



ABAC Adjudication Panel Determination No. 43/15

Product: Various
Company: Liquor Legends
Media: Outdoor
Complainant: Nic Cecire
Date of decision: 4 May 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement for various beer products by Liquor Legends (“the Company”) and arises from a complaint received 1 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 1 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 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 not obtained for this marketing communication.

The Marketing Communication

10. The complaint refers to an outdoor advertisement viewed on poles in suburban streets in Ashfield, New South Wales.
11. The advertisement includes a picture of 4 x 330ml bottles of beer, each a different brand (Carlsberg, Becks, Peroni and Stella Artois), on ice. Above the image is the offer "Any 2 cartons only \$78 Stella, Becks, Carlsberg Green or Peroni Red 330ml BTL CTNS.". At the top of the page is the text "Find us level 2 Ashfield Mall next to Reject Shop. Craft beer lovers come and check out our ever growing craft beer range hundreds to choose from" followed by the Liquor Legends logo which is a hand with the thumb up in the middle of the name. Below the logo is the text "Happy Easter On Sale Now" with three drawn outlines of eggs with sunglasses and hair, a moustache and monocle or checked pants and a bow tie on each side of the words.

The Complaint

12. The complainant is concerned that alcohol should not be advertised in suburban streets outside dwellings where there are children of all ages present.

The ABAC Code

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(i) have Strong or Evident Appeal to Minors;
14. Definitions in Part 5 of the ABAC provide:

Strong or Evident Appeal to Minors means:

 - (i) likely to appeal strongly to Minors;
 - (ii) specifically targeted at Minors;
 - (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
 - (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A 'Minor' means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia

The Company's Response

15. The Company did not respond to the complaint.

The Panel's View

16. Liquor Legends is a retailer of alcohol beverages. 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 supplied a copy of the advertisement complained about and asked to be advised if the outlet is in breach of any rules so they could advise the outlet to take action. Accordingly, the Panel has made a determination.
17. The complaint relates to a poster advertising alcohol beverages from Liquor Legends. The complainant is concerned that the poster was placed on a pole in a suburban area and that the alcohol marketing communication was therefore accessible to minors. Accordingly, the complaint appears to be raising two separate issues. Firstly, the placement of the poster itself and, secondly, the advertisement's appeal to minors. Each of these aspects are considered in turn.
18. As has been noted in previous determinations, section 2(b)(vi) of the Code expressly provides that the ABAC does not apply to the placement of a marketing communication. That is, the ABAC is a content and not a placement code. This means that while an alcohol advertisement may be accessible to under 18 year olds by reason of its placement, this will not of itself constitute a breach of the Code. Rather, in order to establish whether the Code has been breached, the Panel must consider whether the content of the marketing communication can be said to have strong or evident appeal to minors, regardless of the type of marketing or where it can be viewed.
19. Section 3(b)(i) of the Code provides that a marketing communication must not have strong or evident appeal to minors. Pursuant to section 5, 'strong or evident appeal to minors' means that the content of a marketing communication must be likely to appeal to minors, specifically targeted towards minors, or have a particular attractiveness for a minor beyond the general attractiveness it has for an adult.
20. The poster provides factual information about the Company's promotional offer on alcoholic beverages and the location of its retail outlet in Ashfield, New South Wales. While the marketing communication could be viewed by minors, the Panel does not consider that there is anything within the content of the advertisement that could be said to have strong or evident appeal to an under 18 year old.
21. Accordingly, the complaint is dismissed. In dismissing the complaint, the Panel encourages the Company to become a signatory to the ABAC Scheme so as to demonstrate its commitment to good practice in alcohol marketing, and to have access to the ABAC pre-vetting service so it may obtain independent verification of the quality of its advertising prior to its use.