



ABAC Adjudication Panel Determination No. 35/17

Product: Fireball Whisky
Company: SouthTrade International
Media: Digital
Complainant: Confidential
Date of decision: 23 January 2017
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post for Fireball Whisky by SouthTrade International, the distributor of the product in Australia (“the Company”) and arises from a complaint received 16 January 2017.
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 16 January 2017.
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 Instagram post is by Fireball Whisky Australia. It features a photograph of a 375ml bottle of Fireball Cinnamon Whisky with a small quantity used and the lid askew. The bottle is placed on a rock on a clifftop overlooking the ocean. The text "Dive In" is superimposed on the top part of the photograph. The photograph is accompanied by a message by fireball_au "It's #WhiskyWednesday. What better time to dive right in? #FireballWhisky #Ignitethenite #releasethedragon".

The Complaint

11. The complainant is concerned that the post is encouraging over consumption and irresponsible drinking on a cliff or, as the ad plays on, in water. Also that the advertiser deleted a relatively non-inflammatory comment the complainant made on Instagram questioning the post.

The ABAC Code

12. 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.
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

13. The Company responded to the complaint by letter dated 17 January 2017. The principal points made by the Company were:
 - After receiving this complaint we have taken the decision to remove the Fireball Whisky Instagram post that features the Fireball bottle combined with the text 'Dive In'.

- The Instagram post was created by our agency and they are familiar with the ABAC Responsible Alcohol Marketing Code. The agency then sent the post to the Fireball brand manager (who has been ABAC trained) and the decision was made to approve the post.
- In addition to removing the post we will be taking the following actions:
 - Requesting that our agency undertakes ABAC training;
 - Organising a refresher ABAC training for the marketing team at SouthTrade International.

The Panel's View

14. Southtrade imports, markets and distributes a range of international alcohol products in Australia. The Company is not a signatory to the ABAC scheme but has fully co-operated with the Panel's process, which has enabled the determination to be made.
15. One of the products imported and marketed by the Company is Fireball Whisky which the Company website explains is a Canadian product. In promoting the product the Company has engaged an advertising agency and it was the agency which created the Instagram post that has drawn the concern of the complainant.
16. The complainant contends that the post encourages excessive levels of consumption and is generally irresponsible. The complaint and the nature of the post raises several ABAC standards of good marketing practice, namely:
 - advertising must not encourage excessive consumption of alcohol;
 - advertising must not encourage irresponsible behavior related to alcohol use; and
 - advertising must not show or imply the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination.
17. The post features a picture of a bottle of the product resting on a cliff ledge above the ocean. The bottle has a lid which has been opened and around a fifth of the contents has been removed, presumably consumed. The picture is accompanied by the strapline "Dive In".
18. In assessing if an ABAC standard has been breached, the Panel is to have regard to the probable understanding of the advertising item by a reasonable person, taking content of the advertisement as a whole. The reference to a "reasonable person" means a common sense approach reflecting prevailing community attitudes and values is to be applied.
19. The Panel does not believe the post can fairly be said to be encouraging excessive consumption. Merely showing a partially consumed bottle of the

product without any context to suggest that the alcohol was consumed say by a single person on a single occasion, or that this was one of multiple bottles consumed, means that it is too long a bow to conclude excessive consumption has occurred. The phrase “Dive In” would likely be taken as a call to consume the product, but this does not mean it should be consumed in a irresponsible fashion.

20. The Panel does believe the post could reasonably be interpreted as in breach of the section (d) standard going to unsafe activity. In reaching this conclusion, the Panel has noted:
 - the bottle of the product is shown as both partially used and with a lid that is open and resting lightly on the neck of the bottle;
 - it is a reasonable and direct implication from the manner that the bottle is depicted and the phrase “Dive In” that consumption of the product has recently occurred;
 - the bottle is located on the edge of a cliff and traversing a clifftop is an activity which requires a high degree of alertness and co-ordination to be conducted safely;
 - taken as a whole, a reasonable person would interpret the post as showing consumption of alcohol occurring either immediately before or in conjunction with the accessing of a cliff top.
21. The complaint is upheld in relation to standard (d) and dismissed in relation to standard (a)