

# ABAC

## ABAC Complaints Panel Determination No: 130/13

**Complaint by Mr James Bryan-Hancock**  
**Product: Schweppes Soda/Bacardi**  
**Advertiser: Schweppes Australia Pty Ltd**

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

23 December 2013

### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement produced by Schweppes Australia Pty Ltd (“Advertiser”) which includes a Bacardi product and arises from a complaint received 21 November 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 complaints 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 on 21 November 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. The 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 alcohol beverage advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to a television advertisement. The advertisement opens with 5 scenes in quick succession of hands opening schweppes mixer bottles as energetic, fast, party music starts. The music accompanying the pictures includes the lyrics "Dance all day we never stop".
10. We then see the backs of people entering a crowded room with one man holding up an unlabelled bottle and a bottle of Schweppes mixer. The music and picture freezes as the text "Your Place the Best Bar in Town" is superimposed.
11. The music resumes and the next scene is of a group of people dancing in a room at night in slow motion. We see the top of the crowd, then their feet, followed by a man kissing a woman while he is holding a mixed drink.
12. The scene changes to the back of a person walking toward a house holding a bag containing various Schweppes products. We then see several people greeting each other as the text "Only Friends on the Door" is superimposed.

13. We then see a small group of people in a backyard at night dancing in front of a lit screen with one man watching and clapping.
14. The scene changes to a backyard at daylight where a man is picking herbs, a woman on a man's shoulders is reaching for an orange on a tree. We then see a table where mixed drinks are being made using oranges, Bacardi and Schweppes soda water. The text "Orange Mojitos on the Menu" is superimposed on the screen as the picture freezes. We then see a group of people sitting at a table with mixed drinks. In the next scene a man holding a mixed drink is reaching toward a tub of Schweppes products.
15. The scenes then change in quick succession to:
  - (a) a small group of people dancing in front of a screen in a backyard at dusk;
  - (b) a larger group of people dancing in a room at night;
  - (c) a music player with the text "Open all Hours" superimposed on the picture.
  - (d) A woman dancing in a dark room;
  - (e) Hands of a large group of people dancing in a dark room, one holding a small bottle;
  - (f) A woman pouring a mixed drink at a table in a dark room;
  - (g) A blurred picture of a woman with the text "In is the New Out" superimposed on the picture;
  - (h) The picture of the woman's smiling face coming into focus with the text "Mix it up at Home" superimposed on the picture;
  - (i) The woman curls her tongue out of her mouth;
16. The text "cocktailrevolution.com.au" and the Schweppes logo with a hand holding a cocktail glass emerging from the logo is superimposed on the final scene where the camera has moved above the hands of the people dancing in the picture.

### **The Complaint**

17. The complainant is concerned about the depictions of:
  - (a) young people drinking alcoholic cocktails;
  - (b) dancing with alcoholic drinks;
  - (c) kissing;
  - (d) staying up all night drinking;

- (e) a bottle of Bacardi rum and the reference to having your own bar that never closes;
- (f) despite the product advertised not containing alcohol it relies on a depiction of drinking to excess as attractive and sociable in order to sell a product that is directly related to alcohol consumption; and
- (g) it's broadcast during a time and program accessible to children.

## The Code

18. The Preamble to the ABAC states that the Australasian Associated Brewers, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of **all advertisements for alcohol beverages** produced for publication or broadcast in Australia other than point of sale material produced by alcohol beverage retailers, comply with the spirit and intent of this Code. The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.
19. The Definition section of the ABAC states, "alcohol beverage includes any particular brand of alcohol beverage".
20. The ABAC Part 1 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;
  - (b) not have a strong or evident appeal to children or adolescents...
  - (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;

## The Advertiser's Comments

21. Bacardi Lion responded to the substantive issues raised in the complaint and questions posed by the Panel by way of letter dated 6 December 2013. The principal points made by Bacardi Lion are as follows:
- (a) Bacardi Lion was aware of and approved the advertisement inclusive of the use and depiction of Bacardi.
  - (b) The advertisement does not breach section (a) of the code. The advertisement depicts adults (all aged 25+) drinking a variety of beverages (primarily non-alcoholic) throughout the course of a party which transitions from day into night. At no point is anyone depicted acting irresponsibly or consuming alcohol excessively nor is there anyone dancing with alcoholic beverage in hand. There is a scene at 4 seconds where a man walks into a room holding a bottle of Smirnoff Vodka – he is not dancing.
  - (c) The advertisement does not breach section (a)(ii) or (b) of the Code. The advertisement was broadcast during a live sporting event which is in line with the Commercial Television Industry Code of Practice. Per the code “Notwithstanding Clause 6.7, a commercial which is a “direct advertisement for alcoholic drinks” may be broadcast as an accompaniment to the live broadcast of a sporting event.
  - (d) The environment depicts a normal party environment with a number of people all aged 25+. This should not be attractive to children and/or adolescents.
  - (e) The advertisement does not breach Section (c) or (c)(i) of the code. It shows adults enjoying themselves, primarily drinking soft drinks and in no way suggests that the enjoyment is as a result of consumption of alcohol. A kiss is shown, but prior to any alcoholic drinks being opened. This common greeting does not imply it was the result of alcohol consumption. In fact, only one alcoholic drink is depicted prior to the kiss, which is at 4 seconds when a man walks in with a bottle of Smirnoff, whilst at least 8 soft drinks are depicted prior to the kiss.
  - (f) The advertisement depicts adults aged 25+ enjoying primarily a variety of non-alcohol beverages as well as Bacardi Superior in two instances. All adults depicted in the advertisement are acting responsibly. The advertisement was shown during a live sporting event which is allowable within the Commercial Television Industry Code of Practice. As such the advertisement adheres to the ABAC code as well as the Commercial Television Industry Code of Practice and should not be upheld. We are very serious and proactive about maintaining the integrity of advertising within our industry.
22. The Advertiser (Schweppes) responded to the questions posed by the Panel by way of letter dated 27 November 2013. The principal points made by the Advertiser are as follows:

- (a) The Advertisement features young adults having a party which features a range of Schweppes soft drinks being consumed as well as Bacardi Rum being made into a drink with Schweppes Soda Water. The Advertisement also has scenes where young people are having fun with friends and consuming various Schweppes beverages while socialising and dancing, often without a drink in their hand. The complaint suggests the advertisement “relies on a depiction of drinking to excess as attractive and sociable in order to sell a product that is directly related to alcohol consumption”. The alcohol in question being Bacardi is limited to two short frames which illustrate someone making a drink rather than actual consumption. Other scenes in the advertisement do show young adults drinking bottled soft drinks as well as non-descript drinks in glasses that do not have alcohol related products within the shots. The focus of the advertisement is young people having fun, dancing, singing and the beverages served are part of the celebration and not the catalyst to drive the celebration. Furthermore, the Advertisement contains a “Drink Responsibly” message which runs for the last 3 seconds of the Advertisement in the end with the Schweppes branding.
- (b) Furthermore, the complaint suggests that the Advertisement is “also marketed to young people during a time and program that is accessible to children“. As part of the Commercial Television Industry Code of Practice, Schweppes strictly adheres to airing this advertisement based on programing after 8:30pm and in Live Sport. In the case of the complaint the Advertisement was aired in a Live Sporting Program being the Ashes Cricket Broadcast on Channel 9. In addition we believe the advertisement is within the ABAC guidelines because of the following.
- (c) The Advertisement does not in any way encourage the excessive consumption or abuse of alcohol in that:
- a. where the advertisement features mixed drinks, each is based on a standard serving size;
  - b. the Advertisement does not depict any binge drinking or other forms of excessive consumption of alcohol; and
  - c. the Advertisement presents a mature and responsible approach to alcohol, for example in each of the dancing scenes the actors are either dancing with nothing in their hands or dancing with a bottle of Schweppes product (which does not contain any alcohol).
- (d) The Advertisement does not encourage under-age drinking. There are no children depicted in the Advertisement. The actors cast are all over the Australian legal drinking age of 18. In fact, the Advertiser has an internal policy that any people depicted in Schweppes advertisements featuring alcohol of any kind must be adults aged 25 years or older. The Advertisement complies with this internal policy (i.e. all the actors are 25 or over).

- (e) The Advertisement does not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcoholic beverages. The setting of the Advertisement is a relaxed and controlled environment. Further, the Advertisement does not suggest in any way that alcohol will help with personal, business or social success or that it has therapeutic benefits which are necessary to unwind.
- (f) The Advertiser takes the responsible promotion of alcohol very seriously. Whilst not strictly bound by the Code or the Code of Practice, the Advertiser is aware of the requirements of these codes and does all it can to ensure that its advertisements and marketing campaigns are in compliance with them. The Advertiser also has internal "best practice" policies in place which incorporate the key requirements of the relevant codes and alcohol marketing guides.

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

23. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers of alcohol beverages to comply with the standards contained within the ABAC and abide by the pre-vetting and complaints processes which make up the ABAC Scheme. This commitment is embodied through the sponsorship of the ABAC Scheme by several direct signatories together with three (3) peak alcohol industry bodies, namely the:
- Brewers Association of Australia & New Zealand
  - Distilled Spirits Industry Council of Australia
  - Winemakers Federation of Australia.
24. The ABAC is a code which applies to "alcohol beverage advertisements", and not all forms of advertising, such as advertisements for soft drinks. In this case, Bacardi Lion, the owner of Bacardi alcohol beverage brand, and Schweppes have entered into an arrangement whereby the Bacardi brand and product can be used by Schweppes in its advertising of soft drinks. Bacardi Lion were aware of and approved the use of their brand in the advertisement and as such have a measure of control over how their brand will be used. In these circumstances, consistent with earlier Panel determinations, the Panel concludes that the advertisement is one to which the standards in the ABAC apply.
25. The complaint raises a number of substantive issues which will be considered in turn. The first issue raised is whether the advertisement encourages or promotes excessive consumption of alcohol beverages. The complainant is concerned that:
- (a) Young people are depicted drinking alcoholic cocktails, dancing with alcoholic drinks, kissing and staying up all night drinking;
  - (b) The advertisement is encouraging viewers to have a bar at home that never closes;

- (c) The advertisement implies that party goes drinking to excess is attractive and sociable.
26. Schweppes and Bacardi Lion respond that the advertisement:
- (a) depicts consumption of a variety of beverages (primarily non-alcoholic), including bottled soft drinks and non-descript drinks in glasses that do not have alcohol related products in the shots;
  - (b) limits depictions of Bacardi to two short frames which illustrate someone making a drink rather than actual consumption;
  - (c) where it features mixed drinks, each is based on a standard serving size;
  - (d) does not depict any binge drinking, people acting irresponsibly or other forms of excessive consumption of alcohol; and
  - (e) in each of the dancing scenes the actors are either dancing with nothing in their hands or dancing with a bottle of Schweppes product (which does not contain any alcohol).
27. The preamble to the ABAC provides guidance in how the Panel is to assess the consistency of an advertisement against Code standards. The Panel is to have regard to the probable impact of the advertisement upon a reasonable person taking its content as a whole.
28. Section (a) of the Code creates a positive requirement that advertisements present a mature, balanced and responsible approach to the consumption of alcohol. This is a wider concept than simply the “consumption of alcohol” and invites a focus on the overall message about alcohol use that a reasonable person would take from the advertisement. Clearly, if the advertisement is encouraging excessive consumption or immoderate consumption then this requirement will not be satisfied.
29. The advertisement is entitled the “Cocktail Revolution” and is essentially contrasting a house party environment as a desirable alternative to attending external venues such as a nightclub or bar. While the product being promoted is primarily non-alcoholic, it is the non-alcohol product’s use in conjunction with alcohol as a mixer or as a component within an alcohol cocktail, which is the underlying value proposition being used for the Schweppes products. Bacardi features as a recognised alcohol brand in one of the scenes, while in other scenes it is reasonable to assume that the drinks featured or the bottles used would also be of an alcohol product.
30. The Panel has weighed up the various considerations as to whether the advertisement is promoting excessive consumption, inconsistent with the requirement of section (a). While this is a case where reasonable people might reach a different conclusion, on balance, the Panel believes the advertisement does breach the section (a) requirements. In reaching this conclusion, the Panel has noted:

- (a) The overall style, pace and timing of the advertisement which places the activities portrayed at a party which goes from evening and day scenes in quick succession, indicating a prolonged period of the party.
  - (b) Use of the expressions, “Your place is the best bar in town”, “Open all hours”, together with the lyrics of the background music, “Dance all day, we never stop”.
  - (c) The theme of a house party with the phrase, “Only friends at the door”, which could reasonably imply that the regulatory controls which monitor alcohol consumption at an external venue are not present.
  - (d) Scenes featuring a person joining the party carrying a bottle which would reasonably be taken to be a bottle of alcohol, the making of the orange mojito cocktails, the couple on the dance floor with the male holding what would be a mixed alcohol drink.
  - (e) The extent of Schweppes products available in the context where the products are clearly to be used in the making of alcoholic cocktails.
31. No one scene or element of itself is a breach of the standard, but when taken together, the Panel is of the view that a reasonable person could conclude a message that an irresponsible approach to alcohol consumption, and specifically excessive consumption, is being encouraged.
32. The second issue raised is whether the advertisement encourages underage drinking or has strong or evident appeal to children or adolescents. The complainant is concerned that:
- (a) Young people are depicted drinking alcoholic cocktails; and
  - (b) The advertisement was broadcast during live sport during the day which is accessible to children.
33. Schweppes and Bacardi Lion respond that:
- (a) the advertisement was broadcast during a live sporting event in compliance with the Commercial Television Industry Code of Practice applying to alcohol advertisements;
  - (b) all actors are 25 years of age or over; and
  - (c) the environment depicts a normal party environment with a number of people all aged 25+ which should not be attractive to children and/or adolescents.
34. Section (a)(ii) and (b) of the Code provide that advertisements must not encourage underage drinking or have strong or evident appeal to children or adolescents. In previous Panel determinations, the Panel has noted that in assessing advertisements against these standards, the following matters have been taken into account:

- (a) The advertiser's intention as to its target audience is not material, rather it is the 'probable impact' of the advertisement which is important.
  - (b) Alcohol advertisements directed towards adults may have some consequential appeal to children and adolescents and not breach the Code.
  - (c) What is not permitted is advertising which has strong and evident appeal to children and adolescents.
  - (d) Whether an advertisement has strong or evident appeal is a case by case assessment in which context, imagery, use of animation and characters are amongst the things important in deciding the overall impact of the advertisement.
35. The complainant mentions that the advertisement was broadcast at a time where it would have been accessible to children, namely during a live sports program. The ABAC does not contain provisions which go to the placement of alcohol advertisements but, rather, requires that all advertisements, regardless of where and when they are broadcast, printed or located meet the required standards. The Commercial Television Industry Code of Practice generally limits alcohol advertisements to broadcast after 8:30pm, but there is an exception which permits the broadcast of alcohol advertisements in conjunction with live sports broadcasts. Accordingly, it is not a breach of the ABAC code simply because the advertisement was broadcast during the day in conjunction with a sports program.
36. The Panel does not believe that the advertisement breaches the section (a)(ii) and (b) standards. The advertisement has an adult look and feel in terms of the characters portrayed and the activities engaged in. While it is difficult to draw lines between an advertisement which might appeal to a 20 year old, as opposed to a 17 year old, taking the context and content of the advertisement as a whole, the Panel is of the view that it does not have appeal to children or adolescents which is any more marked than its appeal to the general audience.
37. The third issue raised is whether the advertisement depicts the consumption or presence of alcohol as a cause of or contributing to a significant change in mood or the achievement of social, sexual or other success. The complainant is concerned that:
- (a) Young people drinking alcohol is depicted as attractive and sociable; and
  - (b) People are shown consuming alcohol and kissing.
38. Schweppes and Bacardi Lion respond that;
- (a) the advertisement shows adults enjoying themselves, primarily drinking soft drinks and in no way suggests that the enjoyment is as a result of consumption of alcohol; and

- (b) a kiss is shown, but prior to any alcoholic drinks being opened and this common greeting does not imply it was the result of alcohol consumption.
- 39. Section (c) of the Code provides that an advertisement must not suggest that the consumption or presence of alcohol is a cause of or contributor to a change in mood or the achievement of success. The essential issue is that of causation. If an advertisement can be fairly said to be suggesting that alcohol is a cause of success, then it is inconsistent with the standard. On the other hand, if the advertisement is simply associating the product with success which has been achieved without a contribution by alcohol then this will be consistent with the ABAC standards.
- 40. Essentially, the complainant is arguing that the advertisement portrays a scene where young people are seen drinking and this is depicted as attractive and sociable. There is no ABAC requirement that alcohol advertisements are not allowed to feature attractive individuals or social settings. What is not allowed is the implication that alcohol is a cause of contributor to this outcome.
- 41. The Panel does not believe that section (c) has been breached by the advertisement. While the party depicted does show people enjoying themselves, there is no clear linkage that this enjoyment has been caused by alcohol. Rather, the tone and message of the advertisement is that it is enjoyable to host a house party without the implicit or explicit restrictions that apply to a bar or a nightclub. It would seem that alcohol use is a secondary consideration in this message.
- 42. Accordingly the complaint is upheld in relation to section (a) and dismissed in relation to sections (b) and (c) of the Code.