

# ABAC

**ABAC Complaints Panel  
Determination No: 26/08**

**CONFIDENTIAL COMPLAINT  
Product: Woodstock Bourbon  
Advertiser: Independent Distillers Australia**

Professor The Hon Michael Lavarch – Chief Adjudicator  
Professor Fran Baum – Member  
Jeanne Strachan – Member

22 May 2008

## **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an internet advertisement and promotional activities for Woodstock Bourbon by Independent Distillers Australia (“the Advertiser”) and arises from a confidential complaint received 10 April 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:
  - (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 10 April 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. 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 an internet advertisement and promotional activities.
10. The internet advertisement is located at [www.woodstockhonda.com.au](http://www.woodstockhonda.com.au). On finding the website the following statement is displayed on a page featuring only the Woodstock Bourbon Honda Thor Racing Team logo against a black background, "Are you 18 or over? You must be of legal drinking age to enter this site." The user must then nominate either "Yes" or "No". On selecting "Yes" the user is taken to the website.
11. On entering the website the user is taken to a page that features the logo for the racing team which contains the name "Woodstock Bourbon" at the top of the page and, below that, a screen that features a slideshow of images. Around the screen, black-and-white head-and-shoulder pictures of, presumably members of the team, are featured. One is wearing full race apparel and cannot be identified. The other three can be identified as members of the team by viewing the rider profiles on the site. Each of the riders is over 18, however two of them, Kade Mosig and Daniel McCoy, are under 25. The slideshow opens with the names of each of the individual sponsors flashing onto the screen, starting with Woodstock Bourbon, then the names, accompanied by

racing pictures of the riders in the team, then the team logo all accompanied by heavy metal music. After the opening the music stops and there is a slideshow of pictures taken during race events. In some of the pictures the name “Woodstock Bourbon” can be seen on the bikes and caps of the riders.

12. The website offers numerous options to enable them to navigate the information on the site. By selecting the “Riders” option the user is taken to a page that contains a number of cards, each identifying a member of the team. By viewing the profile of each of the riders, it is evident that Dean Ferris is 17 years old, Kade Mosig is 18 years old and Daniel McCoy is 23 years old. Each of these riders is wearing a cap featuring the name “Woodstock Bourbon”. The other two riders featured are over 25 years of age. Since the complaint was made, the advertisers have removed all references to Dean Ferris from the website.
13. On selecting the “Sponsors” option on the website the user is taken to a page that lists each of the sponsors, using their unique logo or form of lettering. On selecting “Woodstock Bourbon”, which is located on the top left hand of the page, a screen pops up which describes the product and allows the user to click on a link to the company web site for Independent Distillers.
14. The complainant does not refer to the specific promotional activities that concern him. The advertiser and racing team communications manager have identified the promotional activities at racing events that include a reference to Woodstock Bourbon as including:
  - (a) Riders had Woodstock signage on bikes;
  - (b) Riders had Woodstock signage on race apparel;
  - (c) Riders were referred to “from the Woodstock Honda Team” over the loud speaker. For example, “Dean Ferris from the Woodstock Honda Team is currently in 8<sup>th</sup> place”;
  - (d) Reference to Woodstock Bourbon on the transport truck.
15. The advertisers have advised that the sponsorship arrangement required the promotion of Woodstock Bourbon through the website, promotional materials and activities at events in name only and that there is no product imagery used or direct endorsement by the riders.

### **The Complaint**

16. The complainant argues that there is an “under-age” rider in the racing team and that alcohol drinks should only be endorsed by adults over 18.

## The Code

17. 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 or 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 (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
    - (iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.
18. 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.”
19. The ABAC contains provisions relating to Promotion of alcohol at events, relevantly:
- “Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.
- The protocol commits participating alcohol beverage companies to endeavour to ensure that:
- All promotional advertising in support of events does not clearly target under-age persons and as such is consistent with the ABAC standard; and

- Promotional materials distributed at events do not clearly target under-age persons; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age

### **Third Parties**

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

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

20. In favour of the complaint it can be argued that the advertisement breaches section (a)(ii), of the ABAC Code by encouraging under-age drinking through including under-age riders in the team and wearing Woodstock Bourbon caps on the team website.
21. Further, it can be argued that the advertisement breaches section (b) of the ABAC Code by including riders under the age of 25 in the team and wearing Woodstock Bourbon caps on the team website.
22. Further, it can be argued that the advertisement breaches the 'Promotion of alcohol at events' section of the ABAC Code by including riders under the age of 25 in the team and wearing Woodstock Bourbon riding gear.

### **The Advertiser's Comments**

23. The Advertiser responded to the complaint and questions posed by the Panel by way of letter dated 21 April 2008 and received on 23 April 2008. The principal points made by the advertiser are as follows:
  - (a) In response to the complaint you received in relation to the Woodstock Honda Motocross race team, I am embarrassed to inform you that I was ignorant of the fact that an under-age rider was included as part of the team. Immediately upon receipt of your complaint and becoming aware of the breach, all reference to Woodstock was taken off the rider's bike and riding gear. His profile has been removed from the team website and he has been re-registered in the Motocross series as part of the Honda-Thor team.

- (b) I confirm Independent Distillers is a sponsor for the Woodstock Honda Thor Racing Team.
- (c) The promotional material and activities used at racing events in Tasmania that refer to or feature Woodstock Bourbon were:
- Riders had Woodstock signage on bikes;
  - Riders had Woodstock signage on race apparel;
  - Riders were referred to “from the Woodstock Honda Team” over the loud speaker. For example, “Dean Ferris from the Woodstock Honda Team is currently in 8<sup>th</sup> place”;
  - Reference to Woodstock Bourbon on the transport truck.
- (d) The sponsorship arrangement requires the Woodstock Honda Thor racing team to promote the Woodstock brand through the naming rights of the team. Hence the promotion of Woodstock through the website, promotional materials and activities at events is through the name only – not through product imagery or direct endorsement by the riders.
- (e) As Independent Distillers have given the Woodstock name to the Honda racing team, the team and all communication in relation to the team is coordinated directly through Woodstock Honda Thor racing. As such, Independent Distillers have a low level of involvement in the external communication of the team. The level of inclusion of Woodstock in any advertising is in name only – not product.
- (f) The advertisements complained about were approved by Independent Distillers.
- (g) Independent Distillers considers it appropriate for advertising by the Woodstock Honda Thor racing team in compliance with the provisions laid out by the ABAC. Similar to the V8 Supercar racing teams, Jack Daniels racing and Jim Beam racing, Woodstock have sponsored the Honda race team through naming rights. As stated above, the riders have the Woodstock name on their bikes and apparel and race under the Woodstock name, which does not include actual product imagery.
- (h) Promotional material and activities at racing events in Tasmania, and other venues around the country do not breach the “Promotion of alcohol at events” provision of the ABAC by targeting the under-age persons through the sponsorship of Woodstock Bourbon. We acknowledge the inappropriateness of including an under-age rider as part of the Woodstock Bourbon sponsorship, however, as previously stated, the sponsorship and level of inappropriateness was in naming only, and this has been rectified. The promotional materials and activities are no different to those which are undertaken by Jack

Daniels and Jim Beam with the naming rights sponsorships of two V8 Supercar teams.

- (i) The Woodstock Honda website advertisement profiling does not breach section (b) of the Code by:
- Not having a strong and evident appeal to children or adolescents, as the site explicitly asks for visitors to be over 18 before entering.
  - Whilst the site does feature adults under the age of 25, it is in the natural environment of a Motocross event. Again the site only has a naming reference to Woodstock Bourbon; there are no product shots.
- (j) It is not the intent of Independent Distillers to target and market to under-age drinkers and we feel that this alliance with the Honda Motocross team does not directly target this market.

24. The Communications Manager for the team website responded to the complaint and questions posed by the Panel by way of letter dated 24 April 2008. The principal points made by the Communications Manager are the same as, and support, those made by Independent Distillers as set out in the previous paragraph. In addition, she advised that the unfortunate inclusion of the under-age rider under the sponsorship umbrella was due to her predecessors not being aware of this rider's age and including him in error. She further advised that, on becoming aware through the complaint, action was taken immediately to rectify the situation with new bike livery, riding gear and team apparel being created without any Woodstock presence for the rider in question and steps being taken to update his registration and remove "Woodstock" from his entry listing.

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

25. This complaint raises a series of quite complicated issues in terms of the ABAC scheme, its coverage of various promotional activities and the scope and meaning of section (b) of the code. Each of these matters will be dealt with in turn.

#### **Is the website an "alcohol ad" for purposes of the ABAC?**

26. The ABAC is a quasi-regulatory scheme which is an initiative of the alcohol industry. The coverage of the scheme is governed by the commitment of the members of the three peak industry bodies who sponsor the scheme and individual companies who have accepted the ABAC scheme and have agreed to comply with its terms. The scheme does not purport to be universal in its coverage and it does not, for instance, cover broadcasters or newspapers that may broadcast or publish alcohol ads. Rather, it is targeted at the producers and distributors of alcohol products who place ads with broadcasters and publishers.

27. In this instance, the website is for the “Woodstock Bourbon Honda Thor Racing Team”. It is a website promotion and provides information for a particular team of riders who compete in a national competition for motor cross riders. It is not a website for the producer of Woodstock Bourbon. The alcohol company is a major sponsor of the team, along with other sponsors such as Honda.
28. The Panel sought advice from the advertiser and the racing team’s management as to the nature of the relationship between the racing team and the advertiser. This advice was that:
- The website is controlled by the management of the team and not the advertiser.
  - The sponsorship arrangements between the team and the advertiser provide for the team to “promote the Woodstock brand through the naming rights of the team” – hence the promotion of Woodstock through the website.
  - The advertiser has “a low level of involvement” in the external communication of the team. The level of inclusion of Woodstock in any advertising is name-only – not product.
  - The website’s use of the Woodstock brand was “approved” by the advertiser.
29. The ABAC provides that the Code standards apply to “internet sites primarily intended for advertising developed by or for producers or importers of alcohol products...and banner advertising of such products on third party sites”. The Panel concludes that the website as a whole is a third party website. There is one “ad” for Woodstock on the website which is accessed via the “Sponsor” link and this ad would need to comply with the ABAC. The balance of the website however is not required to comply with ABAC standards as it is a third party website.

### **The Motocross Events**

30. The complaint goes on to raise concerns about the promotion of the product by “under-age” riders at motor cross events in Tasmania. The advertiser advises that the promotional activities consisted of:
- Woodstock signage on bikes
  - Woodstock name on riders’ race apparel
  - Riders were identified in race calls by reference to their membership of the “Woodstock Honda Team”
  - Transport trucks carrying Woodstock signage.

31. The advertiser points out that it is the “Woodstock” name which is promoted, and not “product imagery”. The advertiser argues that the activities are consistent with the ABAC “Promotion of alcohol at events” protocol.
32. The ABAC protocol on alcohol promotion at events is more limited in its scope than the ABAC standards applying to an “advertisement”; however, the protocol commits “participating alcohol beverage companies to endeavour” to meet ABAC standards, particularly in relation to activities not targeting under-age persons.
33. The point raised by the complaint is that a rider at a Tasmanian motor cross event was associated with the Woodstock brand and this rider was under 18 years old and hence under the legal age for alcohol consumption. This point is conceded by the advertiser and the management of the racing team. The advertiser advises that, upon becoming aware of the age of the rider because of the complaint, reference to the rider was removed from the website and the “Woodstock” name has been removed from the rider’s bike and riding gear.
34. It is clear, however, that the Motocross races are events which are controlled by a third party and not the advertiser as such. In terms of the ABAC protocol, the race events are therefore “third party” events to which alcohol companies “will use every reasonable endeavour” to ensure that terms of the ABAC protocol are observed, however, non-compliance by the third party does not “place alcohol beverage companies in breach” of the ABAC protocol.

#### **Promotion of under-age drinking**

35. The substantive point raised by the complaint is that the ABAC has been breached by use of an “under-age” bike rider in the promotion of the Woodstock bourbon brand. The relevant provisions of the ABAC provide:
  - Advertisements must not “encourage under-age drinking” (section (a)(ii)) and
  - Advertisements must not have a “strong or evident appeal to children or adolescents” (section (b)) and accordingly
    - children or adolescents may only appear in advertisements in natural situations and where there is no implication that the depicted children and adolescents will consume or serve alcohol (section (b)(ii));
    - adults under the age of 25 may only appear as part of a natural crowd or background scene (section (b)(iii)).
36. The protocol concerning alcohol at events places emphasis on activities and promotional materials at events not targeting under-age persons.
37. The advertiser accepts that both the website and the racing events should not have featured riders under 18 years old in a manner which associates the rider with the Woodstock bourbon name. It is stated that steps have been taken to

rectify this “error”. The website has been modified to remove references to the younger riders.

38. More broadly, however, the advertiser argues that neither the website nor the racing events are in breach of the ABAC as:
  - The website explicitly asks for visitors to be over 18 before entering; and
  - The depiction of adults under the age of 25 in both the website and at the events is in the “natural environment of a motor cross event”.
39. The issues raised by the complaint go well beyond this particular case. The question is really one of the sponsorship of sporting teams and associated events by alcohol companies and what rules and protocols should be in place around such sponsorships. The ABAC is essentially aimed at individual executions of alcohol advertising and not sponsorship arrangements.
40. Sponsorship of sport and other community activities by alcohol companies is quite common. Major Australian sports such as rugby codes, motor car racing and cricket have levels of alcohol company sponsorship. Sport, by its nature, particularly at the elite level, is dominated by younger people and often those under the age of 25. The public policy issues involved in sponsorships are beyond the role of the Panel to determine and require the consideration of government, industry representatives, public health experts and sports administrators amongst others.
41. The distinction between activities carried out pursuant to a sponsorship arrangement and an advertisement is not clear-cut and, in some instances, a “sponsorship” activity will be an advertisement and subject to the ABAC.
42. The Panel concludes that the use of under-18 year old riders on the website and through the wearing of the advertiser’s name on bikes and riding gear is inconsistent with the spirit of the ABAC. However, as both the website and the Motocross events are “third party” controlled activities and not advertising or an alcohol event within the ambit of the ABAC scheme, the Panel cannot uphold the complaint on jurisdictional grounds.
43. As to the broader questions brought into play by the complaint, the Panel asks that its Management Committee give consideration to whether steps should be taken to better guide the operation of sponsorship arrangements involving the promotion of alcohol brands and products.
44. The complaint is dismissed.