

# ABAC

## ABAC Complaints Panel Determination No: 6/09

### CONFIDENTIAL COMPLAINT Product: Belgian Beer Café Advertiser: Australian Leisure and Hospitality Group Ltd

Professor The Hon Michael Lavarch – Chief Adjudicator  
Jeanne Strachan – Member  
Professor Richard Mattick – Member

16 February 2008

#### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a poster and an internet advertisement for Belgian Beer Café by Australian Leisure and Hospitality Group Limited (“the Advertiser”) and arises from a confidential complaint received 15 January 2009.

#### 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 ASB and the Panel both assess complaints separately under their own rules. However, for the ease of public access to the complaints system, the

ASB receives all complaints about alcohol beverage advertisements and forwards a copy of all complaints to the Chief Adjudicator of the ABAC.

4. The Chief Adjudicator of the ABAC then determines if the complaint raises issues which are solely within the province of the AANA Code of Ethics. If not, then the complaint will be forwarded to the ABAC Adjudication Panel for consideration. If only AANA Code issues are raised, then the matter is determined by the ASB.
5. The complaint raises concerns under the ABAC and accordingly is within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The complaint is in the form of a confidential email received by ABAC on 15 January 2009.
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 advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to a poster displayed in the Belgian Beer Café that is also featured at [www.belgianbeer.com.au](http://www.belgianbeer.com.au).
10. The poster features a man and a woman in burlesque style clothing in a dark smoky room with the man standing behind the woman and watching her. The woman is looking at the camera with legs astride, hand on hip and is holding an oversize glass of Belgian beer in one hand. The text in large red print next to the woman reads "Commit the oldest sins the newest kind of ways". Below the text the phrase is attributed to William Shakespeare and the Belgian Beer Café Westende logo is included. Below the logo the following text is included "Where King meets Murray, Perth. [www.belgianbeer.com.au](http://www.belgianbeer.com.au)".
11. The website's home page has a depiction of a "coat of arms"-like image which features several options to enter further pages of the website. These options are entitled "Home", "Beers", "Menus", "Soiree", "Gallery" and "Info". Below the options is a drawing of a fanciful looking airship-like craft and on the left of the craft is a text which reads "It's quirky kwak. Its leffe of centre. Its belles and whistles but above all its Stella Belgian Beers". On choosing the Gallery

option, the user is taken to the poster that is the subject of the complaint. The user can also view similar types of posters.

### **The Complaint**

12. The complainant argues that the ad fails to present a mature, balanced and responsible approach to the consumption of alcohol beverages, suggests that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and fails to comply with the AANA Code of Ethics.

### **The Code**

13. 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, other than point of sale material**, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.
14. The ABAC provides that advertisements for alcohol beverages must-
  - (a) present a mature, balanced and responsible approach to the consumption of 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;
15. The ABAC contains provisions relating to Internet advertisements:

“The required standard for advertisements outlined in (a) to (g) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.”

### **Arguments in Favour of the Complaint**

16. In favour of the complaint it can be argued that the advertisement breaches section (a) and (c)(i) of the ABAC Code by promoting drinking alcohol in association with social success and implied sexual activity by a combination of:
  - (a) The image of a woman holding an oversized glass of Belgian beer wearing sexy Burlesque attire and being watched by a man;

- (b) The tag line to the left of the woman “Commit the oldest sins the newest kind of ways – William Shakespeare”; and
- (c) The inclusion on the website of other similar advertisements.

### **The Advertiser’s Comments**

17. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 27 January 2009. The principal points made by the advertiser are as follows:

- (a) Australian Leisure and Hospitality Group Ltd own and operate the Belgian Beer Café.
- (b) The purpose behind the creation of the poster was to promote the venue as a whole, rather than to simply promote the sale of alcohol. The posters were produced as a branding exercise and the use of burlesque imagery is consistent throughout the venue to reinforce the theme. The advertisements were intended to promote the venue’s services as a greater function rather than merely the service of alcohol. The Belgian Beer Café offers food entertainment and a themed experience.
- (c) When observing the advertising in the venue or on the website as a whole, it is apparent that the same burlesque theme and imagery is used. Importantly, this includes advertisements that promote no beverage at all, but simply the dining experience alone. The fact that in the ad there is a Belgian Beer is a symptom of the fact that the venue is named the Belgian Beer Café.
- (d) There is nothing in the ad that encourages irresponsible consumption of alcohol; it is merely designed to be a quirky attention grabbing ad to promote the overall experience at the Café.
- (e) There is no suggestion that the consumption of presence of alcohol may create or contribute to a significant change in mood or environment. The ads are not promoted in a way that indicates the achievement of social or sexual success with alcohol. The ad is designed to be both quirky and cheeky in a way true to the burlesque theme rather than be sexually overt. The presence of male and female does not display anything inappropriately sexual, the attire reflects the burlesque theme and the use of the famous Shakespeare quote contributes to the quirky nature of the ad.
- (f) The posters have been designed to attract customers to the theme created in the café and are only used internally in the Café and via a separate link on the website. The posters are not used in any external advertising.

## The Panel's View

18. This complaint raises several jurisdictional issues, as well as the substantive issue of the consistency of the advertisements with the ABAC standards. These issues will be addressed in turn.

### **Are the advertisements for “alcohol beverages” within the meaning of the ABAC?**

19. The ABAC is a code of practice for “alcohol beverage” advertising. As pointed out by the advertiser, the purpose of the ads in question is to “promote the venue” (*i.e.* the Belgian Beer Café) as a whole, rather than simply to promote the sale of alcohol”. This raises the question of whether the ad falls within the ambit of the ABAC scheme.
20. The ABAC provides in its preamble that the industry sponsors of the scheme are committed to the goal of “all advertisements for alcohol beverages” complying with the spirit and intent of this code. The code contains a “definitions” provision which states that the term “alcohol beverage includes any particular brand of alcohol beverage”.
21. The vast majority of complaints dealt with by the Panel are ads for particular brands of alcohol beverage and it seems that the intent of the scheme is to principally capture advertising of this type. It would not be intended that every ad which contained a reference to alcohol would fall within the ABAC scheme. For instance, an advertisement for a TV cooking program which showed a chef using wine in preparing a dish would not likely fall within the ABAC scheme. Therefore, it is arguable that the ads in question are not covered by the scheme as it is reasonably clear that the venue, rather than a particular brand of alcohol, is the intended beneficiary of the advertisements.
22. That said, the Panel interprets the code having regard to the spirit and intent of the ABAC scheme and conscious of the public policy considerations around the responsible use and promotion of alcohol in the wider community. It is noted that the definition provision within the ABAC defines six (6) terms used within the code. In all other instances other than the definition of “alcohol beverage”, the terms are defined with use of the word “means” *e.g.* “adult” **means** a person who is at least 18 years of age or “low alcohol beverage” **means** an alcohol beverage which contains less than 3.8% alcohol/volume.
23. In contrast, the definition of alcohol beverage uses the word “includes” rather than the word “means”. The Panel takes this to indicate that the definition of alcohol beverage in the context of alcohol beverage advertising is wider than a reference to a particular brand of alcohol beverage and can include other matters. Further, the Panel notes that the homepage of the advertiser’s website refers to “Stella Belgian Beers”. The poster itself features the model holding a large glass of beer. The conclusion drawn by the Panel is that, while the ads in question are promoting the Belgian Beer Café as a venue, they are also promoting alcohol as a product, and accordingly the ads fall within the intended scope of the ABAC scheme.

### **Are the individual posters used within the Cafes “point of sale” advertising?**

24. The complaint goes to a particular advertisement which it is stated to be located within one of the Belgian Beer venues. The complainant goes on to then express a concern about this same advertisement and others like it appearing on the advertiser’s website. This requires the panel to adjudicate on both the individual poster and also the poster as used on the website. This distinction is important as the ABAC contains a “carve out” for “point of sale” advertising and this raises the possibility that the posters, as used within the venue, fall within the carve out and hence will not need to meet the substantive ABAC standards.
25. The Panel considered the scope of the “point of sale” carve out in its Determination No: 18/08. The Panel concluded that point of sale advertising is material which:
- Is displayed adjacent to the point at which the alcohol beverage is purchased
  - Is a fixture or akin to a fixture *i.e.* not intended to be taken away from the premises by a customer
  - Has limited exposure to a wider audience beyond the clientele of the premises from which the alcohol beverage is purchased.
26. Applying this criteria, the poster viewed by the complainant within the Perth venue would appear to be point of sale advertising and hence the poster would not be required to comply with the substantive provisions of the ABAC if it was not used in other promotional activities such as the advertiser’s website.

### **Does the website comply with the ABAC standards?**

27. The poster used within the Perth venue also features on the advertiser’s website. The ABAC scheme does cover internet advertising “primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia ... and to banner advertising of such products on third party sites”.
28. The Panel has concluded that the poster used in the venue and featured on the website is “alcohol beverage advertising”. The advertiser however is not a signatory to the ABAC scheme and, as such, it has not undertaken in advance to meet the ABAC standards. That said, the advertiser has cooperated fully in the Panel process and has expressed its commitment to responsible liquor advertising. Accordingly, the Panel has resolved to make a determination on the substance of the complaint.
29. The substantive issues raised by the complaint are contained in sections (a) and (c) of the ABAC. These provisions require that alcohol advertising be mature and responsible and in relation to section (c) not suggest that the presence or consumption of alcohol can lead to the achievement of sexual or other success.

30. The poster features two characters dressed in Edwardian period clothing. The man is positioned in the background against a wall with a fixed gaze on the woman. The woman is dressed in the clothing of a showgirl and is holding a very large glass of beer which appears to have been partially consumed. The ad contains the text “Commit the oldest sins in the newest kind of ways”. This phrase is a quote attributed to William Shakespeare.
31. The Panel has considered section (c) in previous determinations. From these decisions a few general points can be made about the standard, namely:
- Ads can be “sexy” and characters within ads can be portrayed as sexually confident
  - The section is quite wide in terms of its use of the terms “presence” and “a cause” and hence the standard is robust in its scope
  - The critical issue is whether the ad is implying that alcohol is a cause or contributor to the achievement of success
  - The context of the ad as a whole is important.
32. In applying the standard in this case, the Panel believes that the ad does not breach section (c). In reaching this conclusion, the Panel notes:
- The ad is promoting a venue primarily and, more indirectly, the use of alcohol
  - The interaction between the characters is one way *i.e.* the man is looking at the woman but the woman is not responding to the man. The man’s gaze on the woman is consistent with her being an entertainer in a burlesque show, rather than there being a social interaction between the two of them
  - The woman’s dress and demeanor are not particularly sexual and, given the male’s dress, their clothing is established to be consistent with an historical period
  - The quote is not overtly sexual and does not appear to represent a dialogue between the woman and the man.

The Panel also does not believe the ad breaches section (a) of the code.

33. In dismissing the complaint, the Panel recommends that the advertiser submit its website and general advertising to the ABAC pre-vetting process for independent assessment of its advertising standards. The complaint is dismissed.