



ABAC Adjudication Panel Determination No. 23/17

Product: Cellarbrations
Company: Australian Liquor Marketers Pty Ltd
Media: Digital - Facebook
Complainant: Ms Crampton
Date of decision: 30 January 2017
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Ms Jeanne Strachan
Professor Richard Mattick
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital advertising for Cellarbrations by Australian Liquor Marketers Pty Ltd (“the Company”) and arises from a complaint received 6 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 6 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 this marketing communication.

The Marketing Communications

10. The complaint is about a digital advertisement by the Company on the Cellarbrations Facebook page.
11. The post consists of two pictures divided by a white line with the word "AND".
12. The picture on the left is a group of 6 people sitting at a table on which there is a roast turkey and several bowls of food. The people facing the viewer have neutral expressions or a mild smile and the sun is in the sky as if the picture is during the day. There is an above ground swimming pool in the background, indicating the setting is a private residence. The caption for the picture is "Christmas Day".
13. The picture on the right is the same group of people and the same scene with the differences being that the people are all wearing santa hats, the two outer people facing the viewer have a different mouth shape as if they are talking or broadly smiling and all the people are holding up either a wine glass or a stubby of Crown Lager. On the table, the roast turkey has been mostly eaten, and there are three champagne glasses, four stubbies of Crown Lager, a closed bottle of Bundaberg Rum with a ribbon around its neck, two closed bottles of Yellowglen sparkling wine with ribbons around their necks on the table, two different bowls of food on the table, Christmas lights along the fence, floating candles in the swimming pool and there are stars and the moon in the sky as if it is at night. The caption for the picture is "Christmas YAY".
14. The post is accompanied by a message by Cellarbrations, which reads "Cellarbrations – the difference between Christmas Day and Christmas YAY! Tag the friends and fam you'll be celebrating with long into the night. Over 18s only".

The Complaint

15. The complainant is concerned that the advertising breaches section 3 (c)(i) by implying alcohol enhances or improves mood or situations by showing an image on the left of people looking unhappy with the quote "Christmas Day ..or .. Christmas Yay" above which alcohol beverages were added and the characters now smiling.

The ABAC Code

16. 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;

The Company's Response

17. The Company responded to the complaint by letter dated 20 January 2017. The principal points made by the Company were:

- Cellarbrations is a brand and trademark owned and marketed by Australian Liquor Marketers Pty Ltd (ALM). ALM is a division of Metcash Trading Limited (Metcash), a leading wholesale and marketing company operating in the fast moving consumer goods industry. Metcash and ALM are not at this time signatories to the ABAC Responsible Alcohol Marketing Code. Accordingly, ALM is not bound by any decision of ABAC in relation to this matter. However, Metcash and ALM both work alongside organisations who are signatories to the Code. Likewise, Metcash and ALM both take their legal and social responsibilities very seriously and are therefore willing to address the complaint that has been made in this instance. ALM is committed to the responsible marketing and sale of alcohol and is a participant in a number of programmes designed to minimise the harm associated with the potential misuse of alcohol. For example, ALM supports and endorses the industry ID25 scheme which is aimed at eliminating sales of alcohol products to persons who are below the legal age of consumption.
- The image in question is composed of two pictures with the tagline “Cellarbrations – the difference between Christmas Day and Christmas Yay! Tag the friends and fam you’ll be celebrating with long into the night. Over 18s only”. The first picture which was placed on the left, featured a group of six people sitting around a dinner table with the caption “Christmas Day”. The second picture which was placed on the right, featured the same group of six people sitting around a dinner table holding glasses of wine or stubbies of beer, wearing Santa hats with two people appearing to smile or talk and bottles of alcohol on the table with the caption “Christmas Yay”. The image was not published to suggest or imply that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment but rather promote the celebration of Christmas.
- ALM believes in relation to the image, that the following points support this including:
 - The first picture in the image features three people smiling with no alcohol on the dinner table and could be an everyday family or friend’s dinner. Nevertheless, no alcohol on the dinner table and the smiling faces suggests that a good time may be had in the absence of alcohol.
 - The second picture in the image features two of those three people smiling even more, laughing or talking with alcohol featured in all people’s hands and on the dinner table in addition

to Christmas decorations. When compared with the first picture, this suggests that whilst a good time may be had with no alcohol, a celebration such as Christmas includes more like alcohol and decorations.

- The tagline of the image is further evidence that the image was to encourage a celebration of Christmas amongst family and friends rather than the promotion of alcohol as changing the mood or environment of a party.

The Panel's View

18. The ABAC scheme is based upon the acceptance of the members of the sponsoring alcohol industry peak bodies and direct signatories to the scheme of the standards of good marketing practice contained in the Code. The Company is not a member of the ABAC scheme and as it points out, it is not bound to follow the ABAC standards. Despite this, the Company has stated its commitment to good practice in marketing and has co-operated with the Panel processes which has enabled this determination to be made.
19. The complaint concerns a post on the Company's Facebook page. The post consists of two images which are akin to a "spot the differences" puzzle. The two images are a group of adults sharing a Christmas meal. The differences between the images relate to the time of day, the appearance of Christmas decorations and the presence and consumption of alcohol. The second image which features the changes including the alcohol shows two of the three visible adults with broader smiles. This image is entitled "Christmas Yay" while the first image is called "Christmas Day".
20. The complainant contends that the post is in breach of section 3(c) of the ABAC because it implies that alcohol enhances or improves mood or situations. The Company argues in response that it was not intended that the post would imply that alcohol may contribute to a significant change in mood but rather it was intended to promote the celebration of Christmas. It is argued:
 - the first image established a good time could take place in the absence of alcohol;
 - that the second image establishes while a good time at Christmas will likely include more elements of Christmas festivities such as alcohol and decorations, these are not essential for a good time; and
 - the focus was to encourage a celebration of Christmas rather than a changing of mood through alcohol.
21. The relevant ABAC standard is widely drawn and provides an alcohol marketing communication is not to suggest that alcohol use may create or contribute to a significant change in mood or environment. In assessing if the standard has been breached, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person.

22. The Panel believes the post is in breach of the section 3(c)(i) standard. In reaching this conclusion the Panel has noted:

- the intention of the Company as to the message in the marketing item is not the benchmark. Rather the test is how a reasonable viewer of the item would understand the message;
- the post does show a transition from one family/friends meal scene to the same group in another scene;
- the mood in the second scene is noticeably elevated from the first scene as demonstrated by the faces and smiles on two of the three visible characters and the strapline “Christmas Yay” as opposed to the first scene called “Christmas Day”.
- the cause or contributor of the elevated mood from a simple “Day” to “Yay” event is established to be a combination of matters such as the consumption of food, the presence of Christmas decorations and the presence and consumption of alcohol;
- to breach the section 3(c) standard, it is not required to show that alcohol is the sole or primary contributor to a change in mood. The standard also captures scenarios where alcohol use is suggested to be a contributor to the change, amongst other contributors; and
- taken as a whole, a reasonable person would interpret the two scenes as suggesting that the addition of alcohol is a contributor to the difference between “Christmas Day” and “Christmas Yay” – which is the very point made by the Company itself in the accompanying text to the two scenes.

23. Accordingly, the complaint is upheld.