



ABAC Adjudication Panel Determination No. 34/18

Product: Liquor Barons
Company: Liquor Barons
Media: Outdoor
Complainant: Ms Pierce, McCusker Centre for Action on Alcohol and Youth
Date of decision: 26 March 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Liquor Barons on Transperth buses by Liquor Barons (“the Company”) and arises from a complaint received on 22 February 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 22 February 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 of the marketing communication.

The Placement

10. An advertisement for Liquor Barons was placed on Transperth buses.

The Complaint

11. The complainant is concerned that the advertisement was placed on the back and whole side of Transperth buses from September 2017 onwards and could be seen by many children and young people travelling in cars, by public transport or by foot.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(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

The Company's Response

14. The Company responded to the complaint by email dated 6 March 2018. The principal points made by the Company were:
 - a) Liquor Barons Co-operative Ltd has demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles and maintains strict internal and external processes in addition to those required by the ABAC Scheme.

- b) Liquor Barons does not consider that the advertisements breach any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code
- c) In all ways, the placement of this advertisement on a bus meets the OMA alcohol guidelines (2016 update). Consequently, Liquor Barons would argue no breach of the Code has occurred.

The Panel's View

- 15. The complaint concerns the placement of alcohol advertising on public buses in Perth. No issue is raised about the content of the advertisements with the concern centred upon the high visibility of the advertisements to under 18 year olds.
- 16. The ABAC scheme contains standards, which go to the content of alcohol marketing, and rules which go to the location or placement of marketing communications. The Placement Rules create particular obligations in relation to digital and electronic media and adopt the existing Media Code applying in relation to outdoor placements.
- 17. The Outdoor Media Association Alcohol Guidelines restrict the placement of alcohol advertising on fixtures within 150 metres of a school. The guidelines do not deal with the placement of advertisements on public transport. This means the Placement Rules are not breached.
- 18. Accordingly, the complaint is dismissed.