conclusion, the Panel has noted:
  - The background noise to the scene displaying the cartons of Jim Beam which consist of the sound of an apparently raucous party and car tyres screeching before a smashing sound;
  - The juxtaposition of the sound effects with vision of multiple cans of the product falling over the cartons and knocking over other cans.
23. Taken as a whole, the Panel believes a reasonable viewer would associate the sound and vision as suggesting an irresponsible approach to alcohol consumption, implying a loss of control and potentially the use of a motor vehicle in these circumstances.
24. The Panel notes that the advertiser states it has not had previous complaints and that it withdrew the advertisement upon this complaint being received. Clearly the advertiser intends to advertise responsibly and it is strongly recommended that it joins the ABAC scheme and submits its advertising to the pre-vetting process. This will greatly assist the advertiser in meeting its goal of responsible alcohol marketing.
25. The complaint is upheld.