

ABAC

**ABAC Complaints Panel
Determination No: 55/09**

**Confidential Complaint
Product: Sip'n'Save
Advertiser: Liquor Marketing Group**

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

15 June 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Sip’n’Save by Liquor Marketing Group (“the Advertiser”) and arises from a confidential complaint received 27 May 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 and Alcohol Guidelines which include provisions about the content and placement of 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 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 confidential complaint received 27 May 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 that 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. This advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The television advertisement has the dark setting and appearance of an amateur 1960's horror movie. It opens at night with a car driving along a road through fog. The camera then focuses on an amulet hanging from the rear view mirror of the car and then to the young man driving the car.
10. A voiceover commences a narration. The voiceover is performed in a deep, slightly sinister tone akin to a person telling a horror story. The narration begins with "He thought it would be a short drive". We then see the man lean out of his side window and say "Gday mate can you give me some directions". The camera angle then moves so we see the man the driver is addressing, who is a strange looking man standing in the rain in a coat and hat staring at the driver with a sinister expression as lightning flashes around him. The voiceover continues "But he was wrong" as the text "He was wrong" is painted across the screen in what is supposed to look like blood.
11. We then see the driver driving his car and consulting a map as the voiceover continues "All he wanted was a bottle of Shiraz, all he saw was red". The frame changes to the text "Red" in the same type style as used earlier. We again see the driver driving his car as the voiceover continues "From the director of no cabernet for young men and chardonnay too far away, comes a new type of horror". The driver is seen calling out and slamming on his brakes

due to a traffic barrier blocking the road. The voiceover continues “Thirsty” as the man is seen getting out of his car. The word “Thirsty” is painted across the screen in the same style as used earlier and the driver is shown falling to his knees as he yells “I just want to find a bottle shop”.

12. The scene changes to a man serving a driver of a different car at a Sip’n’Save outlet at night as the narrator continues “Thank Goodness for Sip’n’Save drive thrus. Always Close. No dramas.” The text “Always Close No Dramas” is superimposed on the final scene in the same type style as used earlier.

The Complaint

13. The complainant argues that the advertisement promotes and encourages drink driving and that it looks like the man will buy a bottle of spirits and get back into his car and drive.

The Code

14. The ABAC provides that advertisements for alcohol beverages must-
 - (d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle or potentially hazardous activity and, accordingly-
 - (i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices..

Arguments in Favour of the Complaint

15. In favour of the complaint it can be argued that the advertisement breaches section (d) of the ABAC Code by associating alcohol consumption and the operation of a motor vehicle through its depiction of a man driving while looking for a bottle shop.

The Advertiser’s Comments

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 9 June 2009. The principal points made by the advertiser are as follows:
 - (a) The complaint infers that the man driving the vehicle will purchase and consume alcohol and resume driving. We would strongly like to defend this advertisement against this complaint. In no way whatsoever does the ad intend to indicate or portray any direct or indirect association with driving a vehicle and actually drinking alcohol. There is no intention or indication that he has been drinking either before or during the portrayal of his driving. Yes, we suggest he drives to one of our outlets to purchase product – that’s standard

shopping behaviour whether it be groceries or alcohol. Yes, he may drive up to our shop and make a purchase whilst in the vehicle – that’s the nature and core proposition of our product ie: convenient to the car service. We do not however in any way intend; indicate or suggest he then actually consumes the alcohol and then drives off, or drives off and then consumes the alcohol. This is a pure fabrication and speculation on the part of the complainant and arriving at their own conclusions with their own stretch of imagination.

- (b) We would furthermore like to defend our right to promote our brand and product for what it is: a to-the-car convenient drive through service. The fact that you don’t have to get out of your vehicle and walk into a shop to purchase should not at all suggest to a reasonable person that persons purchasing any goods in this drive thru fashion will automatically consume those goods in their vehicles, and then drive rather than consume these goods anywhere else at any other time. That would be pure speculation and an association with similar fast food drive thru products. We are not a fast food alcohol equivalent.
- (c) It could further be argued that if the above complaint is upheld, we could be equally prohibited from doing any form of communication that depicts even just our logo “Sip’n Save Drive Thru” as the same type of speculation could be arrived at by combining our brand name “Sip’n Save” with the words “Drive Thru”. This would clearly be infringing on our rights to promote ourselves in a free and fair commercial manner.
- (d) We sincerely trust the Panel will agree with the common sense nature of our above defence of this complaint and find accordingly.
- (e) We would like it to be further noted that Sip’n Save supports the responsible service and consumption of alcohol. This advertisement has not been pre-vetted by ABAC’s AAPS (Alcohol Advertising Pre-vetting System) as Sip’n Save is not an ABAC member. It has however gone through the necessary FACTS/CAD process.

The Panel’s View

17. 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 Liquor Marketing Group 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. The Liquor Marketing Group, however, has stated their commitment to good practice in alcohol product advertising and has fully cooperated in this adjudication process and previous adjudication processes involving a different ad. Given the advertiser’s willingness to comply with the ABAC scheme and to accept the Panel’s decision in this and previous instances, the Panel has proceeded to make this determination.

18. This is the third determination that the Panel has made in relation to a series of ads from this particular advertiser.
19. The current complaint and the complaints dealt with in the earlier determinations have all gone to section (d) of the ABAC. Section (d) provides that ads are not to depict any direct association between the consumption of alcohol, other than low alcohol beverages, and the operation of a motor vehicle. The section goes on to provide that any depiction of alcohol consumption must not be represented as having taken place before or during engagement of the activity in question.
20. The complainant is concerned that the driver in the ad will purchase a bottle of spirits and get back in his car and drive.
21. The policy intent behind section (d) of the ABAC is clearly to prohibit advertising which associates alcohol consumption and the use of motor vehicles. The section provides that a "direct association" between alcohol consumption and the operation of a motor vehicle is not to be depicted. The ad does not show alcohol consumption and accordingly the issue rests on whether a reasonable person would imply that the character depicted in the ad has consumed alcohol before driving or will purchase and consume alcohol and then drive again.
22. The Panel notes that the driver in the ad is not depicted consuming alcohol and there is nothing in his behaviour or demeanor which would imply he has consumed alcohol before driving. Further, it requires too many assumptions as to the future actions of the character featured in the ad for it to be reasonably concluded that the ad is in breach of the ABAC provision.
23. While the Panel is dismissing the complaint, the Panel urges the advertiser to utilise the pre-vetting service for all future advertising.
24. The complaint is dismissed.