

ABAC

ABAC Complaints Panel Determination No: 92/13

Complaint by Dylan Campbell Advertiser: Club Eastside

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

25 October 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Club Eastside (“the Advertiser”) and arises from a complaint received 16 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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - 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 is within the Panel's jurisdiction.

The Complaint Timeline

6. The complaint was received by ABAC on 16 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 determined within the target 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 Scheme and pre-vetting approval was not obtained for the advertisement.

The Advertisement

9. The television advertisement opens with the outside of the venue focusing on the sign "Club Eastside".
10. Background music with the lyrics "All my troubles seem to fade away I can feel it change" can be heard as we see the following scenes inside the venue:
 - The inside of the venue;
 - Someone picking up a betting card;
 - A table with a partially consumed glass of beer, a stand with a Keno Guide and entry forms, a wine list and someone writing on a card;
 - Harness racing on a television;
 - A pokie machine

11. The voiceover “Club Eastside, its your club, are you ready? Undoolya Road, Alice Springs” as we see two different men pouring beers behind the bar, with the branded bar taps visible and a beer being picked up by a patron. The final scene is the logo for Club Eastside and its address.

The Complaint

12. The complainant is concerned that in the advertisement, Club Eastside, Alice Springs is promoting its gambling/alcohol venue while playing “all my troubles seem to fade away” in the background. It is unacceptable to promote alcohol and gambling by associating it with ‘taking your troubles away’ when gambling and alcohol are serious addictions, especially in the areas these ads are displayed.

The Code

13. The ABAC provides that advertisements for alcohol beverages must:
 - a) present a mature, balanced and responsible approach to the 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...

The Advertiser’s Comments

14. The Advertiser advised that the advertisement has been modified to remove the background music and voiceover but did not provide any further response to the complaint.

The Panel’s View

14. The threshold issue raised by the complaint is whether the advertisement can be considered to be an “alcohol beverage advertisement” for the purposes of the ABAC scheme. The advertisement is clearly promoting Club Eastside in Alice Springs. In doing this, the advertisement refers to alcohol use (and gambling) in a manner which the complainant considers irresponsible. But does the mere reference to alcohol use in an advertisement make the advertisement an “alcohol beverage advertisement”?
15. The Panel has considered this issue previously in earlier determinations and noted that it has over time dealt with complaints and advertisements which can broadly be placed into five separate categories, namely:
 - Brand specific advertisements by the producer or distributor of a particular alcohol beverage (Category 1);
 - Advertisements from a liquor retailer which promote a particular brand of alcohol beverage (Category 2);

- Advertisements from a liquor retailer which promote the sale of alcohol from the outlet, rather than the sale of a particular brand of alcohol beverage (Category 3);
- Advertisements which are from a non-alcohol entity, but which promote alcohol products or alcohol use in some way (Category 4);
- Material which might contain some reference to alcohol, but can't fairly be said to be "alcohol beverage advertising" (Category 5).

16 This particular advertisement falls within either Category 4 or Category 5. Category 5 advertisements do not fall within the ambit of the ABAC scheme, while an advertisement falling within Category 4 may or may not be an advertisement which the ABAC scheme covers depending on the circumstances and facts of the particular case. Important in this consideration is whether an alcohol brand owner has had some degree of control or influence over the way in which an alcohol brand is portrayed within the advertisement.

17 In the current case, there is a scene in the advertisement which shows a barman pouring a beer from behind the bar where a number of alcohol product brand names or logos are visible. It is quite apparent, however, that the images of the alcohol brands are merely incidental to the scene showing the bar area of the Club. It is also clear that there is no relationship between the Club and the alcohol brands displayed which indicate that the alcohol brands had some control or influence over the fleeting images of the brands in the advertisement.

18 The Panel concludes that on the known facts in this case that the advertisement cannot be regarded as an alcohol beverage advertisement. This means the Panel is unable to make a formal decision on the substance of the concerns raised by the complainant. That said, it is quite apparent that the nature of the advertisement particularly:

- the accompanying music which refers to the "all your troubles fading away"; and
- the overall impression of the advertisements indicating that the activities at the Club, including alcohol consumption, will lead to a change of mood,

taken as a whole would see the advertisement in breach of sections (a) and (c) of the ABAC.

19 The Panel notes the advice of the advertiser that it has taken action to modify the advertisement to remove the background music and the voiceover. Presumably, this is in recognition that the advertisement is inconsistent with either the substance of the ABAC provisions or the provisions of the Advertiser's Code of Ethics. The Panel believes the advertiser's actions in withdrawing the advertisement is appropriate.

- 20 Accordingly, while the complaint is dismissed in a formal sense, the Panel notes the action to withdraw the advertisement as consistent with alcohol advertising good practice.