



ABAC Adjudication Panel Determination No. 46/15

Product: Soho Bar
Company: Eastern Hotels Group
Media: Facebook
Complainant: Confidential
Date of decision: 21 April 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 post on the Soho Bar Facebook page and arises from a complaint received 9 April 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 9 April 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 within 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 not obtained for this marketing communication.

The Marketing Communication

10. The complaint refers to a post that appeared on the Soho Bar Facebook page.
11. The post was purportedly by Soho and stated “We’re throwing an extra special Yeezter event Tonight. Free entry till 10pm and \$5 drinks till midnight – get amongst it!”.
12. Below the text is a photograph of a young woman wearing a black cocktail dress lying on her back with her arms and legs stretched out on a tiled floor in what appears to be an alleyway, possibly outside a licensed premises. There are two beverages and a person sitting cross legged and a third person standing near her. The young woman appears to be intoxicated.

The Complaint

13. The complainant is concerned that the advertisement:
 - (a) Includes a cheap drink offer accompanied by a photograph of an intoxicated young woman;
 - (b) Shows an intoxicated young woman lying on the floor, given the club owner’s son has recently been convicted of rape, and given the spate of violence against women that it endemic in society;
 - (c) Objectifies extreme alcohol intake as something to aspire to.

The ABAC Code

14. Part 2(a) of the ABAC Code provides that The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
 - brand advertising (including trade advertising)
 - competitions
 - digital communications (including in mobile and social media and user generated content)
 - product names and packaging
 - advertorials
 - alcohol brand extensions to non-alcohol beverage products

- point of sale materials
 - retailer advertising
 - Marketing Collateral
15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
16. Definitions in Part 5 of the ABAC provide:

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile or social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

The Company's Response

17. The Company responded to the complaint by email dated 13 April 2015. The Company advised that:
- the advertisement in question was a post on the official Soho Bar Facebook page by an external promoter running a one off event for Easter;
 - all posts are to have pre-approval from management however this process was not adhered to on this occasion and the post in question was an unauthorized post which was not sanctioned by Soho Management;
 - Soho marketing continually monitors the pages and as soon as this post was detected it was removed by Soho staff.
 - The external promoter no longer has any association with Soho Bar and a review of Soho marketing and promotions outsourcing is now in effect to ensure that this does not happen again moving forward.

The Panel's View

18. The Soho Bar is a nightclub located in Sydney's Kings Cross district. The nightclub provides a range of different bar and function spaces, which are marketed via a number of digital communication platforms, including a website and an official Facebook page. The complaint concerns a post promoting a particular event at the club placed on the Facebook page.
19. The ABAC is a quasi-regulatory initiative, which means that compliance with the ABAC is based upon a contractual commitment given freely by alcohol industry participants, rather than obligations created through legislative authority. While the great majority of alcohol producers as well as major alcohol retailers are ABAC members, either directly or through membership of the sponsoring alcohol industry peak bodies, the Eastern Hotels Group, the owner of the Soho Bar, is not a signatory to the ABAC Scheme.
20. As a result, the company is not contractually bound to meet the ABAC standards or to comply with a Panel determination. That said, the Company has fully cooperated with the Panel's processes and, accordingly, the Panel has been able to make this Determination.
21. The ABAC in its current form came into operation on 1 July 2014. The new Scheme has a broader reach, both in terms of the types of marketing communications which are to be subject to the Code standards, and also in the range of alcohol industry participants whose marketing is captured by the Scheme's ambit. The Facebook post on the Soho Bar Facebook page does on its face fall within the ABAC Scheme because:
 - A Facebook page is a digital marketing communication to which the Code standards apply; and
 - The Soho Bar is a retailer of alcohol beverages within the scope of the Scheme.
22. The Company points out that while the Facebook page was an official company page, the post itself was not authorised. It was explained that the post was made by a third party promoter who failed to follow internal Company approval processes prior to the post being made. The Company goes on to state that it has both severed its relationship with the external promoter, and changed its internal processes to guard against unauthorised posts being made in the future.
23. While the Panel acknowledges this information by the Company and notes its intention that a post of this type should not have been made, nonetheless it was. The fact that there was a failure of internal processes does not take away the Company's responsibility for the post. As is made clear by Part 2(a) of the Code, the standards are to apply to "all marketing communications in Australia generated by or within the reasonable control of a marketer". In these circumstances, given the post was on a page under the control of the marketer the Company is responsible, for ABAC purposes, for the content of the post which appeared on its digital communication platform.

24. The issue then turns on whether the post was consistent with the ABAC standards. The complainant is concerned that the Facebook post promotes excessive consumption and encourages irresponsible and offensive behaviour. The Company did not address the substance of these concerns in its response, but rather went to an explanation of the failure in process leading to the post and the steps taken to avoid a repetition in the future.
25. The Panel believes the post is in breach of standards 3(a)(i) and (ii) of the Code. A reasonable person would take the image and the text of the post to be suggesting that the young woman had consumed excessive amounts of alcohol and that such behaviour was acceptable, if not desirable. Equally, the image invokes the vulnerability of the woman, as she is placed lying down seemingly in an alley way with at least one male standing over her. This could easily be interpreted as promoting irresponsible and offensive behaviour related to alcohol use.
26. The Panel strongly urges the Company to utilise the ABAC pre-vetting service in its marketing activities to provide independent verification of marketing approaches consistent with good standards of alcohol marketing practice. While the post in question may not have had the express endorsement of the Company, it does represent a particularly poor example of alcohol related promotion and the concern of the complainant is entirely justified.
27. Accordingly, the complaint is upheld.