

ABAC Adjudication Panel Determination No. 51/18

Product: Alby Beer
Company: Gage Roads Brewing
Media: Digital
Complainant: Ms Pierce, McCusker Centre for Action on Alcohol & Youth
Date of decision: 7 May 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 a Facebook post for Alby Beer by Gage Roads Brewing (“the Company”) and arises from a complaint received 10 April 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 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 other codes as well as meeting the standards contained in the ABAC.
 3. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by Ad Standards, 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 Ad Standards 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 10 April 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 this marketing communication.

The Marketing Communication

6. The complaint relates to a post by @alby.beer. A screenshot of the Facebook account and the post complained about is included following.

The image shows a screenshot of the Alby Facebook page and a specific post. The top portion displays the Alby Facebook profile page, including the logo (a red shield with 'ALBY' and 'GAGE ROADS BREWING CO. THE NEW ALBION WESTERN AUSTRALIA'), the name 'Alby @alby.beer', and navigation options like Home, Videos, Posts, Photos, Reviews, About, and Community. A 'Create a Page' button is visible. The main content area shows a large image of a stadium with Alby banners, a 'Write something on this Page...' text box, and a 'Videos' section with a video titled 'HARVEST'. The bottom portion shows a specific post from Alby, dated March 23, with the text 'I spy something that begins with 'A'... #MadeByWA'. The post has 47 likes, 1 share, and 10 comments. Two comments are visible: 'Lisa Gadsby Ah mah Street drinking' and 'Jesse Varley Is that it?'. The post also includes a photo of a beer bottle and a comment input field.

The Complaint

7. The complainant objects to the marketing as the post includes an image of a young boy who appears to be under the age of 18 years that is likely to have strong appeal to young people. Further there does not appear to be any age gating activated on the Facebook account.

The ABAC Code

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

- (b)(i) Have Strong or Evident Appeal to Minors;
- (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
- (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; or
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules.

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

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

Placement Rules means:

- (ii) 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).
- (iii) 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
- (iv) 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)

- (v) 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

- 10. The Company failed to respond to the complaint.
- 11. On checking the Alby Beer Facebook page shortly after advising the Company of the complaint, it was noted that the post had been removed and the Facebook page had been age restricted.

The Panel's View

- 12. The complaint concerns a Facebook post by the producer of Alby Beer that features a boy skateboarding in a public space. In the background there are people congregating and some are drinking Alby Beer.
- 13. There are three issues to be considered as raised in the complaint, namely:
 - a) Is the male skateboarder featured in the post under 25 years of age;
 - b) Does the post strongly appeal to minors;
 - c) Does the @alby.beer Facebook account apply age restriction controls to exclude under 18 year olds from viewing the post.
- 14. The question of the age of persons featured in alcohol marketing is one of fact. It is permitted to depict an adult who is 25 years old or older and not permitted

to depict a person aged 24 years or younger. The complaint contended the boy appears to be under 18 years of age.

15. Given the Company has failed to respond to the complaint and specific questions about the age of the people featured in the Facebook post, the Panel has to make an assessment of the apparent age of the skateboarding male character. In the Panel's view, the skateboarder does appear to be under the age of 25 and possibly under the age of 18.
16. The second issue is whether the post is strongly or evidently appealing to minors. The post features a large group of people outside a building that has the look of being an industrial site or possibly a warehouse. The building has been 'tagged' with several spray-painted areas. While the site is not pristine in appearance, it is not ill kept and the several glass doors and windows shown are not broken and the surroundings are basically tidy.
17. A reasonable number of people present are consuming stubbies of the product. On the whole, the individuals in the group appear to be adults in their twenties or older. Possibly the skateboarding male is the youngest in the group.
18. It is noted that skateboarding is an activity associated principally with males within an age cohort of mid to late teens to mid twenties. While not all skateboarders are minors, cursory research provides evidence that the largest cohort of skateboarders are aged under 18. For instance, a paper prepared for the City of Melbourne on public park facilities reported that sixty per cent of skaters in Victoria were under the age of 18.
19. In the Panel's opinion, the use of a young male skateboarding as the central character in the post is likely to strongly resonate with males under the age of 18 and is in breach of the section 3(b) standard.
20. The final issue raised by the complaint is the question of whether the Company's Facebook page had utilised available age restriction controls as required by the ABAC Placement Rules. Corporate Facebook pages do have the option of restricting access to persons identified to be adults. Accordingly, to meet the ABAC requirements, the Company needs to use these controls.
21. The Complainant contends that age restriction controls were not operating at the time the site was accessed by them. It does appear that the controls are now in place. Given the Company failed to respond, the contention of the Complainant is not contested and the Panel assumes that the controls were not in place at the time the Facebook page was accessed by the Complainant.
22. The failure of the Company to engage in the ABAC process is disappointing and puzzling. The Panel has made a previous determination regarding the Company (see Determination 02/08) and on this occasion the Company responded to the Complaint and co-operated with the Panel's processes. While the Company is not an ABAC signatory, it has previously acted to support the ABAC process even though it is not a Code signatory and is not contractually bound to do so.

23. It is noted that the Company has removed the post and apparently now adopted the age restriction controls on its Facebook site. While this is welcome given the Panel's findings, the Company is encouraged to become an ABAC signatory and fully engage in the Scheme.
24. The complaint is upheld in all respects.