

# ABAC

**ABAC Complaints Panel  
Determination No: 101/08**

**CONFIDENTIAL COMPLAINT  
Product: Vodka Cruiser Free  
Advertiser: Independent Distillers (Aust) Pty Ltd**

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

7 October 2008

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an advertisement for Independent Distillers (Aust) Pty Ltd (“the Advertiser”) and arises from a confidential complaint received 22 September 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 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 a confidential email received on 22 September 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 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. Pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to an advertisement featured on the back cover of Fernwood Gym's Aug/Sept magazine.
10. The advertisement features the headline "New Sugar Free Available Now Kristov Genuine Double Distilled Vodka". Below the headline on the right side of the page is an attractive woman with a good figure sipping a drink through a straw with pictures of fresh slices of orange splashed with water behind her. To the left of the woman three 275ml bottles of Vodka Cruiser Free are featured in flavours of mixed berry, orange and mango and melon.

### **The Complaint**

11. The complainant argues that the ad should not be on the back cover of a gym magazine because:
  - (a) alcohol is fundamentally at odds with gym and health and fitness;

- (b) it encourages diet conscious drinking;
- (c) promotes a “pseudo-healthier” choice to women who are trying to improve their health and self esteem;
- (d) encourages such women to figure out ways to get trashed while not breaking their diets.

### **The Code**

12. 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;
    - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse 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;

### **Arguments in Favour of the Complaint**

13. In favour of the complaint it can be argued that the advertisement through its promotion of an alcoholic beverage as sugar free and its depiction of a cute, slim and toned woman drinking a beverage with a background of large slices of fresh fruit on the back cover of a gym magazine:
- (a) breaches section (a) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of the product as:
    - alcohol is fundamentally at odds with a gym and health and fitness;
    - encourages the diet conscious to drink an alcoholic beverage;
    - promotes a seemingly healthier choice to women who are trying to improve their health and self esteem;
    - encourages such women to figure out ways to get trashed while not breaking their diets.
  - (b) breaches section (a)(i) & (iii) of the ABAC by encouraging excessive consumption of the product as the ad:

- encourages the diet conscious to drink an alcoholic beverage;
  - encourages such women to figure out ways to get trashed while not breaking their diets.
- (c) breaches section (c)(iii) of the ABAC by suggesting that the consumption of the product offers a therapeutic benefit as it promotes a seemingly healthier choice to women who are trying to improve their health and self esteem;

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

14. The Advertiser responded to the complaint and questions posed by the Panel by way of letter received 1 October 2008. The points made by the Advertiser in relation to the advertisement were:
- (a) As one of Australia's largest liquor organisations we take particular pride in our communication with both our customers and consumers from a moral, ethical and regulatory perspective. Whilst we respect the opinions of the complainant we believe that we have acted in an appropriate way, and in line with the guidelines and spirit of the ABAC code. We have developed a product based on consumer demand and in keeping with the growing trend to low sugar/no sugar alcoholic and non-alcoholic beverages, and have gone to a great deal of trouble to portray this in a way that is appropriate and responsible.
- (b) The ad in question depicts a well groomed lady drinking product responsibly and in a non-threatening environment that is totally within both the words and intent of section (a) (i) and (iii) of the ABAC Code.
- (c) Furthermore, we absolutely refute the assertion that alcohol consumption is at odds with health and fitness. Virtually all health education and advocacy groups around Australia acknowledge that, unlike tobacco, a moderate consumption of alcohol on a regular basis, within the National Drug and Alcohol Consumption Guidelines is totally compatible with a balanced and healthy lifestyle, even though it was not submitted for pre approval on this occasion.
- (d) We also refute that the ad specifically encourages the diet conscious to drink. It is targeted at all people who are conscious of limiting their sugar intake for whatever reason, be it diabetes, or simply part of a balanced and healthy lifestyle. The fact that the young lady in the ad is dressed normally and not in gym gear demonstrates this. We have developed this product to specifically give consumers of our Vodka Cruiser brand the option of consuming it in a sugar free format – which we see as being a totally responsible action in today's' health conscious environment.

- (e) We definitely refute that the ad “*encourages such women to figure out ways to get trashed*” and are struggling to understand where this implication is drawn from the ad in question.
- (f) We also absolutely refute the assertion that the ad “*encourages excessive consumption of the product*”. The lady in the ad is actually drinking the product in a mature and responsible manner from a glass rather than straight out of the bottle.
- (g) Furthermore, we absolutely refute the assertion that the ad implies any therapeutic benefit. The fact that it is sugar free is simply offering the consumer a product in another form and again we feel was being done with the intention of offering the consumer an alternative and, for some people, healthier choice in how they consume their chosen alcohol brand.

### **The Panel View**

- 15. This complaint raises a number of separate concerns about the advertisement which will be dealt with in turn.
- 16. A principal concern of the complainant is the use of the Fernwood Gym magazine as the medium to place the advertisement. The complainant argues that the use of this magazine means that the product is being targeted at a particular audience *i.e.* health and fitness conscious women.
- 17. The ABAC is essentially a code which goes to the content of an alcohol ad, rather than the placement of the ad. The ABAC only indirectly goes to the issue of placement by reference in the ABAC preamble to assessments about conformity of an ad with ABAC standards, having regard to the “class of persons to whom the advertisement is directed”. This means the ABAC does not prescribe the type of publication an alcohol ad can be placed, but in assessing the standards as to the ad’s content, the likely audience of a particular publication is relevant.
- 18. The Panel acknowledges that, as a female-only health club, the readership of the Fernwood magazine and hence the advertisement will be predominantly health and fitness conscious women. This is a relevant consideration in considering the substantive issues raised by the complaint, but the use of the magazine of itself to advertise alcohol is not a breach of the ABAC.
- 19. The complainant, in part, is also concerned by the nature of the product, *i.e.* sugar-free, when this characteristic is coupled with its promotion within the Fernwood magazine, and hence the audience of health-conscious women. Issues about the characteristics of an alcohol product such as alcohol content and sugar content are not matters for the ABAC, which is confined to how products are advertised.
- 20. The question for the Panel is whether the ad breaches ABAC standards. In this regard, the ad itself is relatively straightforward and features a woman who

is sipping a drink through a straw and three bottles of different varieties of the product. The fact that the product is sugar-free is prominently displayed.

21. The complainant believes that this advertisement will encourage a viewer to believe that the product has a health benefit in terms of being sugar-free and that this characteristic may also encourage excessive use. Section (c) of the code provides that an advertisement must not suggest that the consumption of alcohol beverages offers any therapeutic benefit.
22. Other than the fact that the ad is placed within the Fernwood magazine, it is difficult to sustain that the ad itself is making any claims about its health or therapeutic benefit. Merely making the statement that the product is sugar-free, absence of any other representations does not in the Panel's view breach the section (c) standard. The fact that this advertisement is being communicated to health-conscious women does not, in the Panel's view, mean that the advertisement is suggesting to this audience that the product has a particular health or therapeutic benefit.
23. The complaint goes on to suggest that women may engage in excessive consumption given that the product is sugar-free and hence able to be consumed consistent with maintaining a diet. Again, there is nothing in the ad itself which lends support to the contention that excessive consumption is being promoted.
24. In short, the Panel is unable to find that the ad breaches the ABAC and accordingly, the complaint is dismissed.