

ABAC

ABAC Complaints Panel Determination No: 49/07

IN THE COMPLAINT OF Ms SARAH JAGGARD Product: Fosters "Pure Blonde" Advertiser: The Vines Resort/ Fosters

Professor The Hon Michael Lavarch – Chief Adjudicator
Professor Fran Baum – Member
Ms Liz Dangar – Member

12 July 2007

Introduction

1. This determination by the Alcohol Beverages Advertising Code ("ABAC") Adjudication Panel ("The Panel") concerns a radio advertisement by The Vines Resort & Country Club ("The Vines Resort") to which Fosters contributed to financially ("the Advertiser") and arises from a complaint received from Ms Sarah Jaggard ("The Complainant").

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 Panel's Jurisdiction and the Coverage of the ABAC

6. The ABAC Complaints Management Scheme has some co-regulatory features. Australian governments are involved in the system to the extent that the terms of the ABAC and the Rules and Procedures which govern the Panel's operation have been considered and approved by governments at the State, Territory and Commonwealth levels. Further, a governmental official sits on the Management Committee of the Scheme.
7. In terms of coverage of the ABAC, however, the Scheme can be characterised as self-regulatory in nature. This means that the ABAC does not apply to all advertising which promotes or features an alcohol beverage, but only to advertising broadcast or published on behalf of a company which has agreed to be bound by the terms of the ABAC and the complaints determination process. The companies to which the ABAC applies are those who are members of one of four peak alcohol industry bodies, namely:
 - Australian Associated Brewers Inc
 - Distilled Spirits Council of Australia Inc
 - Winemakers Federation of Australia Ltd.
 - Liquor Merchants Association of Australia Ltd.
8. Most of the participants in the alcohol industry are members of one of the four peak industry bodies; or if they are not a member, they have undertaken to comply with the ABAC scheme in any event. This means that the vast majority of advertising for alcohol products is covered by the ABAC scheme, but some advertising which features alcohol beverages may come from an organisation which is not in the alcohol beverage industry.
9. This case involves an example of advertising from a non-alcohol industry entity, namely the Vines Resort and Country Club (The Vines Resort). The Vines Resort is not a member of one of the four industry associations who collectively sponsor the ABAC scheme; nor does it regularly advertise alcohol products. Accordingly, *prima facie* the ABAC standard for alcohol beverage advertising does not apply to the Vines Resort. Equally, the Panel has no authority as such to make a determination which has any force with the Vines Resort.
10. While this is the starting point, the situation is somewhat more complex. Fosters, the producer of "Pure Blonde", has entered into an arrangement with the Vines Resort whereby Fosters has made available funding which has been used by the Vines Resort to run its "Pure Blonde" golf events and

to advertise these events. It appears that Fosters was aware of the radio ads and gave approval to the release of funds for the events which featured their Pure Blonde product.

11. Initial inquiries made of Fosters resulted in the Panel being advised that the company was not involved in the Vines Resort ads and, on this basis, it appeared that the ads and the Vines Resort were beyond the scope of the ABAC scheme. Advice to this effect was passed on to the relevant parties, including the complainant.
12. Subsequently, however, further information became available which indicated Fosters had involvement in the Vines Resort advertising campaign and that this involvement extended to funding and some level of approval of the advertising. Accordingly, the Panel has resolved that the advertising can be considered to fall within the scope of the ABAC scheme and that a determination of the substantive issue raised by the complainant could be made.

The Complaint Timeline

13. The complaint is in the form of a pro forma postcard received by the ABAC Panel on 20 April 2007.
14. The Panel endeavours to determine complaints within 30 days of receipt of the complaint, but, as mentioned above, the Chief Adjudicator initially decided on the basis of information received from the advertiser that the matter fell outside the ABAC Scheme and the relevant parties were advised of this conclusion by letters dated 4 June 2007. Subsequent information revealed that the initial advice from the advertiser was incorrect and as a result the determination process was commenced. This delay in commencement has resulted in the process being completed outside the 30 day period.

Pre-vetting Clearance

15. The quasi-regulatory system for alcohol beverages advertising features independent examination of most proposed advertisements against the ABAC prior to publication or broadcast. Pre-vetting approval was not sought for the advertisement.

The Advertisement

16. The complaints refer to a radio advertisement on 92.9 FM in Western Australia.
17. There were two relevant radio advertisements that formed part of the same campaign and it is not clear which advertisement was heard by the complainant. Both advertisements adopt a humorous tone and consist of a male voice advising of the Vines promotional events. The relevant statements in the first advertisement include:
 - (a) Rather than go to the gym or lift weights, play 18 holes of golf at the Vines Resort and you will be guaranteed a six pack;

- (b) If you book to play 18 holes of golf at the Vines Resort in February you will score a free six pack of Fosters “Pure Blonde” beer;
 - (c) Play 18 holes of golf then take home a special reward.
18. The relevant statements in the second advertisement include:
- (a) Golf and beer, never has a more perfect union been formed;
 - (b) Since the earliest days of golf beer has been right by its side, waiting at the end of a long game...;
 - (c) If you book and play 18 holes of golf they’ll give you a six pack of “Pure Blonde” beer to take home free;
 - (d) Golf without beer would be like beer without pretzels;
 - (e) Play golf – get beer.

The Complaint

19. The complainant argues that the advertisement:
- does not present a mature, balanced and responsible approach to drinking; and
 - depicts a direct association between the consumption of alcohol and the engagement in sport.

The Code

20. The ABAC provides at Section (a) that advertisements for alcohol beverages must:
- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages.
21. The ABAC provides at Sections d and d(i) 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.

Arguments in Favour of the Complaint

22. In favour of the complaint it can be argued that the first advertisement breaches the standard in section (a) of the ABAC by irresponsibly associating the achievement of physical fitness, by the use of the term “get

a six pack”, with the supply of the product after the playing of a round of golf.

23. And by breaching section (d) of the ABAC by depicting a direct association between consuming the product and engaging in the sport of golf.
24. It can be argued that the second advertisement breaches the standard in section (a) of the ABAC by irresponsibly linking the physical activity of golf with the consumption of alcohol.
25. And by breaching section (d) of the ABAC by depicting a direct association between the consumption of alcohol and the sport of golf, by stating that golf and beer are a perfect union, and implying that consumption of beer should occur with the activity of golf.

The Advertiser’s Comments

26. The Advertiser responded to the complaint and questions posed by the Panel by way of email letter dated 3 July 2007. Key points made by the Advertiser in relation to the first advertisement were:
 - (a) The beer is offered as a value add to the purchase of a round of golf.
 - (b) The tone of the advertisement is very tongue in cheek and this humour is further reinforced by the fact that it is parodying a sport that is traditionally not associated with being strenuous enough to get a ‘six pack’.
 - (c) The punch line is revealed when it states that “..you’ll score a free ‘six pack’ of Pure Blonde beer, play WA’s legendary course, then take home a special reward...” A reasonable person would interpret this to mean that if you play a round of golf you are rewarded ‘gift with purchase style’ with a six pack of beer not with a six pack of the muscular kind.
 - (d) There is no depiction of the consumption of alcohol whilst playing golf and in fact the advertisement clearly states that you get to “take home a special reward”.
27. Key points made by the Advertiser in relation to the second advertisement were:
 - a. There is no depiction of the consumption of alcohol whilst playing golf and there is no reference to drinking whilst playing. The advertisement uses phrases like “...waiting at the end of a long game” and “if you book and play...they’ll give a six pack of Pure Blonde beer to take home free”.
 - b. Having a beer post your golf game with friends in a licensed club house venue or at home has been enjoyed by many Australians for a long time, so there is an association. However the advertisement very clearly states (in a humorous tone) that “Beer has been right by its [golf] side waiting at the end of a long game”.

The Panel's View.

28. The complaint is in the form of a *pro forma* card which invites a complainant to tick a box to indicate which section of the ABAC the complainant contends is breached by the advertisement which has caused concern to the complainant. While it is helpful to relate complaints to specific sections of the ABAC, the *pro forma* card does not actually explain what it is about the ad that the complainant finds concerning. In these circumstances, the Panel is obliged to assess the advertisement generally against the standard in the particular section of the ABAC, without the insight of the particular issues which troubled the complainant.
29. As explained, the ad was not submitted to the ABAC pre-vetting process, as the Vines Resort is neither an alcohol industry company nor a member of one of the four (4) relevant industry associations which sponsor the ABAC scheme. Accordingly, neither the Vines Resort nor Fosters had the benefit of developing the ads with the input of independent assessors advising on the ABAC standards.
30. The two sections raised by the complaint are sections (a) and (d). Section (a) is a combination of a positive standard of advertising presenting a mature, balanced and responsible approach to alcohol consumption; and then a list of specific things advertisements must do not. These “negative standards” go to the encouragement of excessive consumption, under-age drinking and offensive behaviour.
31. The Panel does not believe that the ads breach the section (a) standard. The ads do not depict excessive consumption, have any content which could give rise to an encouragement of under-age drinking, or promote offensive behaviour. The ads do link the physical activity of golf with alcohol, but it is difficult to conclude that this is irresponsible within the sense of the matters dealt with in section (a).
32. Section (d) of the ABAC deals with the association of the consumption of alcohol with the engagement in any sport. The section provides that alcohol ads are not to depict any direct association between consumption and the engagement in any sport. Any depiction of consumption must not be represented as having taken place before or during the sporting activity.
33. The two radio ads do associate golf and alcohol. To breach the section, this association must:
 1. be direct;
 2. involve consumption; and
 3. have the consumption take place before or during the engagement in sport.
34. The advertiser contends, in relation to the first ad, that there is no depiction of the consumption of alcohol during or before a person plays a round of golf, but rather the product is supplied as a “take away” after the game. The Panel accepts that this ad creates a direct association between alcohol and golf; however it is not the Panel's view that the ad depicts “consumption” as the

product is not suggested as being consumed before or during the round of golf.

35. The second ad is more problematic. The ABAC uses different language in its sections when setting standards for advertising. Section (d) refers to depictions of “consumption” of alcohol. Section (c) of the ABAC is more expansive and refers to both “consumption” and the “presence” of alcohol in advertising. Section (a) uses different language again of the “approach to consumption” while section (e) refers to “drink or sample”.
36. The Panel does not adopt a legalistic approach to interpreting the ABAC and a commonsense meaning to each of the ABAC standards needs to be applied. Depictions of “consumption” is more than just actual drinking and, in this case, the ad uses language and images which invoke consumption e.g. golf and beer being a perfect union and comparisons to beer and pretzels. Accordingly, the Panel believes that the second ad does depict the “consumption” of alcohol beverage.
37. The essential issue then turns around whether consumption is depicted before or during the engagement in golf. On this point the advertiser argues that any consumption is suggested after the conclusion of the game. While some of the statements indicate that consumption occurs after the engagement of the activity, other statements used are ambiguous at best and could be said to create an impression of immediate consumption i.e. ‘play golf – get beer’. Undoubtedly this element would have been discussed and modified if the ad had been subjected to pre-vetting. On balance, the panel thinks the ad does breach section (d).
38. Accordingly, the complaint is upheld in relation to the second radio advertisement in relation to section (d) and is dismissed in other respects.