



ABAC Adjudication Panel Determination No. 44/18

Product: Healthy Cocktails
Company: Spirit Bar & Lounge Traralgon
Media: Digital
Complainant: Confidential
Date of decision: 9 April 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an advertisement for a healthy cocktail range by Spirit Bar & Lounge at Traralgon (“the Company”) and arises from a complaint received on 15 March 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, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 Ad Standards Community Panel 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 15 March 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 not obtained for this marketing communication.

The Marketing Communication

10. An advertisement for Smirnoff was placed on the Facebook page of Spirit Bar & Lounge Traralgon.



Spirit Bar & Lounge Traralgon added 2 new photos. ...

March 12 at 4:42pm · 🌐

Have you ever wanted to enjoy a night out but don't want to wake up with a hangover 🤔🤔

"Introducing the new spirit bar healthy cocktail range 😊"

It includes no sugar but taste great. It contains electrolytes BCAA thanks to the Traralgon Supps Store, that will keep you hydrated all night to help try avoid the hangover the next day 🙌🙌🙌

Come test it out 😊😊 Supporting locals.

[#spiritbar](#) [#traralgonsuppsstore](#) [#fitness4u](#)



The Complaint

11. The complainant is concerned that the advertisement:
- Encourages excess consumption by saying you can avoid a hangover.
 - Advertises an alcoholic drink as 'healthy'.

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 Australian Alcohol Guidelines.
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company's Response

13. The Company responded to the complaint by email dated 5 April 2018. The principal points made by the Company were:
 - a) In regards to our advertisement regarding our social media post referring to "Healthy Cocktails", we understand the concerns that were raised and how the social media post had been misinterpreted, as it was not our intentions to promote any sort of binge drinking. We had since removed the post from our social media page so there is no more confusion or promotion, as we understand the wording of the post was misconstrued as our intentions were to offer customers an alternative, healthier range of cocktails that contained no sugar compared to other varieties of cocktails.
 - b) We, as a venue do take our serving of alcohol seriously and always monitor customers intake to ensure we are complying with all responsible serving of alcohol. Moving forward, we will ensure our posts are carefully considered before advertising again to ensure we do not encourage any further binge drinking and to comply with all the legislations.

The Panel's View

14. The ABAC provides that in marketing alcohol beverages certain standards of good marketing practice need to be achieved. These standards go to matters such as advertising not suggesting alcohol has any health or therapeutic benefit or encouraging excessive alcohol consumption.
15. The Company is not a signatory to the ABAC scheme and is not contractually bound by the Code or Panel determinations. It is, however, committed to responsible practice in serving alcohol and promoting its venue and has fully co-operated with the Panel processes making this determination possible.
16. The complainant has identified a post on the Company's Facebook page which is referencing the 'new spirit bar healthy cocktail range'. The cocktail is stated to 'keep you hydrated all night' and will 'avoid the hangover the next day'. It is pointed out that these claims are inconsistent with ABAC standards.

17. The ABAC aims to promote responsibility in the marketing of alcohol beverages. It is not permitted to encourage excessive alcohol consumption or suggest consumption offers any therapeutic benefit.
18. The Company states that it did not intend to promote binge drinking and that it concedes the post may have been misinterpreted. The post has now been removed.
19. The Panel believes the post is inconsistent with the ABAC standards. References to 'avoiding a hangover' imply excessive consumption may be a usual outcome of alcohol use. This is not an expected outcome if moderate consumption consistent with Australian Alcohol Guidelines occurs. Equally, it is not permitted to state alcohol is 'healthy' or will keep someone hydrated.
20. It is recommended that the Company seek pre-vetting advice if it intends to promote alcoholic drinks referring to the drinks having attributes which are advantageous compared to other alcohol types. Such marketing is possibly consistent with the Code, but the Company's Facebook post did not meet the required standard.
21. Accordingly the complaint is upheld.