



ABAC Adjudication Panel Determination No. 9 & 14/16

Product: Alcohol delivery service
Company: Jimmy Brings
Media: Print
Complainants: Confidential complainant & Ms Pryor
Date of decision: 29 January 2016
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 printed fridge magnet for an alcohol delivery service named, Jimmy Brings, and arises from complaints received 8 and 18 January 2016.
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:

- ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 8 and 18 January 2016.
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 marketing communication is in the form of a black and white printed fridge magnet which features head shots of two serious looking men in suits. At the top of the images is the text "Alcohol delivery service", "JIMMY BRINGS" and in cursive print "You know you want it".
11. Below the photos in large bold lettering is the text "Alcohol delivered in 30 mins". Below that print in cursive "Jimmy brings it" above the text "7 days, 6pm-midnight, Sunday until 10pm Order online at JimmyBrings.com.au using your mobile, tablet or computer, or call on 93008884 It is an offence to sell or supply alcohol to, or obtain alcohol on behalf of a person under the age of 18 years. Liquor license LIQP770010295"

The Complaint

12. The first complainant is concerned that the message on the material is an open invitation to binge drink and facilitate the supply of alcohol to underage persons.
13. The second complainant is concerned that the material is suggesting that the rapid delivery of alcohol is an antidote to anxiety or low mood by depicting two unhappy and anxious males with the heading "you know you want it" and including a large caption stating alcohol delivered in 30 minutes.

The ABAC Code

14. 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;
 - (b)(i) have Strong or Evident Appeal to Minors;
 - (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)(iv) suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company's Response

15. The Company responded to the first complaint by email dated 12 January 2016. The Principal points made by the Company are:

- (a) We did not receive ABAC approval. This advertisement is a small A6 fridge magnet distributed to several thousand homes in the lower north shore. We are not aware that this sort of promotion should seek prior approval from ABAC, however we would be happy to learn and participate about this process if it was appropriate.
- (b) These concerns are based around if the business model of alcohol delivery per se encourages excessive or underage consumption. The delivery of alcohol is practiced by major chains like Dan Murphy's, including rapid turnaround same-day services and has existed for years. The interest in a rapid turn-around alcohol delivery service is more about our consumer behavior moving more towards convenience and service, than about excessive consumption. Food home delivery is one of the fastest growing markets in Australia and across the world, and that isn't because people are over-eating, it is because of consumer behavior. Our advertising seeks to engage those customers seeking such a service.
- (c) The tagline "you know you want it" is intended to establish a 'street cred' about the brand, not the alcoholic nature of the product. It should be noted that over 90% of our customers are over 25. Our service doesn't actually appeal to young people, as we are considerably more expensive than bottle shops. Everything that we design and use for our brand is targeted to an older demographic.
- (d) The 'Jimmy Brings it' was just an inventive/different way of saying 'opening hours'. We have based our brand around a retro 1930s look and feel. I don't see how this style would appeal in any particular way towards a younger age group. As our customer base is mainly 30-50 with high disposable income, we have targeted our brand and products towards a more sophisticated market, not a young market. This can clearly be seen in our selection (we do not offer RTDs) of high quality products that are not cheaply priced.
- (e) We have taken the following steps to go above and beyond our legal obligations, in order to prevent potential misuse of our service by minors or intoxicated persons:

- All of our drivers and phone operators have RSA certificates.

Drivers are not outsourced couriers, but in-house staff trained specifically

to deal with the delivery of alcohol

- Photo identification must be presented on all orders.
- We will not deliver to parks or public areas. Only to places of residence.
- We never leave alcohol on a doorstep, it must be handed to the customer upon the sighting of valid photo identification

(f) There is the message on the advertisement stating that it is an offense to deliver to persons under the age of 18. We are proud of our culture of Responsible Service and take this matter very seriously.

16. The Company responded to the second complaint by email dated 19 January 2016. The Principal points made by the Company are:

(a) Our brand is based on a retrospective interpretation of the prohibition era, and is targeted at the age group of 25-45. The two mugshot style photos are intended to be a tongue-in-cheek depiction of 1930s gangsters. One of the main reasons why we chose this branding was because we believed that the older age group is more sensitive to historical referencing. These faces have been used in all parts of the brand, and in no way are intended to depict 'low mood' or anxiety, or any suggestion that there would be a release from these states by using our service. Similarly with the tagline "you know you want it", this again is in-line with the brand positioning, referencing the illicit nature of alcohol during the prohibition era, and establishing a 'street cred' around the brand. We don't believe that either of these references implies alcohol as having a therapeutic benefit or an antidote to personal problems. (I would imagine that marketing which shows beautiful, smiling and happy people in social situations is the type of imagery and messaging which enforces alcohol as a reprieve from personal problems.)

(b) The rapid nature of our delivery service targets those customers who are seeking convenience. Generally speaking, these are parents with young children and professionals who have little time to shop or purchase groceries. It is the same type of customer who orders home delivery of food instead of cooking for themselves or going out to a restaurant. Stating the nature of our rapid delivery service in no way suggests there is a therapeutic benefit to alcohol.

The Panel's View

17. Jimmy Brings is an alcohol home delivery business which operates in the Sydney CBD and surrounding suburbs. The marketing theme of the business is based upon the American prohibition era and the depiction of gangsters or

bootleggers. The marketing item that has drawn two complaints is a black and white refrigerator magnet distributed by the Company.

18. The complaints raise several issues about the marketing item. The first complainant believes the marketing amounts to an open invitation to binge drink and facilitate the supply of alcohol to under aged persons. The second complaint contends the marketing is suggesting that rapid alcohol delivery is an antidote to a low mood. Combined the complaints raise ABAC standards relating to:
 - The excessive or rapid consumption of alcohol.
 - Strong or evident appeal to under 18 year olds.
 - Alcohol having a therapeutic benefit or as being a cause of a significant change in mood.
19. In essence, the first complaint is centred on the appropriateness of the alcohol home delivery business model more than it is about the content of the specific marketing item. The argument raised is that a 30 minute delivery service will facilitate a person to binge drink and that controls which exist within a retail outlet to prohibit sales of alcohol to under 18 year olds will not be replicated in a home delivery scenario.
20. For its part the Company advises of a range of measures it says it has instituted to safeguard against under aged persons being able to purchase and/or take delivery of alcohol. Further it argues that home delivery of alcohol is driven by convenience and service and not a desire to facilitate excessive consumption.
21. The Panel does not believe the marketing item is in breach of Section (a) of the Code. There is a clear distinction between the purchase of an alcohol product and the pattern of its subsequent consumption. Alcohol by its nature is a product with a relatively long shelf life in that it can be stored for months or in the case of wine and spirits, for years, prior to its use. It does not follow that simply because alcohol products are home delivered that a person will then engage in binge drinking, any more than a person purchasing a product in store at a bottle shop will engage in subsequent excessive or rapid consumption of the product purchased.
22. Further the Panel does not believe that the content of the marketing item can be said to have strong or evident appeal to under 18 year olds. The black and white style of a Prohibition era themed marketing campaign would seem to have more evident appeal to an older demographic group than it would to say, a 15 – 17 year old group.
23. The second complaint raises issues under Section (c) of the Code by arguing that the marketing item suggests that the rapid delivery of alcohol (within 30 minutes) is an antidote to anxiety or low mood. The relevant ABAC provisions provide that a marketing communication must not suggest that:

- The consumption or presence of an alcohol beverage may create or contribute to a significant change in mood.
 - The consumption of an alcohol beverage offers any therapeutic benefit.
24. The Company argues that the photos and style of the marketing item reflect a tongue in cheek depiction of 1930's gangsters and the tag line "you know you want it" reflects the illicit nature of alcohol during the Prohibition era. The Company rejects that the item would be taken as implying alcohol has any therapeutic benefit.
25. In assessing if a Code standard has been breached the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person taking its content as a whole. The reference to a "reasonable person" is drawn from the Australian Common Law System and means that the benchmark is the opinions, attitudes and values which are common in a majority of the community. A person who holds a different view is not "unreasonable" but their interpretation of a marketing communication might not coincide with that of a majority of the community.
26. The Panel does not believe the marketing item breaches the Section (c) standard. In reaching this conclusion, the Panel has noted:
- The messaging relates to the home delivery service and not the characteristics of any specific alcohol product.
 - The marketing item would not be taken by a reasonable person as portraying a low mood or state of anxiety for which alcohol is an antidote.
 - There is no suggestion within the content of the marketing item that alcohol will lead to a change of mood. The item makes no reasonable inference as to the impact of alcohol use but is related to the capacity to purchase the product through the service provided by the Company.
27. Accordingly the complaints are dismissed.