



ABAC Adjudication Panel Determination No. 73/18

Product: Wine
Company: Coffee & Wine Co
Media: Digital
Complainant: Confidential
Date of decision: 2 August 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 an advertisement within an email from ebay promoting wine specials offered by Coffee & Wine Co (“the Company”) and arises from a complaint received on 2 July 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 2 July 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 email marketing communication sent by ebay to their Daily Deal subscribers on 29 June 2018 included a variety of promotions, including the following promotion by Coffee & Wine Co.



Winter Warmer Wines
Top sellers restocked & new stock added!

[Shop now](#)

 <p>Premium 12x Barossa V...</p> <p>\$99.00</p> <p>View deal</p> <p>Free postage</p>	 <p>RESTOCKED! AU Fav Red...</p> <p>\$79.00</p> <p>View deal</p> <p>Free postage</p>	 <p>OVER 1800 SOLD! AU Re...</p> <p>\$79.00</p> <p>View deal</p> <p>Free postage Almost gone</p>	 <p>Silver Guide NZ Marlb...</p> <p>\$99.00</p> <p>View deal</p> <p>Free postage</p>
---	---	--	---

The Complaint

11. The complainant is concerned that the headline in the advertisement “Winter Warmer Wines” implies that a purchaser is going to get warm by drinking the wine which encourages drinking in order to warm up.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (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 20 July 2018 advising that they had removed the headline complained about.

The Panel's View

14. The Company is not a signatory to the ABAC scheme and is not contractually bound by the Code or Panel determinations. It has, however, co-operated with the Panel processes making this determination possible.
15. The complainant has identified a promotion within an ebay email communication and raised a concern that the heading "Winter Warmer Wines" encourages the consumption of wine in order to keep warm. This raises the question as to the consistency of the promotion with the ABAC standard that marketing must not suggest that alcohol consumption offers any therapeutic benefit.
16. The Company has advised that it has withdrawn the strapline used in the promotion but not provided a view on whether the strapline is in breach of the ABAC standards.
17. In assessing compliance with a standard the benchmark is the understanding of a reasonable person of the marketing communication. This means the opinions, values and life experiences common in a majority of the community is to be the touchstone.
18. The Panel acknowledges the point raised and that the promotion might be understood as saying the consumption of the products will make the consumer feel warm. On balance however the Panel does not believe a reasonable person would read so much into the promotion and would take it as a straightforward attempt to associate the products with the winter season and not as making claims as to a consumer obtaining positive health benefits from use of the products.
19. Accordingly, the complaint is dismissed.