

ABAC

ABAC Complaints Panel Determination No: 10/14

Confidential Complaint Product: Rekorderlig Cider Advertiser: Whitehorse Liquor

Professor The Hon Michael Lavarch – Chief Adjudicator
Debra Richards – Member
Professor Richard Mattick – Member

28 March 2014

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Rekorderlig Cider and the Whitehorse Liquor retail outlet by Whitehorse Liquor (“the Advertiser”) and arises from a complaint received on 19 February 2014.

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 by the ABAC Panel on 19 February 2014.
- 7 The Panel endeavour 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 that 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 did not obtain pre-vetting approval for this advertisement.

The Advertisement

- 9 The advertisement appeared on an external wall of the Whitehorse Liquor retail outlet, visible from the pavement outside the store.
- 10 The top half of the advertisement features a Crown followed by the text "Keep Calm and Drink" against a red background.
- 11 The middle of the advertisement features 6 small bottles of Rekorderlig Cider in different flavours with different coloured backgrounds behind each bottle.
- 12 Below the bottles is an image of a woman next to the text "Beautifully Swedish" against a bright pink background.
- 13 At the bottom of the advertisement is the text "Whitehorse Liquor" and below that "Wine Beer Spirits" against a black background.

The Complaint

- 14 The complainant is concerned about the use of the term "Keep Calm" added to the "And Drink" by reason that:
 - a) It is distasteful in light of the awareness raising attempts to reduce alcohol intake given it is the highest indicated substance use issue in Australia (completely surpassing any illicit substances);
 - b) Everyone is trying to have a go at the phrase "Keep Calm" and add their bit to it and this statement is very attractive to the lower age groups who see this as a very 'now' statement; and
 - c) It suggests that you need to drink to be calm.

The Code

15 The ABAC provides at Part 1 that advertisements for alcohol beverages must:

- (a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly-
 - (ii) must not encourage under-age drinking;
- (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-
 - (iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

The Advertiser's Comments

- 16 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 27 February 2014 advising that the poster in question had been removed completely and replaced with a poster of a totally unrelated product.
- 17 The distributor of Rekorderlig Cider advised that they had no involvement in or knowledge of the advertisement.

The Panel's View

- 18 Whitehorse Liquor is not a signatory to the ABAC Scheme. Nonetheless, the Panel receives and considers complaints about alcohol beverage advertising, irrespective if the advertisement is from an ABAC signatory or not. In this case, the Advertiser has cooperated with the Panel process.
- 19 As a non ABAC signatory the advertiser is not contractually bound to comply with ABAC standards, but it has nonetheless removed the advertisement upon being notified of the complaint. The Panel believes this was the appropriate action for the advertiser to take,
- 20 The Panel concludes that the advertisement does breach section (c)(iii) of the Code by suggesting that the use of alcohol will result in a therapeutic benefit. Specifically, the advertisement could be taken by a reasonable person to be implying that use of alcohol helps a person remain calm.
- 21 Recently, two major Australian alcohol retailers, namely Coles and Woolworths, have joined the ABAC Scheme. The advertiser should also consider joining the Scheme and taking the benefit of testing its advertising against the ABAC standards prior to its use via the pre-vetting service. This would avoid the advertiser producing its own advertisements which are inconsistent with the required standards for good alcohol advertising.
- 22 Accordingly, the complaint is upheld.