

# ABAC

## ABAC Complaints Panel Determination No: 148/08 & 160/08

### In the COMPLAINT of Ms Katherine Williams & a confidential complainant Product: Sip'n'Save Advertiser: Liquor Marketing Group

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

22 December 2008

#### 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 complaint by Ms Katherine Williams received 27 November 2008 and a confidential complaint received 16 December 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 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The complaints are in the form of an email by Ms Katherine Williams received by the ABAC Panel on 27 November 2008 and a further email by a confidential complainant received 16 December 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. 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 on an old fashioned television set showing a black and white horror movie. It then moves to two young men sitting in lounge chairs in a dark room watching the television, holding open stubbies of beer and laughing. There appears to be an electrical storm occurring outside.
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 "It was a night like any other". The men go to sip their beers to find them empty and they exchange concerned glances. One of the men then walks down a hallway towards the kitchen and the fridge. As he does, a bolt of lightning strikes and creates a foreboding atmosphere. The narration continues: "...but then terror struck, at 10 pm nothing compares to the horror of ....the empty fridge".
11. At this point the man has reached and opened the fridge which is completely empty. A "B" grade 1950s style text is superimposed inside a close-up of the fridge which reads "The empty fridge!". The man reacts in an exaggerated and

hysterical manner and screams: "There's no more beer...THERE'S NO MORE BEER!". He raises his arms, clenches his fists and releases a long scream as he gazes skyward. A ghostly apparition briefly flashes across the opened fridge. A superimposed text is again used which reads: "Experience the ultimate nightmare" as the narration continues: "experience the ultimate nightmare....".

12. The scene changes to a car parked in a Sip'n'Save outlet at night with lightning flashing, the narrator continues "Or get down to a Sip'n'Save drive thru. Open Late. No dramas." The text "Open Late No Dramas" is superimposed on the final scene in the same type style as used earlier. This scene is of a car in the drive-through and a man walking from the car towards the service counter. It is not entirely clear if this man is one of the two featured earlier in the ad, but it is most likely a different person.

### **The Complaint**

13. The complainants argue that the advertisement promotes and encourages drink driving.

### **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...
  - (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 complaints it can be argued that the advertisement:
  - (a) breaches section (a) of the ABAC Code by failing to represent a mature, balanced and responsible approach to the consumption of alcohol beverages through its suggestion that "running out" of alcohol amounts to the ultimate horror and hence elevates the importance of alcohol; and
  - (b) breaches section (d) of the ABAC Code by associating alcohol consumption and the operation of a motor vehicle through its depiction of two men drinking beer and when they run out of beer

suggesting they go to a Sip'n'Save drive through, irrespective of the amount of alcohol consumed.

### **The Advertiser's Comments**

16. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 15 December 2008. The principal points made by the advertiser are as follows:
- (a) The advertisement aims to depict the convenience of having a nearby bottle store open late, by presenting an exaggerated "horror" scenario when the main character realises he has an empty fridge.
  - (b) The intention of the advertisement was to generate consumer engagement with the brand by using an exaggerated horror theme in a humorous manner. The advertisement was created in a very obvious tongue in cheek exaggerated genre of the 60's horror movies. The concept, story and visual treatment is of make believe mimicry and mockery and in no way is meant to represent a reality situation. Rather it is a humoristic entertainment method.
  - (c) The very nature and format of the Sip'n'Save product is about a network of convenience drive thru outlets. As such, the action of driving to and from the outlet for the purpose of shopping is integral to the product itself and Sip'n'Save should be able to promote this core shopping convenience aspect of its product.
  - (d) The end frame visual of the ad depicts a vehicle parked in a Sip'n'Save drive thru, demonstrating our core product feature- drive thru shopping convenience. This is intended to depict the branding of the product rather than being connected with the story. There is no depiction or suggestion that the two men drove while under the influence of alcohol. There is no direct link or intended takeout that as soon as the fridge was found empty the man drove to a Sip'n'Save whilst under the influence of alcohol. To the contrary the ad depicts an exaggerated scenario of what could happen should you not have the convenience of a nearby store open late. No reasonable person would draw the conclusion that the ad depicts, promotes or condones drink driving.
  - (e) We are sympathetic to the complainant's personal circumstances but feel that they may not represent the community at large and encourage the Panel to consider how a reasonable member of the public may perceive the advertisement.
  - (f) We consider that the ad does not breach section (d) as it does not depict a direct association between alcohol consumption and driving a motor vehicle.
  - (g) It is lawful to purchase alcohol at a drive thru liquor outlet. If the complainant's concern were to be upheld, then it is arguable that any

depiction of a vehicle in a drive thru outlet would be in breach of the ABAC and this is not its intent.

- (h) We believe that the advertisement does not breach section (a) of the ABAC as the ad is intended to depict an exaggerated scenario in a humorous manner. It is clearly not representing a realistic scenario.
- (i) The ad depicts two young men having a very quiet night at home watching a horror movie on TV sipping on a beer. There is no indication of irresponsible behaviour, excessive drinking or empty containers lying around and the men are only shown drinking one beer during the duration of the ad. The exaggeration of the man's reaction when he finds the fridge empty is clearly intended to emphasise the convenience of the Sip'n'Save product, which can offer a solution to his dilemma. It is not intended to elevate the importance of alcohol in an irresponsible manner. We believe the reasonable viewer would be able to appreciate this overtly obvious and exaggerated make believe shock horror treatment and distinguish it from reality.
- (j) Feedback received to date suggests most people find the ad clever and funny and do not take it seriously or consider that it condones drink driving or excessive alcohol consumption.
- (k) Sip'n'Save strongly supports responsible alcohol consumption and is staunchly opposed to drink driving.

### **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 the adjudication process. Given the advertiser's willingness to comply with the ABAC scheme in this instance, the Panel has proceeded to make this determination.
- 18. The complaint raises a substantive issue about the depiction of alcohol consumption in conjunction with the operation of a motor vehicle. The ABAC provides in Section (d) 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.
- 19. The complainant takes the ad as suggesting that it is in order for a person who has been consuming alcohol to drive to the advertiser's outlet when further

supplies are needed. This is argued to be an encouragement of drink driving. Certainly it is possible to take this interpretation from the ad, as the two lead characters are shown drinking and then subsequently a motor vehicle is seen at one of the advertiser's outlets.

20. For its part, the advertiser argues that the ad is clearly exaggerated and humorous and would not be taken by a reasonable viewer as suggesting that drink driving is acceptable. Further, it is claimed that there is a divide between that part of the ad in which the men were shown consuming alcohol and the final scene which displays a motor vehicle at one of the advertiser's outlets.
21. The Panel has noted previously that humour is a relevant factor in assessing the impact of an ad on a reasonable person viewing the ad, but it cannot excuse what is otherwise a breach of an ABAC standard. It is also noted that the advertiser has not had the benefit of having the ad reviewed through a process of pre-vetting which might have suggested modifications of the ad to assist in removing concerns as expressed by the complainant.
22. That said, the Panel needs to determine if the ad breaches the section (d) standard. The elements of the standard prohibit the depiction of alcohol consumption if this consumption occurs prior to or in conjunction with the operation of a motor vehicle.
23. The ad does depict alcohol consumption. It then proposes that a Sip'n'Save outlet can save the "nightmare" of discovering that beer supplies are depleted but desired later in the evening. It shows a motor vehicle at one of the advertiser's outlets.
24. The Panel accepts that the advertiser is fully entitled to display a scene featuring a motor vehicle at one of its outlets. What it cannot do is create a direct association between alcohol consumption and the concurrent or subsequent use of a motor vehicle.
25. The Panel believes the ad does breach section (d) of the ABAC. In reaching this conclusion, the Panel acknowledges the ad is humorous and exaggerated, but it nonetheless raises a very clear implication that one of the men who had been consuming alcohol will drive to the outlet to buy supplies. The Panel believes the segment of the ad depicting alcohol consumption is not sufficiently separated from the scene of the motor vehicle in the outlet given:
  - The lightning strike seen at the outlet appears to establish the scene as occurring on the same night as the men are depicted consuming the alcohol;
  - The text style used in the motor vehicle scene is the same as that employed during the empty fridge "horror" scene;
  - It is a reasonable implication that the men should overcome their "no beer nightmare" by accessing the late night outlet by driving to the outlet.

26. The Panel does not consider that the ad breaches section (a) of the ABAC. While at one level the ad is suggesting that to run out of beer is a horror story, the Panel believes a reasonable viewer would not take this as actively meaning that alcohol has an overly elevated importance.
27. The Panel strongly recommends that the advertiser become a member of the ABAC scheme and use the services of pre-vetting. A similar creative execution could have been developed which would not have breached the section (d) standard, and the Panel fully accepts that the advertiser did not intend to advertise in a manner inconsistent with ABAC standards.
28. Accordingly, the complaint is upheld.