

ABAC

**ABAC Complaints Panel
Determination No: 82/10 & 86/10**

**Confidential Complaints
Product: Three Kings alcohol beverages
Advertiser: Independent Distillers**

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

2 February 2011

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Three Kings alcohol beverages by Independent Distillers (“the Advertiser”) and arises from two confidential complaints received on 13 December 2010 and 17 December 2010.

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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

6. The complaints were received by ABAC on 13 and 17 December 2010.
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 first complaint has not been determined within the 30 day timeframe due to the Christmas period.

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 member of the ABAC Scheme and pre-vetting approval was not obtained for these advertisements.

The Advertisement

9. The complaint refers to a print advertisement placed in "Drinks Trade" and "Australian Hotelier" publications.
10. At the top of the page is a photograph of three young men sitting on a bench with graffiti in the background, talking and holding bottles of the product. Across the pictures is the headline "Independent Distillers Australia Launches Cross Category Brand in an Industry First".
11. Below the picture is an advertorial which includes the following statements:
 - (a) Tailored to the Generation Y wave of beer-drinking males and launching across three categories simultaneously, Three Kings positions itself as a uniting brand choice, no matter what the consumer's persuasion.
 - (b) While this venture aims to deliver IDA a slice of the beer market, it is also responsive to a new wave of consumer – one whose choice of drink is not necessarily dictated by habit, but habitat. We need to acknowledge the expanding repertoires of this generation. They are no longer just beer drinkers; they drink different products for different occasions.

- (c) There is a need for such a brand in a rapidly evolving market and IDA had created Three Kings to appeal to this generation of men. For them, it's not about the malt, the regionality of the water or the personality of the brewer. It's about good times, good mates and stories that eventuate when these elements unite.
 - (d) Three Kings presents a strong position which is masculine, modern and right for any occasion.
12. On the bottom left of the page are two other photographs of the same three men. The first features one of the men on a skateboard and another with a skateboard over his shoulder facing away from the camera. The second features the three men sharing a joke and two of the men holding bottles of the product.
13. On the right side of the page is a picture of three bottles of the product, one of which is Cider, another Dry Lager and the third is vodka and ginger above packaging and pricing details of the product.

The Complaint

14. The first complainant argues that the advertisement encourages underage drinking and has strong appeal to children by including models that look 18 years of age or younger
15. The second complainant argues that the advertisement encourages underage drinking and has strong appeal to children by:
- (a) including kiddies that are barely 18 years old and wearing clothes that are associated with a very young age group (i.e. under 18); and
 - (b) in one picture showing the youths skating which is hardly an activity associated with adults.

The Code

16. 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 –
 - ii) must not encourage under-age drinking;
 - b) not have a strong or evident appeal to children and adolescents and accordingly:
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbeque, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverage

- iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene

The Advertiser's Comments

- 17. The Advertiser responded to the complaint and questions posed by the Panel on 12 January 2011. The principal points made by the Advertiser are:
 - (a) This editorial was for one edition of the publications in question and is not intended be run again.
 - (b) The talent is of legal drinking age and the editorial content in no way encourages underage consumption of alcohol, nor does it have a strong or evident appeal to children or adolescents.
 - (c) This publication is a trade alcohol magazine and as such the audience will be of legal drinking age.

The Panel's View

- 18. This complaint raises a number of issues, both substantive and procedural, which will be dealt with in turn.

The Procedural Aspects

- 19. The ABAC is a quasi-regulatory system which has at its heart the commitment of advertisers 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 three (3) peak alcohol industry bodies, namely the:
 - Brewers Association of Australia & New Zealand
 - Distilled Spirits Industry Council of Australia
 - Winemakers Federation of Australia.

- 20. While the individual companies which are members of the sponsoring industry bodies cover the vast majority of alcohol beverage advertisers in Australia, there are alcohol producers and advertisers who are not member of the relevant industry bodies or are not signatories to the ABAC Scheme. The advertiser in this particular case is not an ABAC signatory. This means that the advertising was not subject to pre-vetting prior to its showing. Further, this decision by the Panel does not have any binding force on the advertiser. That said, the advertiser has cooperated with the Panel and accordingly a determination can be made.

The Substantive Aspects

- 21. This complaint raises an issue of whether the advertisement breaches section (a) (ii) and (b) of the ABAC by encouraging underage drinking and having a strong and evident appeal to children. The complainants specifically raise the issue of the age of

the models in the ads and that the ad appeals to children or adolescents. Section (b) (i) of the ABAC provides that adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.

22. The Panel has previously considered three of the photographs used in the ad in the context of their use in outdoor advertising and found that they breached section (a)(ii) and (b) of the ABAC. The Panel must now consider the print advertisement which has different content and is placed in different media.
23. The ABAC applies across all media *i.e.* print, television, radio, billboards and the internet and is a content based set of standards. This means that, regardless of where an alcohol ad is placed, its content is to meet the standards laid down in the ABAC. The issue of where the ad is placed is indirectly relevant in terms of assessing the content of the ad in that the audience of the ad is a relevant consideration.
24. This advertisement was placed in two trade publications for the alcohol and hotel industry. The Panel believes these advertisements would not have a substantial audience of children or adolescents. Having said that, its content must still meet the ABAC standards.
25. The Advertiser has not specifically advised the age of the three (3) men featured in the ad, other than they are of "legal drinking age". Consistent with its decision in Determination No: 76/10, the Panel concludes that the models appear to be under 25 years of age and hence the ad is in breach of section (b) (i) and (iii). Further, the model's association with skateboarding is likely to have strong appeal to adolescents and breaches section (a) (ii) and (b) more broadly.
26. In upholding the complaint, the Panel strongly encourages the advertiser to become a signatory to the ABAC Scheme and take advantage of pre-vetting process. Pre-vetting would have identified the inconsistency of the advertising approach with ABAC Standards and enabled the advertiser to consider alternative creative means to pursue its marketing objectives in a manner reflective of ABAC Standards of good alcohol advertising practice.