



ABAC Adjudication Panel Determination No. 48/18

Product: Charlie's Liquor Barn
Company: Charlie's Liquor Barn
Media: Digital & Radio
Complainant: Confidential
Date of decision: 16 April 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel ("the Panel") concerns live reads on i98FM radio and posts on the i98FM Facebook page featuring Charlie's Liquor Barn ("the Company") and arises from a complaint received 28 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.
2. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol 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 other codes as well as meeting the standards contained in the ABAC.
 3. For ease of public access, the Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the AS, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 4. 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.
 5. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

3. The complaint was received on 28 March 2018.
4. 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 completed in this timeframe.

Pre-vetting Clearance

5. 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 these marketing communications.

The Marketing Communications

6. The complaint refers to a series of live read advertisements on i98FM and posts on the i98FM Facebook page. The Complaints Panel does not have access to the live read advertisements. The Facebook posts referred to in the complaint are described as follows:
- a) 16/11/17: An image of a young woman holding up a bottle of Grants Scotch Whisky with the post 'Its specials time at Charlie's again, this week with Grants 700mL Scotch \$32.99, and VB 30 pack cans only \$49.99!!! If you want to check out what other weekend specials Charlie's has to offer, come in store or visit charliesliquorbarn.com.au!! Have a great afternoon at Charlie's Liquor.'
 - b) 7/12/17: An image of a young woman holding up a special sign next to a stack of cartons of Tooheys New with the post 'Charlies Liquor Barn Unanderra and Warilla have the best specials this weekend! To order online for next dat delivery, go to charliesliquorbarn.com.au – Tooheys New Stubbies \$42.99 – Heineken Stubbies \$39.99 – Jim Bean White Label 700ml \$32.99 – at Charlies Liquor.'
 - c) 15/12/17: An image of a young woman holding a bottle of Baileys with the post 'With Christmas around the corner, pop into Charlie's Liquor Barn for all your favourite Christmas beverages. They are having specials on Baileys 700ml for just \$25.99 Heineken Fully Imported 24 packs are only \$39.99 and Jim Beam White Label 700ml is only \$32.99. Whether you are chilling or celebrating, Charlie's Liquor Bar Tannery St Unanderra and George St Warilla are the places to visit – at Charlies Liquor Barn Illawarra.'
 - d) 22/12/17: An image of a young woman with tinsel around her neck next to a display of specials with the post 'Its everyone's favourite time of the year and with Christmas just around the corner you should all be racing down to Charlie's Liquor Barn Warilla and Unanderra! They are having some awesome savings on Johnnie Walker Red Label Scotch 700ml - \$32.99, and Tooheys Extra Dry Stubbies - \$41.99!'
 - e) 29/12/17: An image of a young man holding up a bottle of champagne as if to pop it and with a big smile with the post 'Its New Years this weekend so pop those champagne bottles! For everything you will need, Charlies Liquor Barn has it all, at even better prices – at Charlies Liquor Barn Illawarra.'
 - f) 5/1/18: An image of a young woman next to a display of alcohol specials with the post 'There's only one thing that makes a summer weekend even better and that's either a cold beer or cocktail! Head on down and visit our friends at Charlie's Liquor Barn Warilla and Unanderra for awesome deals and savings! Whether you are chilling or celebrating, Charlie's is the place to visit.'
 - g) 12/1/18: An image of a young man holding up a bottle of Yellow Sparkling wine with the post 'It's Friday afternoon so 'WINE' not treat yo'self. The Yellowglen Colour range is on special for only \$6.99! Be sure to come

and visit the friendly staff at Charlie's Liquor Barn Unanderra and Warilla to see all the nest deals.'

- h) 1/2/18: An image of a young man holding a case of Stella Artois with the post 'If you've got plans for this weekend, you will never be fully prepared without a trip to Charlie's Liquor Barn Warilla and Unanderra! They have awesome savings on Stella Artois stubbies - \$42.99 and a Great Northern 30 pack cans - \$47.99 – at Charlie's Liquor.'
- i) An image of a young woman dancing and holding a case of Wingman beer with the post 'Time for more weekend specials at Charlie's Liquor Barn – Wingman Premium Lager 24pk \$39.99 – Black Douglas blended scotch whicky 700ml only \$33,99!!! For more savings download the app from the App Store or GooglePlay, or for the next day delivery visit charliesliquorbarn.com.au!'
- j) 9/2/18: An image of a young woman next to a display with the post 'Need some beverages for the weekend?! Charlie's Liquor Barn has you covered! They have savings on: - Martin Pils Cans 24pk \$35.99 – Verdi Sparkling Range \$6.99 Come on down and check them out plus MANY more! At Charlies Liquor Barn Illawarra.'
- k) An image of a woman dancing and holding a bottle of alcohol in each hand with the post 'It's FRIYAY! Head on down to Charlie's Liquor Barn..'
- l) 23/2/18: An image of a young man with his arms spread in front of rows of shelves of alcohol with the post 'BEHOLD! Everything the light touches could be yours this weekend. Come down and chat to the friendly team at Charlie's Liquor Barn Warilla and find out about the amazing savings they are having this week! Blake – show us how excited you are for the weekend?? Ohhh that much!'
- m) 1/3/18: An image of shelves of alcohol products with the post 'It's Friday Eve. Time to stock up and visit our friends at Charlie's Liquor Barn Unanderra and Warilla! Right now they are having awesome savings on Stella Artois - \$43.99 and Johnnie Walker Red Label Scotch 700ml - \$33.99!'';
- n) An image of a young woman holding a 6 pack in each hand and dancing and smiling with the post 'That's right, the weekend has arrived at long last! And whether your planning on chilling at home or celebrating with friends and family, the team at Charlie's Liquor Barn Unanderra and Warilla are having specials on all your favourites. You can get: - \$41.99 for - Wingman Premium Lager Stubbies 24 pack - \$37.99 Wild Turkey and Cole 10pack cans - \$10.99 Upsidedown NZ Sauv Blanc. Start your weekend right.'
- o) An image of a young man dancing while holding a carton of Sol Beer with the post 'Wondering why Blake's dancing? Because its always a party at Charlie's Liquor Barn' To celebrate this week, Charlie's have Sol 24pk Stubbies only \$34.99, and Johnnie Walker Red 700ml just \$32.99!! For more savings download their APP from the iTunes or GooglePlay, and to order online for next day delivery visit charliesliquorbarn.com.au!! HAPPY FRIDAY!!'
- p) 9/3/18: An image of a young woman holding up a carton with a specials sign with the post 'Hooray its finally the weekend and we couldn't be more excited [emojis of different types of alcohol products]' If you have big plans this weekend, or even if you don't, the team at Charlie's have every occasion covered! Some of the specials happening this week include..'

The Complaints

7. The complainant objects to the marketing as the posts and live reads:
 - a) Depict people under the age of 25 promoting the purchase of alcohol.
 - b) Promote specials, stocking up and encouraging drinking alcohol with an absence of 'drink responsibly' messaging

The ABAC Code

8. 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.
 - (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted environment.
 - (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

9. The Company responded to the complaint by email dated 9 April 2018. The principal points made by the Company were:
 - a) I spoke to i98fm in regards to the complaint. After reviewing the complaint they have seen where they need to improve the ads, live crosses and Facebook posts to comply with the code.
 - b) As of Friday last week they have taken down all the relevant Facebook posts, they have sat down with the road crew and gone through the standards that they need to meet, have made sure anyone seen to be promoting alcohol through i98 is over the age of 25 and they understand the importance of conveying the message of responsible drinking along with promoting our business.
 - c) I hope this satisfies the complaint and moving forward we can be compliant and not run into these issues.

The Panel's View

10. i98FM is a radio station broadcasting in the Illawarra region of New South Wales and is part of the WIN media group. Charlie's Liquor Barn is an alcohol retailer with stores located in the Illawarra region located at Tahmoor, Unanderra and Warilla.
11. The Company has used the radio station to promote its business. This marketing in part has taken the form of Facebook posts featuring the radio station's 'street fleet' members. The street fleet appears to comprise of young adults who run promotional activities for the radio station.
12. The complaint has identified that some entries on the station's Facebook page feature members of the street fleet who appear to be under the age of 25. Further, some of the content of these posts is argued to encourage irresponsible alcohol use.
13. The ABAC provides standards which alcohol marketing is to satisfy. These standards include:
 - a) That adults depicted in marketing communications must be aged 25 years or older;
 - b) That excessive consumption of alcohol must not be encouraged; and
 - c) That alcohol must not be suggested as being the cause of a significant change in mood.
14. The website of the radio station contains images and brief personal details of five 'fleet street' members named Blake, Cameron, Ebony, Hana and Lauren. The ages of the team members is not mentioned on the website and the Company did not supply this information in responding to the complaint. The Company did seem to accept however that one or more of i98FM representatives featured in the posts advertising the Company may be under the age of 25. The Company stated that use of under 25 year olds would not occur in the future.
15. The Company also accepted that some of the posts may have contained content which could be argued to be in breach of the ABAC standards. In large measure, the Panel believed the text of the posts was not problematic as the posts generally went to product and price information. Some of the posts may have been taken to be encouraging excessive consumption and implied alcohol consumption could lead to a significant change in mood. It is noted that the Company has had the posts removed upon receiving the complaint.
16. The complaint raised the point that the Facebook posts did not contain a 'drink responsibly' message. While the use of such a message might be regarded as good practice, it is not a breach of an ABAC provision to fail to have a message included in marketing.
17. Accordingly, the complaint is upheld.