



ABAC Adjudication Panel Determination No. 128/16

Product: Mumm Champagne
Company: Pernod Ricard Winemakers
Media: Digital
Complainant: Ms Sullivan
Date of decision: 20 December 2016
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 a digital advertisement on Instagram for Mumm Champagne by Pernod Ricard Winemakers (“the Company”) and arises from a complaint received 22 November 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:

- 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 November 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 the marketing communication.

The Marketing Communication

10. The digital advertisement was delivered via Instagram as a post by Maison Mumm Australia with a short video clip. The post was “ghmummauTake celebration to the next level this Autumn Racing Carnival! [@SketchShe](#) show us how ... anyone up for a champagne shower? [#DareWinCelebrate](#) [#TheRaces](#)”.
11. The video clip opens with a lady dressed up in clothing suitable for a racing carnival with her mouth open as if singing along to music. The text “Please enjoy Mumm Champagne responsibly” flashes up briefly in the opening scene. The camera then pans out so we can see the woman is in the centre of three women sitting on a seat with G.H.Mumm branding behind them and on seat cushions. One of the women is singing along to the music with her arms in the air and the other two are in conversation and holding small bottles of champagne. We then see the two women in conversation turn to the other woman and then spray champagne from the small champagne bottles over the other woman while all three women laugh hysterically and the woman being sprayed gets up and moves away.
12. We then see in quick succession the back of a man wearing a suit as a hand rests on his arm, one of the women dancing to music and then one of the women still sitting on the seat holding a small champagne bottle while being sprayed with champagne from a large bottle held by a man in a suit.
13. The camera then returns to the scene of the woman dancing but pans out to show all three women dancing on a balcony.
14. In the final scene the women are shown dancing “macarena’ style in a large crowd of people.
15. The clip ends with the G.H.Mumm champagne logo in the centre of the screen and the smaller Drinkwise logo at the bottom of the screen.

The Complaint

16. The complainant is concerned that the advertisement:
 - Implies the beverage will improve your time at the Melbourne Cup and social gatherings in general;
 - Conveys a blatant message that good times will be a consequence of consuming alcohol by this brand;

- Has sexist overtones by showing the women spraying each other with champagne, which is not normal behaviour and can be attributed to the 'fun' which this product purports to bring and the clearly sexist attitude of the advertisers;
- The video of the three women partying at the marquee can only be interpreted as a message that they are having fun because of the alcohol which is very concerning and in direct contradiction to the lip-service text which briefly flashes up during the commercial telling people to enjoy responsibly. It would be better if people would advertiser responsibly; and
- The entire social media strategy is ethically and legally questionable.

The ABAC Code

17. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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;
 - (c)(iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement;

The Company's Response

18. The Company responded to the complaint by letter dated 30 November 2016. The principal points made by the Company were:
- Pernod Ricard Winemakers is a signatory to the ABAC Code and takes compliance very seriously. We are a company committed to ethical marketing of our products and endeavour to abide by not only the Code but also any other applicable advertising codes and the law. As a member of the global Pernod Ricard Group, we are also committed to the promotion of responsible marketing and consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.
 - The advertisement is a video promoted via the G.H. Mumm Instagram account between 16 and 19 April 2016. The video features members of SketchShe a trio of actors who are well known for their comedic YouTube clips and in particular, those where they lip sync to well-known songs. SketchShe were chosen to work with the G.H. Mumm brand to compliment the partnership with David Guetta, a renowned DJ and producer. The trio were filmed in the Mumm marquee during the

Melbourne Cup Carnival in 2015 (which G.H. Mumm sponsors) dancing and lip syncing to the David Guetta song “Bang My Head” (featuring Sia and Fetty Wap). The song for the official film clip, was the result of a collaboration between David Guetta and G.H. Mumm. The purpose of the partnership with SketchShe was to amplify the association with David Guetta by leveraging the social media followers of SketchShe. The video was promoted during the Autumn racing carnival.

- The intent of the video is to enhance and complement the G.H. Mumm collaboration with David Guetta. SketchShe are a renowned comedic trio, known for being quite animated and for creating entertaining, lively content with a humorous undertone, as was the case with this video. It is evident from the video itself that there is no inference that the presence or consumption of alcohol will result in a successful social event and/or increase the enjoyment of such events. The SketchShe actors depicted in the video are already having a great time before one of them begins to spray champagne on the others and at no stage do they consume alcohol. The tone of the video is similar to many of SketchShe’s other internet videos depicting them humorously lip syncing to popular songs.
- The SketchShe actors are shown already having a good time before the champagne shower commences and at no stage do they consume any alcohol. The post next to the video simply refers to the fun and sense of celebration that the actors are portraying whilst dancing and lip syncing to the song, it is not intended to be a reference to the consumption of alcohol, nor do we consider that the post suggests the consumption or presence of alcohol will result in a successful social occasion.
- The video shows the actors enjoying a day at the races and having a good time dancing to the song “Bang My Head”. Whilst it showcases a celebration occasion, no consumption of alcohol is shown and the actors are clearly depicted as being in a great mood and having a good time together without consuming any alcohol. Accordingly, the product clearly had no impact on the success of the event.
- In conclusion, it is our view that the video does in fact comply with all aspects of the ABAC Code. In particular, neither the video taken as a whole, nor any individual element of the video breaches section (c)(i) (ii) or (iii) as it cannot reasonably be interpreted as implying that the consumption or presence of alcohol will result in a successful social occasion.

The Panel’s View

19. SketchShe are an Australian comedy group which has used social media platforms particularly Youtube to reach significant audiences for their routines which feature a lip-sync mime of popular songs. It seems that in November 2015, the group was engaged by the Company to assist in its brand promotion activities associated with Melbourne’s autumn horse racing carnival.

20. As part of its promotional activities for the 2016 racing carnival, the Company produced a video featuring SketchShe which was posted on the Company's Instagram account. It is this Instagram post, which has drawn the concern of the complainant. In the complainant's view, the post:
- Conveys that the alcohol product creates "Good times" and this is the reason why the depicted participants are having fun; and
 - Displays sexist attitudes.
21. The ABAC provides in section 3(c) that alcohol marketing must not suggest that alcohol use is a cause or contributor to a significant change in mood or the achievement of success. If alcohol is shown as part of a celebration, it must not be implied or suggested that the alcohol product was a cause or contributor to the success or achievement being celebrated.
22. The ABAC standards do not go to issues of sexism as such. Rather, the AANA Code of Ethics, applying to advertising more broadly, contains provisions in relation to sexism, racism and similar community wide standards. Accordingly, this determination will not be addressing the issues raised by the complaint specifically about sexism. Rather that aspect of the complaint would be considered by the Advertising Standards Board.
23. In assessing if a marketing communication is consistent with an ABAC standard, the Panel is to have regard to the probable impact of the marketing item on a reasonable person taking the content of the marketing as a whole. The reference to a "reasonable person" is to ground the assessment against the attitudes, opinions and beliefs, which are commonly held across the Australian community.
24. The Company contends that the Instagram post is consistent with the section 3(c) standard. It argues that there "is no inference that the presence or consumption of alcohol will result in a successful social event and/or increase the enjoyment of such events". It is argued that the high spirited mood portrayed in the video was already in place prior to the introduction of the product.
25. The Panel believes the marketing item does breach the section 3(c) standard. In reaching this conclusion, the Panel notes:
- The key concept in the section 3(c) standard is that of causation. It is permitted to associate an alcohol product with successful and attractive people and enjoyable social events. What is not permitted is the suggestion that the presence or consumption of alcohol was a cause or contributor to the success or achievement;
 - The Instagram video does not display the participants actually consuming alcohol, however the product is prominently displayed and is clearly an integral part of the activities depicted e.g. the champagne shower;

- The section (c) standard not only prohibits alcohol from being portrayed as the primary cause of a celebration or a significant change in mood but also extends to alcohol being “a” cause or contributor; and
- A reasonable person would take the combination of the statement “Take celebration to the next level...anyone up for a champagne shower?” with the video clip as suggesting that the presence of the product has elevated the mood of the partygoers and that alcohol is a contributor to the success being celebrated at the event.

26. Accordingly, the complaint is upheld.