



ABAC Adjudication Panel Determination No. 113/15

Product: Munich Brauhaus
Company: Urban Purveyor Group
Media: Outdoor
Complainant: Ms Smethurst
Date of decision: 11 November 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 and arises from a complaint received 29 September 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.

The Complaint Timeline

7. The complaint was received on 29 September 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 obtained for each of these marketing communications.

The Marketing Communications

10. The five advertisements for Munich Brauhaus that were seen in Southern Cross Station are described following.

First Advertisement – “Hands up if you’re ready to party”

11. The advertisement includes a photographic image in the left third of the advertisement that features a smiling woman in Bavarian costume with visible cleavage standing in a venue with her hands raised in the air.
12. On the right two thirds of the advertisement against a dark blue background is the text “Oktoberfest 2015” in a light blue elaborate font at the top of the page. Below is white bolder font for the text “HANDS UP IF YOU’RE READY TO PARTY”. The bottom right section of the advertisement includes the dates “18 September – 31 October” in light blue font and below in white text “Book now munichbrauhaus.com”. On the bottom right of the page is the Munich Brauhaus logo in light blue and white.

Second Advertisement – “Where three is never a crowd”

13. The advertisement includes a photographic image in the left third of the advertisement that features three smiling women in Bavarian costume with visible cleavage each holding a stein of beer with one additional stein of beer in front of the group. The woman in the middle is waving at someone to the left of the camera.
14. On the right two thirds of the advertisement against a dark blue background is the text “Oktoberfest 2015” in a light blue elaborate font at the top of the page. Below is white bolder font for the text “WHERE THREE IS NEVER A CROWD”. The bottom right section of the advertisement includes the dates “18 September – 31 October” in light blue font and below in white text “Book now munichbrauhaus.com”. On the bottom right of the page is the Munich Brauhaus logo in light blue and white.

Third Advertisement – “Proof that not all heroes wear capes”

15. The advertisement includes a photographic image in the left third of the advertisement that features a woman in Bavarian costume with visible cleavage appearing to lift nine steins of beer.
16. On the right two thirds of the advertisement against a dark blue background is the text “Oktoberfest 2015” in a light blue elaborate font at the top of the page. Below is white bolder font for the text “PROOF THAT NOT ALL HEROES WEAR CAPES”. The bottom right section of the advertisement includes the

dates “18 September – 31 October” in light blue font and below in white text “Book now munichbrauhaus.com”. On the bottom right of the page is the Munich Brauhaus logo in light blue and white.

Fourth Advertisement – “Overflowing with excitement”

17. The advertisement includes a photographic image in the left third of the advertisement that features three smiling women in Bavarian costume with visible cleavage each holding a stein of beer, with the middle stein overflowing with beer.
18. On the right two thirds of the advertisement against a dark blue background is the text “Oktoberfest 2015” in a light blue elaborate font at the top of the page. Below is white bolder font for the text “OVERFLOWING WITH EXCITEMENT”. The bottom right section of the advertisement includes the dates “18 September – 31 October” in light blue font and below in white text “Book now munichbrauhaus.com”. On the bottom right of the page is the Munich Brauhaus logo in light blue and white.

Fifth Advertisement – “Are you thirsty yet?”

19. The advertisement includes a photographic image in the left third of the advertisement that features a woman in Bavarian costume with visible cleavage lifting a stein of beer to her mouth.
20. On the right two thirds of the advertisement against a dark blue background is the text “Oktoberfest 2015” in a light blue elaborate font at the top of the page. Below is white bolder font for the text “ARE YOU THIRSTY YET?”. The bottom right section of the advertisement includes the dates “18 September – 31 October” in light blue font and below in white text “Book now munichbrauhaus.com”. On the bottom right of the page is the Munich Brauhaus logo in light blue and white.

The Complaint

21. The complainant is concerned that the advertisement:
 - (a) Sexualises the women in the advertisements with suggestive slogans alongside;
 - (b) The second advertisement shows three women dressed provocatively with beers and with the caption “where three is never a crowd” suggests that these women are available and interested in sex;
 - (c) The third advertisement focuses largely on a woman’s cleavage and a large amount of beer;
 - (d) All images in the series are sexually suggestive and depict women as sexually available;
 - (e) It is offensive to market women alongside beer in this way in a very public place where everyone is exposed to the messaging; and

- (f) Images and messaging such as these contribute to attitudes that support men's violence against women.

The ABAC Code

Part 3 provides that a Marketing Communication must NOT:

- (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;
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
- (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

22. The Company responded to the complaint by letter received 15 October 2015. The principal points made by the Company were:

- There are a series of 5 adverts that show Bavarian women enjoying the spirit, atmosphere and bier that Oktoberfest is famous for. There is one advertisement that shows a group of three women laughing and enjoying a stein of bier, which is shot in one of our Bavarian venues. This advertisement, accompanied by the tag line "Where three is never a crowd" is intended to convey the spirit of Oktoberfest whereby friends and strangers alike come to share in the joyous festivities. The tag line is a play on the common phrase 'two's company, three's a crowd', implying that at Oktoberfest there is no ideal combination of people; the more the merrier.
- The second advertisement in question shows a Bavarian woman leaning down to carry multiple steins, which is a common occurrence at Oktoberfest celebrations where beer maids carry up to 20 steins of bier to tables. The tagline 'Proof that not all heroes wear capes' is in reference to the impressive nature of carrying multiple steins at once. Oktoberfest is well known for being a place of fun, festivities and the celebration that happens there every year for 6 million people. These advertisements when viewed as part of the holistic campaign, represent the celebration of where people choose to go during the Oktoberfest festival in Australia each year, in this particular case it is referring to the Munich Brauhaus.
- The media buying agency used to place the advertising was Ikon Media Agency. All of the creative was put through a rigorous process and was adapted to ensure it fell in line with the codes of ABAC, OMA and the commercial regulations of JC Decaux. They all deemed the material to be appropriate for advertising.

- There were a range of adverts on billboards at Southern Cross Station, a series of pictures depicting women with beer. This was promotion for Oktoberfest 2015, an event running at Munich Brauhaus.
- We take all complaints very seriously and this concern is no different. We feel very strongly that the complainant has misinterpreted this advertisement which is part of a multi-channel Oktoberfest campaign.

The complaint notes that: “All images sexualise the women in them, with suggestive slogans alongside. All images in the series are sexually suggestive and depict women as sexually available” This is not the case, the purpose of this series of adverts is to capture the fun, conviviality, costumes and the Bavarian fare that is synonymous with Oktoberfest, which is an event that 6 million people attend every year in Germany, many of whom choose to dress in traditional attire. Throughout Oktoberfest, and at our venues, patrons and staff often wear traditional Bavarian outfits – which for women is the dirndl - and can be seen in these images.

- The complaint goes further to note that: “I personally find it offensive to market women alongside beer in this way and to depict women in this way in a very public place where everyone is exposed to the messaging. Images and messaging such as these contribute to attitudes that support men's violence against women.” We are a family-friendly business, with a large contingent of respected and highly valued female team members and by no means would we ever discriminate against women or do anything that leads to inequality or harassment in the workplace or in Australia. This statement is non-factual and is a stretch to be garnered from this advertising. To suggest that these advertisements aim to encourage violence against women is a particularly narrow interpretation of the material and not in line with the Munich Brauhaus brand and ethos. The Oktoberfest festivities that take place at Munich Brauhaus are a celebration of Bavarian food, bier and music which are attended by thousands of Melburnians who seek an authentic and joyous Oktoberfest experience. We have a range of unique activities on offer ranging from family Sundays to Ladies Night and more.

The Panel’s View

23. This is the second determination the Panel has made concerning the marketing campaign from the company based around the 2015 Oktoberfest themed activities conducted at the company’s venues. As explained in Determination 101/15 Oktoberfest traces its history to a royal wedding held in Munich 1810. Since the 1960’s numerous worldwide events have been staged which claim linkage to the original German event.
24. The complainant is concerned about a series of outdoor advertisements which were placed at Melbourne’s Southern Cross Railway station. Each of the advertisements feature one or more attractive women dressed in Bavarian style

dresses which are low cut and emphasise the women's cleavage. Four of the five advertisements feature the women with large and full steins of beer. This combination of showing women dressed in what the complainant considers a provocative matter with alcohol raises a number of concerns for the complainant. These concerns primarily relate to the sexualisation and objectification of the women portrayed in the advertisements.

25. As explained in paragraph two, alcohol marketing in Australia is subject to a fairly complicated regulatory regime of various laws and Codes of Practice. The concerns regarding the sexualisation and objectification of women raised by the complainant fall within the ambit of the AANA Code of Ethics as administered by the Advertising Standards Board and not the ABAC Scheme. This means that those aspects of the complaint will not be canvassed in this determination. Rather this determination deals with those aspects of the complaint which relate to alcohol as a product.
26. The ABAC standards raised by the complaint go to:
 - The encouragement of irresponsible or offensive behaviour that is related to the consumption or presence of alcohol.
 - Suggestions that the consumption or presence of alcohol may contribute to a change in mood and/or the achievement of sexual or social success.
27. In assessing if an advertisement breaches an ABAC standard, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person taking the content of the advertisement as a whole. The notion of a "reasonable person" is borrowed from the Australian Common Law system and means reference is to be had to the opinions, attitudes and beliefs that are common in a majority of the community.
28. The Panel does not believe that the advertisements can fairly be said to be encouraging sexual harassment or violence against women as expressed by the complainant. The Panel believes that a reasonable interpretation of the ad is to display the availability of alcohol at the company's venues and the holding of Oktoberfest themed activities. While these activities are placing emphasis on the consumption of alcohol through the depictions of large steins of beer, there is no suggestion through the images or the related text that sexual harassment or other inappropriate behaviours towards the women displayed are being encouraged.
29. The Panel does not believe that the advertisements are breaching the standard in relation to the achievement of social or sexual success. In reaching this conclusion the Panel has noted:
 - The persons depicted in the advertisements do not appear to be affected by alcohol.
 - Within the context of the Oktoberfest theme the advertisements would not be seen to be out of place.

- The advertisements focus on the women, who are presumably staff at the venues, but showed no interaction between the women and customers which would indicate that social or sexual success has been or is likely to be caused by the use of alcohol.
- Taken as a whole, each advertisement places alcohol as a part of the activities but does not suggest that social or sexual success will be caused by alcohol use.

30. Accordingly, the complaint is dismissed.