

ABAC

ABAC Complaints Panel Determination No: 91/13

Complaint by Catherine Cresswell Company: Jimmy Brings

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

20 September 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns outdoor advertisements for an alcohol beverage retailer, Jimmy Brings. The determination arises from a complaint received 6 September 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 under the ABAC and accordingly the Panel has jurisdiction to deal with the complaint.

The Complaint Timeline

6. The complaint was received by ABAC on 6 September 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. The advertiser is not a signatory to the ABAC and pre-vetting approval was not obtained in this case.

The Advertisement

9. The complaint refers to an outdoor advertisement attached to light poles in Sydney during the 2013 Federal election campaign alongside political posters for candidates. The advertisement was printed on coreflutes and made to look like an election poster.
10. The poster included a head and shoulder's photograph of a man with a serious expression and wearing a suit. Above the photograph was the text "Vote 1 Jimmy Brings". Below the photograph was the text "Alcohol delivered in 30 mins jimmybrings.com.au".

The Complaint

11. The complainant argues that the advertisement:
 - (a) may breach advertising and Council guidelines;
 - (b) is distracting as they are attached to light poles etc alongside the road;
 - (c) may set a precedent for other advertisers and lead to mess and visual pollution;
 - (d) advertises a business model that enables children under 18 to easily order alcohol and have it delivered, provided there is one person in the group who looks over 18 and query how it complies with responsible service of alcohol requirements which pubs and licensed venues must comply with;
 - (e) could facilitate excessive and binge drinking and increase health related harms; and
 - (f) fails to include a drink responsibly message.

The Code

12. 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
 - ii) must not encourage under-age drinking
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages

The Advertiser's Comments

13. The company responded to the complaint and questions posed by the Panel by email dated 16 September 2013. The points made by the company in relation to the complaint were:
- (a) The advertisement in question is a mock election poster, saying "Vote 1 Jimmy Brings. Alcohol delivered in 30mins". The delivery of alcohol is not a new concept, and is offered by major retail chains in addition to smaller off premise businesses. Jimmy Brings offers exactly the same service, the only difference being an increased service level to customers by providing a faster turnaround time. We have taken the following steps to go above and beyond our legal obligations, in order to prevent potential misuse of our service by minors or intoxicated persons:
 - All of our drivers and phone operators have RSA certificates.
 - Drivers are not outsourced couriers, but in-house staff trained specifically to deal with the delivery of alcohol
 - Photo identification must be presented on all orders.
 - We will not deliver to parks or public areas. Only to places of residence.
 - We never leave alcohol on a doorstep, it must be handed to the customer upon the sighting of valid photo identification
 - (b) We are proud of our culture of Responsible Service and take this matter very seriously. I admit that the poster campaign in question did not include a warning to drink responsibly. I admit it was an oversight on my part. If you refer to any of our previous advertising materials, a responsible service warning has always been included. Relevant messaging is included on our facebook page, website, fridge magnets and other promotional materials. In any case, the above mentioned posters were removed last week, and were only visible for a period of 10 days.

The Panel's View

14. This complaint raises a number of issues, some of which fall within the scope of the ABAC while some fall outside ABAC's jurisdiction.
15. The ABAC is a code which sets out the standards which the content of alcohol advertising is to satisfy. Therefore the complainant's concerns relating to the placement of the advertisements on the light poles, namely a breach of Council guidelines and potential distraction to traffic, are outside of the scope of the ABAC. These concerns do

- not relate to the way in which the advertisement promotes alcohol but rather the method of advertising itself.
16. The balance of the complainant's concerns all raise issues under section (a) of the ABAC. Section (a) requires alcohol beverage advertisements to present a mature, balanced and responsible approach to the consumption of alcohol beverages and, in particular not encourage or promote underage drinking or the excessive consumption or misuse or abuse of alcohol beverages.
 17. The complainant is primarily concerned that the advertisement with its offer of home delivery of alcohol within 30 minutes without the inclusion of a drink responsibly message will lead to:
 - (a) the ability of under 18 years old to easily order alcohol and have it delivered thereby encouraging underage drinking in breach of section (a)(ii); and
 - (b) excessive and binge drinking in breach of sections (a)(i) and (iii).
 18. In relation to the first concern, the advertiser has advised of the responsible service of alcohol measures put in place to prevent those under 18 receiving alcohol via their home delivery service. While the adequacy of these measures is primarily a State liquor licensing issue, the question for the Panel is whether the content of the advertisement including this offer will encourage underage drinking. As the advertiser has stated the concept of home delivery of alcohol is not new and the Panel does not believe that the content of the advertisement is likely to encourage underage drinking.
 19. In relation to the second concern, the Panel does not believe that the advertisement is encouraging excessive or binge drinking in breach of section (a)(iii). The advertisement offers home delivery of alcohol within 30 minutes, but makes no suggestion or implication that this service should be used to enable excessive or binge drinking. There is a clear distinction between the purchase of alcohol and its consumption. It does not follow that because alcohol is delivered by the retailer to a purchaser's home, it will be consumed irresponsibly as opposed to a purchaser attending the retailer's outlet and buying the product over the counter.
 20. The complainant has raised a concern that no responsible drinking message was included in the advertisement. It is not a requirement of the ABAC to include such a message and the advertisement does not otherwise fail to present a mature, balanced and responsible approach to the consumption of alcohol in breach of section (a) of the ABAC.
 21. Accordingly the complaint is dismissed.