

# ABAC

**ABAC Complaints Panel  
Determination No: 18/08**

**Confidential COMPLAINT  
Product: WKD  
Advertiser: BDS Marketing (Australia) Pty Ltd**

Professor The Hon Michael Lavarch – Chief Adjudicator  
Professor Fran Baum – Member  
Professor Elizabeth Dangar – Member  
Jeanne Strachan – Member  
Professor Richard Mattick - Member

30 April 2008

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a poster/mobile display for WKD RTD by BDS Marketing (Australia) Pty Ltd (“the Advertiser”) and arises from a confidential complaint received on 14 March 2008.

## **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:
  - 2.1. a generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
  - 2.2. an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
  - 2.3. certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
  - 2.4. The Outdoor Advertising Code of Ethics which includes provisions about the content of Billboard advertising in specific locations e.g. near schools.
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 the ABAC Panel on 14 March 2008.
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. This complaint has been determined within 30 business days.

### **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. This advertiser is not a member of the ABAC Scheme and pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to a cardboard mobile display that was seen hanging in the Litro Liquor Store in Melbourne Central.
10. The mobile features a large cardboard cutout picture of a woman. On one side of the mobile the woman is dressed in a black fitted pants suit with a white shirt under her jacket buttoned to her neck. She is wearing glasses and holding a bottle of WKD. The caption below the picture reads "Have you got a WKD side?".
11. The reverse side of the mobile features a picture of the same woman taken from behind. She is wearing a black leather corset laced up at the back, a red g-string, red suspenders, black fishnet stockings, and black stilettos. The caption below the picture again reads "Have you got a WKD side?".

### **The Complaint**

12. The complainant argues that:
  - The advertisement associates the altered sexual state of females with alcohol consumption;
  - The advertisement gives the impression that women are more sexual when drunk, which is inappropriate in the context of sexual assault and consent issues around rape etc.

### **The Code**

13. The Preamble to the ABAC states that the Australian Associated Brewers Inc, 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 at Section (c) that advertisements for alcohol beverages must 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.

### **Point of Sale Material**

15. The ad in this case was displayed within a licensed premises. This raises the issue of whether the ad is “point of sale material”. The importance of this question is that the ABAC provides a “carve out” for point of sale material, and accordingly such material is not obliged to comply with the substantive provisions of the Code.
16. The ABAC does not define “point of sale”. The AANA Code of Ethics does not specifically use the term, but uses a description of “Advertising or Marketing Communication” which requires that material be “published or broadcast using any medium in all of Australia or in a substantial section of Australia”. This excludes an ad which is displayed in an individual liquor outlet or presumably a limited number of outlets because it cannot be said that the ad is visible to a substantial segment of the population.
17. The approximate equivalent to the AANA Code of Ethics in the United Kingdom is the “British Code of Advertising, Sales Promotion and Direct Marketing”. This code, which applies to advertising as a whole, also provides a “carve out” for point of sale material in the following terms

*Section 1.2 – The Code does not apply to*

*(o) point of sale displays, except those covered by the sales promotion rules and the rolling paper and filter rules.*

Point of sale is not further defined, but advice from the secretariat of the British Scheme was that they take point of sale to mean all marketing that appears inside a shop and is not designed to be removed by the consumer e.g. shop fronts, window displays, posters fixed to the wall, shelf barkers etc.

18. The Portman Group’s Code of Practice applies to the naming, packaging and promotion of alcoholic drinks in the United Kingdom. This code does not exclude point of sale materials.
19. The British Beer and Pub Association has produced a publication dealing with “standards for the management of responsible drinks promotion including happy hours”. While these standards clearly encompass point of sale advertising, the term is not actually defined or described in the publication.
20. A brief review of advertising practice appears to indicate that point of sale advertising relates to material used within a shop, including fixtures such as shop

front displays, or wall posters, blackboards, cut-outs used within or adjacent to the point of purchase, counter signs and counter displays. The essential point seems to be the proximity of the advertising material to the actual point of purchase and that the material is fixed within the premises and is not designed to be taken away from the premises e.g. a leaflet or flyer which is collected from a shop counter is not point of sale, although it is distributed from this outlet.

21. The potential grey areas might arise from two directions. Firstly, should any weight be given to the degree of public visibility of the material? For instance, a shop front is presumably visible to the wider public and if the same material was say on a billboard next to the shop, then it would be clearly within the scope of the ABAC. The second potential grey area is the extent to which the material in question is distributed, even if it is only displayed within a shop. For instance, presumably the AANA Code would apply to material which is displayed in say 500 outlets across Australia, even if only within the confines of closed premises, as this would satisfy the “substantial section of Australia” test of that Code’s definition of advertising.
22. For ABAC purposes, the Panel takes the “point of sale” carve-out to incorporate advertising 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.

### **The Advertiser’s Comments**

23. On 26 March a representative of the Advertiser advised verbally that:

- 23.1. around 40 promotional displays have been produced and distributed, and
- 23.2. the displays are used in liquor stores and licensed premises where the product is sold.

24. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 22 April 2008 and received by email on 24 April 2008. The principal points made by the advertiser were as follows:

- 24.1. The brand adheres to a strict professional and responsible attitude with all of its advertising. All communication on behalf of the brand carries the drink aware message, and may I take the opportunity to point out that although not relevant within this country the brand originates from the UK where it is a key member of the Portman Group (UK’s advertising regulatory group). Whilst it is understood that the guidelines differ in Australia, it is ensured that these are enforced, communicated and practiced here.
- 24.2. The brand's strapline “Have you got a WKD side?” is intended to project a cheeky but not offensive or suggestive attitude when communicated through it’s advertising. It would never intentionally try to aid or suggest that it could in anyway assist the consumers sexual success upon seeing or

consuming the brand or alter the mood or environment. The Point of Sale is communicating our strapline that the model has a 'WKD side' due to the attire that she is wearing underneath her business suit. Not, that as she consumes more alcohol she becomes more uninhibited.

24.3. With regards to the point of sale upon which the complaint is based, may I clarify that it is for use predominantly within the on trade arena (these being pubs, bars and in particular night spots) where the customers are strictly over the age of 18. In the event that it may be displayed within off premise outlets (such as bottle shops) the material should be confined to the inside and not where the general public will be able to view it. However I would like to stress that the placement of the material in a window of Melbourne Central shopping centre, (obviously a busy environment) and not restricted to the inside is unacceptable. This is not the brands directive to be displayed in this manner and steps will be taken to ensure that this kind of positioning is avoided in future.

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

25. As explained in paragraphs 17 to 22, the threshold issue in this complaint is whether the ad is "point of sale material" and hence not required to comply with the substantive provisions of the ABAC. In this regard, the advice received from the advertiser is that:

- 40 promotional displays have been distributed for use within liquor stores and licensed premises;
- The displays are fixed to the premises in which they are used;
- It is not intended that the displays should be visible to persons outside the premises in which they are used.

26. Based on this information and the criteria developed by the Panel for assessing if an ad is point of sale, the Panel concludes that the complaint relates to "point of sale material" and as such is not required to comply with the ABAC.

27. In reaching this conclusion, the Panel asks its Management Committee to consider if:

- The point of sale carve-out should remain within the ABAC and, if so:
- Whether the term should be defined and included within the ABAC definition section, and
- If the criteria outlined in paragraph 22 are appropriate.

28. The Panel further draws the attention of the advertiser to section (c) (i) of the code and asks that the material be assessed for consistency with this standard. In this regard, the ABAC pre-vetting scheme provides an avenue for the advertiser to independently check its materials prior to use.

29. The complaint is dismissed on the grounds that the ad in question is not required to comply with the ABAC standards.