

ABAC

**ABAC Complaints Panel
Determination No: 75/09**

**Confidential Complaint
Product: The Wine Doctor “Resveratrol-enhanced” Wines
Advertiser: Dr Philip Norrie**

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 an internet advertisement for The Wine Doctor “Resveratrol-enhanced” Wines by Dr Philip Norrie (“the Advertiser”) and arises from a confidential complaint received on 8 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 8 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. Dr Philip Norrie is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement. However, he has co-operated with the ABAC processes.

The Advertisement

9. The complaint refers to an internet advertisement located at www.winedoctor.com.au. The website is an advertisement for "The Wine Doctor Resveratrol-Enhanced Wine".
10. The Home Page of the website begins with the following text "Welcome. Wine was always good for you. Now it may be even better. "Whether wine is a nourishing drink, a medicine or a poison is a matter of dosage." Paracelsus, 1493-1541, alchemist, astrologer, physician; Father of modern pharmacology and toxicology." Following this introduction after the heading "The world's first Resveratrol-enhanced wines" Dr Philip Norrie is introduced as having established "The Wine Doctor" label and is noted to be a medical and wine historian and a Sydney GP. The Wines are also introduced and the following text is included "The anti-oxidants in wine are not stored in the body, so it is regular consumption, in moderation, of The Wine Doctor wines that delivers a significant dose of Resveratrol. Dr Norrie who has a busy general practice at Eleanora Heights in Sydney, says moderate consumption can be defined as a standard 750ml bottle of wine each day, shared between two people, with women advised to drink a little less than men." Resveratrol and the enhancement process are then explained.
11. On the next page of the website entitled "Dr Philip Norrie", his academic credentials, schooling, publications, membership, research and projects are featured.

12. The next page of the website is entitled “Resveratrol and REW wines”. On this page the health benefits of Resveratrol are explained and the REW wines are profiled with links to an online catalogue.
13. The next page of the website is entitled “Media”. This page contains links to press releases, photos, news articles and web news links. A You Tube link to a television segment entitled “Are Chocolate & Red Wine Good For You” from a Channel 9 program “What’s Good for You” is included, followed by the following text: “Dr Philip Norrie comments: What’s Good For You does not mention in the segment that Resveratrol is the only substance known to stimulate the SIRT-1 gene, which Australian scientist Professor David Sinclair (see link to Financial Review article) has shown to have a positive impact on longevity. Also, the ORAC score referred to in the segment is not a full measure of anti-oxidant activity. Readers can be confident that my wines deliver a therapeutic dose of Resveratrol if consumed regularly (daily) in moderation: 250-350ml (or 2-3 normal glasses) for women, 350-450ml (or 3-4 normal glasses) for men....” The articles referred to have titles such as “Healthy Wine Tipple”, “Just what the Doctor ordered”, “Red wine combats effects of ageing”, “Wine fights Alzheimer’s best if used daily”, “Red wine ingredient is a ‘wonder drug’” and “Wine clears blood vessels as you drink”.
14. The next page of the website contains links to other websites including www.wineiq.com. This website sells various labels of wine and contains a description of “The Wine Doctor” wines that includes the following statements. “These wines contain up to 100 times more of the powerful anti-oxidant Resveratrol that is found naturally in wine. Resveratrol is the focus of multi-million dollar research programs aimed at developing anti-ageing medicines.....Sydney medical practitioner and wine historian Dr Philip Norrie has developed and patented a method of adding Resveratrol to wine at the time of bottling. Dr Norrie, himself known as ‘The Wine Doctor’, has long been an advocate of the health benefits of moderate wine consumption.....A proportion of revenue from the sale of Resveratrol-enhanced wines in Australia will be donated to the Australian Atherosclerosis Society, which funds research into the causes and prevention of vascular disease.”

The Complaint

15. The complainant argues that the advertisement:
 - (a) encourages excessive consumption and fails to depict a responsible and moderate consumption of alcohol beverages in breach of sections (a)(i) and (iv) of the ABAC by:
 - The statement that “Dr Norrie who has a busy general practice at Eleanora Heights in Sydney, says moderate consumption can be defined as a standard 750ml bottle of wine each day, shared between two people, with women advised to drink a little less than men.”
 - The white wine in the range contains 13.5% alcohol, equivalent to almost 8 standard drinks.
 - A single person drinking half a bottle daily consumes 4 standard drinks each day thereby exceeding the NHMRC recommendations for daily

consumption and conflating it with single occasion drinking. To describe this as moderate consumption is erroneous.

- (b) suggests that the consumption of alcohol beverages offers a therapeutic benefit in breach of section (c)(iii) of the ABAC by the presentation of the following information when considered as a whole in a commercial website intended on selling wine:
- The label “The Wine Doctor” and the proprietor’s frequent use of his medical qualifications as a GP;
 - “Wine has always been good for you. Now it may be even better.”
 - “These free radicals are the body’s terrorists and cause biological havoc which helps contribute to our degenerative ongoing diseases such as cancer, dementia, diabetes, vascular disease (heart attack and stroke), macular degeneration (most common cause of blindness in people over 65) and arthritis. The fermentation process, in making wine, produces alcohol and liberates these antioxidants from the grape skin, which also block the effect of these free radicals.”
 - The overall message being one of implied medical endorsement for the primary prevention of disease.

The Code

16. The ABAC provides at Sections (a) and (c) 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;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages.
 - c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and accordingly –
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
 - g) not encourage consumption that is in excess of, or inconsistent with, the Australian Alcohol Guidelines issues by the NHMRC.

The Advertiser’s Comments

17. The Advertiser responded to the complaint by way of email received 20 September 2009. The points made by the Advertiser in relation to the advertisement were:

- (a) I am a medical practitioner [graduated MBBS from Uni of NSW in 1977] with 33 years of practice in Sydney and I am known as “The Wine Doctor”. I have also Trade Marked this expression. I have three Masters degrees in wine and medical history. I have a PhD on the history of wine as a medicine for the past 5,000 years in which I proved wine is man’s oldest medicine, best preventative medicine and most documented medicine.
- (b) All the statements made in the article in question are medically correct and based on evidence based medical trials. The Copenhagen City Heart Study was the first longitudinal study to divide alcohol consumption into beer, wine and spirits for the purposes of analysis of the data and showed that moderate wine drinkers reduced their death rate the most [by up to 50%] compared to teetotallers. This study defined moderation as up to 5 standard drinks per day for both men and women. The NH and MRC have reduced the definition of moderation from 4+2 to 3+1 standard drinks – but they are not the sole arbiters of what is moderation.
- (c) Free radicals in our body are the end result waste product from our many biological processes and contain an unpaired electron with its negative charge. Free radicals cause extensive damage to our bodies and so I used the colloquialism “body’s terrorists” to describe them. Anti-oxidants, especially those found in wine, block the effect of these free radicals.
- (d) It is sad that the medical truth has to be suppressed for the supposed greater good, due to the abuse of alcohol, when many more people, who suffer from vascular disease, diabetes, dementia and cancer to name but a few diseases that benefit from wine, would benefit from daily consumption of alcohol in moderation than would suffer from abusing alcohol. It is a situation where we, as a society, can have our cake and eat it too by educating people to consume alcohol in moderation so they get its many documented health benefits and not suffer from its abuse. A recent Dutch study has shown, after a 40 year follow up, that moderate consumers of alcohol live on average 2.5 years longer than teetotallers and that wine drinkers live an extra 2.5 years on top of that ie 5 years longer than teetotallers. This is a medical fact and should not be ignored if you have the health interests of all Australians at heart. But unfortunately it will!

18. The Advertiser provided a further response to the complaint by way of email received 23 September 2009. The points made by the Advertiser in relation to the advertisement were:

- (a) “The Wine Doctor” labels etc were all passed by the label compliance section of NSW Food Authority.
- (b) Some of the world’s leading epidemiologists and preventative cardiologists such as Prof Curtis Ellison from Boston Uni ,Prof Phillip Barter from the Heart Research Institute at Syd Uni and Prof David Colquhoun from Uni of Queensland think my Resveratrol Enhanced Wine

is a significant advance in nutraceuticals. These are serious medical researchers and their opinion should not be ignored.

- (c) I have looked at your website and noticed that there is not one medically trained/qualified doctor on the Management Committee or the Adjudication Panel of ABAC – only lawyers and psychologists!! Without a significant clinical medical input in your panel/structure I question the credibility of your organization.
- (d) If everybody's primary concern is the health of our citizens then can you please explain why I, as a medically trained doctor of over 30 years clinical experience, cannot advertise about a substance [wine in moderation] that would reduce one's death rate from all causes by up to 50%, reduce dementia rates by up to 80% [highly relevant and topical with Hazel Hawke now being put into a nursing home with Alzheimer's Disease – and we will have 592,000 demented citizens by 2030 and 1,130,000 by 2050 – so how much will that cost us – a lot more than abuse does I can assure you] and makes you live on average 5 years longer than a teetotaler? All this is from evidence based medical facts as well. We, as a society, have got our priorities upside down – we are throwing the baby out with the bath water when we ignore these facts. If it is so bad for us, why is it so good for us in the trials? As Abraham Lincoln said – the trouble with alcoholism is not the use of a bad thing, but the abuse of a good thing. Or would the Panel think his opinion irrelevant?

The Panel View

- 19. Before turning to the substantive issues raised by the complaint, it should be noted that the advertiser is not a member of one of the peak body sponsors of the ABAC scheme, nor is it a direct signatory to the scheme. The advertiser has however cooperated with the determination process and has responded to questions about the complaint. While the advertiser has not given a commitment to comply with the decision of the Panel, the Panel nonetheless has proceeded to make the determination.
- 20. The complaint raises several separate but related points, but essentially it is argued that the advertiser's website taken as a whole is encouraging excessive alcohol consumption and specifically consumption in breach of the NHMRC Australian Alcohol Guidelines. Further, it is argued that the website claims wine has a therapeutic benefit, in breach of section (c) (iii) of the Code. In response, the advertiser argues that moderate wine consumption is consistent with positive health outcomes and it is this message which is contained on its website.
- 21. The preamble to the ABAC provides that, in assessing the conformity of an advertisement with the Code standards, regard is to be had to the ad's impact upon a reasonable person within the class of persons to whom the ad is directed, taking its content as a whole.
- 22. Section (g) of the Code provides that an ad is not to encourage consumption that is in excess of or inconsistent with the Australian Alcohol Guidelines issued by the National

Health and Medical Research Council (NHMRC). The definition provisions define “Australian Alcohol Guidelines” to mean the electronic document “Guidelines for Everyone (1-3) published by the NHMRC as at 1 January 2004.

23. The current form of the ABAC came into operation in 2004, following a review of the Code by the Ministerial Council on Drug Strategy in 2003 and subsequent discussions between government officials and the sponsors of the ABAC scheme. Section (g) of the Code and the definition of “Australian Alcohol Guidelines” were introduced into the ABAC at this time. These provisions were not part of the pre-2004 ABAC.
24. The first issue for the Panel flows from the fact that, in February 2009, the NHMRC has replaced the Guidelines which were in place from 2001 (and hence in place as at 1 January 2004) with new Guidelines. Importantly for this determination, the Guidelines have been altered in relation to the advice on the amount of alcohol consumption. The 2001 Guidelines provided:

“Every person who drinks alcohol should control their pattern of drinking to minimise both longer-term and short-term risks and to gain longer-term benefits:

For example, men should drink:

No more than 28 standard drinks per week, which should be spread over 5 or 6 days; and no more than 4 standard drinks per day, but no more than 6 standard drinks on any one occasion and no more than 2 drinks in the first hour and 1 per hour thereafter, to minimise short-term risk within the weekly limit.

For example, women should drink:

No more than 14 standard drinks per week, which should be spread over 5 or 6 days; and no more than 4 standard drinks per day, but no more than 6 standard drinks on any one occasion and no more than 2 drinks in the first hour and 1 per hour thereafter, to minimise short-term risk within the weekly limit.

25. The 2009 Guidelines have modified the advice on the 2001 Guidelines. The new Guidelines provide:

Guideline 1

Reducing the risk of alcohol-related harm over a lifetime

The lifetime risk of harm from drinking alcohol increases with the amount consumed. For healthy men and women, drinking no more than two standard drinks on any day reduces the lifetime risk of harm from alcohol-related disease or injury.

Guideline 2

Reducing the risk of injury on a single occasion of drinking

On a single occasion of drinking, the risk of alcohol-related injury increases with the amount consumed.

For healthy men and women, drinking no more than four standard drinks on a single occasion reduces the risk of alcohol-related injury arising from that occasion.

26. The Panel has two choices as to how it should deal with the replacement of the Guidelines in place as at 1 January 2004 with the new 2009 NHRMC Guidelines. It could resolve that the Code must be applied so that section (g) is frozen as at the 2004 date. It is then a matter for the ABAC Management Committee to amend the Code if it believes this should occur to take into account the new Guidelines.
27. Alternatively, the Panel might look to the “spirit and intent” of the Code and conclude that it was intended that section (g) relates to the NHRMC Guidelines which are current at the time of the determination of a complaint.
28. The Panel believes that the ABAC should be applied with a “spirit and intent” approach. The Code’s preamble expressly makes reference to advertising complying with “the spirit and intent” of the Code. Further, the Panel has often noted the public policy rationale of the ABAC scheme and this recognises that alcohol advertising should be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in alcohol merchandising and consumption. Accordingly, the Panel has approached the determination with the current NHMRC Guidelines in mind when applying the Code provisions.
29. Accordingly, an ad which encourages the consumption of more than four (4) standard drinks on a single occasion or the consumption of more than two (2) standard drinks per day over a lifetime, breaches the section (g) standard. The website expressly states that wine should be consumed in “moderation”; however it is clear that the website’s advice on what is “moderation” contemplates a higher level of daily consumption than the NHMRC Guidelines.
30. The advertiser argues that the NHMRC is not the sole arbiter of what amounts to moderate alcohol consumption and that highly reputable studies and medical researchers have concluded that the consumption of wine at higher levels than that recommended by the NHMRC Guidelines is not a risk to health. In fact, it is argued that the studies and the advertiser’s own long experience as a general practitioner suggests that consumption in excess of the Guidelines can be beneficial to health.
31. As the advertiser points out, the Panel is not comprised of medical researchers although each Panel has, as a member, a recognised public health expert. The Panel’s role, however, is not to assess the merit or otherwise of competing medical health research, but to apply in a fair and consistent manner the provisions of the ABAC. The ABAC unambiguously places reliance on the NHMRC Guidelines as the benchmark for safe levels of alcohol consumption and the Panel applies this benchmark when assessing advertisements against the ABAC standards. On this basis, the website contains statements which are clearly inconsistent with section (g) of the Code.
32. A consequential issue from the breach of section (g) is whether the website is also in breach of section (a) of the ABAC in relation to the encouragement of excessive consumption. The ABAC does not define the phrase “excessive consumption” and the issue for the Panel is whether an advertisement which encourages consumption greater than the Guidelines is encouraging excessive consumption. This is the view which was taken by the complainant. In contrast, the advertiser has pointed to various studies, including that of the Copenhagen City Heart Study which suggests up to five (5) standard drinks per day would be moderate consumption.

33. It is the Panel's opinion that the website taken as a whole can be said to be encouraging excessive consumption within the meaning of section (a) of the ABAC. As mentioned earlier, the website is clearly encouraging the consumption of wine and at levels which are beyond that of the NHMRC Guidelines. The Panel takes the intention of the ABAC that advertising which expressly encourages consumption beyond the Guidelines level is for the purposes of the Code encouraging excessive consumption.
34. The final issue is whether the website breaches section (c) (iii) of the Code. This section provides that advertisements are not to suggest that the consumption of alcohol beverages offers **any** therapeutic benefit. On this point, the advertiser argues strenuously that there is extensive evidence that a moderate use of wine, particularly wines which have been enhanced with additional anti-oxidants, has a positive health benefit. The Panel's task, however, is not to make an assessment as to the validity of this claim as the Code provision is quite express in that advertisements are not to suggest that the consumption of alcohol offers any therapeutic benefit. On this point, the Code is quite clear and it is equally clear that the website breaches this standard.
35. Accordingly, the complaint is upheld. It is noted that the advertiser has not had the benefit of having the website reviewed by the pre-vetting component of the ABAC scheme. It is strongly recommended to the advertiser that the pre-vetters be consulted in modifying the website in order to make it consistent with the ABAC provisions.