



ABAC Adjudication Panel Determination No. 71/15

Product: Montrose Cellars
Company: IGA Liquor Montrose
Media: Outdoor
Complainant: Confidential
Date of decision: 3 June 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement for IGA Liquor Montrose and arises from a complaint received 22 May 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 22 May 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 advertisement was on the outside of a building below a sign "Montrose Cellars plus IGA".
11. The advertisement is an image of three attractive smiling women, one woman is holding a partially consumed glass of beer and two are each holding a partially consumed cocktail.

The Complaint

12. The complainant is concerned that the advertisement:
 - (a) is a 4 x 4 metre window poster on the proposed Montrose IGA liquor store on the main street of a shopping village, noting that the store does not currently have a permit for the sale of alcohol;
 - (b) sends the wrong message for young people and other community members about the social harms of drinking by promoting 3 young women drinking wine on a large window in a shopping strip; and
 - (c) shows women that look younger than 25 years of age holding a glass of wine.

The ABAC Code

13. 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;
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol; or
 - (b)(iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - (A) they are not visually prominent; or
 - (B) they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.

The Company's Response

14. The Company advised that the picture had been changed in response to community concerns but that they do not believe the image breaches the Code as the models are all over the age of 25 and the image does not show excessive drinking in any way.

The Panel's View

15. The complaint concerns the placement of a large picture on the window of an alcohol retail outlet. The picture features three women, each holding a partially consumed alcoholic drink. The complainant is concerned that the advertisement sends a poor message to young people and other community members about the social harms of drinking. Further, the complainant is of the belief that the women appear to be under the age of 25 years.
16. Part 3(a)(i) of the ABAC provides that a marketing communication must not show or encourage the excessive or rapid consumption of an alcohol beverage, or misuse or abuse of alcohol. It would seem that the basic concern of the complainant is the visibility of the advertisement in the main street of a shopping village which means it will be seen by the general community, including under 18 year olds.
17. As explained in paragraph 3, the ABAC is concerned about the content of alcohol marketing, rather than where the marketing might be placed. This means that the ABAC will not be breached for the reason alone that an alcohol advertisement will be seen by under 18 year olds. Rather, the Code provides a series of standards, which the content of all alcohol marketing must comply with, regardless of where the alcohol advertising might be seen.
18. The Panel does not believe that the advertisement breaches the Part 3(a)(i) standard. The advertisement displays three women, each with an alcohol drink. There is no indication that the women have been drinking excessively, and they do not appear to be affected by alcohol. There is no reasonable implication to be taken from the advertisement that excessive or irresponsible levels of alcohol consumption are being encouraged.
19. The second element of the complainant's concern related to the apparent age of the models featured in the advertisement. Part 3(b) of the Code provides that an adult appearing in an alcohol advertisement must appear to be an adult and be at least 25 years of age.
20. The Company advises that each of the models featured in the advertisement are in fact over 25 years of age. Further, the Panel does not believe that any of the models appear to be other than an adult (i.e. under the age of 18). Accordingly, the Panel does not believe that this provision of the Code has been breached.
21. The complaint is dismissed.