



ABAC Adjudication Panel Determination No. 8/18

Product: Wolf Blass
Company: Treasury Wine Estates
Media: Outdoor
Complainant: Ms Pierce, McCusker Centre for Action on Alcohol and Youth
Date of decision: 1 March 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the content and placement of an advertisement for Wolf Blass in the Floreat Forum Shopping Centre by Treasury Wine Estates (“the Company”) and arises from a complaint received on 29 January 2018.
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. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in the other codes as well as meeting the standards contained in the ABAC.
 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 29 January 2018.
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 was determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the content but not placement of the marketing communication.

The Marketing Communication

10. The below advertisement was placed in the Floreat Forum shopping centre where it could be seen from a ramp down to the shopping centre carpark.



The Complaint

11. The complainant is concerned that:
- a) The ad was located in an area that would be frequented by many children.
 - b) The gold, glittering effect and the Christmas tree would be appealing to children.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.

13. Part 6 of the ABAC Code includes definitions including:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Response

14. The Company responded to the complaint by letter dated 8 February 2018. The principal points made by the Company were:
- a) Treasury Wine Estates (TWE) prides itself on upholding industry best practice in the responsible marketing of wine in all the markets we operate in. In Australia, TWE is a strong supporter of the ABAC Scheme and a signatory to the ABAC Responsible Alcohol Marketing Code. TWE is familiar

with the requirements of the Code, including the Placement Rules introduced in November 2017. TWE monitors ABAC determinations to ensure we are up to date with current issues being considered by the ABAC Adjudication Panel. TWE has internal guidelines, in the form of Responsible Marketing Guidelines and a more detailed Responsible Marketing and Sales Handbook which specifically refer to the Code, and other guidance materials to assist our Sales, Marketing and Communication teams to develop compliant marketing materials and campaigns. These teams are also trained regularly on responsible marketing. The advertisement in question was assessed by our Wolf Blass brand team and our Legal team to be compliant with the Code and, as such was not submitted for pre-vetting.

- b) TWE is aware of the requirement in Part 3(b)(i) of the Code that a Marketing Communication must not have Strong or Evident Appeal to Minors. TWE draws the Panel's attention to the definition of "Strong or Evident Appeal to Minors" in the Code and disputes that by simply placing a bottle of sparkling wine in front of a Christmas tree (which is predominantly obscured by the bottle shot) on a black background, with no other features that might appeal to children adolescents, the advertisement could be deemed to have a particular attractiveness for a Minor beyond the general attractiveness it has for an adult. Further, TWE notes the recent determination no 122/17 in which the Panel considered whether references to Christmas breached the requirement in Part 3(b)(i). TWE agrees with the view put forward by EDG in that determination that the festive season has appeal to all age demographics and could not be argued to be more enticing to children over that of the general population. TWE notes the Panel dismissed the complaint, rejecting the view that the reference to sleigh bells as used in the context of the advertisement in question would be strongly or evidently appealing to under 18 year olds.
- c) In relation to the placement of the advertisement TWE disputes that the advertisement breaches Part 3(b)(iv) of the Code by directing the marketing at minors by a breach of one of the Placement Rules. TWE's media vendor has confirmed that the placement of the advertisement complied with the Outdoor Media Association Alcohol Guidelines, which prohibit alcohol advertising from being placed on fixed signs that are located within a 150 metre sight line of a primary or secondary school. Although the Floreat Park primary school is located in the vicinity of the Floreat Forum Shopping Centre, the advertisement was located approximately 350 metres from the school (within 10 metres of the Floreat Forum BWS store) and was not visible from the school. In any event, although the complaint was made on 25 January 2018, TWE notes that the advertisement was displayed from 12 November to 25 December 2017 to promote Wolf Blass Red Label Sparkling in BWS during the Christmas retail period and has since been removed.

The Panel's View

15. The Floreat Forum Shopping Centre is located in the Perth suburb of Floreat halfway between the central business district and the coast. The centre houses a range of shops and retail outlets, including the liquor store BWS.
16. Within the centre, there are a number of advertising sites which feature posters from retailers promoting various products or services. In the lead up to Christmas 2017, one of these sites located on a ramp connecting the car park to the shopping area contained a poster for Wolf Blass' wine. This site is in the vicinity of the BWS store and the poster contains the BWS logo. The complainant is concerned that the advertisement was located in an area frequented by many children and because of its presentation, the poster would have appeal to children.
17. The ABAC scheme since November 2017 has contained rules going to the placement of alcohol marketing. The rules in large measure go to alcohol marketing on electronic and digital media. The Placement Rules do not seek to regulate the location of an advertising poster within a public shopping centre. Further, the poster was not located within 150 m of a school and hence the Placement Rules have not been breached.
18. Section 3(b) of the Code provides that a marketing communication must not have strong or evident appeal to minors. Strong or evident appeal might arise if the marketing communication can said to:
 - a) Specifically target minors;
 - b) Have a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - c) Use imagery, designs, motifs, animations or cartoon characters likely to appeal strongly to minors.
19. In assessing if a marketing communication is in breach of a Code standard, the Panel is to have regard to the probable understanding of the marketing item by a reasonable person taking its content as a whole. This means that the experiences, values and opinions held in a majority of the community is to be the benchmark.
20. Christmas themed advertising is very common if not standard during the November and December period each year. Like all marketers, alcohol retailers use Christmas themed advertising during this period. As noted in determination 03/08, the use of characters often associated with children's engagement with Christmas such as Santa Claus needs to be closely scrutinised and all such advertising should certainly be subjected to careful independent pre-vetting prior to use.
21. In this case, the advertising places a bottle of the product in front of a Christmas tree. The Christmas tree is decorated with gold trim which matches the colour of the top of the bottle. The advertisement features the strapline 'Bring out the best this Christmas'.

22. The Panel does not believe that the advertisement breaches the Code standard. In reaching this conclusion, the Panel has noted:
- a) The advertising is Christmas themed and shows a Christmas tree obscured by a depiction of the product;
 - b) The advertisement does not depict activities or characters which are associated with children's engagement in Christmas e.g. giving of presents or characters such as Santa Claus;
 - c) While the gold colouring of the advertisement is bright and eye catching, the balance of the advertisement is dark and is depicting a completely passive scene;
 - d) The strapline use does not contain any messaging which can fairly be said to be strongly appealing to children;
 - e) Taken as a whole, the advertisement would not be regarded as being strongly or evidently appealing to under 18-year-olds.
23. Accordingly the complaint is dismissed.