



ABAC Adjudication Panel Determination No. 2/15

Product: French Champagne
Company: ALDI Australia
Media: Television
Complainant: Carol Cashman
Date of decision: 14 January 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for French Champagne by ALDI Australia (“the Company”) and arises from a complaint received 6 January 2015.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

7. The complaint was received on 6 January 2015.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint has been determined with this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication (13619).

The Marketing Communication

10. The complaint refers to an advertisement viewed on free to air television. There is a responsibility statement and conditions in small print at the bottom of the screen.
11. The advertisement opens in a living room where a small older man is sitting on a sofa and a tall younger woman is standing pointing to two bottles of champagne on a sideboard as the following text appears on the bottom of the screen "I like this French champagne and I like this French champagne". The woman has a French accent and says the words on the bottom of the screen as she points to the two bottles of champagne and the prices "\$29.99" and "\$24.99" appear next to each bottle.
12. The woman then looks at the camera as she says (and the words are superimposed along the bottom of the screen) "And I quite like French kissing". She passes her tongue across her lips and then claps twice. The man stands up and the woman kisses him as the words "The Perfect Aussie Christmas" are superimposed on the screen. The final screen includes the ALDI logo above the URL aldi.com.au/Christmas and the "Get the Facts Drinkwise" logo is included in the bottom right hand corner of the screen.

The Complaint

13. The complainant is concerned that the television advertisement depicts a woman enjoying French Champagne and French kissing with a man and includes sexual innuendo and overtones unsuitable for television.

The ABAC Code

14. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

The Company's Response

15. The Company responded to the complaint on 9 January 2015. The principal points made by the company were:
 - (a) ALDI Australia takes the prevailing standards of the community seriously, especially with regards to the promotion of alcoholic products.

- (b) We do not believe we have breached the Code, but specifically section 3 (c)(ii) for the following reasons:
- The two bottles shown in the advertisement have not been opened and clearly have their foil seals intact;
 - There is no suggestion that any alcohol has been consumed by either of the people in the advertisement, as neither are visibly intoxicated in any manner, nor are there glasses shown; and
 - The 'French' kiss is used as a contextually relevant vehicle to highlight the fact that both champagnes in the advertisement are French, as this is a key selling feature in the sparkling wine/champagne market.
- (c) This is an advertisement about a female character who likes 'French' things, not an advertisement that suggests that an alcoholic product causes or contributes to the achievement of sexual, social or other success.

The Panel's View

16. Aldi is a global supermarket chain which commenced operations in Australia in 2001. Consistent with liquor licensing laws, the company sells alcohol products from particular stores in New South Wales, Victoria, and the Australian Capital Territory. The Company is not a signatory to the ABAC scheme, unlike the two major Australian supermarket companies, Coles and Woolworths, and hence is not bound by Panel decisions. That said, the Company has used the ABAC scheme's pre-vetting service on occasions, including for this particular television advertisement, and has fully cooperated with the Panel's process in relation to this complaint. Accordingly, the Panel has been able to make a determination.
17. The complainant believes the advertisement is unsuitable for television due to its sexual overtones. Given that the underlying concern is about the portrayal of sex and sexuality, which is an issue under the ANAA Code of Ethics rather than the ABAC, it is likely that the ASB will make a determination about the advertisement. In these circumstances, this determination will deal only with the ABAC related issue, which is whether the advertisement's association of the alcohol product and French kissing breaches the ABAC.
18. Part 3(c)(ii) of the Code provides that a marketing communication for an alcohol product must not show the consumption or presence of alcohol as a cause or contributor to the achievement of social or sexual success. It might be argued that the woman's actions in kissing the man has been caused by the French champagne and if this is a fair interpretation of the advertisement, then it will be in breach of the ABAC standard.
19. The Company contends the standard has not been breached as there is no suggestion that either the woman or the man has consumed alcohol, and the French kiss is merely a "contextually relevant vehicle" to highlight that the product is French in origin.

20. The key concept of Part 3(c)(ii) is that of causation. Alcohol products are not able to be shown directly or by implication as a cause to the achievement of success. In other words, it is not prohibited to depict successful people or successful events within alcohol marketing, provided that the alcohol product is not suggested as a reason for this success.
21. In this case, the Panel does not believe the advertisement is in breach of the ABAC standard. In reaching this conclusion, the Panel has noted:
 - a) It is clear that the product shown in the advertisement has not been consumed, and neither the man or woman has been affected by alcohol consumption;
 - b) The French kiss between the couple is being used to emphasise the product's country of origin;
 - c) A fair interpretation of the advertisement would be that the woman enjoys all things French and this is the cause of her kissing the man, rather than the product being the cause of the kiss.
22. While the Panel dismisses the complaint, it encourages the Company to become a signatory to the ABAC scheme. By becoming a signatory, the Company would be joining the other major Australian supermarket retailers of alcohol products, and this would demonstrate its commitment to best practice in alcohol marketing.