

# ABAC

## ABAC Complaints Panel Determination No: 98/13

### Complaint by Nikolina Gagic Product: Oktoberfest Company: Oktoberfest Brisbane Pty Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator  
Debra Richards – Member  
Professor Louisa Jorm – Member

6 November 2013

#### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement for the 2013 Brisbane ‘Oktoberfest’ event. The determination arises from a complaint received 9 October 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 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 9 October 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 Scheme and pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to three images included in an internet advertisement for an event located at [www.oktoberfestbrisbane.com.au](http://www.oktoberfestbrisbane.com.au). The website as a whole provides information about the Oktoberfest event held at the Brisbane Exhibition Grounds on two weekends in October 2013.
10. The first image is included as part of a side bar that appears on each page and is a picture of a group of adults and a child sitting at a long table at the event, some of whom are in German costume. Some of the adults are drinking from beer steins, there is a bottle of lemonade and food on the table and a bottle of water in front of the child. The child is holding two thumbs up and smiling at the camera.
11. The second and third images appear on the page entitled "Miss Oktoberfest, Strongman & Beards".
12. One of the images appears under an explanation of the Miss Oktoberfest competition and is an image of four women in German costume, two wearing aprons and pouring clear liquid from metal buckets into large glass steins that the other two women are holding. There are two haybales next to pretend cows behind the women. The aprons carry the name of the German beer "Tucher".
13. The other image appears under an explanation of the Bavarian Strongman competition and is an image of a man in German costume running while carrying a metal keg around another keg.

### **The Complaint**

14. The complainant argues that the images breach Part 1 sections a-c of the ABAC as:
  - (a) They depict the consumption or presence of alcoholic beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

- (b) They promote offensive behaviour, excess consumption, misuse and abuse of alcoholic beverages and do not depict responsible or moderate consumption;
- (c) They depict alcohol as part of a celebration and imply or suggest that the beverage was a cause of or contributed to success or achievement;
- (d) Include an image of a family with the child holding thumbs up as if in approval or acceptance of this kind of behaviour for a child;
- (e) The image of the four women appears to be a competition as they are isolated from the crowd. The size of the jugs the women are holding up is not a moderate or responsible alcohol intake especially for a female;
- (f) The third image depicts a scenario of rowdy behaviour rather than appropriate celebration and the man appears intoxicated whilst doing the activity suggesting that alcohol contributed to its entertainment and the fun.

### **The Code**

15. 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 consumption;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages.
- b) not have a strong or evident appeal to children or adolescents and, accordingly-
  - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve 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 –
  - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement;

16. 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**

17. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 18 October 2013. The points made by the Advertiser in relation to the advertisement were:
- (a) The Advertiser is not a signatory to the Code and reserves its right not to accept the Panel's decision.
  - (b) The advertisements complained of do not advertise alcohol beverages at all. They are images from the Advertiser's website that advertise aspects of the Oktoberfest Brisbane event itself.
  - (c) Oktoberfest Brisbane is an annual cultural event held in Brisbane based on the Bavarian Oktoberfest held each year in Munich, Germany. The event celebrates the German culture and includes Bavarian bands, Bavarian dancers, food stalls highlighting the various German delicacies, rides for children, facepainting and stalls displaying and selling a variety of German products.

The Advertiser creates an authentic German atmosphere to the extent that it even flies in a 6 person traditional Bavarian band for the event and imports decorations from Germany.

- (d) The sale of liquor, which mainly consists of a variety of German beers, is ancillary to the whole folk festival which is a family oriented event. In fact, the Advertiser does not serve full strength beer at the event at all. It only sells beer with an alcohol content of no more than 4%. It has strict conditions on its liquor licence to this effect.
- (e) The Advertiser is proud that Oktoberfest Brisbane is a true people's event for the whole family. It is supported by, amongst others, the Brisbane City Council, the Lord Mayor of Brisbane, the Premier of Queensland the Hon. Campbell Newman, the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs the Hon. Glem Elmes and the Consul-General of Germany in Sydney Mr H.D.Steinbach, all of whom were speakers and part of the opening ceremony for Oktoberfest Brisbane this year.
- (f) Despite the above, being a good corporate citizen the Advertiser wishes to assist by responding to the questions posed by the Panel.
- (g) Tucher is a brewer in Bavaria who supplies the specialty beer that is sold at Oktoberfest Brisbane. It is imported by a wholesaler based in Melbourne. Tucher has no involvement whatsoever in the design of the Oktoberfest Brisbane website.
- (h) The Code is not applicable and the interpretation of the images is misconceived or misconstrued
- (i) The first image depicts a family having fun at a VIP table at Oktoberfest Brisbane. They are enjoying the music and other entertainment as well as the food and beverages, much like any other family would at such an event or even a restaurant. The young girl has a water bottle and lemonade bottle in front of her. The family has dressed in a traditional Bavarian manner, indicating they are getting into the spirit of a cultural event. The Advertiser denies that the "thumbs up" by the girl (not an uncommon gesture by children in photographs) could be legitimately interpreted as acceptance or approval of consumption of alcohol by the adult. It is a family having fun and smiling for the camera at a cultural event.
- (j) The second image is taken from the annual "Miss Oktoberfest" competition, which is one of the many different parts of the entertainment that form part of Oktoberfest Brisbane. No beer is involved in this image. As part of this competition, the participants were asked to milk a "cow" (a plastic udder fixed under a timber frame in the shape of a cow – which is used in Austria and Germany for trainees of agricultural schools when training for milking cows). The metal buckets contain water (as a stand in for milk) which is collected when the cows are "milked" by the participants and then poured into the two glass steins, which were used so the crowd could identify the winner of the competition (that is, who obtained the most "milk" from the cow). There is no beer in the image whatsoever.
- (k) The third image is part of the Bavarian strongman competition, which is a traditional competition in Bavaria that is many decades old. It forms part of the entertainment at Oktoberfest Brisbane. In the competition **empty** kegs are used as part of the tests of strength by the participants who must carry them

swiftly around the course. There are various individual games as part of the overall competition. There is no consumption of alcohol as part of the competition. The person depicted in the image is not intoxicated. He is lifting a heavy keg and running around another keg on the floor as part of the strongman competition; he is not falling over.

### **The Panel's View**

18. The Oktoberfest event traces its origin to the public celebration of a Bavarian royal wedding in 1810 in what is now the city of Munich in Germany. A brief internet search reveals that since the 1960s the original Munich festival has been the catalyst for many events hosted worldwide which make some claim of replicating the German ancestor. In 2013, Oktoberfest titled events seem to have been held in a range of Australian cities and towns, including a sizeable event held at the Brisbane Exhibition Grounds over two consecutive weekends in October.
19. It is the website promoting the Brisbane style Oktoberfest which is the subject of the current complaint. The complainant argues that a number of the photographic images on the website are inconsistent with standards contained in the ABAC. In short, the complainant contends that the website images promote excessive alcohol consumption, offensive behaviour and imply that a child is shown endorsing irresponsible behaviour. It is further argued that the way in which alcohol is portrayed at the event leads to the conclusion that alcohol is necessary to the success of the celebration.
20. Because of the nature of the ABAC scheme, the standards contained in the Code do not have universal application to each and every depiction of alcohol as a product in the public media. This is because the ABAC is at its heart a self-regulatory initiative of Australian alcohol producers and distributors which has also gained the commitment of major alcohol retailers. This means that the scheme only binds individual companies which have become signatories to the scheme and the promoters of the Brisbane Oktoberfest are not one of the signatories. Hence, the Panel is unable to make a decision which has binding effect on the Advertiser, although the Advertiser has cooperated with the Panel's processes and enabled the Panel to make this determination.
21. There is a second matter to be considered as to whether the ABAC standards apply in this case and this is the threshold question of whether the website can be regarded as an "alcohol beverage advertisement". The ABAC applies standards only to advertisements for alcohol beverages and it needs to be noted:
  - Not every activity which promotes alcohol can be regarded as an advertisement (e.g. alcohol company sponsorship of a sports team is not an advertisement); and
  - Not every advertisement which alludes to alcohol is necessarily an "alcohol beverage advertisement".
22. In this case it is clear that the website is promoting the Oktoberfest activities and is not primarily concerned with the promotion of a particular brand of alcohol beverage or the sale of alcohol as a product more generally. The website does contain the name and logo of an alcohol brand, "Tucher", although the Advertiser makes clear that Tucher has had no involvement in the design of the website. The site also shows the presence and consumption of alcohol in some photographs and availability of alcohol at the event is mentioned in accompanying text. In the Miss Oktoberfest competition photograph, two of the women are shown wearing aprons carrying the "Tucher" brand name.
23. Drawing all this together, the Panel has concluded that the website cannot be regarded as an alcohol beverage advertisement within the meaning of the ABAC scheme. Rather,

- the website is for an event and the references to alcohol have not been shaped or controlled by an alcohol beverage producer or retailer, such as to enable the website to be considered an "alcohol beverage advertisement". As a result, the Panel cannot make a substantive decision on the substantive issues raised by the complainant in relation to the website being an "advertisement".
24. The ABAC also contains a protocol dealing with the promotion of alcohol at events. This protocol is relevant to the current complaint, as it is clear the concerns of the complainant go beyond the images on the website and relate to the activities which are portrayed as occurring at the Oktoberfest event.
  25. The protocol lays down a set of guidelines for how alcohol should be promoted at events. In large part, the guidelines go to advertising and promotional material not targeting under age persons and not linking the consumption of alcohol with achieving success. The guidelines do not replicate each of the ABAC standards applying to advertising and, for instance, do not go to the depiction of children in materials used at the event or in association with the event.
  26. The Panel has reviewed the protocol in light of the complainant's concern, but does not believe that the website taken as a whole is suggesting that the event activities or promotions will take place in a manner that is inconsistent with the protocol guidelines. In reaching this conclusion, the Panel has noted:
    - Alcohol use indicated as occurring at the event is contextualised with the availability of various foods and drinks associated with the Bavarian region.
    - The games and activities do not appear to link alcohol use as being a cause of achieving success.
    - There is no indication that alcohol is being targeted towards underage persons.
  27. The Panel has noted that the Miss Oktoberfest photograph which features the very large steins and two women wearing Tucher branded aprons. While the advertiser explains the context of this photograph, it is quite conceivable that a viewer might believe that the photograph is suggesting that alcohol will be poured and consumed from the steins. This could give rise to a reasonable implication of irresponsible alcohol consumption, inconsistent with the spirit of the ABAC standard and the family orientation of the event which the advertiser has emphasised. The Panel suggests that the advertiser be mindful of this impression in future promotions of the event.
  28. The complaint is dismissed.