

ABAC

ABAC Complaints Panel Determination No: 41/13

Complaint by Commissioner O'Callaghan Product: Veuve Cliquot Advertiser: Liquor Marketing Group Limited

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

21 March 2013

Introduction

- 1 This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Veuve Cliquot and the Harry Brown retail outlet by the Liquor Marketing Group Limited (“the Advertiser”) and arises from a complaint received on 13 March 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 by the ABAC Panel on 13 March 2013.
- 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 by Harry Brown The Liquor Trader appeared in an insert to the West Australian Newspaper on 12 March 2013.
- 10 Page 2 of the insert included images, prices and commentary about various sparkling wine products. The right side of the page under the heading "Quality French Champagne" includes an image of two bottles of Veuve Cliquot Yellow Label NV with a caption "Veuve Cliquot Yellow Label NV \$59.99 in any six \$64.99 single" and the text "Drinking champagne must be good for your health as the famous widow lived for 89 years. We believe it is time to part with some of your stock market gains and indulge. Past Australians have as for over 100 years Veuve was the biggest selling Champagne until nudged aside by Moet. Long live the widow, Barbe Nicole Ponsardin."

The Complaint

- 11 The advertisement breaches the ABAC by claiming that alcohol is good for your health namely Veuve Cliquot Champagne starting with the words "Drinking Champagne must be good for your health".

The Code

- 12 The ABAC provides at Part 1 that advertisements for alcohol beverages must:
 - (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

- 13 The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 20 March 2013. The principal points made by the Advertiser were as follows:
- a) We acknowledge that the statement breaches section (c) (iii) of the Code. This was an inadvertent breach on our part and we undertake to avoid such suggestions in future advertising.
 - b) Liquor Marketing Group strongly supports the responsible service and consumption of alcohol and we take that obligation seriously. We apologise for this instance where more careful prior review on our part would have detected the potential breach before release. We will accept the Panel's decision in relation to this complaint.

The Panel's View

- 14 Liquor Marketing Group is not a signatory to the ABAC Scheme. Mostly, the members of the scheme are alcohol producers and distributors, rather than liquor retailers. Nonetheless, the Panel receives and considers all 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 and agreed to accept the Panel's determination.
- 15 Commissioner O'Callaghan argues that the statement "Drinking champagne must be good for your health as the famous widow lived for 89 years" is in breach of section (c)(iii) of the ABAC. The Advertiser accepts that this statement is an inadvertent breach of section (c)(iii) Code.
- 16 Section (c)(iii) of the ABAC provides that alcohol beverage advertisements must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation. Clearly the statement "Drinking Champagne must be good for your health" suggests that consumption of an alcohol beverage offers a therapeutic (health) benefit and is in breach of this provision of the Code.
- 17 The Panel notes the Advertiser's stated commitment to responsible service and consumption of alcohol and their acknowledgement of their failure to identify this breach. The Panel encourages the Advertiser to utilise the Alcohol Advertising Pre-vetting Service which provides an independent review of alcohol beverage advertisements against the ABAC Code and greatly assists in reducing inadvertent breaches of the Code as occurred in this case.
- 18 The complaint is upheld.