



## **Information paper to support the ANPHA inquiry into alcohol advertising**

# **The Alcohol Beverages Advertising (and Packaging) Code (ABAC) Scheme:**

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### **Background**

The Alcohol Beverages Advertising (and Packaging) Code (the Code) and the associated Pre-vetting and Complaints Management Systems form the quasi-regulatory<sup>1</sup> ABAC Scheme.

The ABAC Scheme was developed in agreement with all major Australian alcohol beverages' manufacturing and marketing industry associations and key advertising, media and consumer bodies.

The Federal Government is also a key stakeholder being represented on the Management Committee of the Scheme and a Professor of Public Health, nominated by government, is part of all adjudication panels.

Under The ABAC Scheme, guidelines for advertising and packaging have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry.

### **Operation**

The ABAC Scheme is responsible for:

- **The Code**<sup>2</sup> (first introduced in 1998 and substantially updated in 2004) which regulates the content of alcohol beverage advertising and packaging in Australia, and alcohol promotion at events. Subject to regular review, the Code aims to reflect community expectations and changes in the media and advertising industries. The Code applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol beverage advertisements in emerging digital and social media, user generated content on alcohol company controlled digital and social media, point of sale advertisements and surrogate marketing over which an alcohol company has control. The ABAC Guidance notes<sup>3</sup> have been developed to assist advertisers and agencies in interpreting the Code.

The Code is not the only set of rules affecting alcohol advertising in Australia. Alcohol advertisements must also comply with relevant legislation and codes of practice including the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974), Fair Trading legislation, the Australian Association of National Advertisers (AANA) Code of Ethics, Commercial Television Industry Code of Practice and the Outdoor Media Association (OMA) Code of Ethics. The attached chart<sup>4</sup> outlines broader alcohol advertising regulation in Australia.

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<sup>1</sup> Australian Government 2010, Best Practice Regulation Handbook, Canberra

<sup>2</sup> Annexure A: The ABAC Code

<sup>3</sup> Annexure B: The ABAC Guidance Notes

<sup>4</sup> Annexure C: Alcohol advertising regulation in Australia

- **The Alcohol Advertising Pre-vetting Service (AAPS)** which provides confidential advice to advertisers on whether proposed alcohol advertisements comply with the Code. This service is offered on a ‘user pays’ basis.
  - AAPS pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting.
  - AAPS has the support of media associations that either require or encourage their members to check that an alcohol advertisement has AAPS approval prior to placement of advertisements.
  - In recent years more than 1000 advertisements, names or packaging are considered by AAPS each year. In 2012 1,229 advertisements or packaging were considered by AAPS.
  - AAPS Pre-vetters are independent of the alcohol beverage industry.
- **The ABAC Adjudication Panel**, headed by Chief Adjudicator Professor Michael Lavarch, considers public complaints about alcohol advertisements and packaging that fall within the ambit of the Code.
  - The Advertising Standards Bureau (ASB) accepts all complaints in relation to all types of advertising. This avoids a duplication of entry points for advertising-related complaints. In the past 5 years 2-7% of all complaints received by the ASB related to alcohol. In 2012 1.47% of complaints were alcohol related. All alcohol related complaints received by the ASB are provided to the ABAC Adjudication Panel and the Panel considers all complaints that raise ABAC Code issues subject to the exceptions set out in section 3(c)(i) of the ABAC Rules & Procedures<sup>5</sup>.
  - The ASB considers complaints insofar as they raise AANA Code of Ethics issues. The AANA Code of Ethics deals with matters of “taste” and “decency” for all advertising thus ensuring that there is a consistent standard for taste and decency issues across all advertising for every type of product.
  - The ABAC Adjudication Panel reports its decisions to the ASB, the ABAC Management Committee, the advertiser, and the complainant. Its decisions are also made publicly available through the ABAC website. A diagram of the complaints process is attached.<sup>6</sup>
  - The Adjudication Panel and its deliberations are independent of the ABAC management committee and the broader alcohol and advertising industry.
  - The Adjudication Panel comprises:

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<sup>5</sup> Annexure D: ABAC Rules & Procedures

<sup>6</sup> Annexure E: ABAC complaints process

- the Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise,
  - a health sector Panelist, Professor Richard Mattick or Professor Louisa Jorm (both were appointed from a shortlist of health sector professionals provided by the relevant Federal Minister responsible for alcohol issues or his or her nominee); and
  - a Panelist with market research, media or advertising expertise, Jeanne Strachan or Debra Richards.
- In 2012 48% of alcohol complaints received resulted in an ABAC determination. In 2010 there were 31 ABAC determinations, in 2011 there were 45 ABAC determinations and in 2012 there were 36 ABAC determinations.
- Code provisions raised in public complaints are summarised in the attached table.<sup>7</sup>
- Examples of ABAC determinations that upheld and dismissed complaints in relation to each area covered by the Code are set out in the attached table.<sup>8</sup>
- Each quarter the Chief Adjudicator reports to the ABAC Management Committee on the operation of the ABAC Adjudication Panel and the Chief Adjudicator submits an annual report on the Panel's operation to the ABAC Management Committee for inclusion in its published annual report on the operation of the overall scheme.
- **General operation of the scheme**
  - The ABAC Rules and Procedures<sup>9</sup> outline the agreed rules and procedures for the operation of the Scheme.
  - The ABAC website<sup>10</sup> includes scheme information and publications to assist alcohol beverage advertisers and agencies understand all aspects of the scheme and their obligations and to inform consumers about the scheme, in particular the ABAC standards and how complaints can be lodged. The ABAC website was set up in August 2007 and is currently being upgraded to include a search function for adjudication decisions and to update its format and improve ease of navigation.
  - The three key features of the scheme result in alcohol beverage advertisers having four decision points in relation to advertisements and packaging:

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<sup>7</sup> Annexure F: Percentage of complaints raising ABAC issues that relate to each ABAC standard

<sup>8</sup> Annexure G: Examples of ABAC determinations relating to each area covered by the Code

<sup>9</sup> Annexure D: ABAC Rules and Procedures

<sup>10</sup> [www.abac.org.au](http://www.abac.org.au)



1 <sup>st</sup> decision point	2 <sup>nd</sup> decision point	3 <sup>rd</sup> decision point	4 <sup>th</sup> decision point
Checked by company and advertising agency staff against the Code	Pre-vetted by non-company assessors using the AAPS service	Any complaints are referred (via the ASB) to the ABAC Chief Adjudicator	Where a complaint is upheld, company asked to withdraw or modify an advert within five business days

## Management of the Scheme

The ABAC Management Committee manages and reviews the operations of The ABAC Scheme and considers amendments to the Code and scheme procedures with a view to:

- encouraging industry members, large and small, to participate in the quasi-regulatory system;
- playing an active role to ensure an effective quasi-regulatory system;
- monitoring the implementation of The ABAC Scheme and improving it where necessary;
- co-ordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy and the Advertising Standards Bureau; and
- managing AAPS as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members in AAPS.

The ABAC Management Committee comprises:

- the Executive Director of the Brewers Association of Australia & New Zealand;
- the Executive Director of the Distilled Spirits Industry Council of Australia Inc;
- the Chief Executive of the Winemakers Federation of Australia;
- the Chief Executive of the Communications Council Limited;
- a representative of Australian Governments nominated by the relevant Federal Minister responsible for alcohol issues.

The ABAC Management Committee is supported in its role by the ABAC Executive Officer.

The members of the ABAC Management Committee each represent a group of stakeholders in alcohol beverage advertising and packaging regulation. Any member of the Committee may raise issues for consideration by the Committee and the Committee in practice operates on a consensus basis.

The Australian Government representative reports to each ABAC meeting after consultation with a sub-committee of the Intergovernmental Committee on Drugs (IGCD) set up for that purpose and also reports to that sub-committee following each ABAC meeting.

The ABAC Management Committee meets at least four times a year and all issues raised by any member of the Committee or referred to the Committee by the ABAC Adjudication Panel or ABAC Pre-vetters receives full consideration by the Committee.

## Scheme Coverage

- Membership of, and compliance with the scheme is voluntary. However, the individual members of the Brewers Association of Australia & New Zealand, Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia have agreed to be bound by the Scheme. This means that the majority of alcohol advertising in Australia is regulated by the Scheme.
- Other companies that advertise alcohol, including retail chains, are encouraged to become non-member signatories to the Scheme and to utilise the Pre-vetting Service. Many non-signatories currently use the Pre-vetting Service and the scheme has the support of media associations. In 2012 13% of pre-vetting applications were from non-signatories which was an increase from 7% in 2011.
- The alcohol industry (both signatories and non-signatories) and advertising agencies have access to biennial training sessions with the ABAC Chief Adjudicator and a pre-vetter in Sydney and Melbourne where all aspects and obligations of the Code, Pre-vetting Service and complaints scheme are explained. Training sessions are filmed and made available to advertisers. In addition the ABAC pre-vetters, alcohol beverage industry associations and ABAC executive officer are available to explain the Code and the scheme to alcohol beverage advertisers and their agencies.
- The ABAC Adjudication Panel made 36 determinations resulting from 2012 complaints of which 7 were upheld and in each case the advertiser agreed to withdraw or modify the advertisement or packaging so as to comply with the ABAC standards, as required by section 3(e) of the ABAC Scheme Rules and Procedures. Five of the upheld complaints related to non-signatory advertisers that co-operated with the scheme. All adjudication decisions are published to the ABAC website. A table outlining ABAC statistics since the scheme was substantially updated in 2004 is attached<sup>11</sup>.

Further information about The ABAC Scheme, including Annual Reports and Adjudication decisions are publicly available on the ABAC website, [www.abac.org.au](http://www.abac.org.au).

Denita Wawn  
Chair  
25/2/13

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<sup>11</sup> Annexure H: The ABAC Scheme statistics

## **The ABAC Scheme: ALCOHOL BEVERAGES ADVERTISING (AND PACKAGING) CODE**

### **Preamble**

Brewers Association of Australia and New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia, other than point of sale material produced by alcohol beverage retailers, and all naming and packaging of alcohol beverages comply with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising, naming and packaging will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement, name or packaging with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement or product material is directed and other persons to whom the advertisement or product material may be communicated, and taking its content as a whole.

### **Definitions**

For the purpose of this Code –

**adult** means a person who is at least 18 years of age;

**alcohol beverage** includes any particular brand of alcohol beverage;

**adolescent** means a person aged 14-17 years inclusive;

**Australian Alcohol Guidelines** means the electronic document ‘Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)’ published by the National Health & Medical Research Council (“NHMRC”) as at 1<sup>st</sup> January 2010.

**child** means a person under 14 years of age; and

**low alcohol beverage** means an alcohol beverage which contains less than 3.8% alcohol/volume.

### **Standards to be applied**

#### Part 1 – Standards to be applied to advertisements for alcohol beverages

#### **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;
  - ii) must not encourage under-age drinking;

- iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;
- 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;
- 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;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
  - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
  - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- 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; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

## Internet Advertisements

The required standard for advertisements outlined in (1)(a) to (h) 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.

### **Retail Advertisements**

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

### **Promotion of alcohol at events**

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.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and
- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and

- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; 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.

### *Public Education*

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.

## Part 2 – Standards to be applied to the naming and packaging of alcohol beverages

1. The naming or packaging of alcohol beverages (which is also referred to within these standards as “product material”) 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;
  - ii) must not encourage under-age drinking;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly –
  - i) adults appearing in product material must be over 25 years of age and be clearly depicted as adults;
  - ii) children and adolescents may only appear in product material in natural situations (e.g. 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;
- 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;

- ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
  - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
  - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- 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; and
- f) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- g) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

2. These standards, (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.





## **Alcohol Beverages Advertising (and Packaging) Code: Guidance Notes**

### **Overview of The ABAC Scheme**

The Alcohol Beverages Advertising Code (ABAC) is an initiative in quasi-regulation administered by industry and supported by government. The key components of the Scheme are the Alcohol Advertising Pre-vetting Service (AAPS) and the ABAC complaints handling process. Costs of the scheme are borne by industry.

All advertisements for alcohol beverages are required to comply with the ABAC as well as the Australian Association of National Advertisers' (AANA) Code of Ethics. In addition, where appropriate, alcohol advertisements must comply with other Codes of Practice such as the Commercial Television Industry Code of Practice, the Codes for Commercial Radio and the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

In the first instance, any complaints about alcohol advertising are directed to the Advertising Standards Bureau which accepts all complaints about advertising. All complaints in relation to alcohol beverages are then referred to the ABAC Chief Adjudicator. Any that fall under the provisions of the AANA Code will be considered according to the procedures of the Advertising Standards Board.

For beer producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics. For spirits producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For wine producers all television, cinema and outdoor advertising should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For all producers pre-vetting of naming and packaging is optional.

### **Purpose of the Guidance Notes**

The ABAC Management Committee has developed the following Guidance Notes to assist advertisers, agencies and decision makers under the ABAC Scheme including AAPS Pre-vetters in interpreting the essential meaning and intent of the ABAC by providing clarification through definition, explanation, or example. The Guidance Notes are not intended to replace or extend the provisions of the Code itself.

The Guidance Notes represent the opinions of ABAC's advisory services and are based in part on previous decisions made by the independent ABAC Complaints Adjudication Panel. Where particular Clauses of the Code have been the subject of a recent adjudication, they are cited as an addendum to these Notes. The full text of



the adjudication can be sourced on the ABAC website – [www.abac.org.au](http://www.abac.org.au) – and may be useful in providing further understanding of the issues involved in that clause.

*Notwithstanding the content of these Guidance Notes, the AAPS Pre-vetter remains the final arbiter on how the code should be interpreted and applied at the pre-vetting stage.*

With respect to the AAPS Service, the initial AAPS Pre-vetter may seek the opinion of a second pre-vetter where the initial AAPS pre-vetter is in the first three months of their term or where a new concept or new medium is being assessed and the pre-vetter believes that they may be operating without precedent and is unsure of the approach to take. Likewise, an advertiser may request an assessment or a review by more than one AAPS Pre-vetter either when submitting the advertisement or upon the initial decision by the first pre-vetter. In all instances, the initial AAPS Pre-vetter will coordinate the decision-making process.

Advertisers may offer relevant materials and facts in support of their applications for pre-vetting approval. Such materials will be given full consideration by the AAPS Pre-vetters but in all cases the decision of the AAPS Pre-vetters will be considered to be final.

Likewise, in the event of a complaint, materials submitted by the advertiser will be given full consideration, but the decision of the ABAC Adjudication Panel is final.

*Users of these Guidance Notes are strongly encouraged to work within both the spirit and the letter of the Code as it stands. Advertisers are reminded that examples, real or perceived, of attempts to circumvent the provisions of the Code threaten the industry's reputation for responsible regulation and are in direct conflict with the interests of industry and the wider community.*

*Whilst the AAPS Pre-vetters undertake to provide the best possible advice in relation to all advertisements submitted to them, any complaint regarding an alcohol advertisement will be assessed through this complaints handling process. It should be noted that successful pre-vetting does not serve as a guarantee or an argument that a complaint should be dismissed. The ABAC complaints handling process and the AAPS Pre-vetting Service are conducted separately by independent experts.*

## Preamble

The Brewers Association of Australia & New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia, other than point of sale material produced by alcohol beverage retailers, and all naming and packaging of alcohol beverages comply with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising, naming and packaging will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement, name or packaging with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement or product material is directed and other persons to whom the advertisement or product material may be communicated, and taking its content as a whole.

**Guidance Note 1:** The ABAC is a code which principally deals with the content and not the placement of advertisements within a particular medium, location or timeslot. This can be contrasted with the Commercial Television Industry Code of Practice and the AANA Code for Advertising & Marketing Communications to Children which do contain provisions that restrict when an alcohol beverage advertisement can be broadcast. The preamble does however indirectly raise the placement of advertising by reference to “the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated”. This means decision makers will take placement into account when assessing the class of persons to whom the ad may be communicated.

***For relevant ABAC Adjudications see Appendix A***

**Guidance Note 2:** For the purposes of the ABAC Code, and as it is applied in Australian law, the test of the *reasonable person* is intended as a reflection of the standards and attitudes of contemporary Australian society.

The test of the *reasonable person* exists specifically to ensure the perceived views and standards of the broader community prevail over those of any individual or minority group. Specifically, in relation to the context in which alcohol is presented in advertising, we have adopted the test of *the reasonable person* as it is reflected in widely observed and accepted practice and public opinion, to determine where, when, by whom and how alcohol consumption is portrayed.

## Definitions

For the purpose of this Code –

**adult** means a person who is at least 18 years of age;

**alcohol beverage** includes any particular brand of alcohol beverage;

**adolescent** means a person aged 14-17 years inclusive;



**Australian Alcohol Guidelines** means the electronic document 'Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)' published by the National Health & Medical Research Council ("NHMRC") as at 1<sup>st</sup> January 2010.

**child** means a person under 14 years of age; and

**low alcohol beverage** means an alcohol beverage which contains less than 3.8% alcohol/volume.

## **Standards to be applied**

### Part 1 – Standards to be applied to advertisements for alcohol beverages

#### **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;
  - ii) must not encourage under-age drinking;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;

**Guidance Note 3:** There can be no association with violent, aggressive, dangerous, anti-social or illegal acts or behaviour, nor can there be any suggestion of illegal, irresponsible or immoderate consumption of alcohol.

The 2010 Australian Guidelines to Reduce Health Risks from Drinking Alcohol advise that to reduce the lifetime risk of harm from alcohol-related disease or injury, healthy men and women should drink no more than 2 standard drinks on any day and to reduce the risk of alcohol related injury arising from a single occasion of drinking healthy men and women should drink no more than 4 standard drinks on a single occasion. Notwithstanding this, where alcohol consumption is depicted in advertising, it should always be done in an appropriate and responsible manner, depicting consumption in moderation.

#### ***For relevant ABAC Adjudications see Appendix B***

- 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 (e.g. 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;

**Guidance Note 4:** The Code defines an adult as someone of 18 years or over, that is anyone of legal drinking age and it is accepted that advertisements should always be directed at adults. However the apparent age of the talent in an advertisement will often be a subjective test. To avoid ambiguity, the pre-vetter will always take a conservative view of the apparent age of the talent. Therefore agencies should do likewise, irrespective of the actual age of the talent.

In addition to the above, advertisements should not feature activities, imagery, music, characters, celebrities or any other elements that have evident appeal to, or are targeted at, people under 18.

***ABAC Adjudications see Appendix C***

- 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;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;

**Guidance Note 5:** Advertisements for alcohol beverages must not portray the presence of alcohol as having any causal relationship with mood change, or success of any kind. However, this Clause is not intended to prevent the depiction of alcohol as being incidental to any of these circumstances or attributes.

For example, there is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success. The same rationale should apply to any form of personal, business, social, sporting, or other success, there being no intention to restrict the depiction of alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion that it has caused or contributed to their circumstance. Subject to these limitations, it is also possible to depict the presence of alcohol in a romantic situation.

It should be noted that the presence of alcohol includes any elements of the product or brand (such as packaging or brand marks) intended to represent the product.

***For relevant ABAC Adjudications see Appendix D***

- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
  - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as



- ii) having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;

**Guidance Note 6:** There is no intention to exclude every association between alcohol and sport; however any such association must not involve depictions of consumption of alcohol taking place before or during the engagement in sport. Depictions of consumption of alcohol is more than just actual drinking and includes language and images which invoke consumption. In addition, the clause precludes consumption prior to or during engagement in

- the operation of machinery/equipment which could be dangerous
- any other potentially dangerous activity.

This clause contains an exemption in relation to low alcohol beverages, however, the exemption is not intended to allow the depiction of alcohol consumption in conjunction with inherently dangerous activities, irrespective of the strength of the alcohol product being consumed.

***For relevant ABAC Adjudications see Appendix E***

- 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; and

***For relevant ABAC Adjudications see Appendix F***

- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

**Guidance Note 7:** There is no intention to prevent or limit the use of fantasy or fiction in the advertising of alcohol beverages, provided the spirit and letter of the *Code* is adhered to in all respects. The fact that the circumstance or outcome being portrayed is clearly of a fantastic or fictional nature provides no relief or relaxation of the advertiser's obligations to depict the presence or consumption of alcohol beverages in a manner that is consistent with the *Code*.

## Part 2 – Standards to be applied to the naming and packaging of alcohol beverages

1. The standards set out in Part 1 (with the exception of section 1(f)) are extended to the naming or packaging of alcohol beverages.
2. These standards (Part 2 (1)(a)-(g)) apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the

Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.

***For relevant ABAC Adjudications see Appendix G***

## Appendix A

### ABAC Adjudications:

14/01/12 (*Crown Lager*)  
 22/12/08 (*Kahlua*)  
 01/11/07 (*Tooheys Extra Dry*)  
 16/04/07 (*Absolut cut Vodka*)

## Appendix B

### ABAC Adjudications:

01/05/12 ( <i>Jim Beam</i> )	section (a)(i)(ii)(iii)(b)	Dismissed
26/10/11 ( <i>Wild Turkey</i> )	section (a)(i)(iii)	Dismissed
21/02/11 ( <i>VB Beer</i> )	section (a)(iii)	Upheld
24/12/10 ( <i>Agwa de Bolivia</i> )	section (a)(i)(iii)(c)(i)(iii)	Upheld
26/04/10 ( <i>Tooheys New</i> )	section (a)(i)(iii)(g)	Dismissed
21/10/09 ( <i>Wine Doctor</i> )	section (a)(i)(iii)(c)(iii)(g)	Upheld
21/10/09 ( <i>Pre-mix Kings</i> )	section (a)(i)(iii)	Upheld
23/12/08 ( <i>Natural Beer x 3</i> )	section (a)(ii)(iii)(b)(d)	Dismissed
14/10/08 ( <i>Carlton mid</i> )	section (a)(i)(iii)	Dismissed
15/09/08 ( <i>Jim Beam 'stalker'</i> )	section (a)(i)(ii)(iii)(b)	Upheld
25/03/08 ( <i>Black Douglas</i> )	section (a)(iii)	Upheld
08/02/08 ( <i>Corona</i> )	section (a)(i)(iii)	Upheld
27/11/07 ( <i>James Boag Draught</i> )	section (a)(i)(iii)(iv)	Upheld
31/07/07 ( <i>Toohey's New</i> )	section (a)(i)(iii)	Dismissed
16/05/07 ( <i>Johnnie Walker</i> )	section (a)(ii)	Dismissed
19/05/05 ( <i>Jim Beam</i> )	section (a)(iii)(e)	Upheld

## Appendix C

### ABAC Adjudications:

26/11/12 ( <i>Cellarbrations</i> )	section (a)(ii)(b)	Upheld
16/08/12 ( <i>Jack Daniels Honey</i> )	section (a)(ii)(b)(d)	Dismissed
22/08/11 ( <i>Infused Rush Vodka</i> )	section (a)(ii)(b)	Upheld
21/02/11 ( <i>Jim Beam</i> )	section (a)(ii)(b)(c)(d)	Upheld
17/12/10 ( <i>Three Kings</i> )	section (a)(ii)(b)	Upheld
14/10/10 ( <i>BWS</i> )	section (a)(ii)(b)	Dismissed
02/12/09 ( <i>Go Vodka</i> )	section (a)(ii)(b)	Upheld
03/03/09 ( <i>Dominos</i> )	section (a)(ii)(b)	Dismissed
29/02/08 ( <i>Cellarbrations</i> )	section (a)(ii)(iii)(b)(c)(iii)	Dismissed
14/11/07 ( <i>Little Creatures</i> )	section (a)(ii)(b)	Upheld
01/11/07 ( <i>Pure Blonde</i> )	section (a)(ii)(b)	Dismissed
16/05/07 ( <i>Toohey's New</i> )	section (a)(ii)(b)	Dismissed
25/04/06 ( <i>Bundaberg Rum</i> )	section (b)	Upheld



## Appendix D

<b>ABAC Adjudications:</b>		
03/12/12 ( <i>First Choice Liquor</i> )	section (c)	Dismissed
28/09/12 ( <i>BWS</i> )	section (c)	Upheld
03/08/12 ( <i>Tooheys Extra Dry</i> )	section (c)(i)	Dismissed
14/06/12 ( <i>Canadian Club</i> )	section (a)(c)(i)	Dismissed
08/09/11 ( <i>Bundaberg Five</i> )	section (c)(i)	Upheld
07/01/11 ( <i>Liquor Barons</i> )	section (a)(i)(iii)(c)(ii)(iii)	Upheld
28/10/10 ( <i>VB</i> )	section (a)(c) (i)(iii)	Upheld
21/12/09 ( <i>Coopers</i> )	section (a)(c) (iii)	Upheld
05/02/09 ( <i>Moorilla Wines</i> )	section (c) (i)	Upheld
22/12/08 ( <i>Johnnie Walker</i> )	section (c) (i)	Dismissed
02/12/08 ( <i>Bacardi</i> )	section (a) (ii) (b)(c)(i)	Dismissed
30/10/08 ( <i>Budweiser</i> )	section (a) (i)(iii)(iv)(c)(i)	Upheld
23/05/08 ( <i>Cockatoo Ridge</i> )	section (a) (ii) (b)(c)(i)	Upheld
25/10/07 ( <i>Tooheys New</i> )	section (c) (i)(ii)	Dismissed
31/07/07 ( <i>James Boag</i> )	section (c) (i)	Upheld
10/04/07 ( <i>Victoria Bitter</i> )	section (a)(i)(iii)(iv)(c)(iii)	Dismissed
26/02/07 ( <i>James Boag</i> )	section (a)(i)(iii)(c)(i)(d)	Dismissed
03/11/06 ( <i>James Boag</i> )	section (a) (iii)(c) (ii)	Dismissed
20/06/06 ( <i>Toohey's New</i> )	section (c) (ii)	Upheld
07/02/06 ( <i>Hahn Light</i> )	section (a) (iii)(c)(i)	Dismissed
13/01/06 ( <i>Cascade</i> )	section (c) (i) and (ii)	Dismissed
14/01/05 ( <i>St. Agnes Brandy</i> )	section (c) (i)	Upheld
09/12/04 ( <i>James Boag</i> )	section (c) (i)	Upheld
09/1204A ( <i>James Boag</i> )	section (c) (i)	Upheld

## Appendix E

<b>ABAC Adjudications:</b>		
22/03/12 ( <i>Strongbow Cider</i> )	section (d)	Dismissed
05/07/11 ( <i>Carlton Draught</i> )	section (c)(d)	Dismissed
23/12/10 ( <i>XXXX Gold</i> )	section (a)(d)	Upheld
28/10/10 ( <i>Tooheys New</i> )	section (a)(d)	Dismissed
04/08/09 ( <i>Bundaberg Rum</i> )	section (d)	Upheld
15/06/09 ( <i>Sip'n'save</i> )	section (d)	Dismissed
10/06/09 ( <i>Sip'n'save</i> )	section (d)	Upheld
22/12/08 ( <i>XXXX Gold</i> )	section (a)(d) (i)	Dismissed
15/09/08 ( <i>XXXX Gold</i> )	section (a)(iii)(d)(i)	Dismissed
21/12/07 ( <i>Corona</i> )	section (d) (i)	Dismissed
12/07/07 ( <i>Pure Blonde</i> )	section (a)(d) (i)	Upheld
09/07/07 ( <i>McKenna Bourbon</i> )	section (d) (i)	Upheld
26/02/07 ( <i>James Boag</i> )	section (a)(i)(iii)(c)(iii)(d)	Dismissed
17/11/05 ( <i>Toohey's New</i> )	section (d)	Upheld
17/12/04 ( <i>Guinness</i> )	section (d) (i)	Dismissed
31/08/04 ( <i>Carlton Draught</i> )	section(a)(iii)(d)D	Dismissed

## Appendix F

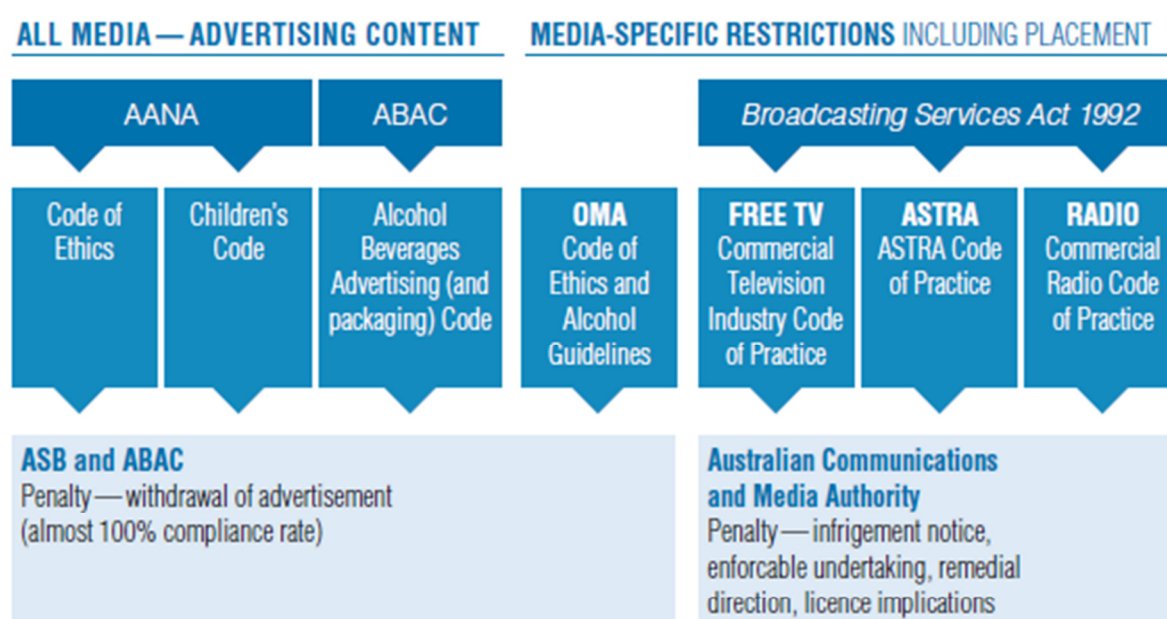
<b>ABAC Adjudications:</b>		
19/05/05 ( <i>Jim Beam</i> )	section (a)(iii)(e)	Upheld



## Appendix G

<b>ABAC Adjudications:</b>		
26/11/12 ( <i>Three Bears</i> )	Part 2.1 (a)(ii)(b)	Upheld
22/03/12 ( <i>Skinnygirl</i> )	Part 2.1 (a)(ii)(b)	Upheld
12/01/12 ( <i>Midori</i> )	Part 2.1 (a)(ii)(b)	Dismissed
13/02/12 ( <i>Bacchus Shot Bucket</i> )	Part 2.1 (a)(i)(ii)(iii)(b)(f)	Upheld

## Annexure C: Alcohol Advertising Regulation in Australia



Source: Australian Association of National Advertisers



## **The ABAC Scheme: RULES AND PROCEDURES**

### **1. Management**

#### **1.1 Management Committee**

The management and operation of The ABAC Scheme will be undertaken by a Management Committee consisting of –

- (a) the Executive Director of the Brewers Association of Australia and New Zealand Inc or their nominee (“Brewers Association”);
- (b) the Executive Director of the Distilled Spirits Industry Council of Australia Inc or their nominee (“DSICA”);
- (c) the Chief Executive of the Winemakers Federation of Australia or their nominee (“WFA”);
- (d) the Chief Executive of The Communications Council Limited or their nominee.
- (e) a Representative of Australian Governments with a nominee put forward by the relevant Federal Minister for consideration by the other members of the Management Committee, who will be appointed for a one (1) year term but will be eligible for re-appointment by the Management Committee.

An Independent chair may be appointed to the Management Committee by the Directors of The ABAC Scheme Ltd, who have been appointed by the members that fund the appointment. The position of deputy chair (or chair in the absence of the appointment of an independent chair) will rotate between the Brewers Association, DSICA and WFA representatives on an annual basis.

#### **1.2 Role**

To manage and review the operation of The ABAC Scheme and to consider amendments to the Alcohol Beverage Advertising (and Packaging) Code (“the Code”) and to the voluntary system of compliance with a view to:

- Encouraging industry members, large and small, to participate in the quasi-regulatory system;
- Playing an active role to ensure an effective quasi-regulatory system;
- Monitoring the implementation of The ABAC Scheme and improving it where necessary;
- Co-ordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy and the Advertising Standards Bureau (“ASB”); and
- Managing the Alcohol Advertising Pre-Vetting Service (“AAPS”) as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members in AAPS.

### 1.3 Meetings of the Management Committee

The Management Committee must meet at least four times a year.

Any of the representatives of the Brewers Association, DSICA, or WFA may convene a meeting of the Management Committee which, if not a telephone meeting, must be held by giving not less than fourteen (14) days prior written notice of the meeting to the other members of the Management Committee.

### 1.4 Funding

The Directors of the ABAC Scheme have a responsibility to ensure that The ABAC Scheme is adequately funded.

## 2. Adjudication

### 2.1 Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel

An Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel ("the Adjudication Panel") will be formed to adjudicate upon complaints concerning:

- advertisements for alcohol beverages, and
- naming and packaging for alcohol beverages.

Complaints made to the Advertising Standards Bureau will be referred to the ABAC Scheme for consideration under the relevant complaints procedure.

Adjudication by the Adjudication Panel will be in addition to any other legal right or remedy which may exist.

### 2.2 Code Signatories

All Code Signatories, including members of Brewers Association, DSICA and WFA will be asked to:

(a) in respect of advertising: agree to comply with any recommendation of the Adjudication Panel that they not publish or broadcast or permit to be published or broadcast any advertisement which the Panel decides does not comply with the Code; and

(b) in respect of product names and/or packaging: agree to act in good faith to uphold the principles of The ABAC Scheme in considering recommendations of the Adjudication Panel relating to this section of the Code.

Non-members are strongly encouraged to become Code signatories, by filling out a form approved by the Management Committee for the purpose, which are to be available from the ABAC Executive Officer, and submitting it for approval by the ABAC Management Committee.

### 2.3 Disputes between Competitors

The Panel will have no role in the adjudication of a complaint by an alcohol beverages manufacturer about the advertising of a competitor. Such competitive complaints will be dealt with by the Advertising Claims Board established by the AANA.

### 2.4 Appointment of the Adjudication Panel

The Adjudication Panel will be appointed by the Management Committee and will consist of three (3) regular members and at least two (2) reserve members.

The Management Committee will appoint a Health Sector member as one of the three regular members of the Adjudication Panel. The relevant Federal Minister with responsibility for alcohol issues, or his or her nominee, will be invited to nominate a shortlist of candidates to the Management Committee for consideration.

The Management Committee will appoint one (1) member of the Adjudication Panel as the Chief Adjudicator of the Panel.

No member of the Panel may, at the time of or during the term of his or her appointment to the Panel –

- (a) be a current employee of a participant or member of the alcohol beverages industry; or
- (b) have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.

Each member of the Panel will be appointed for a one (1) year term but will be eligible for re-appointment.

Determinations of the Panel will be by a simple majority vote and no member of the Adjudication Panel will have a casting vote.

## 2.5 Indemnity of Adjudication Panel Members

If a complaint made to the Advertising Standards Bureau and referred to the Adjudication Panel is from an advertiser, advertising agency, government agency or statutory authority, the AANA must ensure that the members of the Adjudication Panel receive the benefit of the indemnity provided to the Advertising Standards Board by the complainant.

## 2.6 Annual Report

The Panel must prepare a report summarising the complaints received and dealt with by the Adjudication Panel and the recommendations made during the preceding year and provide a copy of that report to the Management Committee.

Complaints Procedures for Advertising

(The complaints procedures for naming and packaging are described in Section 4.)

The complaints procedures for advertising are as follows:

- (a) The ABAC Management Committee has a duty to oversee that the process for handling complaints is running efficiently, and in performing this duty must have regard to:
  - (i) A target of 30 business days on average for the handling of complaints, and
  - (ii) A need to ensure privacy, where required by law, and
  - (iii) Any natural justice considerations.
- (b) All complaints received from the ASB will be considered within the ABAC complaints procedure and all decisions must be recorded in writing for statistical purposes and communicated to the complainant.
- (c) (i) The Chief Adjudicator will look at all complaints received from the ASB to determine if the complaint raises issues which:
  - a) are solely within the province of the AANA Code of Ethics; or
  - b) are solely within the province of an alternative code of practice or legislative regime for which there is a separate complaints resolution mechanism; or
  - c) have been fully considered and determined in an earlier determination in relation to a particular advertisement; or
  - d) have been consistently dismissed by the Panel as not being in breach of the Code; or
  - e) are not under the Code on a broad interpretation of the complaint.
- (ii) If it is so determined the complaint will not normally be further considered under The ABAC Scheme excepting
- (iii) Where the Chief Adjudicator exercises his or her discretion to refer the complaint to the Adjudication Panel notwithstanding his or her determination that it raises issues which fall within 3(c)(i).

In all other cases (including 3(c)(iii)) the complaint will be referred on to the Adjudication Panel for adjudication.

- (d) A Health Sector representative will sit on the Adjudication Panel for all adjudications. Copies of the advertisement against which a complaint has been lodged will be provided to Adjudication Panel members to assist them with their deliberations. The ABAC Adjudication Panel will not consider any issues raised under the AANA Code of Ethics except in the circumstance set out in 3(c)(iii).
- (e) If the Adjudication Panel decides that the complaint should be upheld the advertiser or its agency must advise the Adjudication Panel within five (5) business days as to whether the advertiser agrees to modify the advertisement or its use must be discontinued.

- (f) Decisions of the Panel, and the response (if any) of the advertiser/agency, must be advised to the ASB and the ABAC Management Committee, within five (5) business days after –
  - (i) in the case where the Adjudication Panel has not upheld the complaint, the date of the decision of the Adjudication Panel; or
  - (ii) in the case where the Adjudication Panel has upheld the complaint, the date the response is received (or due) from the advertiser/agency pursuant to paragraph (e) above.
- (g) A record of all decisions must be maintained to assist with establishing statistical patterns over time for use in drafting the Annual Report etc.



#### 4 Complaints procedures for naming and packaging

- (a) The ABAC Management Committee has a duty to oversee that the process for handling complaints for naming or packaging is running efficiently, and in performing this duty must have regard to:
  - (i) The efficient handling of complaints, and
  - (ii) A need to ensure privacy, where required by law, and
  - (iii) Any natural justice considerations.

##### *All complaints to be considered*

- (b) All complaints received from the ASB will be considered within the ABAC complaints procedure and all decisions must be recorded in writing for statistical purposes.
- (c) If the complaint also relates to advertising, the complaint will also be considered under Section 3 of the Rules & Procedures.
- (d) The Chief Adjudicator will look at all complaints against naming and packaging (received by the ASB) to determine if the complaint raises issues under the ABAC Code.
- (e) If it is so determined the complaint will be referred to the Adjudication Panel for consideration unless the complaint relates to product material that has been certified pursuant to paragraph 4(p).
- (f) Where a complaint is referred to the Adjudication Panel for consideration, the Chief Adjudicator will, prior to consideration of the complaint by the Adjudication Panel, notify the Supplier of the complaint and its referral to the Adjudication Panel.
- (g) For the purposes of Section 4 of the Rules & Procedures, a "Supplier" is deemed to be either:
  - (i) the Australian named manufacturer; or
  - (ii) the Australian distributor(s) of the Product either as shown on the labelling or packaging of the Product or otherwise identified in good faith by the Chief Adjudicator on the information available to him or her.

##### *Materials to be supplied to the Adjudication Panel*

- (h) When the Adjudication Panel considers the complaint, it should have before it:
  - (i) a copy of the complaint
  - (ii) either a sample or picture of the product name and/or packaging or product or product material in question, or a fair description of both (and the text of any determination issued by the Adjudication Panel should stipulate which)
  - (iii) any correspondence from the Supplier, either in response to the complaint, or any questions/issues raised with it by the Chief Adjudicator.
  - (iv) any other materials the Chief Adjudicator deems fit.

### *Review processes*

- (i) If the Adjudication Panel decides to uphold the complaint, then a provisional determination must be provided to the Supplier, who will be able to seek a rehearing of the provisional determination, by providing a formal written response and further submission within ten (10) business days of receipt of the provisional determination.
- (j) All or part of this appeal period may be waived by the Supplier, and will be deemed to have been waived upon receipt of a formal written response to the provisional determination.
- (k) After considering any material provided by the Supplier, or after the elapse of ten (10) business days from the date that the provisional determination is provided to the Supplier, the Adjudication Panel is free to issue a final determination whenever it deems fit.
- (l) When a complaint has been upheld against a product's name or packaging, the Supplier must advise the Chief Adjudicator within ten (10) business days of being informed of the Adjudication Panel's decision, as to whether they intend to either discontinue or modify the affected product.
- (m) The onus is on the Supplier to demonstrate to the Chief Adjudicator that a product name or trademark was in use in the Australian market prior to 31 October 2009. The Supplier may do so at any stage of the process prior to the end of the five (5) business day period the Supplier has to respond to a final determination.

### *Agreement to modify name or package*

- (n) Where a Supplier has agreed to modify the affected product, then it may put proposals for doing so before two pre-vetters for consideration. The pre-vetters must ensure that any such proposal(s) are dealt with in a timely and confidential manner.
- (o) The pre-vetters shall determine whether the proposed modifications bring the product name and/or packaging into line with the Code (not just the section(s) on which the original complaint and determination hinged). Where the pre-vetters do not both agree that the proposed modifications bring the product name and/or packaging in line with the Code certification may not be given for that name and/or packaging.
- (p) Where the pre-vetters have certified that modifications to naming and/or packaging are sufficient to bring it in line with the Code, then the Adjudication Panel will not consider any further complaints against the product so modified. Any minor modifications to the packaging (e.g. bar codes, use-by dates, date or place of manufacture, grape sources etc.) will be deemed to not alter the compliant status of the product. Complaints in respect of advertising in which the name and/or packaging is featured will still be considered by the ABAC Adjudication Panel.

## **5.0 Alcohol Advertising Pre-Vetting Service (AAPS)**

### **5.1 Role of AAPS**

Individual alcohol beverage producers may use the AAPS pre-vetting service to assess whether proposals conform to either or both of the following codes the *Australian Association of National Advertisers Code of Ethics* (AANA) or the *Alcohol Beverages Advertising Code* (ABAC).

For beer producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics. For spirits producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For wine producers all television, cinema and outdoor advertising should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For all producers pre-vetting of naming and packaging is optional.

Pre-vetters have no public role in representing the scheme. Their role is to provide pre-vetting services. Any inquiries or correspondence from third parties to pre-vetters must be referred on to the ABAC Executive Officer or ABAC Management Committee to be dealt with.

To encourage the frank exchange of views within The ABAC Scheme, any opinion expressed by a pre-vetter in respect to a matter which is submitted for pre-vetting is confidential to the producer, the pre-vetter, the ABAC Executive Officer and the representative of their respective industry association.

### **5.2 Appointment of Pre-Vetters**

There will be a minimum of two pre-vetters within the AAPS Service, appointed by the Management Committee.

No pre-vetter may, at the time of or during the term of his or her appointment to the Panel –

- (c) be a current employee of a participant or member of the alcohol beverages industry; or
- (d) have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.

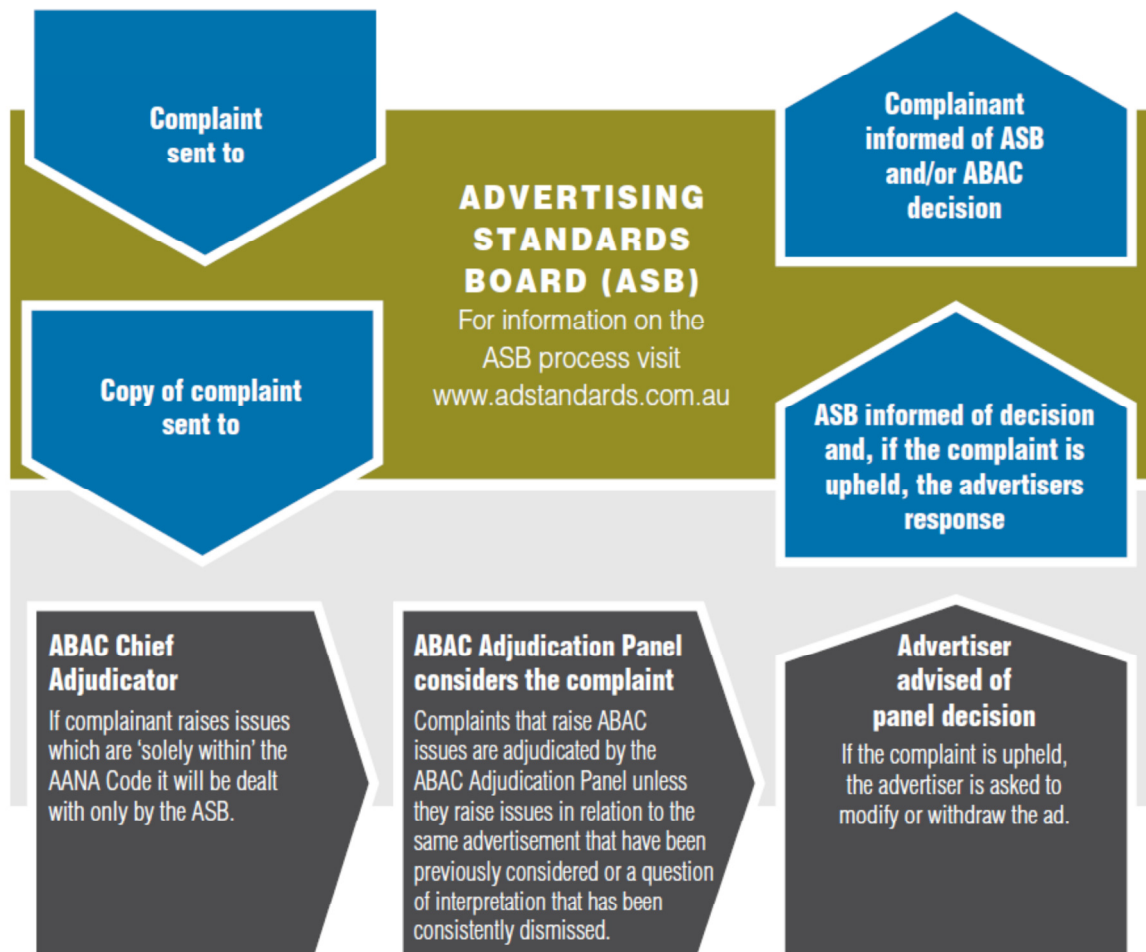
Each of the pre-vetters will be appointed for a three (3) year term and will be eligible for re-appointment after a minimum period of one (1) year out of The ABAC Scheme. These provisions may be varied by the Management Committee.

### 5.3 Funding

Where appropriate, all services provided by AAPS Pre-vetters (including pursuant to paragraphs 4 (n)-(p)) are to be funded on a user-pays basis by those industry members seeking pre-vetting of alcohol advertisements, names or packaging.

The Management Committee is to be responsible for the setting of any retainers and hourly rates for pre-vetters and approving any related expenses. Further, the Management Committee is to ensure that a system is in place for the orderly collection of debts incurred through use of the pre-vetting service by producers.

Annexure E: ABAC Complaints process



Annexure F: Percentage of complaints raising ABAC issues that relate to each ABAC standard

	2009	2010	2011	2012
Maturity and balance	23%	48%	27%	33%
Excessive consumption	26%	35%	22%	11%
Encourage underage drinking	46%	48%	44%	53%
Offensive behaviour and misuse	26%	35%	20%	14%
Irresponsible consumption	-	-	2%	-
Appeal to children and/or adolescents	53%	45%	49%	44%
Alcohol cause of success	13%	29%	16%	19%
Alcohol cause of celebration	3%	3%	-	-
Therapeutic benefit	5%	16%	-	6%
Motor vehicle use or sport	15%	13%	9%	25%
Inconsistent with NHMRC Guidelines	3%	10%	7%	-
Bringing ABAC into disrepute	3%	-	-	-
Naming and Packaging	N/A	2%	7%	3%

Annexure G: Examples of ABAC determinations relating to each area covered by the Code

	Upheld	Dismissed
Excessive consumption/Inconsistent with NHMRC Guidelines (a(i)g)	22/11 – Thirsty Camel 25/3/11	102/11 – Bolt Lager 23/12/11
Underage drinking / Appeal to children and/or adolescents (a(ii)b)	73/12B – Cellarbrations 26/11/12	83/12 – Hix beer 21/11/12
Maturity, responsibility, moderation, balance, offensive behaviour and misuse of alcohol (a(iii)(v))	14,20,21/11 – VB 21/2/11	84/11 – Wild Turkey 26/10/11
Alcohol cause of success (c(i))	69/11 – Bundaberg Five 8/9/11	47/12 – Canadian Club 14/6/12
Alcohol cause of celebration (c(ii))	80/10 – Liquor Barons 7/1/11	66/07 - Tooheys New 25/10/07
Therapeutic benefit (c(iii))	41,47,48,50/10 – VB 28/10/10	85/12 – Bottlemart 7/12/12
Motor vehicle use or sport (d)	84/10 – XXXX Gold 23/12/10	113/11 – Peroni 23/12/11
Not challenge or dare people to drink or sample or contain inducement to prefer due to higher alcohol content (e)	Nil	Nil
Naming and Packaging (Part 2)	104,106/11 - Skinnygirl 22/3/12	112/11A – Midori 12/1/12

# ABAC

## **ABAC Complaints Panel Determination No: 22/11**

**Complaint by Ms Julia Stafford, McCusker Centre for Action on Alcohol and Youth**

**Product: Thirsty Camel Bottleshops**

**Advertiser: Thirsty Camel Bottleshops**

Professor The Hon Michael Lavarch – Chief Adjudicator

Jeanne Strachan – Member

Professor Richard Mattick – Member

25 March 2011

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print and internet advertisement for Thirsty Camel Bottleshops (“the Advertiser”) and arises from a complaint received 9 March 2011.

### **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 and Alcohol Guidelines 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 9 March 2011.
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 was decided within the 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. The Advertiser is not a signatory to the ABAC and pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to a full page print advertisement in The West Australian Newspaper on 2 March 2011 and an ad located on the advertiser's website.
10. The print advertisement has the headline "More Classic Specials from the Camel" above a box containing pictures of various alcohol products with their prices. In the top left hand corner of the box is a picture of a carton of Carlton Dry superimposed with the price "\$37.99" and the text "Plus a bonus Camel Pong Game with each ctn". Next to the carton is a picture of a green cup with the Thirsty Camel logo containing ping pong balls with the same logo. Below the box is the Thirsty Camel logo with a list of bottleshops.
11. The Thirsty Camel website featured an advertisement on the home page with the headline "Beer Pong Time!" above a picture of a carton of Carlton Dry superimposed with the price "\$37.99" and the text "Plus a bonus Beer Pong Game" next to a picture of a green cup with the Thirsty Camel logo containing ping pong balls with the same logo. At the bottom of the advertisement is the text "Visit your local Camel today".

### **The Complaint**

12. The complainant argues that:
  - (a) The advertisement breaches section (a)(i)(iii) and (g) of the ABAC by encouraging irresponsible and excessive alcohol consumption and consumption in excess of the NHMRC Australian Alcohol Guidelines by offering a free Thirsty Camel branded Beer Pong game as an incentive to purchase a carton of 24 bottles of Carlton Dry full-strength beer. Noting also that beer pong is a drinking game in which players throw a ping pong ball across a table with the intent of landing the ball in a cup of beer positioned at the other end and which is invariably associated with the consumption of large quantities of alcohol.

- (b) The advertisement breaches section (a)(ii) and (b) by offering a drinking game as a gift with purchase as drinking games have a distinct appeal to young people.

### **The Code**

- 13. 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;
    - ii) must not encourage underage drinking;
    - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
- 14. The ABAC provides at Section (b) that advertisements for alcohol beverages must:
  - b) not have a strong or evident appeal to children or adolescents ...
- 15. Section (g) of the ABAC provides that advertisements for alcohol beverages must:
  - (g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

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

- 16. The Advertiser responded to the complaint and questions posed by the Panel by letter received 17 March 2010. The points made by the Advertiser in relation to the advertisements were:
  - a. The gift with purchase offer was an incentive to purchase one carton of full strength beer however unlike Coles & Woolworths, it was offered at a fair price and was not encouraging anyone to purchase more than one carton at a time.
  - b. The gift of a game was aimed at the fun of the game more so than a drinking game for excessive consumption of beer. Carlton Dry promoted their brand with bouncing ping pong balls off walls and tables recently and this was aimed as an extension to this television commercial. At no point in time (as shown by the game rules in the cups) was it marketed to be a drinking game.
  - c. The game rules in the cups state:

“Beer Pong is a game where players attempt to toss or bounce ping pong balls into the special cup(s). A player aims to get his team's ping pong ball into the cup and win points. If playing with multiple cups, the shot maker's team wins points AND removes the cup from the table. The game continues in this way, with all players from one team taking a shot, followed by all players from the other team. The team that is able to get all their balls in and get the most points is the winner.

To begin, a player from each team takes a shot simultaneously without looking at the cup(s). This is repeated until one team makes a shot, and one team misses. This decides who gets the first possession. The winning team gets the first shot in the point scoring game. The elbow rule is also applied for EVERY shot. A player's elbow may not cross the plane of the playing table or it does not count. It sounds simple, but the game is more complex than it first appears, as you will soon see once you get going....

#### Points

Hole in One -1	2 bounce & in – 2	3 bounce & in – 3	Rim
shot – 3	Wall bounce & in – 3	Floor & wall bounce & in -3	

Contents: 1 x Thirsty Camel Beer Pong Glass 2 x Red Camel head balls 2 x Green Camel head balls”

- d. The game was aimed to appeal to a younger demographic however could only be purchased by people over the age of 18 who are entitled to purchase alcohol. At no point in time, was there any aim to market to underage drinkers or to purchase excessive alcohol.
- e. We understand the concerns you may have perceived with this advertising gift with purchase, however our only intention was to market a fun activity to our consumers aged between 18 to 30 years of age. If you believe this gift with purchase is inappropriate we will not market it again in the future, as was our intention to roll out the game in all states in April.

#### The Panel's View

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

##### *The Procedural Aspects*

18. 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.
19. 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 publication and the advertiser is not contractually bound to follow a panel decision. That said, the advertiser has cooperated with the Panel in enabling the determination to be made and has agreed to abide by the Panel's findings.

## The Substantive Aspects

20. The substantive points raised by the complaint are as follows:
- The ads breach sections (a), (a) (i) and (iii) and (g) of the ABAC by promoting or encouraging excessive alcohol consumption and consumption that is in excess of NHMRC guidelines; and
  - The ads breach section (a) (ii) and (b) by encouraging under-age drinking and/or by having strong or evident appeal to children.
- As two separate ads are the subject of the complaint, these issues have to be assessed for both ads.
21. On the excessive consumption point, essentially the complaint makes two arguments. Firstly it is contended that the game “give away” will encourage a consumer to purchase a carton of the product, as opposed to a lesser quantity of alcohol, say a six-pack or an individual can. Secondly, it is argued that the nature of the “give away” game “Camel Pong” or “Beer Pong” promotes excessive alcohol consumption.
22. In response to these arguments, the advertiser contends that the ads are “an incentive to purchase one carton of full-strength beer...at a fair price and was not encouraging anyone to purchase more than one carton at a time”. Further, it is contended by the advertiser that the game is fun and is not marketed “to be a drinking game”. The advertiser rejects that excessive consumption will be encouraged by the nature of the game.
23. The Panel has considered “give away” promotions in previous decisions. The key point is that the Code standard goes to consumption and not purchase of alcohol. To accept the complainant’s argument, it would have to be assumed that a reasonable consumer would:
- Firstly alter their purchasing intention from a smaller alcohol quantity to buying the carton, based on the lure of the “give away” and then
  - Secondly, consume the purchased carton of beer in an excessive and irresponsible manner.
24. Alcohol is a product which is commonly sold in packaging of multiple of bottles or cans e.g. a carton of beer or a case of wine. By its nature, alcohol is a product which has a long shelf life, with beer being able to be kept before consumption for many months, while spirits and wine have a use-by date of many decades. This means a carton of beer purchased in April 2010 might be consumed progressively over months – not days - or in a single session.
25. In the Panel’s view the “give away” is more likely to entice a consumer to purchase Brand A of a carton of beer as opposed to a carton of Brand B which does not have the “give away”. But even if it was accepted that the “give away” motivated a consumer to purchase a carton instead of a six-pack of beer, it does not follow that the purchased product will then be consumed in a binge drinking session or otherwise in an excessive manner, or at levels inconsistent with NHMRC guidelines. Neither the print ad nor the internet ad can fairly be said to breach ABAC standards by merely promoting the sale of a carton of beer with a “give away” game.

26. The second argument relates to the nature of the “camel pong” or “beer pong” game and whether the advertising of this promotional device can be said to encourage an irresponsible approach to alcohol consumption and/or excessive consumption.
27. The advertiser alludes to the beer pong game being featured in a video clip produced by the distributors of Carlton Dry beer and that the “give away” promotion builds on that existing marketing material. While the advertiser states that camel or beer pong is not a “drinking game”, a brief internet search of the term reveals that the game is commonly played with cups containing beer and involves the consumption of beer as “part and parcel” of the game. Further, references to the game in popular culture such as the movies: “Road Trip: Beer Pong” and “Beerfest” would indicate that the game often involves excessive alcohol consumption.
28. In applying the ABAC standards, the Panel is mindful of the spirit and intent of the ABAC scheme which is concerned about the responsible and moderate use of alcohol. Further, the code preamble provides that, in assessing if an ad breaches an ABAC standard, the Panel is to have regard to the probable impact of the ad on a reasonable person, taking the ad’s content as a whole.
29. In this case it is likely that some, but not all, readers of the print ad and website would be familiar with the alcohol consumption connotations of the beer pong game. Given this background, the Panel concludes that both the print advertisement and web advertisement breach section (a) of the code. Further, the Panel thinks it is unwise to sell alcohol in conjunction with a game which often involves excessive alcohol consumption. In reaching this conclusion, the Panel has noted:
- There is a sufficiently strong popular connection between beer pong and alcohol consumption for a reasonable person to take the game as a drinking game;
  - The nature of the game involves alcohol consumption and reasonably widespread depictions of the game in popular culture associate the game with excessive alcohol consumption;
  - The use of the game to promote the sale of alcohol fails to represent a “responsible approach” to alcohol consumption as required by section (a) of the ABAC.
30. The final point raised by the complainant is that the beer pong game association within the advertisement will have a distinct appeal to young people. The advertiser argues that, while the game was aimed to a younger demographic, there was no intention to market to under-age drinkers.
31. The Panel believes that, while the beer pong game may appeal across a wide range of consumers, as the advertiser accepts, it has primary appeal to a “younger demographic”. It is probable that the appeal is strong and evident to adolescents and accordingly the Panel finds both the print ad and website ad breach sections (a) (ii) and (b) of the ABAC.
32. The complaint is upheld.

# ABAC

## **ABAC Complaints Panel Determination No: 102/11**

### **Complaint by MCAAY Product: Sail & Anchor Bolt Lager Advertiser: Woolworths Limited**

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

23 December 2011

#### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Sail & Anchor Bolt Lager by Woolworths Limited (“the Advertiser”) and arises from a complaint received 28 November 2011.

#### **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 and Alcohol Guidelines 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 28 November 2011.
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 was decided within the 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. The Advertiser is not a signatory to the ABAC but pre-vetting approval was obtained for this advertisement [11027].

### **The Advertisement**

9. The complaint refers to an outdoor advertisement on a bus shelter near an IGA supermarket in Mosman Park, Western Australia.
10. The advertisement is set against a black background and features a bottle of Sail & Anchor Bolt Lager being held by a man with a bolt attaching the bottle to his hand. The tagline "Easy To Drink Hard To Put Down" is in large text next to the bottle. The bottom of the page notes the product is exclusive to Dan Murphy's, BWS and Woolworths Liquor and includes in small print "Not for sale to persons under the age of 18. Please drink responsibly. We take Responsible Service of Alcohol seriously".

### **The Complaint**

11. The complainant argues that highlighting that an alcoholic product is "easy to drink" and "hard to put down" encourages excessive consumption of alcohol and presents an approach to the consumption of alcohol that is neither "responsible", "moderate" nor "mature".

### **The Code**

12. 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 –
    - ii) must not encourage excessive consumption or abuse of alcohol;

- iv) must only depict the responsible and moderate consumption of alcohol beverages.

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

13. The Advertiser responded to the questions posed by the Panel by letter received 1 December 2011. The points made by the Advertiser in relation to the advertisement were:
  - f. Woolworths takes its advertising responsibilities very seriously and has policies and procedures in place to ensure compliance with the Law.
  - g. Woolworths is of the view that the complaint should be dismissed. Woolworths had this advertisement pre-vetted and approved.
  - h. The depiction of the hand "bolted" to the bottle with the ad line "easy to drink, hard to put down", reflects the quality and refreshing character of the beer and, in Woolworths' view, does not suggest excessive or similar conduct with respect to alcohol in breach of the relevant section of the Code.

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

14. This complaint raises both substantive and procedural issues, which will be dealt with in turn.

#### ***The Procedural Aspects***

15. 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.
16. 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 advertiser is not contractually bound to follow a panel decision. That said, the advertiser has co-operated with the Panel enabling this decision to be made.

#### **The Substantive Aspects**

17. The complainant contends that the ad encourages excessive alcohol consumption and fails to represent a moderate, responsible or mature approach to alcohol consumption as required by section (a) of the ABAC. This is said to arise from the image and language used in the ad, namely "easy to drink" and "hard to put down".



18. For its part, the advertiser argues that the image and language do not suggest excessive consumption, but relate to the “quality and refreshing character of the beer”.
19. The Panel is to apply a “reasonable person” test in assessing the consistency of an ad to ABAC standards. In other words, how would a reasonable person in the community view the ad, having regard to its content as a whole. Not infrequently, this requires the Panel to make a decision on an ad upon which different people might take differing opinions as to consistency with a particular provision.
20. On balance, the Panel does not believe the ad breaches section (a). While the Panel sees the point made by the complainant, it is considered that most viewers would take the ad to be promoting the claimed enjoyable nature of the beer – “easy to drink”. Further, the “hard to put down” expression seems to be a play on the “Bolt” brand name which is reinforced by showing the hand “bolted” to the bottle. It is too long a bow to interpret the ad as an encouragement to excessive or immoderate consumption.
21. Accordingly the complaint is dismissed.

# ABAC

## ABAC Complaints Panel Final Determination No: 73/12B

**Complaint by Ms JulieAnn Bennett**  
**Product: The Three Bears**  
**Advertiser: Australian Liquor Marketers Pty Ltd**

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

26 November 2012

### Introduction

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a catalogue advertisement featuring “the three bears” Shiraz and Semillon Sauvignon Blanc by Australian Liquor Marketers Pty Ltd (“ALM”) and arises from a complaint received on 10 October 2012. The complaint also addresses packaging of the wine. This aspect of the complaint is dealt with in a separate determination.

### The Quasi-Regulatory System

2. Alcohol advertising and packaging 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 and packaging. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol advertising and packaging as quasi-regulation. The most important provisions applying to alcohol advertising and packaging 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 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 10 October 2012.
7. The Panel endeavours to determine complaints within 30 business days of receipt. In this case, the Panel was unable to make a determination until the related determination concerning the packaging was finalised. As a result, the complaint has not been determined within the 30 days timeframe.

### **Pre-vetting Clearance**

8. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements and some packaging 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 the advertisement.

### **Advertisement**

9. The complaint refers to a catalogue advertisement by Cellarbrations which is owned by ALM. The catalogue promotes a range of alcohol products sold by Cellarbrations retail outlets.
10. The front page of the catalogue includes the Cellarbrations logo at the top of the page followed by the text "Make everyday a celebration". A red spot below and to the right of the logo states "Hurry! Specials available from 8/10/2012 until 21/10/2012". The top half of the page below the logo includes an image of two bottles, "the three bears" Semillon Sauvignon Blanc and "the three bears" Shiraz with a red spot with the text "2 for \$25 750ml". Below the bottles is the text "Three Bears Range". Next to the bottles the three bears logo as depicted on "the three bears" Shiraz label is featured.
11. The enlarged logo featured in the advertisement includes a stylized picture of a wave using shades of purple and blue with a surfboard balancing on the wave, a large bear balancing on one leg on the surfboard, a smaller bear with a purple skirt and beads balancing on one leg on the larger bears raised foot and a smaller bear balancing on one hand on that bear's outstretched arm. Below the logo is the text "the three bears". The text "the three" and "Shiraz is in purple and the text "bears..." is in stylized bold text.
12. The 4 page catalogue depicts a wide range of alcohol products including their price and any special offers. On the back of the catalogue at the bottom of the page are details of Cellarbrations outlets in South Australia. Below that list is the "ID25" logo and the following text "Cellarbrations supports the responsible service and consumption of alcohol. "Specials valid from 8/10/2012 to 21/10/2012 or while stocks last. Retail quantities only. No trade supplied. Prices include GST where applicable. Tobacco & Alcohol not sold to under 18's. Cost of local call, higher

from mobiles or public phones. Prices may vary in country areas due to Freight. Specials available in SA only.”

### **The Complaint**

13. The complainant argues that the wine, named ‘The Three Bears’ and the picture on the label and in the ad of a mother, father and little bear (as in the Goldilocks and the 3 bears story) would attract attention especially by children.

### **The Code**

14. Part 1 of 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....

### **The Supplier’s Comments**

15. The Advertiser responded to the complaint and questions posed by the Panel on 16 October 2012. The principal points made by the Advertiser are:
  - (b) Australian Liquor Marketers Pty Ltd (**ALM**) is the owner of the Cellarbrations brand and the publisher of the brochure which has led to this complaint. ALM is a division of Metcash Trading Limited, a leading wholesale and marketing company operating in the fast moving consumer goods industry. Metcash and ALM are not at this time signatories to the Alcohol Beverages Advertising (and Packaging) Code (the **Code**). Accordingly, ALM is not bound by any decision of ABAC in relation to this matter. However, Metcash and ALM both work alongside organisations who are signatories to the Code. Likewise, Metcash and ALM both take their legal and social responsibilities very seriously and are therefore willing to address the complaint that has been made in this instance. In particular, it should be noted that ALM is committed to the responsible marketing and sale of alcohol and is a participant in a number of programmes designed to minimise the harm associated with the potential misuse of alcohol. For example, ALM supports and endorses the industry ID25 scheme which is aimed at eliminating sales of alcohol products to persons who are below the legal age of consumption.

### **Nature of the advertisement**

- (c) The Advertisement in question consists of a brochure advertising approximately 50 alcoholic products, across the spectrum of wines, beers and spirits. Featured prominently on the cover of the brochure are two products marketed under “The Three Bears” brand and the use of a logo also associated with that brand. The Advertisement was not in a publication addressed to children, adolescents or persons under the legal age of consumption. It was contained in a brochure and featured alongside a number of other liquor products.
- (d) The following should be noted in relation to the brochure:

- The brochure itself does not contain any advertisements in relation to non-liquor products or products that might appeal to children or adolescents.
  - The brochure did not contain any material or editorial content that might usually be considered to be of any interest to children or adolescents.
  - The brochure was distributed by direct mail and was not included in a publication that might have had any interest or appeal for children or adolescents.
- (e) It is therefore clear that the Advertisement, by the nature of the brochure in which it was published, was addressed squarely at the adult market and to persons who are above the legal age of consumption.
- (f) ALM therefore submits that the Advertisement, given the context in which it is presented to the consumer, cannot, on balance, be seen to have any strong or evident appeal to children or adolescents.
- (g) It should be noted that the Advertisement did not feature any persons under the age of 25 as is proscribed by the Code. The brochure in which the Advertisement is contained also contains the messages that:
- Cellarbrations supports the responsible service and consumption of alcohol;
  - Tobacco and alcohol are not sold to under 18's; and
  - If the customer looks to be under 25, they will be asked for identification.
- (h) The Advertisement itself only shows the product and logo. It does not depict, or contain any message encouraging, the consumption of the product by anybody, let alone by persons who are under the age for legal consumption. ALM therefore submits that the advertisement cannot be regarded as being material that might be perceived to encourage under-age consumption
- (i) Nevertheless, given that this complaint has been raised, ALM has now determined that subsequent advertising of this product will feature only images of the product itself rather than reproducing the more prominent logo. Given that the "The Three Bears" logo, when it is only reproduced as part of a picture of the product, is actually very small and not very prominent, ALM believes that this change will go a long way towards addressing the concerns raised by some members of the community.

### Products supplied under The Three Bears brand

- (j) The Advertisement features a picture of a logo and a product marketed and supplied by ALM under “The Three Bears” brand. For the purposes of any full assessment of the Advertisement, it is therefore relevant to consider the branding of the product itself, as is featured in the Advertisement. Given that a complaint has been raised, and in demonstration of the seriousness with which such complaints are taken by ALM, an explanation of the rationale behind the brand design has been set out below. The product being advertised are two wine varietals sold under the brand “The Three Bears”. The Three Bears brand is used in relation to three wine varietals marketed by ALM – a Shiraz, a Chardonnay and a Semillon Sauvignon Blanc. In particular, it should be noted that the branding has been used on products that are not generally marketed to the 18-25 age category (in the same way as some suppliers might market RTD categories). ALM’s experience is that wine products marketed under The Three Bears brand tend to be more popular with an older demographic. In particular, the brand is linked strongly to the quality wine-making heritage of the Margaret River region. This heritage is reflected in the desire that the majority of ALM’s customers have in relation to these products, which is to enjoy the flavour of the products (rather than focus on their intoxicating effects) and to enjoy their consumption in moderation.
- (k) “Three Bears” is the name of a premier surf location at Dunsborough, in Margaret River, well known, particularly among members of the surfing community and people who have also visited the region. Margaret River is also a scenic region of Australia which is heavily associated in the mind of the consumer with the quality of the local wine-making industry. The intention of the branding is therefore to create a geographical nexus between the branding of the product and a region of Australia, renowned for its quality wine-making. The actual history of how this surf location came to be known as “Three Bears” is not known. It is acknowledged that it is likely that the location was named after the story now more commonly known as “Goldilocks and the Three Bears”. We note that whilst this story is now commonly reflected in popular culture and is more widely known as a children’s story, further research indicates that the original oral literary tradition of the story, prior to publication of *“The Story of the Three Bears”* in 1837 by Robert Southey, was not a children’s story. In fact, prior to that date, the story was a gruesome and macabre adult story involving an old lady being attacked by wild animals. Nevertheless, ALM acknowledges that it is likely that the name of the children’s story has influenced the name of the surf location and that it has therefore indirectly influenced the name behind this particular brand. However, ALM submits that, on balance, it can be demonstrated that it was not intended that the name have a strong or evident appeal to children or adolescents through a direct allusion to a children’s story. It was intended that the name be linked to a location in the Margaret River region of Western Australia.
- (l) The images used in the branding of the products are based on a caricature line drawing of three bears (being the bears from the location after which the brand is named). The bears are depicted engaging in surfing, again creating a link to the “brand story” and are portrayed in a humorous or whimsical manner (through the

unexpected juxtaposition of animals participating in an acrobatic posture and in an activity which is not associated with animals), so as to have longer lasting appeal in the mind of the consumer. The choice of a caricature line drawing and use of bright and bold colours are directly relevant to the brand's portrayal of the attributes of the product being sold – “light”, “clean”, “fresh”, “crisp”, “vibrant” and “modern”. These are all characteristics that one associates with a line drawing (versus other forms of graphic representation). The attributes can be found in the tasting notes provided with the products, which are set out following.

### **Tasting Notes**

#### ***Semillon Sauvignon Blanc***

*Aromas: Tropical fruits, feijoa, guava and passionfruit. Freshly cut grass with a mineral complexity.*

*Palate: Light bodied and clean, with fresh, crisp acidity.*

#### ***Chardonnay***

*Aromas: Ripe peach and nectarines with toasty vanillin oak.*

*Palate: Rich and creamy with intense flavour and length.*

#### ***Shiraz***

*Aromas: Spicy shiraz lift with a lovely oak background.*

*Palate: Typical Margaret River style with a spicy, peppery edge to soft cherry fruit.*

*Fresh, vibrant and modern with a lovely spicy lift.*



### **Source: The Three Bears – Margaret River Product Tasting Notes**

- (m) In particular, it should be noted that the bears are not themselves portrayed in consuming the product, or encouraging the consumption of the product by anybody, let alone by persons under the age of legal consumption. The bears are not depicted in any scene taken from the children's story, nor are they presented as participating in that story. In fact, the depiction of the bears engaging in the activity of surfing, which is an activity which does not feature in the story, might also be suggestive of the fact that the bears are not actually participating in the well-known children's story. ALM acknowledges that caricatures or line drawings may frequently be used in children story books, but notes that a wide range of other styles of artistic expression are also often used in other children story books. Many of these styles of artistic expression are also used on other popularly accepted alcohol products. The coincidental use of a particular form of artistic expression in a type of literature, and in the advertising of a type of product, need not therefore logically imply that there ought to be a link made between the product and its consumption by persons to whom that form of literature is addressed. Furthermore, the style of graphic design used for this product is consistent with that used for a number of other products which are currently available in the Australian market.
- (n) On balance, therefore, ALM submits that the use of The Three Bears brand on these products is not intended to, and does not in fact encourage under age drinking or have a strong or evident appeal to children or adolescents.

- (o) Nevertheless, given that this complaint has been raised, ALM is still committed to addressing the concern of members of the community. With this in mind, at this time, ALM does not intend to advertise further the logo associated with this brand, other than by depicting the logo as part of a picture of the product itself.

## **The Panel's View**

### **Some Procedural Aspects**

16. The complaint has placed before the Panel two separate but entirely related matters for determination, namely:
  - (p) Is the branding of the product, specifically the labels used on the shiraz and semillon sauvignon blanc bottles of the product in breach of Part 2.1, sections (a)(II) and (b) of The Code; and
  - (q) Is the advertisement for the product contained within a brochure advertising various alcohol products in breach of Part 1 of The Code.
17. This determination deals with the advertisement for the product. Determination 73/12A is the final determination in relation to the branding of the product. There are separate determinations because complaints about branding under Part 2 of the ABAC have a different decision making process than complaints about advertisements under Part 1. Further, the underlying concern of the complainant was about the product label and, accordingly, it was sensible for the Panel to resolve that question first before turning to the complaint going to the advertisement.
18. It should also be noted that ALM is not a signatory to the ABAC Scheme. This means that it is not contractually bound to follow a Panel's decision, in contrast to signatories to the Scheme or members of the peak alcohol industry bodies who are the sponsors of the Scheme. The Panel does, however, consider all relevant complaints regardless of whether the advertiser or supplier is a signatory to the Scheme and, in this case, ALM has stated its strong commitment to good practice in alcohol marketing. ALM has fully cooperated with Panel in its decision making process.

### **The Substantive Issues**

19. The Panel in Determination 73/12A found the label of the product to be in breach of sections (a)(ii) and (b) of Part 2 of the ABAC. Equivalent provisions are contained in Part 1, which deals with advertising. It does not follow automatically, however, that the advertisement must also be in breach of the ABAC standard. This is because the Panel is to assess the content of the advertisement as a whole, and it is quite conceivable that the advertisement placed as it is in a brochure advertising various products, may be in context not be seen to be strongly appealing to children.
20. The advertiser argues that while "The Three Bears" advertisement is prominent on the brochure, it should be noted that the brochure:
  - (a) Was not in a publication addressed to children;
  - (b) Does not contain any advertisements in relation to non-alcohol products or products that might appeal to children or adolescents;



- (c) Does not contain any editorial content that might be considered to be of interest to children or adolescents;
  - (d) Was distributed by direct mail and not included in a wider publication that might have interest or appeal to children.
- 21. The Panel acknowledges the points made by the advertiser and accepts, as it did in Determination 73/12A, the intention was to market the product solely to an adult audience. That said, the test which the panel must apply is the probable impact of the advertisement on both the intended audience and those to whom the advertisement may be communicated. It is almost inevitable that a brochure distributed widely to households will come to the attention of children and adolescents.
- 22. The advertisement does not prominently show the product's label as such, however it features a large depiction of the three stylised bears engaging acrobatically on a surf-board. The bears are presented in a manner and with colours which the Panel believes would have evident appeal to children, as outlined in Determination 73/12A.
- 23. Accordingly, the Panel believes the complaint should be upheld.

# ABAC

## **ABAC Complaints Panel Determination No: 83/12**

**Complaint by Chris Clague  
Product: Hix Beer  
Advertiser: Hickinbotham of Dromana**

Professor The Hon Michael Lavarch – Chief Adjudicator  
Debra Richards – Member  
Professor Louisa Jorm – Member

21 December 2012

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns an outdoor advertisement for Hix beer produced by Hickinbotham of Dromana (“the Advertiser”) and arises from a complaint received on 22 November 2012.

### **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 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 22 November 2012.
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 the 30 business 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. The 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 an outdoor advertisement in a city bound train from Footscray.
10. The advertisement features three bar taps labeled "Hix Beer Brown Ale", "Hix Beer Pale Ale" and "Hix Beer Pilsener". Superimposed over the image is the text "Girls Love Hix Beer", "No Added Anythings" "[www.hickinbotham.biz](http://www.hickinbotham.biz) ph: 03 5981 0355".
11. To the left of the image of the bar taps is a smaller photograph of two women sitting at a bar, one of whom is holding up a partially consumed glass of beer.

### **The Complaint**

12. The complainant objects to the following elements of the ad that may have strong or evident appeal to children or adolescents and may encourage underage drinking:
  - (a) The use of the word "girls" in the statement "Girls Love Hix Beer". The "girls" referred to in the ad could be the complainant's 15 & 17 year old nieces who travel to school by train each day and could easily see the ad.
  - (b) One of the female images in the ad who from a reasonable distance could be of school age, or upon closer inspection in her early twenties.

### **The Code**

13. 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 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.

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

14. The Advertiser responded to the complaint on 23 November 2012. The principal points made by the Advertiser are:
  - (a) Both females shown in the ad are in their late twenties or early thirties.
  - (b) A director of the advertiser is in her fifties and still referred to as being "one of the girls".
  - (c) The idea for the ad stemmed from a beer tasting event with the female contingent providing some of the most cognisant tasting evaluations throughout the day. The brewers were all quite effusive over how well they managed to describe most precisely the characteristics of each beer style. This ad was supposed to recognise this attribute and in no way seeks to infer or promote underage drinking.

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

15. This complaint raises both substantive and procedural issues which will be dealt with in turn.

### **The Procedural Aspects**

16. 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.
17. 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.

### **Substantive issues**

18. The complainant is concerned that the advertisement by the use of the tagline “Girls Love Hix Beer” and the depiction of a female who appears to be under 25 years of age or from a distance could be a schoolgirl could have strong appeal to children or adolescents and may encourage underage drinking.
19. The advertiser responded to the complaint with the assertion that the females depicted in the ad are in their late twenties or early thirties and that the use of the term girl is applied to females of any age. Further the ad was recognition of the ability of females to understand and describe the characteristics of different beer styles as demonstrated at a tasting event held by the advertiser.
20. The complaint has two elements. Firstly, the apparent age of the women depicted in the advertisement is raised, as the complainant believes one of the women shown is younger than 25 years of age, either of school age or in her early twenties. Section (b)(i) provides that adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults.
21. The section (b)(i) standard has two limbs. Firstly, as a matter of fact, persons shown in advertisements must be over 25 years old. Secondly, irrespective of a person’s actual age, if the person is depicted as an adolescent (i.e. under 18), then the advertisement will be in breach of the standard. In this case, the advertiser advises the two women are aged in their late twenties or early thirties. The Panel has no option but to accept the advertiser’s advice on this point.
22. The apparent age of the women is more problematic, as this involves forming an opinion on how old the women appear to be. The Panel’s job has been made more difficult as the advertiser supplied a very poor quality copy of the advertisement and it was not possible to make any assessment of the women’s age based on this copy. The complainant supplied a better quality picture of the advertisement, but even this picture was not entirely clear, given the reflection of light in the photograph. Through an internet search, the Panel was able to locate a clear picture of the two women.
23. In the Panel’s best judgment it is concluded that the women are depicted as adults and the section (b)(i) standard is not breached. While the age of the women is open to some conjecture, they do appear to be clearly adult women and there is nothing in their clothing or general demeanour to indicate they are not adults.
24. The second element of the complainant’s concern is about the use of the term ‘girl’ in the advertisement. The complainant takes the term to mean that the advertisement is encouraging younger females (children or adolescents) to drink the product. The advertiser contends that the term ‘girl’ has a wider usage and includes females of all ages.
25. There is no doubt that, depending on the context of its use, the term girl often refers particularly to young females. In other contexts, the term can be used in a demeaning and sexist manner. In other contexts again, the term may not have any negative sentiments and might be describing females more generally.

26. The preamble to the ABAC provides that consistency with ABAC standards is to be assessed by considering the probable impact of the advertisement on a reasonable person, taking the context of the advertisement as a whole.
27. On balance, the Panel believes the advertisement does not breach section (b) of the Code. In reaching this conclusion, the Panel has noted:
- (a) while there appears to be little other reason to use the term 'girl' in the advertisement as opposed to 'women' other than to pitch the advertisement at younger adult females, the advertisement does not, through its overall tone and content, have strong appeal to children or adolescents.
  - (b) in the particular context of the advertisement, the term 'girl' is a description of women more generally, although its use has sexist overtones.
  - (c) the use of the term and its juxtaposition with the picture of adult women lends weight to the term having a general meaning applying to all females.
28. The advertiser is not an ABAC scheme member and clearly it would benefit its ongoing advertising if it joined the scheme and used the pre-vetting service. The aim of the advertisement could have been achieved without raising the concerns legitimately raised by the complainant.
29. Accordingly, the complaint is dismissed.

# ABAC

## **ABAC Complaints Panel Determination No: 14, 20 & 21/11**

**Confidential Complainants & Mr Scott Kelly  
Product: VB Beer  
Advertiser: Fosters Group**

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

21 February 2011

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for VB Beer by Fosters Group (“the Advertiser”) and arises from complaints received 17, 27 and 31 January 2011.

### **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 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 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 17, 27 and 31 January 2011.
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. These complaints were decided within the 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 obtained for this advertisement [10532].

### **The Advertisement**

9. The complaint refers to a television advertisement entitled "Slide" which is part of the VB "Real" series of television advertisements.
10. The advertisement opens with two men sitting at a table in a public bar one holding a partially consumed glass of beer and one holding an open stubby of VB as they look toward the other end of the bar with a concerned expression. We then see a man at the other end of the bar wearing a red jacket and sunglasses with a glass of beer in front of him and the barman pouring something into the beer.
11. A voiceover commences "Dear Tom". At this point everything is seen in slow motion as the man with the stubby places it heavily onto the table and gets up as the man next to him is seen shouting something. The voiceover continues "By the time this letter reaches you I will have crash tackled you to the ground". We then see that the substance being poured into the beer in front of the man at the other end of the bar is red in colour.
12. As the man with the stubby lifts himself up onto the bar and throws himself onto his stomach as he slides down the length of the bar toward the man with the coloured beer the voiceover continues "We thought it was just a phase so the guys let a lot of things slide like that labradoodle pup. But you crossed the line when you colour co-ordinated your outfit with your beer."
13. As the man with the coloured beer looks in shock at the man sliding down the bar toward him the voiceover continues "Anyway, we're still here for you mate. Stevo"
14. We then see a stubby of VB next to a full glass of beer and the tagline "Real" above a Drink Responsibly logo.



## **The Complaint**

15. The first complainant argues that the ad is irresponsible in that it promotes:
  - (a) violence in bars;
  - (b) attitudes of intolerance of difference; and
  - (c) homophobia and homophobic violence.
16. The second complainant argues that the ad is irresponsible in that it promotes:
  - (a) violence and alcohol;
  - (b) shows an illegal activity of jumping on the bar of a licensed premises; and
  - (c) depicts behaviour unacceptable anywhere in Australia even between friends or for a joke.
17. The third complainant argues that the ad is irresponsible in that it promotes:
  - (a) Violence against gay men;
  - (b) Violence and alcohol/Australian drinking culture; and
  - (c) homophobia.

## **The Code**

18. 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 promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;

## **The Advertiser's Comments**

19. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 7 February 2011. The points made by the Advertiser in relation to the advertisements were:
  - (a) This advertisement brings to life the idea of saving your mates from superficial behaviour and sits as part of a campaign titled "Real". The VB "Real" campaign (which includes a number of different advertisements) was inspired by broad population research commissioned by Carlton & United Breweries on 'superficiality', which is most often evidenced as heightened vanity and puffery. The advertisements focus on this societal trend and are based on insights including the fact that people are increasingly presenting an image that is not true to who they are. As is often the case in advertising, the campaign brings this to life with much humour and some highly tongue in cheek and exaggerated scenarios. These are representative of the diverse behaviour found in the broader community and do not reference any

one group. It was never the team's intention for the scenario presented in "Slide" to represent stereotypical homosexual behaviours. We believe the character and scenario are far removed from the stereotypical and one dimensional depictions of gay men, which are often very camp or sexualised. Supporting the fact that there is no existing bias, in 2011 VB will be the official beer of Australia's largest celebration of gay and lesbian culture in the Sydney Mardi Gras. The team here believe VB is most definitely a beer for everyone, which is supported by the fact that VB is the largest selling beer in Australia and one of the most popular in every state and territory. It's also important to note that one of the complainant's views of the ad targeting "the perceived manliness of their choices" is not what I believe is represented. This advertisement is about blokes staying true to who they are and not feeling the need to have flashy accessories, costly designer dogs or expensive, overly complicated drinks.

- (b) In the case of "Slide", a man (Tom) is seen purchasing a drink at the bar – he's colour coordinated his outfit to match his beer. He is seen wearing sunglasses inside and is encouraging the bartender to pour red cordial into his beer in order for it to match his polo shirt. His friend (Stevo), upon witnessing this, leaps to 'save his mate' from this superficial (and over the top) behaviour. He jumps onto the bar and then leaps to his mate's aid. The intent is to stop Tom from removing the beer from the bar. A fellow patron steps back and takes his beer with him as Stevo ultimately slides along the bar. The action in the bar concludes with a final frame of Tom taking off his glasses and looking surprised and a little taken back by the turn of events. The actual feat of flying through the air, landing and then sliding along a bar is not realistic or even feasible in real life (made possible here only with the magic of TV) and appears more exaggerated still through the use of a slow motion film technique. The action takes place as a voiceover states the following: "Dear Tom. By the time this letter reaches you I will have crash tackled you to the ground. We thought it was just a phase. So the guys let a lot of things slide, like that Labradoodle pup... but you crossed the line when you colour co-ordinated your outfit with your beer. Anyway, we're still here for you mate. Stevo." It's accompanied by low key orchestral music, which transitions into the VB theme song right at the end.
- (c) This advertisement has been viewed in excess of 2.6 million times within Australia post 8.30pm (or on weekends only during live sport). As such I don't believe it's reasonable to represent these three views/complaints as representative of its probable impact upon a reasonable person within the class of people to whom the advertisement is directed (or more broadly).
- (d) The advertisement in its entirety is incredibly tongue in cheek and light hearted from the tone/words of the letter (read as a voiceover) to the scenario represented (it's clearly exaggerated and theatrical). Whilst this is not an 'antidote' as such, the humour is obvious enough to seriously influence how the advertisement would be perceived.
- (e) Consumption throughout the advertisement is minimal and importantly there is no depiction of violence.
- (f) The demeanour of Stevo, combined with the voiceover (which is heartfelt in nature and articulates the motivation for his actions), clearly illustrates that his behaviour is motivated by what he thinks is best for his mate and his desire to save him from his superficial behaviour versus being driven by aggression or anger. It's clear that Stevo is a mate who is concerned about Tom and wants to stop him from taking his superficial behaviour too far - so

in this instance his plan is to literally stop him from removing his beer (with extra colour added to match his outfit) from the bar. Stevo needs to make an impact (both on Tom and also the viewers) so he goes about the intervention in a dramatic and unexpected (but completely safe) fashion.

- (g) The crash tackle reference should not be taken out of context as the entire 'letter', the way it's spoken and the fact the letter ends with "we're here for you mate" completely neutralises (at the very least softens) the term. It's also worth flagging young adult males do use language that is sometimes exaggerated (but lacks malice) and should not be taken literally. Furthermore there is no depiction of violence. The advertisement ends before you see Stevo successfully grab the beer from his mate's hand plus there is no physical contact between Stevo or Tom nor are any of the patrons impacted. At the very start of the advertisement, the blokes are seen having a quiet beer (a stubby and pot respectively) and it's clear that 'saving his mate' has motivated his slide down the bar (rather than excessive alcohol consumption). In fact no alcohol is seen to be consumed by Stevo in the advertisement, and any consumption that may be perceived to have happened is minimal given his stubby is more than half full and he is clearly sober looking and sounding.
- (h) Within the scope of ABAC the use of the term "offensive behaviour" refers to bad behaviour which is influenced by alcohol misuse and results in, for example drunken, loutish behaviour. I'd argue that the behaviour is neither offensive nor violent (and not illegal as one complainant claims) for the reasons stated previously and the advertisement shows only "responsible and moderate consumption of alcohol beverages" as is required by section a) iv). It is very clear that the behaviour of Stevo is motivated by a desire to intervene in a situation where his mate is exhibiting extreme superficial behaviour (sunglasses inside and colour co-ordinating his beer to outfit) versus being motivated by aggressive/violent tendencies or alcohol misuse. His demeanour and physical actions (whilst dramatic) are controlled and his voice (represented in the voiceover) is calm and sober sounding. No-one in the advertisement is impacted, inconvenienced or troubled by his actions. As previously stated, Stevo does not engage in violence towards his mate Tom. It's also worth reiterating that the advertisement in its entirety with all its elements in combination - the music, the voiceover, the slow motion film technique and the sequence of events – leave the impression of a light hearted advertisement as opposed to one that has any heavy, aggressive or violent feel. I'd also emphasise again that I don't believe these three complaints should be seen to be representative of a 'reasonable person's view'.
- (i) The CUB team takes our responsible marketing responsibilities very seriously and both the Alcohol Beverages Advertising Code (ABAC) and the AANA Code of Ethics were carefully considered during the VB campaign development. This advertisement was also pre-vetted by the independent Alcohol Advertising Pre-vetting Service – the AAPS number is 10532.

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

- 20. The complaints raise issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to discrimination on the basis of sexual preference and intolerance of difference. As explained earlier, Code of Ethics matters are determined by the ASB and this determination will not deal with these concerns.

21. Rather, this determination deals with that part of the complaints which argue that the ad promotes violence in bars and homophobic violence. These concerns bring into play section (a)(iii) of the ABAC. This section requires that ads for alcohol beverages be mature, balanced and responsible in their presentation of the approach to the consumption of alcohol. This standard will not be satisfied if the ad encourages excessive alcohol consumption or abuse of alcohol, under-age drinking, offensive behaviour or the immoderate consumption of alcohol.
22. The argument of the complainants is essentially that the ad depicts one man ("Steve") consuming alcohol in a public bar who dramatically and violently intervenes to stop a friend ("Tom") from proceeding to drink beer at the bar. The complainants each take this to be encouraging or at least associating alcohol use and violence. Two of the complaints also believe the ad promotes violence against gay men.
23. For its part, the advertiser contends that the theme of the ad is about 'superficiality' and that the scenario depicted is clearly humorous and shows exaggerated behaviour and no actual physical contact is shown. It is argued that a reasonable person would not view the ad as promoting violent behaviour and the implication that violence against gays is expressly rejected by the advertiser.
24. It is without question that alcohol linked violence is a social and public welfare problem in Australia. There have been various public policy responses to the problem of public violence related to alcohol misuse including placing restrictions both on the hours of operation of hotels and clubs and the movement of patrons between licensed premises in particular areas. Clearly alcohol advertising that can be fairly said to promote or encourage violence is contrary to the public interest and the standards contained in ABAC.
25. The Panel has examined the issue of advertising and its association with violence in several previous decisions such as 65/08, 68/08, 87/08 and 94/08 concerning a television ad for Jim Beam. This ad featured a woman in a bar, consuming alcohol while relating her history of stalking a former boyfriend. The complaints against the ad were upheld with the Panel noting:
  - The term "offensive behaviour" used in section (a)(iii) needs to be understood within the context of the section and ABAC as a whole and in this context means unacceptable behaviour related to or influenced by the misuse of alcohol, e.g. drunken loutish behaviour.
  - Humour is a factor to be taken into account in assessing how a reasonable person would view the ad, but humour cannot excuse an ad which taken as a whole breaches the ABAC standard.
  - In the context of the ad, the positioning of the woman in a bar consuming alcohol, while communicating in a slightly irrational manner and relating her history of stalking was offensive behaviour that did not present a responsible approach to alcohol consumption.
26. The Panel accepts that the advertiser has been conscious of the requirements of section (a) and has endeavoured to comply with the standard. The ad was approved through the pre-vetting service. That said, an ad which uses a narrative device of an intervention by a man drinking alcohol aimed to bring another person to their senses by 'crash tackling' them in a public bar was always likely at best to be near the borderline of meeting the ABAC standard.

27. On balance, the Panel believes that the ad breaches the section (a)(iii) standard. In reaching this conclusion the Panel has noted:
- That the man “Stevo” is depicted consuming alcohol.
  - The language of the narration and the expression “crash tackle” combined with the depiction of “Stevo” sliding along the bar to affect the tackle could be taken by a reasonable person as associating alcohol use with violence.
28. The complaints are upheld.

# ABAC

## **ABAC Complaints Panel Determination No: 84/11**

**Complaint by Mr Julian Douglas-Smith  
Product: Wild Turkey Bourbon  
Advertiser: Campari Australia Pty Ltd**

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

26 October 2011

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Wild Turkey Bourbon by Campari Australia Pty Ltd (“the Advertiser”) and arises from a complaint received 4 October 2011.

### **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 and Alcohol Guidelines 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 4 October 2011.
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 was decided within the 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. The Advertiser is not a signatory to the ABAC; however, pre-vetting approval was obtained for this advertisement [10917].

### **The Advertisement**

9. The complaint refers to a television advertisement for Wild Turkey Bourbon.
10. The advertisement is set in a public bar and features a group of four men at the bar with drinks either in their hand or on the bar in front of them. One of the men says "Hey look it's Jimmy Barnes." The men all look over the bar and the camera moves so that we see Jimmy Barnes leaning on the bar talking with another patron. He does not have a drink in front of him or in his hand.
11. The man goes on to say "Watch this, I'm gonna give him the bird". The camera moves to the face of one of his friends which changes from smiling to concern. The man shouts across the bar "Hey Barnesy" and his companions all cringe as we see Jimmy Barnes turn towards the man shouting to him. We then see the man's arm slowly rise as his friends look on with concern until his arm is fully raised toward Jimmy Barnes with a bottle of Wild Turkey Ready to Drink in his hand and a smile on his face. We see Jimmy Barnes smile at the man and one of his friends also smiling and saying "For a second there I thought you were going to".
12. We then see a bottle of Wild Turkey on the bar as a voiceover says "Give Em the Bird Wild Turkey" and super imposed text "Give Em the Bird" appears on one side of the bottle and a bottle of Wild Turkey Ready to Drink on the other side of the bottle. The text "Drink Responsibly" appears below the bottles. A hand turns the bottle of Wild Turkey Ready to Drink so the label is more visible. In the final scene we see the four friends standing at the bar, one with his arm around Jimmy Barnes and Jimmy Barnes holding a bottle of Wild Turkey Ready to Drink.

### **The Complaint**

13. The complainant argues that it is inappropriate for an alcohol advertisement to feature Jimmy Barnes as:

- (a) he is a well-known, self-confessed alcoholic;
- (b) has a high profile history of drug and alcohol abuse;
- (c) it send the wrong signals to anyone aware of his very public battle with alcoholism, implying he has in fact “fallen off the wagon”;
- (d) he has very well publicized excesses with alcohol in the past, especially during his time as lead singer of the Australian rock band, Cold Chisel who is currently on a re-union tour.

### **The Code**

- 14. 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;

### **The Advertiser’s Comments**

- 15. The Advertiser responded to the questions posed by the Panel by letter dated 12 October 2011. The points made by the Advertiser in relation to the advertisement were:
  - a. Campari Australia fully supports the ABAC and takes care when developing and executing advertising to ensure compliance with the ABAC and other Australian advertising and liquor licensing laws, regulations, codes and guidelines.
  - b. Campari believes Mr Barnes’ past history and personal issues are irrelevant considering the nature and content of the TVC. Nevertheless Mr Barnes’ struggle with alcohol has been well documented in the public arena and his achievement of sobriety has been equally well-documented. As such there is no public perception that Mr Barnes has current issues with alcohol. In fact, we consider that in view of his achievement of sobriety, Mr Barnes is a role model for moderate and responsible consumption of alcohol. In addition, Mr Barnes has openly discussed his previous personal issues and the steps he has taken to change his lifestyle to the one he currently enjoys. Mr Barnes has been upfront about his issues and has never portrayed those issues, and in particular alcohol abuse, in a positive light.
  - c. Campari strongly disagrees with the assertion that the TVC implies that Mr Barnes has “fallen off the wagon” by being portrayed in the TVC and by holding a bottle of Wild Turkey Ready to Drink. At no stage in the TVC is Mr Barnes shown consuming any alcohol. Indeed, no-one in the TVC is seen consuming alcohol. The conclusion that Mr Barnes has “fallen off the wagon” is a non sequitir to the portrayal of Mr Barnes in the TVC, in circumstances in circumstances where:



- i. he is known to have overcome his past issues with alcohol;
  - ii. he is not shown to be consuming alcohol at any time during the TVC; and
  - iii. the TVC does not depict any excessive consumption, misuse or abuse of alcohol.
- d. Campari also considers Mr Barnes to be an appropriate role model and ambassador for the Wild Turkey brand. Mr Barnes was chosen to appear in the TVC and the broader WILD TURKEY Summer 2011 advertising campaign as his public persona is a perfect fit for the attitude of the WILD TURKEY brand – bold, yet genuine and uncompromising. The broader advertising campaign also includes sponsorship of Mr Barnes’ band, Cold Chisel’s 2011 concert tour.
- e. Campari considers that Jimmy Barnes is an Australian icon. He has been part of the Australian music industry – both individually and as a member of Cold Chisel for decades. He is a proud member of the Australian community and over the years has made a significant contribution to both the Australian music industry and various national and international community efforts. Some recent examples of his community contributions includes participation in a fundraising concert for the victims of Cyclone Yasi (North Queensland Cyclone Relief Fund 2011) and, along with family, releasing an album “Floodlight” with all proceeds being donated to the recent Queensland Disaster Relief Appeal (supporting those affected in the Queensland floods earlier this year). Mr Barnes is also a UNICEF Ambassador.
- f. Jimmy Barnes is very aware and protective of his status as a role model and his public persona which he uses to contribute to the community. Given the hard work that Mr Barnes has put in to building his career and reputation, he would not participate or endorse any activities which would jeopardise his ability to contribute to our community or encourage irresponsible behaviour by any Australians. Campari considers Mr Barnes an abundantly appropriate role model to use in the Wild Turkey advertising campaign, given the affinity between his persona and the brand’s attitude and his status as an Australian icon and music legend. A reasonable viewer of the TVC would not view the TVC, or Mr Barnes’ appearance in the TVC as promoting, encouraging or portraying excessive consumption of alcohol. Indeed, Campari believes that reasonable people immediately associate Jimmy Barnes with his successful music career and status as a rock music icon and not issues with alcohol.
- g. From concept to final TVC AAPS approval was sought and obtained.
- h. Only one complaint was received in relation to the TVC. In addition, the TVC has been positively received with extensive feedback applauding the TVC for its humour and clever execution. The TVC is intended to be humorous and is centred on a play on the colloquial phrase of “giving the bird”.
- i. The core demographic for the product is men aged in their 30s and 40s.

## **The Panel's View**

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

### ***The Procedural Aspects***

17. 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.
18. 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 advertiser is not contractually bound to follow a panel decision. That said, the advertiser has advised that it supports the ABAC and regularly obtains AAPS approval for its advertising.

### **The Substantive Aspects**

19. The argument of the complainant is that it is entirely inappropriate and irresponsible to feature the Australian rock singer, Jimmy Barnes, in an alcohol advertisement because of his publicly well-known past problems with alcohol addiction. It is argued that his presence in the ad "sends the wrong signals ... implying that he has in fact 'fallen off the wagon'."
20. The advertiser argues at two levels: firstly, that the ad has to be assessed on its nature and content and not through imputing particular attributes or history to Mr Barnes; and secondly, and in a sense in the alternative, that Mr Barnes is well-known for overcoming past alcohol abuse issues and he is a "role model for moderate and responsible consumption of alcohol".
21. The relevant provision of the ABAC provides a combination of a positive requirement for alcohol beverage ads to satisfy, and which will be breached if particular negative depictions or implications are contained in the ad. The positive requirement is that ads must present a mature, balanced and responsible approach to the consumption of alcohol. This standard is not satisfied if an ad encourages excessive consumption or under-age drinking, or promotes offensive behavior or the misuse or abuse of alcohol. Ads must only depict responsible and moderate consumption of alcohol beverages.
22. The complainant does not take issue with the content of the ad, other than its use of Jimmy Barnes. The ad does not show or suggest excessive consumption of alcohol, nor offensive behaviour, although the strapline "Give em the bird" does allude to a rude gesture. In the context of the ad, however, it is not considered that the ad can be fairly said to be promoting offensive behaviour within the meaning of section (a) (iii) of the ABAC.

23. The issue therefore is whether the inclusion of Mr Barnes in the ad of itself means that the ad fails to present a mature, balanced and responsible approach to the consumption of alcohol beverages.
24. In Determination 07/07 and 20/07 of 10 April 2007, the Panel considered a TVC featuring the former Australian cricket player, David Boon. The complainant in that case argued that Mr Boon was well-known as having a history of excessive alcohol consumption and, as a result, it was inappropriate for him to feature in an alcohol ad. The Panel dismissed the complaint, noting:
- The content of the ad itself did not depict excessive consumption and the argument that the ad offended section (a) only had weight if it assumed a viewer automatically associates Mr Boon with heavy alcohol consumption;
  - It was not reasonable to associate Mr Boon with excessive alcohol use, nor would a reasonable viewer take the ad as promoting excessive consumption simply because of Mr Boon's appearance.
25. The Panel concluded in Determination 07/07 and 20/07 that "it would be very difficult to apply the ABAC by going beyond the actual advertisement and attempting to imply a message into the advertisement by the use of a contested opinion as to whether a particular person is associated with a specific view or particular behaviour. Each advertisement has to be taken on its own terms".
26. The Panel believes that it cannot find the ad in breach of section (a) of the code. While Mr Barnes is a well-known musician, the extent it is publicly known about his past history of alcohol problems is uncertain, nor is it possible to assess if the community generally knows he has overcome his alcohol problems. The Panel is obliged to assess ads on what is portrayed within the ad and how a reasonable person would likely view the ad as a whole. On this basis, the content of the ad does not breach section (a). That said, the Panel believes it is highly questionable that Mr Barnes should be featured in an alcohol beverage ad.
27. Accordingly, the complaint is dismissed.

# ABAC

## **ABAC Complaints Panel Determination No: 69/11**

**Confidential Complaint  
Product: Bundaberg Five  
Advertiser: Diageo Australia**

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

8 September 2011

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Bundaberg Five by Diageo Australia (“the Advertiser”) and arises from a complaint received 17 August 2011.

### **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 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 August 2011.
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 was decided within the 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 obtained for this advertisement [10834].

### The Advertisement

9. The complaint refers to a television advertisement. The visual elements of the advertisement are accompanied by a song sung by the barman and backup singers.
10. The advertisement opens with a young man walking into a bar with three friends. He and his friends look bored as do many of the patrons. As he walks to the bar a male voice and backup singers sing "**You're in the club with your homies, bunch of players, blandness all around you, so damn boring, make the call, you want it all, head to the bar, It's not that far, to buy a round, to buy a round, you're generous.**"
11. When the young man reaches the bar, the barman spins around and sings "**But then it hits you, feel it in the air, this ain't you man, you're a maverick...**" "**You want it all, you like it raw, time to get some, time to get some, player, player...**"
12. The bar splits in half and a gleaming white staircase forms and leads down below the bar. The barman and the young man walk down the stairs. The staircase leads them down to a very grand, luminous white bar where there are fountains, men and women all wearing white with gold accessories. As they are walking down the stairs the lyrics continue: "**Ain't no posers drink, It's a players drink, Ain't no boy band drink, it's a manly drink. Ain't no dandy drink! It's a maverick's drink, Ain't no posers drink...**"
13. The young man is guided through the white bar by the barman to a second barman that pours him a drink. As the young man picks up the drink and takes a sip with the encouragement of the barman, the barman sings to him "**Pick up your drink now, so heavy, and take a sip, oh gosh damn**".

14. The barman continues to guide the young man through the bar and points him toward a staircase in the middle of a fountain as he sings **“What’s that you see, that’s a fountain, your tongue is dancing, in your mouth”**.
15. The young man smiles as he and the barman begin to ascend the staircase and the barman and backup singers continue to sing **“You can’t believe it, and you laugh out loud, tastes amazing, problem solved, like algebra... ”**.
16. The Barman and the young man reach the top of the staircase and the platform they are standing on begins to lift to expose a large Bundy 5 bottle that they are standing on as the singing continues **“You got a clear drink, mucho-macho, 5-times filtered, oh-so- trans-lu-so no more blandness, no more blandness for youuuuuuu...”**.
17. The Barman explodes disappearing and being replaced by birds which fly away leaving the young man standing on a large Bottle of Bundy 5 as the bar’s patrons look up at him. The scene is superimposed with either “Clear Character” or “Bundy 5. Get it. Player” depending on the version of the advertisement.
18. The advertisement is available on the Bundy Rum Facebook page and YouTube

### The Complaint

19. The complainant argues that:
  - (a) the advertisement breaches section c of the ABAC by depicting the environment changing substantially in the presence of the Bundaberg Five drink, from a “typically boring bar” to a “world filled with players, gold, fountains and a camel”
  - (b) the advertisement breaches section c (i) by depicting the character filled world of Bundaberg Five with a fantasy-like scene featuring glamorous people drinking Bundaberg Five in an exclusive setting of luxury and extravagance which is only accessible with Bundaberg Five. This is in clear contrast with the first scene that depicts a typically boring bar with tired décor and dull people that does not feature Bundaberg Five. It is clearly the presence of Bundaberg Five that differentiates the two environments. The advertisement clearly depicts the consumption and presence of the Bundaberg Five alcoholic beverage as contributing to personal, social and sexual success.

### The Code

20. The ABAC provides that advertisements for alcohol beverages must-
  - (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.

## Arguments in Favour of the Complaint

21. In favour of the complaint it can be argued that the advertisement breaches section (c)(i) of the ABAC by suggesting that the presence or consumption of Bundaberg Five may create or contribute to a significant change in mood or environment or may be a cause of or contribute to the achievement of success by:
- (a) The bartender introducing the product to the customer and, as a result, moving the environment from “blandness” and “boredom” to excitement and engagement.
  - (b) The lyrics of the song sung by the bartender establishing:
    - The initial bar is bland and dull;
    - The consumption of the product alters this mood by phrases such as:
      - “But then it hits you”
      - “Tastes amazing / problem solved”
      - “No more blandness for you”;
  - (c) The “white bar” scenes, particularly when the bartender and customer ascend the staircase and the pair are elevated upon a bottle of the product, suggesting the product lifts the mood.

## The Advertiser’s Comments

22. The Advertiser responded to the complaint and questions posed by the Panel in relation to the complaint by way of letter received 1 September 2011. The principal points made by the advertiser are as follows:
- (a) **Description of ad:** A guy called Nick and three of his friends (2 guys, 1 girl) walk into a bar. He notices it is filled with guys and girls so dull and grey. They all have limp clear drinks in their hands. Nick walks to the bar, and a male voice sings, as if in his head with backup singers. When Nick reaches the bar, the barman spins around and sings “But then it hits you, feel it in the air, this ain’t you man, you’re a maverick...” “You want it all, you like it raw, time to get some, time to get some, player, player...”. Now the bar splits in half and a gleaming white staircase forms and leads down below the bar. The barman and Nick walk down the stairs. The staircase leads them down to a very grandiose white palace type place. It is very fantastical and other worldly, and everything is luminous white. Three female backup singers appear on the stairs behind them and sing. The world is filled with lots of interesting and odd characters. Nick is guided through this world by the barman and the backup singers, and they sing to him. The second barman pours Nick a drink. As Nick is guided through the world, he sees a staircase. The barman and backup singers continue to sing. The Barman and Nick walk up the staircase and, once they get to the top, the platform they are standing on begins to lift to expose a large Bundaberg Five bottle. The Barman explodes into a cloud of smoke exposing golden birds which fly away.
  - (b) **Overall:** The two settings work as a visual metaphor - the first represents the blandness in lack of choice and the second represents the unique taste character of Bundaberg Five. The bartender is the vehicle for recommending it to the patron and the patron only consumes the product once already in the second environment

- (c) **Advertising pre-approval:** Diageo obtained full and complete clearance for the advertisement from the Alcohol Advertising Pre-Vetting System ("**AAPS**") prior to final production and broadcast of the TVC.
- (d) We note that Diageo complies with the ABAC Code, DSICA Code and Diageo's own internal global marketing code. We consider that the Bundaberg Five rum TVC complied with all aspects of these codes. Our reasoning is set out below.
- (e) **Part 1 section (c):** The transition between the two environments depicted in the advertisement acts as a metaphor. It depicts the difference between not trying something new (through lack of choice or motivation) and the excitement of trying an innovative product, Bundaberg Five. The move into an exciting and engaging setting aims to recreate the taste journey of Bundaberg Five, and not the personal, emotional or physical journey of the consumer following consumption of the product. There is no depiction of the product or of any alcohol consumption prior to the commencement of the environment change, it is therefore highly unlikely that a reasonable person in the target audience would assume a transformation or mood change occurs as a direct result of the product being consumed.
- (f) The song performed by the bartender references two elements:
- the moment of choice - when a consumer is at the bar;
  - the characteristics and taste profile of the product.
- At no point does this song imply that consumption of this product will change the mood of the consumer.
- (g) The song does not say that the initial bar is bland and dull - it says: "in the club with your homies - blandness all around you". Blandness is presented as the internalised feeling of boredom that can come from doing the same thing in the same club over and over again.
- (h) The song itself is an appeal to really think about your drink choice and consider a white spirit with real taste - at no point does the song attribute any mood altering effects to consumption of the product.
- (i) The full lyric "But then it hits you, feel it in the air, this ain't you man, you're a maverick" refers to the moment of inspiration when deciding what drink to order. A reasonable person in the target audience would not assume that this is referencing the effects of consumption of the product, due to the statement "feel it in the air" which is in no way related to the consumption of any alcohol product. The statement "this ain't you man" also speaks to a choice or preference (i.e. which drink to purchase).
- (j) The full lyric "Tastes amazing, problem solved, like algebra" refers to the taste of the product. The problem being solved (like algebra) is in reference to the decision of which drink to choose when ordering at a bar.
- (k) Blandness is presented as the internalised feeling of boredom that can come from doing the same thing in the same environment, in this case ordering the same drink at the same bar. The TVC suggests that with the launch of this new product there is an opportunity for the consumer to break away from this boredom as the Bundaberg Five product provides the consumer with an appropriate alternate choice when selecting a drink in a



bar environment. As such it can be seen that this lyric does not refer to any alteration of mood or environment experienced as a result of consuming the product.

- (l) The product plays no role in elevating the mood as the bartender and customer ascend the staircase - they are simply walking up stairs. At no point during the advertisement do the bartender or customer consume the product, nor does their behaviour change, therefore making it unlikely for a reasonable person in the target audience to relate this 'elevation' to the consumption of the product. There are no other elements to suggest that the product elevates the mood, it is not referenced in the lyrics of the song or the visual creative drama. Furthermore, the elements of the white room scene of the advertisement simply reflect the product cues and characteristics, for example clear and white surroundings relating to the clarity and category of the product and contrasting with the greyed blandness of the original scene.
- (m) **Part 1 section (c) (i):** The Bundaberg Five product is not present in the initial bar scene - so a reasonable person in the target audience would not assume that the product allows "access" to luxury or extravagance. The bartender is the vehicle for moving from one setting to the next, by way of introducing the customer to this new product in a humorous and exaggerated way. The word 'maverick' by definition it means a feral bovine creature that has not been branded and roams the countryside as a free beast. When used colloquially this word means 'independence' - it is not a word commonly associated with success. The word 'maverick' in the context of the advertisement aims to promote trying something new, not being afraid to be different and independent. In the context of this advertisement, these lyrics refer to the customer's desire to have the best product available, a fresh, crisp, clear rum and that it is now available for him to have. The use of the term 'player' in the context of this advertisement is explained below.
- (n) A poser is a widely accepted term for a person who behaves with excessive pretence in a social environment. The term poser is used in the context of the TVC to refer to people who are concerned about what other people perceive of them to the extent that they are hesitant to go out on a limb and try something new. The reference to "player" is intended to refer to an extrovert, maverick and generally someone who is willing to take a chance and try something new. Of course this in turn refers to the fact that the Bundaberg Five product is a new innovation and that it will appeal to people willing to try a new innovation rather than stay with the same old drink choice.

### The Panel's View

- 23. This complaint raises section (c) and (c) (i) of the ABAC. This section essentially is concerned with alcohol advertising suggesting that either the consumption or presence of an alcohol beverage can cause or contribute to a change in mood or environment and imply that alcohol leads to the achievement of success. The key element is that of causation i.e. would a reasonable person take the ad as suggesting that alcohol is a cause or contributor to a change in circumstances or the achievement of success.
- 24. The advertiser argues that the ad is carefully constructed so as to not offend the standard laid down in section (c). Specifically, it is contended:

- While the ad does depict two environments (a bland bar and the exciting white bar) these environments act as a metaphor between the difference of trying or not trying something new;
  - The product is not introduced prior to the commencement of the change in the environment;
  - The song is an appeal to think about your drink choice and does not attribute any mood altering effects to the consumption of the product;
  - The bartender, and not the product, is the vehicle for moving from one setting to the next; and
  - The ad is exaggerated and humorous and would not be taken by a reasonable viewer as suggesting that the product changes a mood or leads to success.
25. The preamble to the ABAC provides that in assessing the consistency of an ad with an ABAC standard the Panel is to have regard to the probable impact of the ad upon a reasonable person taking the content of the ad as a whole. In considering section (c) in previous determinations the Panel has noted that it is a broad provision which deals not only with depictions of alcohol consumption but also with the “presence” of alcohol and circumstances where alcohol “may” create or contribute to a significant change in mood or environment. Alcohol is not to be depicted as “a” cause of the achievement of success. Presumably this means that achieving success might have a number of causes and alcohol is not be depicted as any one of the causes even if it is a secondary reason for the success.
26. The Panel believes that the advertiser’s construction of the ad in which the product plays no part in the change in mood and environment cannot be sustained. The Panel believes that a reasonable person viewing the ad as a whole would take away a message that the presence of the product was a cause of the significant change in mood and environment. In reaching this conclusion, the Panel noted:
- The presence of the product is materially linked to the change in environment;
  - Scenes such as the elevation of the customer and the bartender on the bottle of the product imply the mood lifting characteristics of the product;
  - Song lyrics such as “you can’t believe it, and you laugh out loud, tastes amazing, problem solved...” and “no more blandness, no more blandness for you” imply the consumption of the product is a cause or contributor to success and mood change.
27. Accordingly, the complaint is upheld.

# ABAC

## **ABAC Complaints Panel Determination No: 47/12**

### **Confidential Complaint Product: Canadian Club Advertiser: Beam Global Australia Pty Ltd**

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

14 June 2012

#### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Canadian Club by Beam Global Australia Pty Ltd (“the Advertiser”) and arises from a complaint received 15 May 2012.

#### **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 and Alcohol Guidelines 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 15 May 2012.
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 was decided within the 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 obtained for this advertisement [11429].

### **The Advertisement**

- 9 The television advertisement opens with the top of a beer keg covered in flickering candles, many held in "Golden Brown" beer bottles, a book entitled "Beerble", a bowl of peanuts, a bottle opener and a photograph of a smiling man behind which is a noticeboard with missing persons posters blowing in the wind.
- 10 The camera angle widens and we see that there is a telephone booth next to the noticeboard, and around the keg is another keg on its side on a crate, a crate of empty beer bottles with a dried flower in it, and more burning candles. The posters are blowing in the breeze and the photograph blows off the top of the keg.
- 11 The camera widens again to a street on which there are a number of obese, poorly dressed, drab looking men that all have insect wings on their backs. One man is sitting on the back of a tanker labeled "Ale", one man is walking down the street, one man is sitting on a beer keg and one man is serving another through a "hole in the wall" kebab shop. The street is dirty with piles of kegs and rubbish and the sky is overcast and polluted. Advertising is painted on the walls of a building including "Ultra extra super duper 100% dry Dull Ale", "Down the Brown, Golden Brown" & "Warm Beer". Dull, music begins in the background and is punctuated with groaning and flatulence noises.
- 12 We see a man walking along the street carrying a give way sign over his shoulder. He is wearing a T-shirt that says "I heart beer" and has a grumpy expression and ruddy complexion. As he walks past we see behind him an old sofa, dart board and some kegs on the side of the street and a poster pinned to the wall that says "Keep Beer Fairyland Filthy. Vote Brown" and has a picture of a man with wings wearing a dinner suit holding up a glass of beer and smiling. Liquid is gushing from a pipe out onto the street. The camera then moves to the kebab shop which has rubbish over the counter and on the street that includes empty squashed beer cans and beer bottles and the shop attendant is burning the edge of a kebab with a lighter. A sign "Beer" spins in the breeze.

- 13 We then see three dirty, fat men with wings, one holding a map and one with a camera, staring in awe. We see that they are staring at a large factory with the sign “Brewery”, emitting smoke into the polluted atmosphere. The gates to the brewery are labeled “BF and UB”. They look ecstatic until one of the three men explode in a ball of flame and dust and then they look terrified.
- 14 The scene changes to a bright, clean, upmarket bar full of attractive, well dressed men and women with lounge music in the background. The camera focuses on a man and woman talking and laughing together at the bar as the man holds a bottle of ready to drink Canadian Club Dry and the woman holds a mixed drink in a glass. The camera focuses on the man sipping from his bottle and then placing it down. The voiceover performed by the comedian, John Cleese says “Every time you buy a Canadian Club a beer fairy dies”. The scene changes to a bottle of Canadian Club dry in a mountain snowscape with the text “Over beer?” and the facebook logo with “Canadian Club Australia” as the voiceover continues “Refresh your drink. Canadian Club”.

### **The Complaint**

15. The complainant argues that the advertisement suggests that:
  - (a) men that drink beer are slothful pigs and this is sexist;
  - (b) if you switch to Canadian Club you will be able to talk to women in a bar; and
  - (c) the amount of alcohol in a Canadian Club stubby is the same as in a stubby of beer and a vulnerable or uneducated person may underestimate the alcohol content of that product and drive home, putting themselves and others at risk.

### **The Code**

16. 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...
17. Section (c) of the ABAC provides that advertisements for alcohol beverages must:
  - 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.

### **The Advertiser’s Comments**

18. The Advertiser responded to the complaint and questions posed by the Panel by letter received 29 May 2012. The points made by the Advertiser in relation to the advertisement were:

- a. Beam Australia appreciates the opportunity to comment to the complaint for the consideration of the Panel as part of this process and believe the commercial abides with all parts of the ABAC code.
- b. Canadian Club's tagline Over beer? Is an open question to the consumer which simply asks them if they have considered an alternative to beer. The line Refresh your drink is a direct reference to Canadian Club being a refreshing alternative. Both taglines are part of a strategy designed to differentiate the product from beer. They make no reference to the consumption of alcohol, and as such, do not represent a failure to present a mature, balanced and responsible approach to the consumption of alcohol.
- c. Similar positioning statements are common practice across the advertising industry where consumers are invited to consider one brand or category of brand over another. Eg: the Commonwealth Bank tagline, *Determined to be different*, is not a failure to present a responsible approach to banking, but merely an attempt to position the CBA product in a unique and differentiated space.
- d. Further, there is no reference in the advertisement, either directly or implied, to the ABV (alcohol content) of either Canadian Club or beer. As such, there is no comparison between the two beverages via ABV or suggestion that they be compared on this basis.
- e. Specific to this complaint, we would point out that the Canadian Club & Dry beverage shown in the advert is of comparable ABV to most beers in the Australian market, and is in fact considerably less than that of many premium beers.
- f. There is no content within the advertisement that suggests that consumption of the product contributes to a significant change in mood or environment, or implies that by changing from beer to Canadian Club will result in success with women.
- g. The only consumption of the Canadian Club product takes place within a controlled and licensed establishment, specifically designed to represent a realistic and relevant 'real-world' on-premise environment. The people within the environment remain there and the environment and mood does not change. The main couple are enjoying themselves as many people who visit licensed premises do. They are talking, laughing and carrying themselves in the way of people enjoying a relaxed social occasion. To suggest that they are 'acting in a flirtatious manner' is a very subjective judgement and, we would suggest, a long bow to draw.
- h. The beer fairy world is intended to represent the broader positioning of beer within the context of the advertisement. (i.e.: a boring and predictable drink with friends), supporting the attempt to communicate that the Canadian Club product is a refreshing alternative.. The lack of females within the advertisement does not suggest that they are absent from the beer fairy world in totality, simply that the beer fairy world by definition would be stereotypically male-dominated settings. Reference to beer advertising in Australia in general would support the premise that it tends to represent male-dominated/male exclusive settings.

- i. The two worlds depicted in the advertisement are purposely portrayed as separate ie: there is no cross-over, shown or implied, from one to the other and as such no suggestion that the consumption of Canadian Club contributes to a change of mood or social success.
- j. The pre-vetting approval process enabled us to work closely with ABAC to give us the guidance to ensure the consistency of the advertisement aligns to the prescribed standards of good marketing practice and the ABAC code.
- k. Whilst approval through the pre-vetting process by ABAC does not guarantee preclusion from alternative determinations as a result of consumer complaint, it did ensure Beam conformed to the code “in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole”.
- l. In terms of probable impact it is quite clear that the ‘reasonable person’ would not view Canadian Club as presenting an immature, unbalanced and irresponsible approach to the consumption of alcohol by encouraging people to choose the product over beer or implying that a drink of Canadian Club has the same alcohol content as a stubby of beer and therefore the alcohol content of the product may be underestimated and a person may drive home, putting others and themselves at risk. There is nothing in the advertisement to support this subjective out-take, and an objective analysis of the complaint would acknowledge that the beverage shown in the advert is of comparable ABV to most beers in the Australian market, and is in fact considerably less than that of many premium beers.
- m. Nor would the ‘reasonable person’ believe that the consumption or presence of Canadian Club may create or contribute to a significant change in mood or environment and be a cause of or contribute to social or other success by implying that by changing from beer to Canadian Club will result in success with women.
- n. Therefore this advertisement is clearly not in breach of sections (a) & (c) of the ABAC Code and aligns with the existing approval ruling from the ABAC pre-vetting process.
- o. We are confident that Canadian Club is marketed appropriately and intend to continue responsibly marketing Canadian Club products to consumers above the legal drinking age.

### **The Panel’s View**

- 19. The complaint raises issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issue is that the portrayal of men that drink beer as slothful pigs is sexist. This concern is not so much related to alcohol as a product, but rather reflects the complainant’s opinion that the ad depicts men in a sexist way. This aspect will be dealt with by the ASB and not this determination.
- 20. This determination deals with the ABAC issues and these can be expressed as follows:

- a. Does the ad breach section (a) by failing to present a mature, balanced and responsible approach to the consumption of alcohol by suggesting that a stubby of Canadian Club is a substitute for a stubby of beer (the complainant is particularly concerned that a vulnerable or uneducated person may underestimate the alcohol content of that product and drive home, putting themselves and others at risk); and
  - b. Does the ad breach section (c) (i) of the ABAC by suggesting that the presence or use of the alcohol product may contribute to a significant change in mood and contribute to the achievement of social or sexual success.
21. The complainant's first concern is premised on a Canadian Club stubby having a higher alcohol content than beer and it therefore being irresponsible to suggest that it is a suitable substitute for beer. The Canadian Club & Dry 330ml stubby depicted in the commercial is 4.8% ABV or 1.3 standard drinks. The Australian Government Standard Drinks Guide approximates full strength beer at 4.8% ABV. Therefore while the ABV of a beer will vary depending on the brand, Canadian Club has a comparable alcohol volume to a stubby of full strength beer. The Panel therefore finds that the comparison with beer in the advertisement is reasonable and does not breach section (a) of the ABAC.
22. The complaint also raises section (c) and (c) (i) of the ABAC. This section essentially is concerned with alcohol advertising suggesting that either the consumption or presence of an alcohol beverage can cause or contribute to a change in mood or environment and imply that alcohol leads to the achievement of success. The key element is that of causation i.e. would a reasonable person take the ad as suggesting that alcohol is a cause or contributor to a change in circumstances or the achievement of success.
23. The preamble to the ABAC provides that in assessing the consistency of an ad with an ABAC standard the Panel is to have regard to the probable impact of the ad upon a reasonable person taking the content of the ad as a whole. In considering section (c) in previous determinations the Panel has noted that it is a broad provision which deals not only with depictions of alcohol consumption but also with the "presence" of alcohol and circumstances where alcohol "may" create or contribute to a significant change in mood or environment. Alcohol is not to be depicted as "a" cause of the achievement of success. Presumably this means that achieving success might have a number of causes and alcohol is not to be depicted as any one of the causes even if it is a secondary reason for the success.
24. The ad does depict two very different scenarios and "moods". The first scenario "beer fairy world" is shown as dull, polluted and populated by dirty, poorly dressed and seemingly stupid men. The second scenario is the bright clean bar which is frequented by attractive, well dressed men and women. The issue for the Panel is whether the introduction of Canadian Club has changed the mood and this changed mood contributes to the achievement of social success.
25. The Panel does not believe the ad can be fairly said to breach the Section (c) standard. While the two scenarios reflect a different mood, the entire context of ad clearly establishes that the "beer fairy world" is make believe and a parody of the attributes of beer drinkers. The two scenarios are distinct, with the first not moving into the second. Equally, merely showing attractive people in an alcohol ad is not inconsistent with ABAC standards. What is inconsistent is the suggestion that alcohol is needed for someone to appear attractive. The ad does not make this suggestion.
26. Accordingly, the complaint is dismissed.



# ABAC

## **ABAC Complaints Panel Determination No: 80/10**

**Complaint by Ms Myra Robinson, Public Health Advocacy Institute of WA**  
**Product: Liquor Barons**  
**Advertiser: Liquor Barons**

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

7 January 2011

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Liquor Barons (“the Advertiser”) and arises from a complaint received 9 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 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 9 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. This complaint was decided within the 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. The Advertiser is not a signatory to the ABAC and pre-vetting approval was not obtained for this advertisement.

### **The Advertisement**

9. The complaint refers to a full page print advertisement in The West Australian Newspaper on 24 November 2010.
10. The left side of the advertisement features a photograph of a soldier carrying a gun on his shoulder in desert terrain above the tagline in large text "Bernard keeps his fridges at 0C, because his regulars would kill for an ice cold beer after work."
11. The right side of the advertisement features a small bottle of Crown Lager next to a narrative in smaller text:

"Reckon you had a tough day at work? Spare a thought for [blank] who has just come back from active service in Afghanistan. There, walking through 45C heat, carrying a 50-kilo pack, is the least of your worries.

A tour of duty is no Playstation game. The ability to keep your mental and physical cool can save your life. [Blank] does it by using a clever trick an army shrink taught him years ago. It's called creative visualization. It's pretty simple really – think of something that makes you feel cool and calm (well as calm as you can be in hostile territory).

When [blank] starts feeling the heat he conjures up the icy cold beer that will be waiting for him in the Sergeant's mess when he gets back home. Bernard, who owns Liquor Barons Claremont, supplies the Mess and keeps the beer achingly cold, straddling that delicate line between pleasure and pain. (His fridges are calibrated to stay at 0C no matter how hot the day.) [Blank] can just about taste the freezing amber fluid sliding down his throat; which is a bonus because he's often forced to go months without a real one.

For [blank] that first step back onto Australian soil is cause for celebration. There will be beers a plenty in the Mess. But the night he really looks forward to is the

Regimental Dinner. It's a chance to let your hair down (what little of it the army lets you keep) with brothers who understand exactly what you've been through.

Once again Bernard will be hard at work behind the scenes. He considers it an absolute privilege to be able to serve Australia's bravest men and will make deliveries through the night to ensure their events don't run dry.

While Bernard could tell you a story or two about these nights, he'd probably be court-martialled. He can reveal however, that our fiercest warriors have something in common with little old ladies. They're partial to a tippie of sherry and port after their meal. It appears even tough guys have a sweet spot.

If you're planning a killer party of your own, your local Liquor Barons can organise everything for you with military precision. In addition to making sure you have the perfect mix of beer, wine and spirits, they'll supply and deliver ice, tubs and glasses free of charge (you only pay for the casualties). Afterwards they'll come back and take away your empties, as well as give you a refund on any unopened bottles so long as they're in good condition.

We may be called Barons, but we are here to serve. We'll track down the obscure, co-ordinate the logistics for any sized event and reward you for your loyalty with a Liquor Barons card.

We aren't some big eastern states chain or soulless franchise; we are a co-operative of independent stores that fight tooth and nail to secure you great prices."

12. At the bottom of the narrative is the Liquor Barons logo.

### **The Complaint**

13. The complainant argues that:

- (a) The advertisement breaches section (a) by encouraging excessive alcohol consumption through the statements: "For [blank], the first step back on Australian soil is a cause for celebration. There will be beers aplenty in the mess." This implies the supply of beer at the celebration will be unlimited and excessive.
- (b) The advertisement breaches section (c) by suggesting the stress of working in heat is reduced by imagining drinking beer and that being forced to go without a beer is a stressful situation

### **The Code**

14. 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;
15. The ABAC provides at Section (c) that advertisements for alcohol beverages must:

- 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 –
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

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

16. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 24 December 2010. The points made by the Advertiser in relation to the advertisements were:
  - (a) While Liquor Barons is a liquor retailer, as distinct to a wholesaler or manufacturer, and is therefore not a signatory to the ABAC Scheme, we do endeavour to sell alcohol responsibly and consequently agree to abide by the findings of the adjudication panel.
  - (b) In our view, the first part of the complaint deals with the copy where we have described a soldier thinking about beer. We believe a reasonable person would not indeed imply that mentally visualising a beer is mood altering in a way associated with alcohol consumption. We have clearly stated that the soldier is conjuring up a beer for its physical property of coolness, rather than it's alcohol content and the effects of inebriation. This is reiterated in both the headline and body copy where we specifically refer to the Liquor Barons' fridges being set to 0° Celsius. We also point out that even after imagining the beer the soldier still stays at a high level of alertness, as he is on patrol in very dangerous surrounds. We further point out that the soldier will willingly go without alcohol for several months at a time.
  - (c) However, on reflection, we accept that where we could have been more responsible is in the use of language like "beers aplenty" and "never run dry". As this advertisement was based on a true story, we were trying to accurately relay our customers' experiences. This advertisement was only ever intended to run once. In the unlikely event it runs again, we will edit the above phrases and remove all reference to excessive alcohol consumption.
  - (d) In all future advertising and communications we will seek to abide by the ABAC Scheme guidelines.
17. Both the Advertiser and Fosters Group advised that despite a Foster's product, Crown Lager, being featured in the advertisement, Fosters Group did not have any involvement in the advertisement, financial or otherwise.

### **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 in enabling the determination to be made and has agreed to abide by the Panel's findings.

*The Substantive Aspects*

21. The first issue raised in the complaint is whether the advertisement breaches sections (a), (a)(i) and (iii) of the ABAC by failing to present a mature, balanced and responsible approach to the consumption of alcohol beverages and/or promoting or encouraging excessive consumption.
22. The complainant refers to the statement in the advertisement "For [blank] the first step back onto Australian soil is cause for celebration. There will be beers a plenty in the Mess" as implying that the supply of beer at the celebration will be excessive and unlimited.
23. The Advertiser advised that they were accurately relaying a customers' experience but would not use the language complained about in future.
24. The Panel believes that a reasonable reader of the ad would take that the language:
- "There will be beers a plenty in the Mess";
  - "the Regimental Dinner. It's a chance to let your hair down..."; and,
  - "make deliveries through the night to ensure their events don't run dry".

collectively suggests that excessive alcohol consumption occurs and is encouraged to occur. This breaches sections (a) (i) and (iii) of the Code.

25. The second issue is whether the advertisement breaches section (c), (c)(ii) & (c)(iii) of the ABAC by:
- (a) suggesting that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment;

- (b) depicting alcohol beverages as part of a celebration and implying or suggesting that the beverage was a cause of or contributed to success or achievement; and
  - (c) suggesting that the consumption of alcohol beverages offers a therapeutic benefit.
- 26. The concern arises from the language in the ad involving the “visualisation” of drinking a cold beer and the later statements around the celebration of the soldiers return to Australia involving alcohol use. The advertiser refutes that a reasonable person would take the text in the way argued by the complainant.
- 27. The essential part about the section (c) standard is the prohibition on the implication that alcohol is a cause or contributor to success or that it is needed for a celebration or that it is an aid to relaxation or has other therapeutic benefits. In assessing if the standard is breached, the Panel has regard to the content of the ad as a whole and how a ‘reasonable person’ would likely be impacted by the ad.
- 28. In this case, the Panel believes that the advertisement makes clear that the celebration which takes place upon the soldier’s return to Australia is not caused by alcohol but by the return home – “the first step back onto Australian soil is the cause for celebration.” In this regard, the Panel finds the ad does not breach section (c). The Panel believes, however, that the ad does suggest that alcohol is a contributor to the soldier remaining cool and calm in the heat of service in Afghanistan and this suggestion is inconsistent with and a breach of the section (c) standard.
- 29. Accordingly, the complaint is upheld in relation to sections (a) (i), (a) (iii), and section (c) as discussed above.
- 30. The Panel acknowledges that the advertiser has fully co-operated with the ABAC process and has confirmed that it will not run the ad again. It is strongly recommended that the advertiser take advantage of the ABAC pre-vetting service to assist it in ensuring future advertisements meet standards of good practice.

# **ABAC**

**ABAC Complaints Panel  
Determination No: 66/07**

## **CONFIDENTIAL COMPLAINT**

**Product: Tooheys New  
Advertiser: Lion Nathan**

Professor The Hon Michael Lavarch – Chief Adjudicator  
Professor Richard Mattick - Member  
Professor Elizabeth Dangar - Member

25 October 2007

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a complaint about a television advertisement for the alcohol beverage “Tooheys New” by Lion Nathan (“The Advertiser”).

### **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 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 dated 22 August 2007 which was received by the ABAC Adjudication Panel on 23 August 2007.
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. Advertisers are required to respond to questions to answer within 10 days. In this case the Advertiser's response was received 12 days late. Accordingly, this complaint has been determined outside 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 granted to the advertisement (UN37/07).

### **The Advertisement**

9. The complaint refers to a television advertisement.
10. The advertisement features a street party with a range of people and brightly coloured inflatable "tallmen" which dance in a synchronised dance routine to the soundtrack of Tom Jones's "Just Help Yourself".
11. A Toohey's New truck drives down the street and the operators of the "tallmen" push them into position to surround the truck, where they continue to dance, then bend over and rise up clutching Toohey's New beer.
12. Men climb into the truck and unload kegs of beer, watched by the Toohey's New stag.
13. Beer is poured from the kegs and the people in the street drink and dance.
14. The final scene is a giant inflatable glass of Toohey's New which is inflated on the front lawn. The ad concludes with the strap line "For the love of beer".

### **The Complaint**

15. The complainant makes three (3) arguments, namely:
  - That the advertisement suggests that the consumption or presence of alcohol changes the mood depicted from happy to euphoric
  - That the product is portrayed as an aid to being socially accepted, and



- That the ad will be a “trigger” for persons with an addiction to alcohol and it fails to warn of the potential harm of alcohol consumption.

## **The ABAC**

16. The ABAC provides that advertisements for alcohol beverages must:
- 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;
    - ii. if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement;...

## **Argument in Favour of the Complaint**

17. It might be argued that the advertisement is in breach of section (c)(i) & (ii) of the ABAC by depicting:
- (a) a significant mood change from happy to euphoric after the arrival of the beer truck;
  - (b) an innocent, family oriented street party changing to pandemonium with people singing and dancing in the street after the arrival of the Toohey's New Truck;
  - (c) large inflatable rubber men being erected to welcome the beer truck; and
  - (d) people clamouring to applaud the man delivering the beer;
- therefore suggesting that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment. It further suggests that the product is an aid to being socially accepted.

## **The Advertiser's Comments**

18. The Advertiser responded to the complaint by way of letter dated 25 September 2007. The Advertiser has advised that:
- (a) at the commencement of the ad, a spinning record label indicates the cause of the celebration is New Year, indicating it is a 'Monster New Year Street Party'. The party mood is consistent throughout the ad. There are cheers from the crowd well before the truck arrives in the street and there is very clearly a constant and continuous party atmosphere throughout the ad.
  - (b) Even if you wrongly accept that the atmosphere in the ad is solely a product of the arrival of the Toohey's New Truck, there is nothing in the Code that requires that an advertiser cannot place their brand on a pedestal. Taking the complainant's argument to its logical conclusion an ad would not be able to depict someone entering a pub and expressing pleasure at the availability of their favourite beer or wine brand. To do so would not “conflict(s) with nor detract(s) from the need for responsibility and moderation in liquor

merchandising and consumption, (or) encourage consumption by underage persons” as outlined in the pre-amble which governs how the Code should be interpreted. There is nothing in the ad that suggests that other beverage types and brands are not available prior to the arrival of the Toohey’s New truck – it is very clearly a Tooheys New Truck with very obvious livery to that effect. A reasonable person would interpret that any sentiment displayed relates to the brand, not to the substance of alcohol.

### **The Panel’s View**

19. The complainant raises three (3) issues which will be addressed in turn. The first and major issue turns on the standard established in section (c) of the ABAC. This standard deals with the relationship between the presence and/or consumption of alcohol and the mood or environment with which the alcohol beverage is associated. In simple terms, an advertisement should not depict that alcohol contributes to a significant change in mood, such as being the cause of the achievement of success. The key concept is whether the ad suggests a causal relationship between alcohol and success and a significant change in mood.
20. The Preamble to the ABAC provides guidance in assessing ads against the Code standards with regard to be had to:
  - The probable impact of the ad upon a reasonable person; and
  - The content of the ad as a whole.
21. The Panel has made a number of determinations dealing with section (c). Each of these decisions turns on its own terms and requires an individual assessment of the ad against the ABAC standard. This same assessment has to be undertaken in this case.
22. The complainant contends that the arrival of the product changes the mood of the street party from happy to euphoric; and further, that the product is portrayed as an aid to being socially accepted. The advertiser rejects this interpretation and argues that the mood of the ad, namely as a New Year’s street party, was established before the introduction of the product and that this mood was not altered by the arrival of the product. In the alternative, it is argued that if the mood did alter with the arrival of the product, then it was because of issues of brand recognition and “not the substance of alcohol”.
23. It can be accepted that the ad does set its “party” mood from the beginning and that a celebration was underway prior to the introduction of the truck carrying the product. The issue is whether the introduction of the product created or contributed to a significant change in mood. The complainant argues that the presence of the product did cause a change from happy to euphoric.
24. The arrival of the truck carrying the product is the trigger for the rather fanciful “truck-jacking” by party-goers using the tallman inflatable figures. Upon some kegs of the product being liberated from the truck, a large cheer is heard; and the ad features more scenes of people dancing, and somewhat less of the tallman figures. It is arguable that the party becomes more “active” upon the introduction of the product, but is more difficult to confidently conclude that a “significant” change in mood has occurred, as contended by the complainant.

25. On balance, the Panel believes the ad does not breach the ABAC in terms of its depiction of alcohol contributing to a change in mood. Further, the Panel does not believe the product is depicted as a cause of the street party celebration.
26. The complainant secondly raises whether the ad suggests that the product is an aid to being socially accepted. The Panel does not believe the ad can be said to breach this standard as it depicts a party and social interaction occurring before the introduction of the product and this interaction is not significantly altered by the presence or consumption of the product.
27. Finally, the complainant notes that the ad is a “trigger” for alcohol-dependent persons and it should be accompanied with a warning about the potential harm of alcohol and a message to use the product responsibly. While the Panel acknowledges the points made, the ABAC does not require a “drink responsibly” message to be included in advertisements.
28. Accordingly, the complaint is dismissed.

# ABAC

## **ABAC Complaints Panel Determination No: 41/10, 47/10, 48/10 & 50/10**

**Complaints by Ms Maggie Korneblium and confidential complainants**

**Product: VB Beer**

**Advertiser: Fosters Group**

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

28 October 2010

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a series of television advertisements for VB Beer by Fosters Group (“the Advertiser”) and arises from a complaint received 7 September 2010, two complaints received 24 September 2010 and a complaint received 5 October 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 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 complaints raise concerns under the ABAC and accordingly are within the Panel's jurisdiction.

### **The Complaint Timeline**

6. The first complaint was received by ABAC on 7 September 2010, the second and third complaints were received on 24 September 2010 and the fourth complaint was received on 5 October 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. Given that the complaints all related to the same advertising campaign, it was decided to produce a composite determination. As a result the first complaint has been decided outside of 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 obtained for these advertisements [10323].

### **The Advertisement**

9. The complaints refer to a series of television advertisement which consist of various compilations of several different scenarios displayed against the backdrop of the musical score "Hello Again" by Neil Diamond. The scenarios are:
  - A man with cocktails in a hotel bar (cocktails)
  - A man with a doctor apparently considering plastic surgery (doctor's surgery)
  - A man in a gym on an exercise bike (gym)
  - A man at a backyard BBQ using hand-cream (BBQ)
  - A man trying to put on skinny jeans (jeans)
  - A man styling his hair in front of a mirror (mirror)
  - A man with a strange handshake (handshake)
  - A man in a spray tan booth (spray tan).
10. In each scenario the male principal character is behaving in a particular way which he comes to realise does not reflect his real character. The main character's realisation is shown as a generally emotional experience and in this emotional state he is supported by one or two male "mates".

11. In the cocktails scenario, the principal character is shown in a hotel bar walking towards two male friends and one female friend carrying two large and elaborately decorated cocktails. His friends are both holding stubbies of beer. When he approaches the men, they look at the cocktails in a surprised and slightly disapproving manner and the main character also views the cocktails and appears to realise that his choice of drink is inappropriate. He becomes emotional and falls to his knees while being supported by his two mates. The main character is next seen still kneeling and drinking from a VB stubby as he calms down. His two friends exchange smiles as he does this. The 15 second advertisement ends prior to the man falling to his knees.
12. The doctor's surgery scenario opens with the principal male character standing topless in front of a doctor who is marking his chest with a pen to show where the incisions for the plastic surgery will occur. The next scene shows two men apparently outside the doctor's surgery hitting on the door and yelling. The principal character is shown slowly turning around towards the door with the realisation showing on his face that possibly he is doing the wrong thing. We next see the principal character being held on either side by his two friends in the surgery. He is in an emotional state, while his friends appear pleased that he has "come to his senses".
13. The gym scenario features a man on an exercise bike wearing bright orange lycra riding clothes, including a racing helmet. He is shown taking a drink from his water bottle. The scene then moves to show his two friends outside the glass walls of the gym tapping on the glass, endeavouring to attract the bike rider's attention. Both men have expressions of disbelief as they watch their friend on the bike. The rider removes his sunglasses to acknowledge his friends and, as in the other scenarios, he appears to realise that his behaviour is not reflecting his true self. The 30 second advertisement including this scenario ends here. In the 60 and 90 second advertisements the rider is then shown in a highly emotional state on the bike.
14. In the BBQ scenario, a man is shown sitting on a ledge in a backyard with a number of people in the background standing, talking and drinking. The man is applying hand-cream from a small tube to each hand. He is then joined by another man who sits next to him. This second man is carrying two stubbies of VB. They exchange friendly glances as the second man hands to the principal character one of the stubbies. The main character opens the stubby but, in doing so, the bottle slips from his hand and drops to the ground. The man then looks at his hands and begins to appear upset at what has happened. The 30 and 15 second advertisements incorporating this scenario end here. In the 60 and 90 second advertisements he is then seen in a highly emotional state and is comforted by his friend. The 60 second version ends here. In the 90 second version he is seen in the company of two men as he drinks from another stubby of the product. He is calming down as he drinks and his companions look approvingly as he also has "seen the light" and rediscovered his true character.
15. The jeans scenario depicts a man sitting on the edge of a bed in a messy room trying to pull on tight jeans.
16. The mirror scenario features a man looking approvingly at himself in the mirror as he styles his hair and two men walk up behind him.
17. The handshake scenario opens with a man receiving a stubby of VB from the bartender and then turning to greet another man. The friends shake hands but the second man continues to carry out an elaborate and lengthy handshake as the first man looks at him strangely. The first man is then seen stopping the handshake and holding the second man's hand still as he looks down at his hand. In the next

scene we see the second man in a highly emotional state holding on to the first man for support who holds him up and pats him on the back.

18. The spray tan scenario shows a man in a shower cap in a spray tan booth looking down at his hands with a slightly bewildered expression.
19. The final scene in all except the 15 second advertisements shows a VB stubby being placed down on a coaster as the text “the real beer” and an “Enjoy Responsibly” message are superimposed on the screen. The text then changes to the VB logo above the word “real”. The 15 second advertisements only superimpose the VB logo and the text ‘real’ over the final scene.

## **The Complaint**

20. The first complaint relates to a 60-second advertisement containing the scenarios:

- Cocktails
- Doctor’s surgery
- Gym
- Mirror.

The complainant argues that:

- (a) the ad is homophobic and transphobic; and
- (b) the depiction of beer as a cure for men who behave in a metro/trans/homosexual manner is irresponsible as alcohol is commonly present at “interventions” that go out of control and end in tragedy.

21. The second complaint relates to the same ad as the first complaint and a second 60-second advertisement containing the scenarios:

- Handshake
- Cocktail
- BBQ
- Spray Tan.

The complainant argues that:

- (a) the ad is discriminatory toward males; and
- (b) the suggestion that males are not men if they don’t drink VB and the depiction of males going out of their way to get their mates to drink VB and make them what they consider to be normal is inappropriate.

22. The third complaint does not specify the particular ad, but it appears it could have been ads containing the scenarios in the first two complaints, as well as the Jeans scenario.

The complainant argues that:

- (a) the ad is politically incorrect in its portrayal of “homosexual” and possibly a disabled man; and
- (b) the suggestion that only “real” men drink VB and the breaking into tears over a VB because their mates make fun of them for not being “normal” is inappropriate.

23. The fourth complaint relates to the 90-second ad featuring the scenarios:

- Handshake
- Cocktails
- Doctor’s surgery
- BBQ
- Gym
- Spray tan.

The complainant argues that the ad implies that by consuming the alcohol the embarrassment /upset of the man using moisturizer and dropping his bottle of VB would be removed or lessened. It appeared to imply that the use of alcohol is helpful to overcome emotional distress and/or social awkwardness in breach of section (c) (iii) of the ABAC.

#### **The Code**

24. 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.....
25. The ABAC provides at Section (c) that advertisements for alcohol beverages must:
- d) 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;
    - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

#### **The Advertiser’s Comments**

26. The Advertiser responded to the first complaint and questions posed by the Panel by letter dated 17 September 2010. The points made by the Advertiser in relation to the advertisements were:
- (a) It was never our intention for the scenarios presented in the TV commercial to represent stereotypical homosexual or transsexual behaviours. Rather, the advertisements were based on broad population research commissioned by Carlton & United Breweries on ‘superficiality’. The



commercial you refer to sits as part of a broader campaign that focuses on this societal trend and is based on various insights including specific research that demonstrated people are increasingly presenting an image that is not perhaps true to who they are and they often expend a lot of energy in manufacturing this façade which is at its most prevalent amongst current celebrity pop-culture and many of the role models we often see amongst film or sporting stars. The commercial brings this to life with much humour and some highly tongue in cheek and exaggerated scenarios. The scenarios presented – buying expensive cocktails, long drawn out and overcomplicated handshakes, doing a spin class in full Lycra, putting product in your hair and getting a fake tan - are representative of the diversity of behaviour in the broader community and do not reference any one group. Our view is that the characters and scenarios are far removed from the stereotypical and one dimensional depiction of gay men, which are often very camp or sexualised. Our lead characters are encouraged by their friends to cease their behaviour because they are being superficial. This is a universal theme that we have brought to life in a series of diverse and entertaining ways. As evidence that there is no existing bias, in 2011 VB will be the official beer of Australia's largest celebration of gay and lesbian culture in the Sydney Mardi Gras. The team here believes VB is most definitely a beer for everyone, which is supported by the fact that VB is the largest selling beer in Australia and one of the most popular in every state and territory. In fact, after decades of very traditional male advertising, VB has included women, high profile gay men and a far broader cross section of the community in recent major advertising campaigns ("VB Regulars" - see vb.com.au). Additionally, in the development of this campaign we did extensive research around the country with hundreds of Australians across various age and demographic backgrounds. The research conducted on this campaign demonstrated that viewers 'got' the intended meaning of the ads and no-one raised any of the themes that have been flagged in these complaints. Research commissioned by Leading Edge articulated the most common outtake as "Stay true to yourself" and "not pretending to be something you are not". People understood that these are light-hearted commercials that show mates helping mates regardless of whether they are doing spin classes in lycra or spending a bit too much time in front of the mirror. I think it's also important to point out that whilst the plastic surgery office scene may have been incorrectly labelled as depicting male to female (MTF) surgery, it is in fact showing a male who is having a consultation to enhance his six pack/pec muscles – you can tell from the fact that his trousers are on and he has texta markings on his abdomen and chest. People have surgery for all kinds of reasons including vanity and men are no exception, in fact men are increasingly having cosmetic surgery procedures such as pectoral muscle implants and calf muscle implants, purely for aesthetic reasons. We don't believe the average viewer would view this scene and make the association re: MTF surgery.

- (b) In relation to section (a) we believe the commercial is compliant. There is a minimal focus on alcohol consumption and all characters are sober, alert and enjoying a quiet, social drink with friends. I think it's a tenuous link to draw regarding a connection with "'interventions' that go out of control and end in tragedy". None of the scenarios end this way nor are they situations that could be classed as 'interventions' in the way that the complainant is perhaps referring to (those that involve drug and alcohol addicted behaviour). Additionally, there is certainly no "tragedy". In fact it's quite the opposite as we see mates helping their friends regardless of the situation they've found themselves in.

- (c) In relation to section (c) we also believe the commercial is compliant with this section of the code. The advertisement clearly does not depict that VB is a cure or offers a therapeutic benefit. No alcohol is consumed before or at the time of each lead character's self realisation. In fact, many of these scenes do not have any alcohol present (for example the spray tan booth, cosmetic surgery office and spin class). The moments of exaggerated realisation are very clearly prompted by the character's male friends – sometimes through a simple look or by pounding on a door or encouraging them to shake hands the old fashioned way. The mates come across as sometimes bemused or surprised but always supportive and there for their friend. The only consumption shown is at the very end where two blokes are comforting a friend and enjoying a beer and this is well after the moment that the actors have 'realised' their moment of superficiality. This is what I think the reasonable person's outtake would be – not that the beer has 'cured' him. And in terms of the Real tagline at the end it encapsulates what VB is all about – not fancy or expensive but just a great tasting beer. I believe it's also unreasonable to imply the tagline infers that if you drink the beer it transforms you into a real man or that this would be the general outtake from watching the commercial. As additional context, VB has been using the "Real" tagline in various forms across several media channels over the last 2 years.

27. The Advertiser responded to the second, third and fourth complaints and an additional question posed by the Panel by letter dated 7 October 2010. The points made by the Advertiser in relation to the advertisements were:

- (a) The campaign went to air on September 7 and in a three week period has been viewed by more than six million Australians. With only four complaints raised through the ABAC complaints process we are confident that the campaign is resonating with the Australian public and that the (four) complainants' views are not representative of the general community or the average person's take out.
- (b) VB is more than 150 years old as a beer brand. It is Australia's largest selling and most popular beer and has been for more than 20 years. The VB brand is built upon a very long and powerful tradition of reward for effort, made famous by advertising that featured lines such as "hard earned thirst" and "best cold beer". This is still true, and it's a fundamental part of this current advertising. The VB advertisements were inspired by broad population research commissioned by Carlton & United Breweries on 'superficiality'. This increasing superficiality is most often evidenced as heightened vanity and puffery. This research was subsequently made public at a series of forums hosted by Australia's leading demographer, Bernard Salt and received broad exposure across television, print and radio. The advertisements focus on this societal trend and are based on insights including the fact that people are increasingly presenting an image that is not perhaps true to who they are and they often expend a lot of energy in manufacturing this façade which is at its most prevalent amongst current celebrity pop-culture and many of the role models we often see amongst film or sporting stars. It was also found to be particularly obvious in mediums like Facebook, where for instance, the average person spends over two hours selecting their profile picture. The VB team invested in national research on the consumer reaction to the advertisements and hundreds of Australians across various age and demographic backgrounds shared their views. The research demonstrated that viewers 'got' the intended meaning of the

advertisements and no-one raised any of the themes that have been flagged in these complaints. It was clearly understood that the hero's mates initiate the 'moment of realisation' that then leads to some exaggerated emotional responses and then VB is sometimes, but not always, enjoyed as the mates have a beer together. Some verbatim quotes from the research include; "The story is mates saving blokes who have become fake...and they all enjoy a VB when they're back to being real again"; "It's saying just be yourself...and don't take things too seriously"; "We all have mates like that...and you have to bring them back into line...it's your duty as a real mate".

- (c) Specifically in relation to section (c) I believe the commercial is compliant. The advertisement, when viewed in its entirety and by the reasonable viewer, clearly does not imply that VB plays a role as a cure, that it offers a therapeutic benefit or significantly changes the mood or environment. No alcohol is consumed before or at the time of each lead character's self realisation. The majority of the scenes (in the 2 x 60 second and 90 second advertisement) does not have any alcohol present including the spray tan booth, hair preening, cosmetic surgery office and spin class. These scenes make up the bulk of the commercials. The two scenes – the flute glasses and man's beer slipping through his fingers because he just moisturised his hands – where consumption does take place are at the conclusion of the 'moment of realisation' and as such the characters have already had their emotional response. This is what I think the reasonable person's outtake would be upon watching the advertisements in their entirety (and what our research supports) – not that the beer has made him 'real' or played a role in the change in mood. The moments of exaggerated realisation are very clearly prompted by the character's male friends – sometimes through a simple look or by pounding on a door or encouraging them to shake hands the old fashioned way. The mates come across as sometimes bemused or surprised but always supportive and there for their friend. In these commercials, in every single scene without exception, we see the following construct in chronological order; hero character demonstrating common superficial behaviours; intervention by hero's mates; stark moment of realisation as the hero realises he has gone too far with his superficial behaviour; and finally, he's supported by his mates and in selected scenes only, enjoys a VB with his mates. Given this order of events, I'd also argue that a simple but important test further demonstrates that the advertisements are compliant with section (c) as all the scenarios or more specifically the changes to the character's demeanor would play out in the exact same way if you removed VB from all the scenes. This is due to the fact that the moment of realisation, which is then followed by the exaggerated emotional response, very clearly happens because each character's mate stepped in and called them on their behaviour and subsequently is acknowledged by our hero. VB is NEVER shown as a key contributor or trigger; instead its role is incidental. In the final scenes we either see our hero being supported by their friends (by being carried out of the plastic surgery office or with a hug) or enjoying a quiet beer together. And in terms of the Real tagline at the end it encapsulates what VB is all about – not fancy or expensive but just a great tasting beer. I believe it's also unreasonable to imply the tagline infers that if you drink the beer it transforms you into a real man or that this would be the general outtake from watching the commercial. As additional context, VB has been using the "Real"

tagline in various forms across several media channels over the last 2 years.

- (d) Overall, these advertisements have a very low level of beer shown throughout relative to the vast majority of other alcohol advertisements. As discussed earlier, consumption of VB features prominently in only two scenes in these 60 second television advertisements and its 'presence' insofar as stubbies or cans being visible (but not consumed) or as VB branding is minimal. There are a range of emotions expressed by our heroes in the four advertisements identified by the complainants (with the exception of the skinny jeans advertisement) but I believe it's made abundantly clear that these are triggered by the fact their mates stepped in and let our 'hero' know that he wasn't being true to himself. This then leads to a range of exaggerated emotional responses, that for a couple of characters in the final scenes changes to what could be described as relief or calmness – a relief that comes from a return to being yourself without any pretence and having your mates by your side.
- (e) In relation to the reference to the skinny jeans 15 second commercial made by one complainant who believes the ad depicts a person who has a disability, that was not our intention but we're confident that given the scenario, actor, early research findings and consumer feedback that this outtake would not be held by the vast majority of viewers. This advertisement brings to life another superficial trend where blokes feel compelled to wear fashion they perhaps shouldn't. This short advertisement shows a bloke struggling to get his super skinny jeans and very tight jeans past his calf muscles – something many men could relate to as skinny jeans only suit a small number of the male population although many attempt to wear them regardless.

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

- 28. The complaints raise issues under both the AANA Code of Ethics and the ABAC. The Code of Ethics issues go to discrimination on the basis of gender or sexual preference. As explained earlier, Code of Ethics matters are determined by the ASB and this determination will not deal with these concerns.
- 29. Rather, this determination deals with that part of the complaints which argue that:
  - (a) alcohol beverages should not be advertised in a manner which suggests that it is responsible to use them within an "intervention" to help "cure" a person from being a homosexual or a metrosexual. This concern by the first complainant brings into play sections (a) and (c) of the ABAC; and
  - (b) the consumption or presence of VB changes the mood or environment, transforms the male characters into "normal" or "real" men and helps them overcome emotional distress and/or social awkwardness. This concern by each of the complainants brings into play sections (c) (i) & (iii) of the ABAC.
- 30. Given the relative complexity of the multiple versions of the ad and the range of complaints, it is proposed to examine each scenario in turn against the ABAC provisions raised by the complaints, namely section (a) and Section (c) (i) and (iii). In applying the Code standards, the Panel is advised by the Code preamble to assess the ad as a whole and to take into account the probable impact of the ad

upon a reasonable person. This is important as, though each scenario is described in full in the determination for ease and understanding, the actual ads comprise snippets of each scenario interwoven, rather than as a whole scenario being shown in full before moving to the next scenario. The ads as shown need to be assessed.

### **The Cocktail**

31. This scenario involves a man in a bar who purchases two elaborately decorated cocktails for himself and a female companion. He approaches two male friends, exchanges glances, becomes emotional and drops to his knees. He is comforted by his mates and calms down while drinking from a stubby of VB.
32. The Panel does not believe the scenario or the ads in which it is incorporated breach section (a) of the Code. The ad does not suggest excessive consumption or an irresponsible approach to consumption.
33. Section (c) of the ABAC provides that an ad must not suggest the consumption or presence of alcohol beverages may create or contribute to a significant change in mood and must not depict the consumption or presence of alcohol as a cause or contributor to the achievement of success or that consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. Each of the complaints and the fourth complainant specifically refer to the change in mood depicted in the ads and the impact of alcohol as a means to overcome emotional distress.
34. The advertiser's argument on this point is as follows:
  - No alcohol is consumed before or at the time of each lead character's self-realisation
  - Self-realisation is prompted by the lead character's male friends – by a look or gesture – and not alcohol
  - Alcohol only enters the scene after the change in mood and alcohol is not depicted as the cause or contributor to the change in mood and the character's demeanor
  - The mood changes would play out in the same manner without any depiction of the alcohol product
  - VB is never shown as a key contributor or trigger: instead its role is incidental.
35. Section (c) of the ABAC is expressed in expansive terms and has been considered by the Panel in previous determinations. From these decisions it can be noted:
  - The section focuses on the casual relationship between alcohol use and a change in mood, achievement of success or gaining of a therapeutic benefit
  - The section does not prohibit the "association" of alcohol with success with the key assessment as to a causal relationship between alcohol and success.
  - Alcohol is not to be suggested as a cause or contributor to the change in mood or achievement of success. This is wider than alcohol use being portrayed as the only or sole cause of the change in mood or achievement of success.

- The section also refers not only to consumption, but includes the presence of alcohol.
36. There are several aspects of the scenario which bring section (c) (i) and (iii) into consideration. These are:
- Is the lead character's move into an upset self-realisation mood caused or contributed by the presence or consumption of alcohol?
  - Is the lead character's mood adjusting from upset to calm caused or contributed by the presence or consumption of alcohol?
  - Does the consumption of the alcohol product in the final scene of the scenario suggest the product has a therapeutic value?
37. The Panel accepts the advertiser's argument that the initial change in the lead character's mood is caused by "self-realisation" and not the presence or consumption of alcohol. At this point of the ad, alcohol is present but is not shown as having been consumed by the lead character. Equally the context of the ad as a whole at this point establishes that each lead character is brought into self-reflection by the intervention of their "mates" and alcohol is not suggested as a cause of or contributor to this moment of self-reflection.
38. The Panel believes however that the ads containing the cocktail scenario do breach section (c) (i) in so far as alcohol use is depicted in the scene where the lead character is shown in an emotional state, which then moves to a calm state. Here the man is shown drinking the product and a reasonable person would take from the ad that alcohol use was a contributor to the man's mood changing from upset to calm. While the principal reason for the change in mood might be the emotional support offered by the lead character's two mates, alcohol is shown as a part of the men lending support. The advertiser itself argues that VB is "never shown as a key contributor" but in an "incidental" role; however, showing any causation role for alcohol influencing mood is not permitted by section (c) (i).
39. The fourth complainant also raises section (c) (iii) of the Code. This provision provides that an advertisement must not suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. The Panel does not believe the ads would be taken by a reasonable person that alcohol is suggested as a "cure" for problems or causes the moments of self-reflection. But the same scene when alcohol use is shown while the lead character calms himself could be seen as suggesting that alcohol is an aid in achieving relaxation and emotional stability. For this reason, the Panel believes the final scene of the "cocktail" scenario breaches section (c) (iii) of the Code.

### **Doctor's Surgery**

40. This scenario is set in a doctor's surgery and involves a man apparently discussing forthcoming plastic surgery. Two male friends intervene to help "bring him to his senses". No alcohol is shown within this specific scenario but the ad in which it appears shows alcohol use or its presence on some occasions e.g. the final scene where a stubby is shown with the VB logo.
41. The Panel does not believe this scenario breaches either section (a) or (c) of the Code. No alcohol is present in the scenes and there is nothing in the behaviour of the characters which indicates that alcohol use has affected their behaviour. It cannot be reasonably said that excessive consumption is being promoted, nor that alcohol is a cause for the changed emotional state of the lead character.

## **Gym**

42. The Gym scenario depicts a lycra-clad bike rider within a gym who has taken his exercise regime to an excessively serious length. He becomes emotional when two male friends see him in the gym and he apparently reassesses his attitude to his “full on” style of exercise. No alcohol is shown within the scenario, but alcohol features in other segments of the ad within which the scenario is played out.
43. The Panel does not believe this scenario breaches sections (a) or (c) of the Code. As with the Doctor’s Surgery scenario, it cannot reasonably be said that the gym scene encourages excessive consumption of or an irresponsible approach to consumption. The mood of the lead character does alter through the scenes depicted, but there is nothing in the scenario itself or in the scenario’s inclusion in the ad as a whole which can reasonably be concluded that alcohol is a cause of the change in mood or demeanor.

## **BBQ**

44. The BBQ scenario features a man at a backyard BBQ using hand cream prior to endeavouring to open a stubby of the product. The stubby drops from his hands, he becomes very upset and then is shown recovering his composure and drinking alcohol in the company of two mates. Shorter versions of the scenario in some ads do not show the scenes beyond the dropping of the stubby following the use of the hand cream.
45. The Panel does not believe the scenario breaches section (a) for similar reasons to those explained earlier. The Panel does believe the longer version of the scenario does breach sections (c) (i) and (c) (iii). This is because:
- The mood of the lead character moves from calm to highly emotional and upset, to recovering composure and calm.
  - The first change in mood arises because of the “self-realisation” moment after the stubby has been dropped.
  - The second change in mood from upset to calm is contributed, at least in part, by the man having a drink of the product.
  - While the advertiser’s argument that the change in mood was not primarily caused by the presence or consumption of alcohol might be accepted, nonetheless a reasonable viewer would take the ad as suggesting that alcohol use assisted in the lead character improving his mood and such implication is not permitted by section (c) (i).
  - Equally, it can be reasonably said that the end scenes of the scenario suggest that alcohol consumption is an aid in relaxation and assists in stabilizing a person’s mood, in breach of (c) (iii) of the Code.

## **Jeans**

46. The Jeans scenario is a very short scene where a man is shown on a bed endeavouring to pull on a very tight pair of jeans. There are no other characters depicted in this scenario, nor is any alcohol product shown. The Panel does not believe the scenario breaches either of the relevant sections of the Code.

## **Mirror**

47. The Mirror scenario is another short scene showing a man admiring his hair style in the mirror. It shows two other men, but no alcohol products are depicted. The Panel does not believe the scenario breaches the relevant provisions of the Code.

### **Handshake**

48. The Handshake scenario depicts friends shaking hands and one of the men continuing with an elaborate handshake. He becomes emotional after his male friend holds his hand still and he holds onto his friend for support. The Panel accepts that the change in the lead character's mood is caused by "self-realisation" and not the presence or consumption of alcohol. As in the Cocktail scenario, alcohol is present at this point but is not shown as having been consumed by the lead character.
49. The Panel does not believe this scenario breaches sections (a) or (c) of the Code. As with the Doctor's Surgery and Gym scenario, it cannot reasonably be said that the handshake scene encourages excessive consumption of or an irresponsible approach to consumption. The mood of the lead character does alter through the scenes depicted, but there is nothing in the scenario itself or in the scenario's inclusion in the ad as a whole which can reasonably be concluded that alcohol is a cause of the change in mood or demeanor.

### **Spray Tan**

50. The Spray Tan scenario is a short scene showing a man wearing a shower cap and standing in a spray tan booth. No alcohol products or a significant change in mood or environment is depicted. The Panel does not believe the scenario breaches either of the relevant sections of the Code.

### **Conclusion**

51. The Panel upholds the complaints in relation to section (c) (i) and (iii) and those versions of the ads which contain the complete scenarios "The Cocktail" and "The BBQ". The Panel does not believe the scenarios breach section (a) of the Code in relation to the issues raised by the complainants. The issues in the complaints about discrimination or homophobia are matters for the ASB and are not dealt with in this Determination.



# ABAC

## **ABAC Complaints Panel Determination No: 85/12**

**Complaint by Peter Cain  
Product: Bottlemart  
Advertiser: Liquor Marketing Group**

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

7 December 2012

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for Bottlemart by Liquor Marketing Group (“the Advertiser”) and arises from a complaint received on 26 November 2012.

### **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 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 26 November 2012.
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 determined within that 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 obtained for the script of the advertisement. This script varied somewhat from the final version of the advertisement which was broadcast.

### **The Advertisement**

9. The advertisement opens with a man walking toward the front door of a house. As he is about to open the door a woman comes out of the house pushes past him holding a lamp and says to him in an angry voice "It's over". The man looks at her walk away with a shocked expression and after a delay says "What?" and we see the back of the woman walking away around a corner.
10. We then see the man walk through the empty house looking distressed. He sees a set of golf clubs some of which have been snapped or bent in an otherwise empty room.
11. We then see the man looking into another room with the same distressed expression until he looks to the other side of the room and slowly his expression changes and he smiles. We then see an empty fridge as the voiceover says "Time to get your mates over?". The screen and voiceover then change to a blue and yellow backdrop with the strapline "Better get to Bottlemart". The screen also includes the Bottlemart logo and Facebook address and the voiceover continues to say, "Better get to Bottlemart".

### **The Complaint**

12. The complainant is concerned that to suggest that an emotional shock can be mitigated by a visit to the local Bottlemart store is both irresponsible and offensive to both recovering alcoholics and the community at large.

### **The Code**

13. 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.....
14. The ABAC provides at Section (c) that advertisements for alcohol beverages must:
- e) 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;
    - (ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
    - (iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.

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

15. The Advertiser responded to the complaint and questions posed by the Panel by letter dated 30 November 2012. The points made by the Advertiser in relation to the advertisement was:
- (a) By way of an overview, the 'Leaving You' scenario shows a man being left by his girlfriend/wife. As he walks through the house he is initially surprised to see that she has taken everything apart from the golf clubs. He then enters the kitchen and smiles as he's relieved/happy to find that she has left him his trusty old beer fridge. So, yes, he is surprised, at first, to find he's been left by his girlfriend/wife and the house is all but empty, but life's good because she's left him one of his prized possessions, his trusty old beer fridge. The voiceover then comes in saying, "*Time to get mates over? Better get to Bottlemart*". He's been left his fridge and it's time to celebrate this fact with his mates. The fact that it's empty requires the visit to Bottlemart. An equally plausible interpretation for the cause of celebration might be the fact that his girlfriend/wife had left.
  - (b) We believe that the reasonable viewer would be able to appreciate this overtly obvious and exaggerated treatment. From feedback we have received to date regarding the advertisement, most people find the advertisement humorous and do not take it seriously, nor do they consider that it infers that alcohol is a solution to a shocked state.
  - (c) As Liquor Marketing Group strongly supports the responsible service and consumption of alcohol we duly sought and received interim approval through ABAC's AAPS despite not falling under the jurisdiction of the scheme nor having to obtain pre-vetting. In discussions with AAPS this specific issue was raised and addressed to their satisfaction. The TVC also went through the necessary FACTS/CAD approval process as well as abiding by the required alcohol airtime regulations.
  - (d) It is our firm view that the advertisement breaches neither sections (a) nor (c)(iii) of the ABAC.

## The Panel's View

16. 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.
17. 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.
18. The advertisement depicts a narrative where a man arrives home to find his partner is leaving him and has emptied the home of furniture and possessions. The man is shown as shocked, but his mood changed when he comes to the kitchen and discovered the fridge, while emptied, is still there. At this part of the advertisement a voiceover states, "Time to get your mates over. Better get to Bottlemart".
19. The complainant explains that he is a recovering alcoholic and that he found the advertisement irresponsible and offensive as it is suggesting that alcohol is an answer to a problem and offers a therapeutic benefit. Section (c) of the ABAC provides that an alcohol advertisement must not suggest that the consumption or the presence of alcohol may create or contribute to a significant change in mood and must not suggest that the consumption of alcohol offers any therapeutic benefit.
20. For its part, the advertiser accepts that the advertisement does depict the mood of the male character changing, but argues that this change does not occur because of alcohol, but because he finds that one of his prized possessions - "his trusty old beer fridge" - has been left. The advertiser contends that the fact that the fridge is empty means that a trip to Bottlemart is required so that the man can celebrate the survival of his fridge with his mates. The advertiser contends that an "equally plausible interpretation" for the change in the man's mood might be the fact that his partner had left.
21. The Panel sometimes has found it useful to describe advertisements it has to assess as falling within three categories of 'green', 'red' and 'amber'. Advertisements which fall into the green category are very clearly both within the letter and the spirit of the ABAC and while a complaint might be received, it is relatively straightforward to assess the advertisement as consistent with ABAC standards and to dismiss the complaint. Advertisements which fall into the red category are equally easily determined, as it is evident that they contain elements which are in breach of an ABAC standard. The far more difficult category of advertisements are those which fall within the amber category because reasonable

people might disagree if the advertisement is consistent with an ABAC standard or not. The current advertisement falls within the amber category.

22. There is no doubt that the advertisement depicts a change in mood of the male character and that this change occurs at the point when the man comes across the fridge. What is ambiguous is why the man's mood has altered and what role, if any, alcohol plays in this change of mood.
23. In assessing an advertisement against the ABAC standards, the Preamble of the Code provides that the Panel is to assess the likely impact of the advertisement on a reasonable person to whom the advertisement has been communicated, taking its content as a whole.
24. The advertisement does not directly depict either the presence or the consumption of alcohol. Rather, the issue turns on the implication to be taken from the change in the man's mood, arising from a combination of him finding the fridge and the voice over question, "Time to get your mates over?", and the conclusion suggested, namely, "Better get to Bottlemart".
25. The advertisement relies heavily on implications. For instance, as alcohol is not depicted or even mentioned in the advertisement, certain implications have to be made to even place the advertisement as marketing an alcohol retailer. In the same vein, if a reasonable person would likely take the man's change of mood to be caused or contributed by future consumption of alcohol, then the advertisement breaches section (c). Alternatively, if the implication is, say, that the change in mood is caused by meeting up with friends ("Time to get your mates over?"), then the advertisement will not breach section (c).
26. On balance, the Panel believes the advertisement does not breach section (c)(iii). In reaching this conclusion, the Panel has noted:
  - (a) Section (c)(iii) is a provision which prohibits alcohol advertisements suggesting alcohol beverages offer any therapeutic benefit. This means the benefit derived need not be solely gained by alcohol, but alcohol must play a causal link in gaining of the benefit.
  - (b) A reasonable implication to be drawn from the scenario depicted is that the man will meet up with his mates and commiserate about his partner leaving him.
  - (c) The change in the man's mood appears to be triggered by thoughts invoked by seeing the fridge, and while one conceivable chain of assumptions leads to alcohol consumption causing the changed mood, this is by no means the only explanation.
  - (d) Rather, the Panel takes the likely scenario is that the man's spirits were lifted by thoughts of getting together with his mates, with any consumption of alcohol being incidental to the gathering of friends and not the cause of the friends coming together.
  - (e) It is regarded likely that a reasonable view will take the humorous undertone of the advertisement as not actually advocating the use of alcohol as a solution to the distress caused by the partner leaving.
27. Further, the Panel does not believe that the advertisement breaches section (a) of the ABAC. Section (a) provides that alcohol beverage advertisements must present a mature, balanced and responsible approach to the consumption of

alcohol beverages. For the reasons set out in the preceding paragraph the Panel believes that the advertisement is consistent with this standard.

28. Accordingly, the complaint is dismissed.

# ABAC

## **ABAC Complaints Panel Determination No: 84/10**

**Complaint by Mr Patrick Flynn  
Product: XXXX Gold  
Advertiser: Lion Nathan**

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

23 December 2010

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a television advertisement for XXXX Gold by Lion Nathan (“the Advertiser”) and arises from a complaint by Mr Patrick Flynn received on 14 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 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 an email received by ABAC on 14 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. This 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 obtained for this advertisement [310/09].

### **The Advertisement**

9. The advertisement opens on a beach with two men standing next to a large spool of fishing line with a fishing rod attached. One of the men says "You' reckon we've got enough line?" as the other chuckles and then holds up one arm and shouts "Okay".
10. There is the sound of an engine running as a third man who is some distance away from the first two holds up a squid that is attached to the fishing line and places it in a catapult that is held back by the tow bar of a 4WD and says "Alright mate". A fourth man says "Yep? Alright Digger" and he opens the door of the 4WD which has the engine idling, a dog jumps in the car and then the fourth man gets in.
11. We then see the fourth man driving the car slowly forward with the dog in the passenger seat as the other three men walk alongside the vehicle, two of which are holding opened stubbies. One of them shouts "That's it Brucey keep going" as the tires on the vehicle start to spin. Another shouts "That'll do. We can see that the catapult is a thick band of elastic tied to two trees and being pulled back by the vehicle.
12. One of the men then releases the catapult and the squid is shown travelling a long distance out to sea and over the heads of two men fishing in a boat. One of the men in the boat says "Hey Jacko I think I just saw a flying squid". The other man in the boat says "Yeah sure Harry".
13. We then see the four men and dog standing by the catapult looking over the ocean as two of them sip on a stubby of beer and laugh. One of them says "Well that went well" and another says "Yeah". The XXXX Gold logo is superimposed on the screen with the tagline "Good as Gold".

### **The Complaint**

14. Mr Flynn argues that:



- (a) the advertisement depicts 4WDs with beaches and alcohol as light hearted fun when this combination kills many people each year;
- (b) the damage to the environment and mistreatment of an animal are to be deplored; and
- (c) there should be a ban on showing alcohol and any activity, such as driving or boating, where drinking can and does contribute to injury and death.

## **The Code**

15. The ABAC provides that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages ...
  - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly -
    - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices...

## **The Advertiser's Comments**

16. The Advertiser responded to the complaints and questions posed by the Panel by letter dated 17 December 2010. The principle points made by the Advertiser are:
- (a) The XXXX GOLD 'Catapult' TVC is part of a broader series of advertisements for the XXXX GOLD brand. In each execution, the same four friends are seen 'living the good life' – which is essentially about good times with good mates. It's about time and space, activity without purpose and a good injection of sociable, larrikin humour. The XXXX GOLD consumer does not take him or herself too seriously, and the advertisements are about bringing to life this kind of Aussie lifestyle and comical ingenuity.
  - (b) In the 'Catapult' TVC the four friends connect their fishing line to a catapult, to launch a large piece of bait much further into the ocean than they would normally be able to do. This is not a 'prank' – it is an example of the four friends finding a new and comical way to fish.
  - (c) The 4WD is moved forward a small distance to extend the catapult and launch the bait – it is not driven along the beach. The man who drives the 4WD this distance is never shown with a drink in his hand, neither before driving, during or after. Only two of the four men are shown to have a beer at the end of the activity, neither of which is ever seen operating the vehicle. There is no suggestion that the two men with stubbies of beer have or will drive the 4WD. There are clearly two men who are not consuming alcohol who can operate the car if it is needed, however the only purpose it serves in the advertisement is to extend the catapult and launch the bait.

- (d) With regards to the boat, two different characters are shown to be fishing out on the ocean when the bait flies overhead. Neither of these characters is drinking. There is no alcohol present on the boat and no suggestion that they have or will engage in alcohol consumption at any point.

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

17. The complainant raises a genuine concern about the dangers associated with operating 4WD vehicles on beaches and points to the risk of combining alcohol use with vehicles in these conditions. The ABAC also expressly recognizes the importance of drink driving as a public policy and safety issue and includes a provision which goes to this issue.
18. Section (d) of the Code provides that an alcohol advertisement must not depict a direct association between the consumption of alcohol and the operation of a motor vehicle and accordingly any depiction of the consumption of alcohol in connection with the operation of a motor vehicle must not be represented as having taken place before or during engagement of the activity and must in all cases portray safe practices.
19. The provision has several elements namely:
- A direct association between alcohol and a motor vehicle
  - Alcohol consumption and
  - The operation of a motor vehicle

all of which are present in the current ad. What is contended by the advertiser, however, is that the driver of the vehicle does not at any point consume alcohol and hence the provision is not breached.

20. Specifically the advertiser argues that
- The ad sits within a series which are about 'living the good life – good times with good mates'
  - It depicts a humorous, lighthearted scenario
  - The man who drives the vehicle is not shown with alcohol in his hand, and only 2 of the 4 characters depicted with the vehicle are shown consuming alcohol and these two are not involved in operating the vehicle
21. In interpreting the Code, the Panel has regard to the 'spirit and intent' of the provisions. In this case, the intention is clearly around the serious potential consequences of drink driving. The Code preamble also provides that conformity of an ad with Code standards is to be assessed taking the content of the ad as a whole and how the ad would probably impact upon a reasonable person.
22. In this case the ad creates a scenario where each of the 4 mates plays a role in the launching of the bait. Two of the men, who are depicted consuming alcohol, are firstly shown near the water's edge with the fishing reel and line. In a later scene, these two men are shown alongside the vehicle while it is moving into position to

launch the bait. At this point the two men are shown with stubbies of the products in their hands and can reasonably be assumed to be consuming alcohol.

23. The two other men in the scenes featuring the vehicle are not shown to be consuming alcohol and it is the advertiser's argument that it is these men and in particular, the man who is behind the wheel of the vehicle who is 'operating' the motor vehicle. The Panel believes however, that it is not clear that only the non-alcohol consuming men are involved in 'operating' the vehicle in its maneuver.
24. Firstly, section (d) and (d)(i) refers to 'the operation of a motor vehicle' and 'consumption of alcohol beverages in connection with' the operation of a motor vehicle and not simply to driving a vehicle. In the ad, one man drives the vehicle, while the 3 others apparently assist the driver by giving directions and advice as to how far forward the vehicle needs to travel in order to successfully launch the bait. At one point a voice is heard giving advice to the driver, "that's it Brucey – keep it going", and then "that'll do". This initially occurs during a wide shot of the vehicle and all 3 men walking alongside of the vehicle. It is not evident which man is giving the instructions and it could be one of the men consuming alcohol.
25. On balance, the Panel believes the overall impression a reasonable person could take from the ad is that the vehicle is being operated in conjunction with the consumption of alcohol. In this case, therefore, the ad breaches section (d) of the ABAC. Clearly, the complainant gained the impression from the ad that all of the men may have been drinking and while the Panel does not base its conclusion on this, it does reinforce that advertisers need to be careful when depicting alcohol use and the operation of motor vehicles.
26. The Panel does not believe the depiction of two other men fishing while the bait flies overhead suggests that these two men are operating the boat while consuming alcohol. There is no depiction of alcohol with the men, and they are not shown as involved with the men using the vehicle.
27. Finally, the Panel does not believe the ad breaches section (a) of the Code. The ad does not depict or suggest excessive alcohol consumption and the key issue of the ad in terms of ABAC standards is how the vehicle is used in conjunction with alcohol use.
28. Accordingly, the Complaint is upheld in relation to section (d).

# ABAC

## **ABAC Complaints Panel Determination No: 113/11**

**Complaint by McCusker Centre for Action on Alcohol and Youth  
Product: Peroni Nastro Azzuro beer  
Advertiser: Pacific Beverages**

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

23 December 2011

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns a print advertisement for Peroni Nastro Azzuro beer by Pacific Beverages (“the Advertiser”) and arises from a complaint received 14 December 2011.

### **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 and Alcohol Guidelines 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 14 December 2011.
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 was decided within the 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 obtained for this advertisement [11085].

### **The Advertisement**

9. The complaint refers to an advertisement in the West Weekend magazine in the Weekend West newspaper on 3 December 2011.
10. The advertisement is set against a white background and features a bottle of Peroni Nastro Azzuro beer on the lower portion of the page and the front part of a dark coloured Alfa Romeo convertible at the top of the page. A blue ribbon on the bottle is extended either side of the bottle and on the left side leads to the vehicle. The text "PERONI ITALY" is placed below the bottle.

### **The Complaint**

11. The complainant argues that the advertisement is inappropriate given the harms involved in drink driving in that it tries to strengthen the association between a high powered sports car and an alcoholic product. Road safety is an important issue in Australia and significant work goes into preventing drink driving. This advertisement uses imagery to show a direct association between a motor vehicle and an alcoholic product.

### **The Code**

12. The ABAC provides that advertisements for alcohol beverages must:
  - d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
  - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken

place before or during engagement of the activity in question and must in all cases portray safe practices.

### The Advertiser's Comments

13. The Advertiser responded to the questions posed by the Panel by letter received 22 December 2011. The points made by the Advertiser in relation to the advertisement were:
- a. As a responsible alcohol company we take any complaint or criticism of our advertising extremely seriously. Our own stringent internal controls on the production and placing of advertising reflect the ABAC Guidelines and responsible promotion policies. At the fore of are our aims of ensuring the responsible promotion and advertising of our products, including preventing underage appeal and not depicting alcohol consumption during activities (such as driving) which require a high degree of alertness.
  - b. We would like to set out some background to the imagery used in the specific print image as we judge this to be relevant to the challenges made and illustrates the context of our campaign which we believe is well known amongst consumers. Peroni Nastro Azzurro is Italy's number one premium beer and has been enjoyed by Australian consumers for over 20 years. In 2008 the brand was re-launched, emphasising the blue ribbon (which translates into Italian as "Nastro Azzurro") and focussing on what we consider to be the essential strengths of the brand - Italian style, design, quality and heritage. To do this we formed associations with other products and brands that epitomise in our view these qualities, particularly that of Italian style. In a nutshell, the theme has been "Italian style, applied to beer". Amongst the iconic brands, products and names with which Peroni has sought to associate itself with are chef Giorgio Locatelli, Alessi (makers of the Conico kettle and Starck lemon squeezer), Alfa Romeo, Piaggio (the maker of Vespa scooters) and fashion designer Antonio Berardi. All of the associated products have a distinct Italian heritage and embody a passion for craftsmanship, creative flair, the use of the finest materials and meticulous attention to detail. As well as particular initiatives with brand owners, several of the iconic images and brands in cinema and poster advertising have been used to help build the theme of Peroni as a quality, Italian, stylish brand. In the outdoor and print advertising the images of the Peroni bottle have always been used as combinations of Italian icons. These have included a stylish Italian boot and watch, stylised Italian sunglasses, the Fiat Cinquecento and repeated the image of the boot. Recently we used the Castiglione Arco lamp, the Piaggio Vespa and repeated the image of the sunglasses.
  - c. The vehicle was chosen for its recognisable status as one of a range of leading iconic Italian symbols - not because it is a motor vehicle. It is an attractively styled product with a classic Italian image, well known and associated with stylishly Italian city life.
  - d. As the image shows an unopened bottle of Peroni Nastro Azzurro and no individual consuming the product or pouring it, we do not believe that the advertisement is in contravention of the code. The ribbon device appears to connect the premium style and imagery of the design of the vehicle (amongst a range of other designed icons), and not to suggest a link between drinking and subsequent driving.

- e. The poster shows an entirely static image of the vehicle – it is not in motion or about to be driven. It is also unoccupied with no driver shown behind the wheel.
- f. The only physical “association” between the two images is made by the blue ribbon, ‘the Nastro Azzurro’, which is part of our central advertising theme and is common to our overall linking of Italian design icons with Peroni Nastro Azzurro.

### **The Panel’s View**

14. This complaint raises a concern about the ad promoting drink driving. Drink driving is a major public policy issue and the misuse of alcohol in this way causes untold personal hardship and extensive economic and social cost to the community. Accordingly, alcohol producers and advertisers must be very careful in advertising alcohol in a manner which can legitimately raise concerns that drink driving might be regarded in any way as acceptable behaviour.
15. In this case, the ad comprises a still shot of a motor vehicle and a separate still shot of a bottle of the product. The two separate shots are linked by a blue ribbon.
16. The relevant ABAC provision states that an ad must not depict a direct association between alcohol consumption and the operation of a motor vehicle. To breach the standard, the ad needs therefore to depict:
  - (a) A direct association between alcohol and motor vehicles;
  - (b) Alcohol consumption; and
  - (c) The “operation” of a motor vehicle.
17. The ABAC preamble provides guidance as to how the Code is to be applied. It refers to regard being taken to its “spirit and intent” and taking the content of the ad as a whole. For its part, the Panel endeavours to apply a common sense approach to interpretation and avoids legalistic or pedantic reading of provisions. It must however apply the provisions as they are written, and the personal opinions of the Panel members cannot override the natural meaning of the Code and how it would be understood by a “reasonable person within the class of persons to whom the ad is directed”.
18. The complainant and the advertiser agree that the advertisement directly associates the product with a motor vehicle, but to breach Section (d) this association needs to involve alcohol “consumption” and the “operation” of a motor vehicle. The advertiser’s response to the complaint is that consumption is not portrayed and the featured motor vehicle is not being operated and no driver is shown behind the wheel.
19. While the Panel believes it is undesirable to depict motor vehicles and alcohol in a manner which could somewhat imply drink driving is acceptable, it is quite clear that the ad does not breach the terms of section (d). Firstly, showing an unopened bottle of the product cannot be said to be a representation of “consumption”, even accepting that consumption captures more than physical swallowing of the liquid. Secondly, a static car with no driver or other depictions suggesting the vehicle is in use in some way cannot be said to fall within the concept of the “operation” of a motor vehicle.

20. The Panel is obliged to dismiss the complaint.



# ABAC

## **ABAC Complaints Panel Final Determination No: 104/11 & 106/11**

**Complaints of Mr Alistair Brown & Confidential complainant**

**Product: Skinnygirl cocktails**

**Supplier: Beam Global Australia Pty Ltd**

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

22<sup>nd</sup> March 2012

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns the name and packaging for the products Skinnygirl Margarita and Skinnygirl Cosmo. The products are produced by Beam Global Australia Pty Ltd (“the Supplier”). This determination results from a complaint by Mr Alistair Brown received 2 December 2011 and a confidential complaint received 5 December 2011 and only concerns the name and packaging of the products. A separate determination considers those aspects of complaints 104-107/11 that relate to two advertisements for the products.

### **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 2 and 5 December 2011 respectively.
7. The Panel endeavours to determine complaints under Part 1 of the ABAC dealing with advertisements within 30 business days of receipt of the complaint. As is explained later on, the process for complaints under Part 2 of the ABAC dealing with naming and packaging potentially involves a second stage of Panel consideration and the provision of additional time to the supplier of the product to make submissions. As a result, the 30-day timeframe is not applicable to these complaints.

### **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 of names and packaging is optional. The Advertiser is a Code signatory but did not obtain pre-vetting approval for the name or packaging of the relevant products.

### **Name and Packaging**

9. The Panel has been supplied with samples of the product material.
10. The complaints go to the product material in relation to the combination of the name "Skinnygirl" and its use on the label of the bottles of the product which feature a stylized image of a woman and the calories of the product.
11. The name "Skinnygirl" is in effect a brand name developed by Ms Bethenny Frankel who has come to prominence in the USA and then more widely as a result of her involvement in a series of "reality" television programs. In addition to alcohol beverage products, the "Skinnygirl" brand name applies to beauty and other product types.
12. The alcohol product label features a silhouette of a girl/woman. The female character is wearing a red top and a knee length skirt. Both top and skirt are figure hugging. The female character's hair is in a ponytail. In one hand the figure is holding a cocktail shaker and in the other a cocktail glass which is holding a liquid, presumably a "skinnygirl" brand beverage.
13. The figure is placed above the name "Skinnygirl" with the "Skinny" in black type and the "girl" in red type. The colours match those on the clothing of the female character. Under the product name, information is provided about the product such as:

- The type of beverage i.e., “Cosmo” or “Margarita”;
- The type of alcohol spirit used in the drink i.e., vodka or tequila
- Calorie count per 100ml serve;
- Alcohol content (%) and bottle volume (750mls);
- The instructions “open pour accessorise” in a colour matching the female character’s clothing and “Skinnygirl” brand name.

### **The Complaint**

14. The first complainant argues that the product by its name and packaging and the advertisement referred to in the complaint:
  - (a) is marketing fair and square at the teen market;
  - (b) provides confusing messages of being healthy due to the low calories and use of natural sweetening and yet has an alcohol content of 9% and 12%; and
  - (c) compounds the issues adolescents have with eating disorders.
15. The second complainant argues that the product by its name and packaging and the advertisement referred to in the complaint:
  - (a) targets young people, in particular girls; and
  - (b) promotes lower calories but not the alcohol content resulting in body image issues for adolescent girls.

### **The Code**

16. Part 2.1 of the ABAC provides that the naming and packaging of alcohol beverages (which is also referred to within these standards as “product material”) 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 product material must be over 25 years of age and be clearly depicted as adults
    - ii) children and adolescents may only appear in product material in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages

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

- 17. Part 2.2 of the ABAC provides that these standards (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.

#### **The Supplier's Comments – Provisional Determination**

- 18. The Supplier responded to the complaints and questions posed by the Panel by letter dated 15 December 2011. The Supplier provided a lengthy response that is attached as Annexure A.

#### **The Supplier's Comments – Final Determination**

- 19. The Supplier responded to the Panel's provisional determination in relation to this complaint and requested a review of that determination by letter dated 3 February 2012. The Supplier provided a lengthy response that is attached as Annexure B.

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

- 20. The ABAC scheme was extended to product names and packaging inclusive of labeling on 31 October 2009. This is only the third occasion the panel has been obliged to make a determination on Part 2 of the ABAC which is titled "Standards to be applied to the naming and packaging of alcohol beverages." It is the second occasion that the entire process from complaint, provisional determination and final determination has occurred.
- 21. Because this is one of the first occasions the Panel will make a full assessment of complaints raising Part 2 of the ABAC, the Panel has set out the steps in the process in detail. The Determination will canvass the following:
  - Do the standards apply to the "Skinnygirl" name and label?
  - The operation of the rules and procedures applying to Part 2 of the ABAC
  - Is the "Skinnygirl" name and label consistent with Part 2.1 (a) (ii) and (b) of the ABAC?
  - Provisional Panel Determination
  - Final Panel Determination.

#### **Do the Standards apply to the Product Name and Label?**

- 22. The standards apply to 'the naming and packaging of all alcohol beverages supplied in Australia'. The exception to this wide coverage is provided in section (2) Part 2 of the ABAC, which states that the standards do not apply if 'the supplier can demonstrate to the satisfaction of the adjudication panel' that the name of any product or 'a trademark' had been supplied for Australian bona fide retail sale in the ordinary course of business prior to 31 October 2009.

23. The effect of section (2) Part 2 is to 'grandfather' product names and trademarks which are on the market prior to the extension of the ABAC scheme to product names and packaging. This creates a 'line in the sand', after which alcohol product suppliers of new product brands are to comply with the standards.
24. The advice of the supplier of the product is that the "Skinnygirl" cocktail product was created in February 2009, presumably in the United States. The supplier also advised that the product trademark was registered in Australia on 22 May 2009. The product, however, was not available for sale in Australia until November 2011.
25. The grandfathering provision of the ABAC only exempts product names and trademarks that had been on retail sale in a State or Territory of Australia prior to 31 October 2009, not in overseas markets. Accordingly, the Panel is not satisfied that the exemption is available to the supplier and the product name and label will be assessed against the substantive ABAC standards. The supplier did not provide additional information on this point in its response to the provisional determination.

### **The operation of the rules and procedures applying to Part 2 of the ABAC**

26. Part 2 of the ABAC mirrors the original Part 1 which applies to advertisements for alcohol beverages. The operation of Part 1 and Part 2 of the ABAC scheme is supplemented by rules and procedures settled by the Scheme's Management Committee. While similar, the rules have important differences.
27. The key points to note are:
  - A complaint does not trigger an assessment of either an ad (Part 1) or a name or packaging (Part 2) against each of the ABAC standards. Rather, the assessment is against those standards which the nature of the complaint raises concerns.
  - The Panel reaches a decision on an advertising complaint in a single stage process. In contrast, the process for a naming and packaging complaint can be a two-stage process involving a "provisional" determination reached after the first stage and then a second stage resulting in a final determination.
  - The second stage in a naming and packaging complaint occurs if the Panel finds from its Stage One consideration of the complaint that a relevant ABAC standard appears to have been breached. If, after the Stage One process, the Panel is of the view that an ABAC standard has not been breached, then the determination becomes final and no second stage process occurs.
  - The materials which the Panel considers in both an advertisement complaint and Stage One of a naming and packaging complaint comprise:
    - The complaint
    - A copy of the ad or the product material in a naming and packaging matter (either an actual example of the product material or an accurate description of the material *e.g.* photographs).

- A response to the complaint from the advertiser/product supplier, including any questions asked by the Chief Adjudicator (questions go to aligning the complaint to specific ABAC provisions).
  - Any other materials the Chief Adjudicator deems fit. Such other materials have included:
    - Previous decisions of the Panel
    - Provisions and decisions on other alcohol or otherwise relevant marketing codes made in Australia and overseas
    - Background research of relevance carried out by the Panel.
  - If a provisional determination is made in a naming and packaging complaint, then the second stage is triggered. This involves:
    - Providing the supplier of the alcohol product with a copy of the provisional determination
    - The supplier may seek a “rehearing” of the Panel’s decision by providing a written response with further submissions within 10 business days of the receipt of the provisional determination
    - The Panel is to consider “any material provided by the supplier” and then issue a final determination.
  - If the final determination holds that the name or packaging of the product material is inconsistent with a Part 2 ABAC standard, then a further process can be triggered by the supplier by which a modified name or package can be given “once and for all” certification of consistency with Part 2 ABAC Standards.
28. The policy rationale for the different approaches to an advertisement complaint adjudication process and a naming and packaging adjudication process would appear to relate to the seriousness and potential economic and business impact of an adverse finding by the Panel in both cases. While a decision that an ad is inconsistent with an ABAC standard may cause disruption and expense to an advertiser, the consequence is confined to a particular ad or potentially a wider marketing campaign.
29. In contrast, a decision that a product name, its labeling or packaging is inconsistent with an ABAC standard can potentially lead to an inability to use a product brand. This could in effect remove not only the branding, but also the physical product itself, from the Australian market. This severe consequence would be argued to justify both the second stage in the adjudication process and the “once and for all” clearance process available for modified naming and packaging developed by a supplier in response to a final determination.

**Is the “Skinnygirl” name and label consistent with Part 2.1 sections (a) (ii) and (b) of the ABAC? (Provisional Decision)**

30. The complaints argue that the product, by its name and label, is aimed squarely at a teenager or adolescent market. This is because of concerns of women generally,

but younger women in particular, with body image and weight issues. The product material is argued to target and appeal to these concerns.

31. The basis of the supplier's response is that the Skinnygirl brand and its market demographic are very much centred on "more affluent 30+ women". In support of these arguments (and as contained in Annexure A), the supplier:
- Explains the history of the brand and its originator in the United States, Ms Bethenny Frankel
  - Provides television rating information for the programs featuring Ms Frankel which indicate a strong majority of women watching the shows are 25 years or over in age
  - Provides the sale prices of various alcohol beverage products which indicate the Skinnygirl products are expensive *vis a vis* other products
  - Reports on sales from "a large national retailer" which indicates that over 90% of purchases of the Skinnygirl products are by consumers over the age of 25.
  - Provides Facebook "fan" data and a correlation with Roy Morgan Research data which it is argued shows the appeal of the Skinnygirl product is to females older than 25.
  - Lists information on the gender and age of the consumers of various alcohol products which indicates that Skinnygirl is consumed by women over 25 at a higher rate than the other chosen products.
  - Explains the supplier did not use mainstream media to launch Skinnygirl because the very defined older women demographic for the product is best accessed via other marketing channels.
32. In short, the supplier is asking the Panel to accept its intention is to market the product to women aged 25 and older and that the provided market research and consumer information establishes the brand and the product itself appeals strongly to 25 years and older women. It follows, according to the supplier's submission, that the brand name and label do not have strong or evident appeal to children and adolescents.
33. The ABAC provides some guidance to the Panel as to how it is to assess the consistency of either an ad (Part 1) or a name or packaging (Part 2) to the prescribed standards of good marketing practice. The preamble to the ABAC provides that "the conformity of an advertisement with this code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole".
34. The preamble in its current form was part of the ABAC before the extension of the scheme to names and packaging in 2009. Clearly the guidance provided has not been amended to refer to "product material" as opposed to advertising. The Panel, however, assumes it was not intended to exclude the preamble guidance from assessing complaints under Part 2, but that the essential messages in the

preamble as to assessing consistency with the code are to apply to Part 2, as well as to Part 1.

35. This is important, as the key elements of the preamble are that consistency is to be assessed:
- In terms of probable impact upon a reasonable person
  - Within the class of persons to whom the advertising (or the name or packaging) is directed and other persons to whom it may be communicated
  - Taking its content as a whole.
36. This means that the intention of an advertiser or a supplier is not a decisive issue, but rather the decisive issue is how “a reasonable person” is probably impacted upon by the ad or product material. Therefore, while the Panel can accept that the supplier intends to market Skinnygirl alcohol products to adult women over the age of 25, this does not settle the argument. The key question is how a reasonable member of the public who may well come across the Skinnygirl product, either as part of a targeted audience or otherwise, would view the name and label.
37. The supplier has given the Panel quite extensive market research and associated information. In Determination 37/10, the Panel was provided by a complainant with an extensive range of research papers which went to the relationship between alcohol advertising or marketing and alcohol use in young people. The papers accompanied a complaint about an ad which was argued to have strong or evident appeal to children or adolescents.
38. The Panel explained in Determination 37/10 that it is not a research assessment body and cannot be expected to undertake literature reviews. Equally, while the Panel accepts that the information provided by the supplier in this case was done in good faith and with a genuine desire to demonstrate the market appeal of Skinnygirl products, the Panel has no independent capacity to properly assess the validity or completeness of the material provided. The material supplied does have relevance, as it relates to the actual product material being assessed; but it does not settle the question of the strong or evident appeal of the product material to children or adolescents.
39. While the Panel has not previously considered the substantive Part 2 provisions, it has on numerous occasions adjudicated upon the equivalent provisions in Part 1 dealing with an alcohol advertisement’s strong or evident appeal to children or adolescents. From these previous decisions, it can be noted:
- The intention of the supplier as to its target audience is not material: rather, it is the “probable impact” of the product material which is important.
  - Product material might have consequential or residual appeal to children or adolescents and not breach the code.
  - What is not permitted is product material which has “strong or evident” appeal to children and adolescents.
  - Assessment of consistency is a case-by-case exercise in which imagery, colour, use of characters and context is important in deciding the overall probable impact of the product material.



40. In the current case, the product material comprises a stylized image of a thin female with a ponytail and wearing a tightly fitting skirt and top. The character is holding a cocktail shaker and a filled cocktail glass. The brand name "Skinnygirl" underlines the stylized character.
41. The image and name reflect the brand of the Bethenny Frankel range of products which extend beyond the alcohol products to include cleansers, skincare, mental health and wellbeing videos and books. It is clear that the brand was not created solely for the alcohol products, but that the alcohol products were one of the ranges of products to be branded in this way.
42. The Panel has assessed the product material as a whole, namely the name and its combination with the stylized image and other information on the product label. The Panel believes the product material is in breach of section (b) and section (b) (i). In relation to section (b) and the "strong and evident appeal" of the name and label to children and adolescents, the Panel finds:
- The name "Skinnygirl" has evident appeal to adolescent females, particularly in light of the well-recognised issues some adolescent females experience with body image and perceptions of what is a desirable weight.
  - The Skinnygirl appeal to adolescents is reinforced by the nature of the stylized character which is quite possibly a young adult. Equally, the label references to calorie content of the product, when placed in context with the name and imagery, reinforces the appeal of the product to adolescents.
43. The Panel also notes that section (b) (i) requires that adults appearing in product material must be over 25 years of age and be clearly depicted as adults. The Panel believes the image of the female character used on the label does not meet this standard. The age of the character is uncertain, at best. The Panel believes the dress and hairstyle could well be taken by a reasonable person to be depicting a female under the age of 25.

#### **Provisional Panel Determination**

44. Accordingly, consistent with section 4 (i) of the rules and procedures applying to the Panel processes, the Panel made a provisional determination on 12 January 2012 that the product material is in breach of Part 2, section (b) and (b) (i) of the ABAC.

#### **Final Panel Determination**

45. The supplier sought a re-hearing of the complaints by providing the Panel with a formal written response dated 3 February 2012 setting out its further submissions. This submission is at Annexure B. In short, the supplier argued that the provisional decision should be reviewed on the grounds that:
- The Panel had not properly applied the "reasonable person" test in assessing the consistency of the name and label to the Part 2, section (b) and (b) (i) ABAC standards
  - The Panel's provisional decision was based on a minority opinion in the community

- The Panel had no evidence or basis to support its conclusion that the product material has strong or evident appeal to children or adolescents
- With no countervailing data, the Panel must accept the data submitted by the supplier on the appeal of the product material to under age persons.

#### **The approach of the Panel in the “Rehearing”**

46. The rules and procedures for the Panel state that the supplier can “seek a rehearing of the provisional determination by providing a formal written response and further submission”. It is not specified if the rehearing is a complete reconsideration of all issues decided in the provisional determination or is to be limited to essentially the supplier showing where the Panel made a mistake in its provisional determination.
47. The Panel takes its approach to reconsider all matters which it made in its provisional determination. In other words, the rehearing is a hearing *de novo* as opposed to issues of mistake raised by the supplier. This is consistent with the spirit and intent of the ABAC scheme, where complaints are not expected to be framed against precise sections of the ABAC, and a common sense approach is adopted, as opposed to strict legalism.
48. Accordingly, the Panel has looked at its decision afresh, taking into account the complaint and the totality of the materials provided by the supplier.

#### **Is the “Skinnygirl” name and label consistent with Part 2.1 sections (a) (ii) and (b) of the ABAC (Final Decision)**

49. The supplier has provided substantial data in support of the demographic of the majority of purchasers of the product and Facebook fans for the product and the target market being over 25 years of age. This is said to be evidence of both Beam’s intentions with regard to the appeal of the product material and also the actual reactions of the adult consuming public with respect to the product material.
50. The supplier further asserts that the Panel has failed to properly apply the ‘reasonable person’ test in this case and states that the views expressed by the Panel are minority views and not those of a ‘reasonable person’ and points to:
  - (a) Only 4 complaints, consisting solely of opinion being lodged with ABAC in relation to the Skinnygirl product material
  - (b) No complaints have been received in the US about any aspect of the product material or product
  - (c) 96.5% of Facebook Fans are over the age of 25
  - (d) Over 93% of purchasers are over the age of 25
  - (e) The product is the most expensive across its category
51. The supplier agrees that the test the Panel needs to apply when considering whether the product material meets the ABAC standards is the “probable impact upon a reasonable person within the class of persons to whom the advertisement (package) is directed and other persons to whom the advertisement (package) may be communicated”. The Panel notes the material provided by the supplier that the product material is directed to a target market aged over 25 however the test goes

further and includes “persons to whom the advertisement (package) **may** be communicated”. In the case of product material it may be communicated to adolescents and children. This might occur through

- Depictions of the labeling featuring in mainstream broadcast mediums such as newspapers via advertising of the product;
- Adolescents accessing liquor retail outlets even if such persons cannot lawfully purchase any alcohol product;
- The product being present in any number of social gatherings attended by adolescents and children;

52. The Panel has reviewed all the material supplied by the supplier and has reconvened to assess the complaints afresh. The Panel has fully considered the supplier’s argument that the Panel must accept Beam’s data and assertions as set out in paragraph 50 as the best evidence of whether the name, images and label have strong or evident appeal to underage persons. The Panel accepts that the target market for the product is older women over the age of 25 years. The Panel notes the market sales data, Facebook statistics and other data supplied as well as the supplier’s arguments as to the application of the ‘reasonable person’ test. The Panel has considered each of the arguments presented by the supplier.

53. On a full reconsideration of the entire matter the Panel believes the product material does breach Section (b) and b(i) of the ABAC. In addition to the comments made in the provisional determination the Panel has noted:

- The supplied market data by its nature cannot capture the appeal of the product material to children and adolescents as clearly this cohort is unable to lawfully purchase the product and hence the data does not provide direct evidence of the appeal of the product material to this cohort;
- The market data has shown that older women as opposed to women in the 18-25 age group are the principal purchasers of the product and the Panel gives due weight to the inferences which flow from this about the appeal of the product to adolescents and children;
- The supplier is however incorrect to conclude that the Panel is obliged to accept its arguments in the absence of other data. To impose this requirement in assessing the ‘reasonable person’ test would effectively require complainants to undertake their own product specific research in order to make a compelling complaint. Such a requirement is completely contrary to the entire spirit and intent of the ABAC Scheme and the public complaints process.
- It is the Panel which is to form a view as to the probable impact of the product material on a reasonable person and is obliged to apply this objective standard. It is accepted that in some instances the Panel is drawing conclusions upon which persons of good faith might disagree, but it is the Panel’s role to form its own view. In doing this it is not forming an opinion on the ‘perceived reaction of the minority’ or ‘unsubstantiated opinion’ but on its view of the product materials’ probable impact.

- Notwithstanding the further comments of the supplier, the Panel believes the Skinnygirl stylized silhouette does not depict an adult over the age of 25 and at best the age of the adult depicted is uncertain, but a reasonable person could well conclude the person depicted is under the age of 25.
54. The supplier has argued that in other cases such as Determination 91/11 the Panel has made its decision on the basis of evidence supplied by the advertiser/supplier over unsupported opinions and points of view by the complainants. This is not an accurate reflection of the Panel's approach. In each case before it including Determination 91/11 the Panel has considered the arguments put forward by both the complainant and the advertiser/supplier and has then reached a view on whether it believes that a reasonable person would find the advertisement or product to be in breach of the ABAC standard. In Determination 91/11 the Panel noted that in making its decision it had considered the design, use of colours and general layout of the ad which is consistent with the approach taken in all determinations.
55. The Panel believes for the reasons set out above that a reasonable person would find the product material to have a strong or evident appeal to adolescents and that the image of the female character used on the label is not a depiction of a person over the age of 25 years. Accordingly the complaints are upheld.

# ABAC

## **ABAC Complaints Panel Determination No: 112/11A**

### **Complaint of McCusker Centre for Action on Alcohol and Youth**

**Product: Midori Party Pourer**

**Supplier: Suntory Australia Pty Ltd**

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

12 January 2012

### **Introduction**

1. This determination by the Alcohol Beverages Advertising Code (“ABAC”) Adjudication Panel (“The Panel”) concerns the ‘Party Pourer’ packaging for a Midori product. The product is produced by Suntory Australia Pty Ltd (“the Supplier”). This determination results from a complaint by the McCusker Centre for Action on Alcohol and Youth received 9 December 2011 that relates to this and other products and advertising which will be considered in separate determinations.

### **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 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 9 December 2011.
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 the 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 of names and packaging is optional. The Advertiser is a Code signatory but did not obtain pre-vetting approval for the packaging of the relevant product.

### **Packaging**

9. The packaging referred to in the complaint is a "Midori Party Pourer" that contains a 500ml bottle of Midori. The "Party Pourer" is a plastic translucent green 1L container with a removable lid and a tap dispenser that is labeled in white "Midori Party Pourer".
10. The reverse side of the "Party Pourer" has white print which comprises liquid measurement markings, at the bottom of the markings the instructions "Starting with Midori follow the liquid indicators for the perfect mix, then stir, pour over ice & enjoy!", on the side of container the text "For more recipes visit [www.midori.com.au](http://www.midori.com.au) Drink Responsibly" and also includes instructions for mixing four cocktails that are named:
  - (a) "Midori Illusion Using Illusion Mix" comprising 150ml Midori, 450ml Midori Illusion Mix and 400ml Ice;
  - (b) "Midori Kingston" comprising 150ml Midori, 150ml White Rum, 450ml soda water, lemon juice and 220ml Ice;
  - (c) "Midori Sangria" comprising 120ml Midori, 180ml Red Wine, 360ml lemon squash, lemon juice and 300ml Ice; and
  - (d) "Midori Breeze" comprising 150ml Midori, 150ml White Rum, 450ml Cranberry Juice, lemon juice and 220ml Ice.

### **The Complaint**

11. The complainant argues that the Midori packaging/promotion which is a large bright green cocktail shaker with a tap on the bottom labeled a “Party Pourer” could be expected to have a strong appeal for children and adolescents

### **The Code**

12. Part 2.1 of the ABAC provides that the naming and packaging of alcohol beverages (which is also referred to within these standards as “product material”) 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.
13. Part 2.2 of the ABAC provides that these standards (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.

### **The Supplier’s Comments**

14. The Supplier responded to the complaints and questions posed by the Panel by letter dated 22 December 2011. The principal points made by the Supplier in relation to the packaging were:
  - (a) The bright green colour of the packaging is a reflection of the liquid colour of the Midori trademark product. It is not our intention to make this product have strong appeal to children or adolescents. We enforce the responsible sale of alcohol to those only aged 18 years and over, and actively communicate the Responsible Drinking message via the use of ‘Drink Responsibly’ on the packaging and the Drink Wise logo. The Midori Party Pourer is to only be sold in licensed retail outlets, whereby it is the responsibility of the licensee to not sell or supply alcohol to minors.
  - (b) The term ‘party’ is widely used within the industry, particularly within the Spirits category, and it’s not our intention to encourage underage drinking. As mentioned above, we do actively promote the ‘Drink Responsibly’ message on all our products including the Midori Party Pourer.
  - (c) The design of the pack and the inclusion of the tap dispenser is a reflection of cask wine packaging, however with a smaller volume capacity of only 1.0L. It is not our intention to resemble a water or cordial dispenser. This design has also been used by other alcohol brands, namely Malibu with their limited edition packaging of the Mali Bu’Tube.
  - (d) The Midori Party Pourer does not fall within the exception of the above mentioned Code, as the product in question was launched in the Australian market in October 2011. It is in our belief that for the reasons outlined in Point 1 a) and b) above, that the Midori Party Pourer is not in breach of the ABAC code.

- (e) It should also be noted, that the advertising of the Midori Party Pourer was at the discretion of the retailer, Liquor Home Delivery and was not endorsed or paid for by Suntory (Aust) Pty Ltd.

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

15. The complaint raises a concern under Part 2 of the ABAC which sets out the standards which are to apply to the names and packaging of alcohol beverages available for retail sale in Australia. The ABAC scheme was extended to product names and packaging on 31 October 2009.
16. The method adopted in this extension of the ABAC scheme was to in effect allow products already in the market as at the commencement date to continue without having to meet the Part 2 standards, but to require new products coming onto the market after commencement to meet the standards. Accordingly, the first issue to be considered is whether the Midori "Party Pourer" package was available for sale in an Australian State or Territory prior to 31 October 2009.
17. The supplier of the product has advised that the product in the "Party Pourer" package was launched on the Australian market in October 2011. Hence the packaging does not fall within the "grandfathering" exemption and the Panel is able to make a determination on the consistency of the packaging with the relevant ABAC standards as raised by the complaint.
18. The complainant argues that the packaging is inconsistent with the ABAC standard which provides that product material must not have a strong or evident appeal to children or adolescents. This is argued to arise because of the design of the packaging (a large cocktail shaker with a tap similar to wine casks) and its bright green colour.
19. The supplier responds to the complaint by arguing that the colour of packaging reflects the colour of the Midori trademark and is not intended to have a strong appeal to under-age drinkers. The design is argued to reflect a wine cask in terms of a tap dispenser; however, the volume of the container is much less than a wine cask at 1.0l. It is pointed out that the dispenser is available only from licensed retailers and that this design of packaging has been utilised by other alcohol companies.
20. Over time, the Panel has made decisions on the application of the ABAC standards to alcohol beverage advertisements. In advertisements, the context of the ad as a whole is critical. This means that words and images in one ad might be consistent with an ABAC standard, but similar words or images placed into a different context might result in another ad not satisfying an ABAC standard. In contrast, the assessment to be made on a product name or package does not involve context in the same way and is more "absolute" in nature.
21. The Panel does not believe the product material (packaging) in this case can be said to have strong or evident appeal to children or adolescents. In reaching this conclusion, the Panel has noted:
  - The colour of the package is a mid-shade of green and, while it might arguably be eye-catching, it does reflect the colour of the alcohol product.
  - While bright colours displayed in a particular fashion might, in an individual case, be said to have strong appeal to children, it is not the Panel's view that a



plastic rectangle container of a green colour would have strong or evident appeal to children or adolescents.

- The complaint advances no reason why a container with a tap similar to a wine cask, as opposed to a standard bottle with a screw top, would have strong or evident appeal to children or adolescents. The Panel does not believe the use of a tap to gain access to the product, as opposed to pouring the product from a bottle, means that the packaging has strong or evident appeal to children or adolescents.

22. The complaint is dismissed.

# Annexure H: The ABAC Scheme statistics

	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>AAPS Pre-vetting</b>									
Ads pre-vetted	754	761	936	1267	1110	1369	1050	1059	1229
Ads rejected	84	86	182	293	232	238	77	82	192
Ads accepted with conditions			53	61	29	85	44	39	59
<b>Complaints</b>									
Total complaints received	212	105	53	87	162	117	87	119	98
Complaints considered by Panel	23	29	13	25	49	47	41	63	47
Determinations made by Panel	5	12	10	22	36	39	31	45	36
Average business days – Panel determinations	35.1	33	78.6	29.3	19.8	22.5	26.5	25	20