

ABAC

**ABAC Complaints Panel
Determination No: 62/13**

**Confidential complaint
Product: Bottlemart
Advertiser: Liquor Marketing Group**

Professor The Hon Michael Lavarch – Chief Adjudicator
Jeanne Strachan – Member
Professor Louisa Jorm - Member

7 June 2013

Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns two television advertisements for Bottlemart by Liquor Marketing Group (“the Advertiser”) and arises from a complaint received on 17 April 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 generic code (the AANA Advertiser Code of Ethics) with a corresponding public complaint mechanism operated by the Advertising Standards Bureau (ASB);
 - an alcohol specific code (the Alcohol Beverages Advertising Code) and complaints mechanism established under the ABAC Scheme;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice (CTICP) which restricts when direct advertisements for alcoholic drinks may be broadcast; and
 - The Outdoor Media Association Code of Ethics which includes provisions about Billboard advertising.
3. The complaint 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 ABAC on 17 April 2013.
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 was not determined within the timeframe due to a delay in receiving a response from the advertiser coupled with the non-availability of the Chief Adjudicator.

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 the advertisements.

The Advertisement - Bathtub

9. The advertisement opens with a tradesman looking toward the camera as the other man says "That's it". We then see the other tradesman shaking his head and lifting an arm holding a drill and then lowering it as he calls out "Hey mate, are you sure about this?"
10. We then see a young man walking into the room with a smile and holding a bag of ice under his arm who says "Yeah mate, that's perfect." He walks out of the room and we see that the two tradesmen are kneeling on the ground each end of a bathtub with one man holding a drill with an open toolbox next to him with a shocked expression while the other man looks amused. There are two streamers and a balloon on the fireplace and a sign saying "Welcome Home Kent" on the mirror above the fireplace.
11. A voiceover says "Looking to party, better get to Bottlemart" as one of the tradesman starts using his drill on the bathtub.

12. There are three alternate versions of the ad. In the first version, the screen changes to a carton of Corona stubbies against a yellow background with the text "\$49.99 Corona 24x355ml stubbies. Price may vary in country areas. Specials available until 12/2/13. Bottlemart supports responsible consumption of alcohol". The voiceover continues "Where 24 packs of Corona stubbies are \$49.99". The screen changes again to a 4 pack of Vodka Cruiser Raspberry with the text "\$12.99 Cruiser 4x275ml bottles. Price may vary in country areas. Specials available until 12/2/13. Bottlemart supports responsible consumption of alcohol". The voiceover continues "and Vodka Cruiser 4 packs are only \$12.99."
13. In the second version, the screen changes to a carton of El Loco stubbies against a yellow background with the text "\$39.99 ea El Loco 24x355ml stubbies. Price may vary in country areas. Specials available until 26/2/13. Bottlemart supports responsible consumption of alcohol". The voiceover continues "Where 24 packs of El Loco stubbies are \$39.99". The screen changes again to two 4 packs of Jack Daniel's and Cola with the text "2 for \$35 Jack Daniel's and Cola 4x375ml cans. Price may vary in country areas. Specials available until 26/2/13. Bottlemart supports responsible consumption of alcohol". The voiceover continues "and 4 packs of Jack Daniel's Cola and cans are 2 for \$35."
14. In the third version, the screen changes to a bottle of Wild Turkey and a bottle of American Honey against a yellow background with the text "\$37.99 ea Wild Turkey 86.8 or American Honey 700ml. Price may vary in country areas. Specials available until 5/3/13. Bottlemart supports responsible consumption of alcohol". The voiceover continues "Where Wild Turkey 86.8 or American Honey are \$37.99 each". The screen changes again to a carton of Tooheys Extra Dry with the text "\$36.99 Tooheys Extra Dry 24x345ml stubbies. Price may vary in country areas. Specials available until 5/3/13. Bottlemart supports responsible consumption of alcohol". The voiceover continues "and 24 packs of Tooheys Extra Dry stubbies are \$36.99."
15. All three versions end with the voiceover "For these specials and more, better get to Bottlemart" as the screen changes to the text "Better get to Bottlemart".

The Advertisement – Stubbies

16. The advertisement opens with two men playing Jenga with finger shaped biscuits. They look up as they hear a truck reversing, nod to one another and then get up and rush out of the room.
17. We then see a tipper truck reversing onto a front lawn and then the two men standing watching. The truck dumps a large number of printed stubby holders onto the front lawn as the men watch, with puzzled expressions. One of the men bends down to pick up one of the stubby holders, examines it and then laughs and turns to the other man.
18. The screen changes to the text "Better get to Bottlemart" as a voiceover says "Better get to Bottlemart".

The Complaint

19. The complainant is concerned that:
- Both advertisements encourage excessive consumption of alcohol in breach of section (a) of the ABAC. In 'Bathtub' the implication is that the bath will be filled with alcohol products, only one person is present in the house, and the direction to fill the bath tub with alcohol products is reinforced by the subsequent product promotions. In 'Stubbies' two men are faced with the prospect of having to use all the stubby holders – again the message is excessive consumption of alcohol.
 - The delivery of hundreds of 'Stubbies', together with the reactions of the actors in the advertisement, also constitutes a dare to drink alcohol, in breach of section (e) of the ABAC.

The Code

20. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages.
21. The ABAC provides at Section (e) that advertisements for alcohol beverages must:
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content.

The Advertiser's Comments

22. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 20 May 2013. The points made by the Advertiser in relation to the advertisement were:
- (a) The Bathtub ad very clearly shows streamers, and banners in the background, highlighting that the person in the ad is in fact planning for a party involving a significant number of people, and not drinking alone. The tagline in the ad also states "looking to party", which again reinforces that he is having a party and not drinking alone. The presence of numerous people at a party where alcohol is served does

not necessarily imply excessive consumption. We do not believe that it breaches the Code.

- (b) There is no mention at all in the “Stubbies” ad that the men either need or intend to use all of the stubbie holders (i.e. having a drink to fill every stubbie holder). In fact, the expression on both of the men’s faces is suggestive of confusion and bewilderment. The theme of delivering a large number of stubbie holders is intended to be a light-hearted way of saying that, no matter what kind of stubbie holder you have or use, Bottlemart carries such a wide range of stock available for purchase, that there’s likely to be one for any “brand” of stubbie holder. We do not believe that it breaches the Code.
- (c) I don’t believe that either of the TVCs was pre-vetted before going to air.
- (d) We will accept the Panel’s decision(s) on these complaints.

The Panel’s View

- 23. 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.
- 24. 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 suppliers and advertisers who are not members 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 the advertiser is not contractually bound to follow a panel decision. That said, the ABAC Adjudication Panel considers relevant complaints regardless of whether the advertiser or supplier is a signatory to the ABAC Scheme. The Advertiser indicated it will accept the Panel’s decision on the complaint.
- 25. The complaint raises two separate issues that will each be considered in turn:
 - a. Firstly, that both advertisements encourage excessive consumption; and
 - b. Secondly, that the ‘Stubbies’ advertisement, in particular the reaction of the actors to the delivery of hundreds of stubby holders constitutes a dare to drink alcohol.

Section (a)(i)(iii) – Excessive consumption

26. Section (a)(i) and (iii) of the ABAC provide that alcohol beverage advertisements must not encourage or promote the excessive consumption of alcohol. The complainant is concerned that both advertisements breach this ABAC standard.
27. In the case of the 'Bathtub' advertisement the complainant believes excessive consumption is encouraged as there is an implication that the bath will be filled with alcohol products, only one person is present in the house, and the direction to fill the bath tub with alcohol products is reinforced by the subsequent product promotions.
28. For its part, the advertiser argues that the context of the advertisement establishes that the man is preparing for a party and hence the bathtub will contain alcohol which would be consumed by many people and not a single person.
29. The Panel does not believe that the 'Bathtub' advertisement is in breach of section (a)(i) or (iii) of the ABAC. The Panel agrees with the complainant that there is an implication that the bathtub will be used for alcohol products, however, it is also implied from the streamers, balloon and welcome home sign and the voiceover "Looking to party" that the bathtub will be used for a party. Using a bathtub to serve alcohol and non-alcoholic drinks at a party is a common experience, and a reasonable viewer would view the advertisement in that light. In this context, the Panel does not believe the viewer would take the advertisement as encouraging excessive consumption.
30. In the case of the 'Stubbies' advertisement the complainant believes that the message is that the two men are faced with the prospect of having to use all the stubby holders and the message is excessive consumption of alcohol.
31. The Advertiser argues that the advertisement is giving a message that the outlet has products to meet a wide variety of tastes, as represented by the stubby holders
32. The Panel does not believe the advertisement breaches the ABAC in respect of the promotion of excessive consumption. Clearly the scenario depicted is highly fanciful and would not be taken literally by viewers. The Panel does not believe a reasonable viewer would take the advertisement as promoting excessive consumption, but rather it would be seen as suggesting the retailer is a supplier of various and varied types and styles of beer.

Section (e) – Dare to drink

33. The second ABAC provision raised is the first part of section (e) of the ABAC. This provision has only been raised once before in the history of ABAC in Determination 18/05.

34. Relevantly section (e) prevents advertisements from challenging or daring people to drink or sample a particular alcohol beverage, other than low alcohol beverages.
35. The complainant believes that the delivery of hundreds of stubby holders, together with the reactions of the actors in the advertisement, constitutes a dare to drink alcohol, in breach of section (e) of the ABAC.
36. The Panel does not believe that a reasonable person would see the unexpected delivery of hundreds of stubby holders and the amusement shown by one of the characters at receiving them as a challenge or dare to drink a stubby of beer. Simply showing multiple stubby holders does not, without any other statement or visual cue, lead to the conclusion that the man is being dared or challenged to consume alcohol.
37. Accordingly, the complaint is dismissed.