

ABAC

ABAC Complaints Panel Determination No: 81/13

Complaint by Alyx Gorman
Product: Absolut Vodka
Company: Premium Wine Brands Pernod Ricard

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Louisa Jorm – Member

14 August 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns both a digital advertisement for an event that includes the Absolut Vodka logo and the event itself. The determination arises from a complaint received 11 July 2013.

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 complaint 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 that are in part under the ABAC and accordingly the Panel has jurisdiction to deal with those parts of the complaint.

The Complaint Timeline

6. The complaint was received by ABAC on 11 July 2013.
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 was decided 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, on the basis that the relevant alcohol company, Pernod Ricard, was not the creator of the advertisement.

The Advertisement

9. The complaint refers to both a Facebook advertisement for an event located at facebook.com/events/293160820830397/?fref=ts and the event.
10. The page had a black box at the top of the page that was a cut down of an image that could be seen in full when clicking on the box. The cut down version did not include the "Absolut Vodka logo" which appears on the full image.
11. The full image that could be reached when clicking on the box is a black rectangular box that features the word blackout vertically in large white text on the left side of the box. Next to the word "Blackout" is two hands holding a camera. On the right side of the page is large white text "Six Hotel Rooms Six Live Fashion Shoots Pitch Black You Take the Pictures" and in smaller white text "7-10PM Thursday July 18 Darlo Bar, Darlinghurst Cheap Drinks, DJS, \$10 Entry". Along the bottom of the page is large white text "Jesse Willesee" followed by smaller white text "X Styling by Kurt Johnson". In the bottom right corner are logos for "100 Squared Emerging Designer Market" and "Absolut Vodka".
12. On the facebook page below the box is the heading "Blackout – Jesse Willesee X Kurt Johnson – Live Shoots". Below the heading the site is recorded as "Public" and "By Jesse Willesee, Marta Jary and Kurt Aaron James Johnson". The date, time and location of the event are also recorded.
13. The following information about the event is then supplied:

BLACKOUT
A JESSE WILLESEE EVENT
SIX HOTEL ROOMS
SIX LIVE FASHION SHOOTS
PITCH BLACKNESS
...

Six hotel rooms above the Darlo Bar will come alive with six live fashion photo shoots, complete with models, props, and amazing styling from Kurt Johnson (Estate of Mind) and featured items from epic street label ONE FAMILY CLOTHING (<http://onefamilyclothing.com>) and 100 Squared. The twist? The whole fashion show will be held in pitch blackness with only occasional torches, UV black lights and camera flashes lighting the secret installations in the rooms. DJs will provide a fitting soundtrack to the darkness. Punters, photographers and anyone with a phone camera can walk room to room shooting the scenes as they come alive or just watch the whole crazy show emerge from the blackness. You never know what you'll see in the dark... THE AMAZING TIMOTY SNAPE WILL BE PROVIDING PARTY MONSTER WORTHY TUNES UPSTAIRS DURING THE SHOW.

BLACKOUT
THURSDAY JULY 18
7PM-10PM
DARLO BAR, DARLINGHURST
\$10 ENTRY
CONTACT: martajary@gmail.com
www.jessewillesee.com

14. Posts then follow. A post on June 30 notes that Jesse Willesee created the event.

The Complaint

15. The complainant argues that the event flagrantly breaks the alcohol brands' obligation to promote the responsible consumption of alcohol by:
- (a) the name 'Blackout' which is clearly a provocative reference to drinking too much alcohol,
 - (b) supporting an event by the artist who was also associated with the event "Passout" which expressly and classily glorified binge drinking; and
 - (c) supporting and glorifying alcoholism.
16. In support of the expressed concerns, the complainant provided a link to a Tumblr site of the artist, Jesse Willesee, which featured photographs of persons (possibly posed models) apparently passed out at a party, surrounded by numerous empty plastic cups.

The Code

17. The ABAC provides 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;
18. The ABAC includes the following additional protocols:

Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
.....
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines;
.....

Third Parties

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

The Advertiser's Comments

19. Premium Wine Brands Pernod Ricard (Pernod Ricard) responded to the complaint and questions posed by the Panel by letter dated 24 July 2013. The points made by the Pernod Ricard in relation to the advertisement were:
 - (a) The advertisement which is the subject of the complaint ('Advertisement') was placed on a Facebook event page created by photographer Jesse Willesee ('Facebook Page') to promote his 'Blackout' photography event being held at the Darlo Bar (part of the Royal Sovereign Hotel) on 18 July 2013 ('Event'). We understand that the Advertisement was created by Jesse Willesee and/or his business partner or event organiser, Marta Jary ('Advertiser'), with whom we have no direct relationship.
 - (b) Our only involvement in the Event was with the owners of Darlo Bar, Solotel Pty Ltd ('Solotel'), with whom we have an existing commercial relationship. We made a minor payment, via our sales function, to Solotel (at their request) to support moderate Absolut Vodka drink specials at the Event in return for advertising behind the bar. However, we have no direct relationship with the Advertiser or the Advertisement.

- (c) We became aware of the Advertisement in late June, when a member of our sales team was sent, by his contact at Solotel, a version of the Advertisement (as part of a press release) which Solotel had received by email from the Advertiser the previous day. We understand that the Advertiser sent this "press release" to a number of parties at the same time it was sent to Solotel, that is, before we received it. We did not respond to the email, either to Solotel or the Advertiser, nor were we invited to.
- (d) We were not aware of, nor did we approve, the placement of the Advertisement on the Facebook Page. Nor were we aware of the existence of the Facebook Page prior to the complaint. No approval for the Advertisement generally was provided. However, as noted above, Solotel provided us a slightly different version of the Advertisement following the apparent press release via email by the Advertiser. It is our understanding that the Advertiser had already put a version of the Advertisement into the public domain, via a press release to an email distribution list the day before we received it. We did, however, provide approval for the use of the Absolut Vodka logo in advertising behind the bar at the Event, though we note such advertising is not the subject of this complaint.
- (e) There was no consideration paid for the use of the logo on the Advertisement, nor for promotion of Absolut Vodka on the Facebook Page. We did not request and were not involved with the creation of the Advertisement or the addition of the Absolut Vodka logo. The advertisement was created by the Advertiser, with whom we had no direct relationship. We can only speculate that the addition of the logo to the Advertisement may have been to assist in gaining visibility or credibility for the Event, or as a gesture of goodwill. However, as pointed out earlier, we paid a minor amount of consideration to Solotel to assist in covering the shortfall associated with a moderate special on Absolut Vodka on the night in return for on-going relationship maintenance and advertising behind the bar in venue.
- (f) We do not consider that the Advertisement is an advertisement for Absolut Vodka. Rather, we consider it is an advertisement for the Event. We had no input into the creation of the Advertisement. At no time were we asked for, nor did we provide any input into the Advertisement, the Facebook Page and we certainly did not exercise any measure of control over the Advertisement or its placement. Our only connection to the Advertisement is via the inclusion of the Absolut Vodka logo, something we were made aware of, as we understand it, after a version of the Advertisement was put into the public domain by the Advertiser. In our view, the Advertisement is a "category 5" advertisement (as referred to in the Domino's determination, no. 7/09), being material which might contain some reference to alcohol but can't fairly be said to be 'alcohol beverage advertising'. We therefore do not consider that the Code Provisions apply to the Advertisement. However, if the Panel determines that the Advertisement is instead a "category 4" advertisement, being an advertisement of a non-alcohol entity but which promotes alcohol products or alcohol use in some way, then, on the facts we do not consider that the Code Provisions apply as we did not have a direct relationship with the Advertiser, had no awareness of the creation of the Advertisement until after it was made public, had no entitlement to approve the Advertisement and did not have, or exercise any control over the Advertisement.
- (g) We note also, the provision of the Code protocols in terms of third party advertising and events. We consider that the protocol relating to Internet Advertisements does not apply as the use of the Absolut Vodka logo on the Advertisement does not comprise a 'banner advertisement'. The Promotion of

Alcohol at Events protocol draws a distinction between activities undertaken by alcohol companies and third parties. The Event was organised by the Advertisers and, whilst we acknowledge our obligations to use reasonable endeavours to ensure their compliance with such Protocol, we note that there is no breach of the Code on our behalf if a third party fails to meet the standards on the protocol.

- (h) In any event, we do not believe that the Advertisers failed to meet the standards set out in either the Code provisions or the Code protocols, for the following reasons. It is very clear from the Advertisement that the context of the Advertisement relates to the promotion of the Event. The Event was an unconventional photo shoot in that the rooms in which the models were posing were darkened. The photographer used the hotel rooms above the Darlo Bar to carry out the shoot and attendees of the Event were encouraged to take their own photographs. The models were dressed by fashion designers and wearing illuminated make-up, jewellery, reflective materials and holding glow sticks all intended to create a particular effect when photographs were taken in the dark. Hence, the term 'blackout' in the Advertisement references the fact that the lights are turned out (being the common meaning of the term) during the photo shoot. The Advertisement is comprised of the term "Blackout" featuring vertically down the left side of the advertisement, an image of a person taking a flash photo in the middle, followed on the right hand side by the horizontal text:

SIX HOTEL ROOMS
SIX LIVE FASHION SHOOTS
PITCH BLACK
YOU TAKE THE PICTURES

We fail to see how the use of the term 'blackout' in the above context can reasonably be viewed as a reference to the excessive consumption of alcohol. It is clear from the context that the Advertisement is intended to promote the Event, and the use of the term 'blackout' is in reference to the lights being turned out during the shoot. We strongly deny that the use of the term 'blackout' in the Advertisement breaches section (a), (aX_i) or (a)(iii) as it cannot reasonably be interpreted as failing to present a mature, balanced and responsible approach to the consumption of alcohol, or as promoting or encouraging excessive consumption or misuse or abuse of alcohol.

- (i) We note that the complaint did not make reference to the use of the term 'cheap drinks'. However, as noted earlier, there was a moderate special offered on Absolut Vodka in the bar on the night of the Event. Such drinks were served in the Darlo Bar which is a licenced premise, subject to the Responsible Service of Alcohol (RSA) requirements NSW. An offer of discounted drinks doesn't of itself promote excessive consumption, misuse, or the abuse of alcohol, nor does the terminology fail to present a mature balanced and responsible approach to alcohol consumption. It is merely a statement making reference to the fact that moderately discounted drinks were to be available at the Event, which may make attendance for some people more affordable, particularly given the cover charge.
- (j) The photographer is an artist, and art is more often than not a commentary on existing societal issues and not an endorsement of an issue. We would therefore dispute that the 'passout' photographic shoot (which we had nothing to do with) "expressly, classily glorified binge drinking" as suggested by the complainant. We are not aware of any cross promotion between the 'passout' event and this Event, and even if there was, it does not follow that the Event

can reasonably be seen to encourage excessive consumption simply by association. Any past shoot or exhibition by the Advertiser may have held is irrelevant to this particular Advertisement, which in our view does not of itself does not breach any of the requirements of the Code.

- (k) For completeness, no element of the Advertisement, nor a combination of the elements of the Advertisement in our view, breaches section (a), (a)(i) or (a)(iii) for the reasons set out above.
- (l) In conclusion, it is our view that the Advertisement does not constitute 'alcohol beverage advertising' under the Code and we are not otherwise in breach of the Code Protocols. Notwithstanding this, it is also our view that the Advertisement does in fact comply with all aspects of the ABAC Code. In particular, neither the Advertisement taken as a whole, nor any individual element of the Advertisement breaches section (a), (ai) or (a)(iii) as it cannot reasonably be interpreted as failing to present a mature, balanced and responsible approach to the consumption of alcohol, or as promoting or encouraging excessive consumption or misuse or abuse of alcohol.

The Panel's View

Introduction

- 20. On July 18 2013, the Darlo Bar in the Sydney suburb of Darlinghurst held an event entitled "Blackout". The event (as advertised) featured a form of performance art where the photographer, Jesse Willesee, had staged models and props in 6 hotel rooms above the bar. In the hotel rooms, the models and props were going to be in the dark, lit only by UV lights, some torches and flashes of cameras.
- 21. Apparently, the concept was for patrons of the Darlo Bar to pay a \$10 cover charge and witness the rooms and take photos if they wished. The event also included "cheap drinks" and a DJ.
- 22. The complainant apparently became aware of the event via a Facebook event page created by Mr Willesee. On this Facebook page was positioned the advertisement described in paragraphs 9 to 14. The advertisement included the name and logo of the alcohol brand, Absolut Vodka.
- 23. The complainant was conscious of other work of Mr Willesee, notably a series of photographs accessible via a Tumblr site collectively entitled "Passout". These photographs, in the complainant's opinion, showed men and women apparently unconscious through excessive alcohol consumption or at least seriously affected by excessive alcohol use. The complainant is of the view that these photographs glorify binge drinking.
- 24. Presumably, against the backdrop of the "Passout" photographs the complainant has drawn the conclusion that the "Blackout" event would promote binge drinking and that the association of the event with the brand Absolut Vodka was irresponsible and contrary to good practice in alcohol marketing.
- 25. It has been necessary to step through this background as the ABAC scheme has a limited and defined scope which does not readily meet the concerns expressed in the complaint. The scheme applies standards of good practice to advertisements for alcohol beverages with which signatories to the scheme have agreed to comply. In addition, the ABAC contains a protocol related to the promotion of alcohol beverage brands at certain

events. The scheme does not, however, have universal application and does not apply to the activities of non-alcohol industry entities, such as the photographer, Mr Willesee. Further, the Darlo Bar, as a nightclub, is not a signatory to the ABAC scheme. Nor are any of the other sponsors to the “Blackout” event.

26. This means that the starting point for the Panel is to clearly identify which of the parties involved in the event are responsible for the various activities that have concerned the complainant. In essence, the Panel must decide which of these activities can be assessed against the ABAC standards either through the Code provisions applying to ‘alcohol beverage advertisements’ or the protocol applying to the promotion of alcohol at events. Other concerns implicit in the complaint are in the domain of state liquor licencing regimes relating to the responsible service of alcohol. These areas are well outside the scope of ABAC scheme and authority of the Panel.

The ABAC and the Facebook Advertisement and Darlo Bar Event

27. The complaint concerns the Darlo Bar event which is advertised by Mr Willesee’s Facebook page. This brings into play the advertisement and the event itself. The ABAC deals with both matters in different ways.
28. The ABAC is substantially concerned with ‘alcohol beverage advertisements’. This means not all alcohol marketing is covered by the scheme. For instance, sponsorship of a football team by an alcohol company is not ‘an advertisement’, although an advertisement might flow from the existence of the sponsorship arrangement. Equally, alcohol use is extensively portrayed in popular media, such as in a movie, and clearly this is also not ‘an advertisement’.
29. Even with ‘advertisements’, the scheme’s coverage is limited to those advertisements which are ‘alcohol beverage advertisements’. In most instances it is clear enough that the advertisement is for an alcohol product, but if the advertisement is for another product or activity and an alcohol brand is promoted within the advertisement, the test applied by the Panel is based on the control and influence an alcohol company has over the advertisement.
30. In relation to Mr Willesee’s Facebook advertisement, the advice from Pernod Ricard is that;
- The advertisement was created by Mr Willesee and/or his business partner, with whom Pernod Ricard have no direct relationship.
 - Pernod Ricard did not place the Facebook advertisement and had no control over its content.
 - Pernod Ricard support and influence over advertising associated with the event was limited to advertising behind the bar at the event itself.
31. Given that the Facebook advertisement was primarily for the event and not the alcohol product, and was created and placed on the site by Mr Willesee (or potentially his business partner) and not by Pernod Ricard and, further, the alcohol company states that it had no control over the content of the advertisement, the Panel must conclude that the advertisement is not an alcohol beverage advertisement for the purposes of the ABAC. Accordingly, the Panel is unable to make a substantive decision about the consistency of the advertisement with the Code provisions.
32. Beyond the advertisement, however, the principal concern of the complainant is that the event itself promoted binge drinking and it was irresponsible for Pernod Ricard to be

- associated with the event. The ABAC provides a protocol to guide alcohol companies in their engagement with events and activities.
33. This protocol commits alcohol beverage companies to endeavour to ensure that promotional advertising in support of events does not clearly target underage persons and that beverages served at events are in keeping with guidelines for the responsible service of alcohol. While there are other elements of the protocol, they are not relevant to the current event.
 34. The protocol goes on to deal with events run by third parties. In these cases alcohol companies are required to use “every reasonable endeavour” to have the event take place consistently with the protocol in the ABAC. It is noted, however, that non-compliance with the protocol by third parties will not place the alcohol beverage company in breach of the protocol.
 35. The basis of the complainant’s argument is that Mr Willesee’s previous artistic activities in photographing persons under the “Passout” title glorified binge drinking and, hence, by implication the “Blackout” event should be seen in the same light. In response to this, Pernod Ricard argues:
 - It is clear that the term “Blackout” within the context of the event references the fact that the lights are turned off during the photo shoot. The advertisement and the event itself would not lead a reasonable person to conclude that “Blackout” was relating to the excessive consumption of alcohol.
 - Financial support was provided to the event, but this was limited and related to a “moderate special offered on Absolut Vodka in the bar on the night of the event”.
 - Mr Willesee is an artist and art is “more often a commentary on existing societal issues and not an endorsement of an issue”.
 - The “Passout” photographs are not relevant to the current event.
 36. The Panel does not believe that Pernod Ricard is in breach of the ABAC protocol in its support of the event at the Darlo Bar. In reaching this conclusion, the Panel has noted:
 - The terms of the protocol are much more limited than the ABAC provisions applying to advertising. The protocol is aimed particularly at events not targeting people under the legal drinking age and that staff at the events serve drinks in a responsible manner.
 - While Pernod Ricard supported the discounted drinks of Absolut Vodka at the event, there is no information to suggest that it was intended to not serve alcohol consistently with applicable guidelines and state liquor licencing requirements.
 - The term “blackout” is properly contextualised in the associated promotional material and would be taken by a reasonable person to relate to the in the dark installation and activity in the adjoining hotel rooms.
 - The earlier “Passout” photographs do not appear to relate to the Darlo Bar event.
 - The Darlo Bar event is a third party event under the ABAC protocol and any non-compliance by non ABAC signatories, such as Mr Willesee or the night club, does not bring the ABAC signatory (Pernod Ricard) into breach of the protocol.
 37. As stated earlier, the ABAC scheme is not readily applicable to the complainant’s concerns. This no doubt will not be particularly satisfying to the complainant, however, in large measure the question of how night clubs promote and stage events in a manner which does not encourage excessive alcohol use falls within the domain of State Government authorities.
 38. The complaint is dismissed.