

ABAC

**ABAC Complaints Panel
Determination No: 45/09**

**Confidential Complaint
Product: Tyrrell's Rufus Stone Shiraz
Advertiser: Tyrrell's Wines**

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

20 May 2009

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns a print advertisement for Tyrrell's Rufus Stone Shiraz by Tyrrell's Wines ("the Advertiser") and arises from a confidential complaint received on 29 April 2009 ("The Complainant").

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 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 an email received by the ABAC Panel on 29 April 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 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. Pre-vetting approval was not obtained for this advertisement.

The Advertisement

9. The complaints refer to a print advertisement for Tyrrell's Wines Rufus Stone Shiraz.
10. The advertisement features an image of a bottle of Tyrrell's Wines Rufus Stone Shiraz in the centre right of the page. To the left of the bottle is the tagline "As deep and rich as the soil it's grown in". To the right of the bottle is the Tyrrell's Wines Logo, the Rufus Stone logo and the text "Shiraz Heathcote, Victoria www.tyrrells.com.au".

The Complaints

11. The complainant is concerned that the advertisement fails to include a "moderation" or "drink responsibly" logo.

The Code

12. 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.

Arguments in Favour of the Complaints

12. In favour of the complaint, it can be argued that the advertisement breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol by failing to include a responsible consumption message such as "Enjoy wine in moderation" or "Drink responsibly".

The Advertiser's Comments

13. The Advertiser responded to the complaint and questions posed by the Panel by way of email dated 17 May 2009. The points made by the Advertiser in relation to the advertisement were:
- (a) The ABAC code requires advertisements for alcohol beverages to present a mature, balanced and responsible approach to the consumption of alcohol. We understand and support this code and believe that the headline and imagery centred around the advertisement in question is presented in this light. 'As deep and rich as the soil it's grown in', in no way indicates, encourages or supports anything contrary to responsible and moderate consumption of alcohol beverages.
 - (b) In essence we believe the question isn't so much what our advertisement promotes, as stated, in no way does it promote consumption contrary to the code but whether the "omission" of the words or words to the effect of "drink responsibly" or "drink in moderation" breaches the code? The Winemakers Federation of Australia confirms we have not directly breached any legislation by not having a "drink responsibly" or "drink in moderation" message.
 - (c) In light of the above we further submit that we have not breached the ABAC code. However, we do support the ABAC, its code and perhaps what's more important, both in this complaint and generally, is the spirit of the code and encouraging responsible drinking of our product. Taking this into consideration, we are currently working on a plan to implement a drink responsibly message on our packaging, advertising and promotional material. This is co-incidental to the complaint.
 - (d) The advertisement in question is due to conclude in August 2009. Its media campaign is relatively small. We ask that it be permitted to run its course in its current form with the caveat that all future advertising will confirm to our new undertaking.

The Panel's View

14. The complainant's concern is the failure of the Advertiser to include a responsible alcohol consumption message in their advertisement.
15. The Advertiser argues that there is no legislative requirement to include such messages, however, they are co-incidentally in the process of implementing a system for including the messages on their packaging, advertising and promotional material.
16. The Winemaker's Federation of Australia have advised that under the current labelling requirements, all wine producers are required to state the number of standard drinks contained in their bottle or packaging and an alcohol content statement. In addition, wine producers are voluntarily adopting a standard drinks logo and responsible consumption messages on package labels such as "Enjoy wine in moderation" or "Drink Responsibly". There is nothing mandating their use either on packaging or advertising, though the Winemaker's Federation do encourage it.

17. The ABAC contains no positive obligation to include a “drink responsibly” style of message. The advertisement is basic in message, referring to the product and a simple strapline. There is nothing in the substance of the ad which can be taken to be encouraging the irresponsible use of alcohol. Not incorporating a “drink responsibly” message is not of itself a breach of the ABAC, nor would the inclusion of such a message excuse an ad from otherwise breaching the ABAC if the content of the ad failed to meet a code standard.
18. Accordingly, the complaint is dismissed.