



ABAC Adjudication Panel Determination No. 76/18

Product: Alcohol
Company: Mackie Road Supermarket
Media: Outdoor
Complainant: Confidential
Date of decision: 10 August 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of outdoor advertising of various alcohol specials on the external window of the Mackie Road Supermarket by Mackie Road Supermarket (“the Company”) and arises from a complaint received 12 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:
 - 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;

- 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 other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 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.
 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 12 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 completed in this timeframe.

Pre-vetting Clearance

9. 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 the content or placement of this marketing communication.

The Marketing Communication

10. The complaint relates to a black and white posters on the external window of the Mackie Road Supermarket advertising alcohol products sold at the Mackie Road Supermarket in its liquor department.

The Complaint

11. The complainant objects to the marketing as it involves a grocery store advertising alcohol products on its front window which might influence children/teenagers.

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:
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

The Company's Response

14. The Company responded to the complaint by email dated 6 August 2018. The principal points made by the Company were:
 - a) I'm not sure what this relates to but if you're talking about our Foodworks weekly specials signs that are displayed at the front of the store - I'm no

different to any other supermarket that runs their specials on a weekly basis. These A4 specials signs are a mix of Grocery and Liquor depending on what's a hot special in any given week. They don't have any visual pictures attached to them and are just plain black and white printed A4 signs.

- b) If anything, I should be accused of underselling my newly opened liquor department as I don't have any visual advertising paraphernalia (with pictures of products) letting passers-by know I have a liquor department. I don't even have a Victoria Bitter or CUB light box on the roof telling customers I have a liquor department.

The Panel's View

15. The Mackie Road Supermarket is located in the Melbourne suburb of Bentleigh East. The supermarket appears to be a small business which offers a range of convenience store items. The store also carries alcohol products.
16. The complaint raises an issue about the placement in the store's window of posters advertising alcohol products. The concern expressed is not about the specific content of any of the posters as such but is more general in nature questioning if the business is a grocery store or a liquor store and whether children and teenagers are influenced by the advertising.
17. Laws regarding the sale of alcohol within supermarkets vary across Australia. In some states it is permitted to sell alcohol in stores carrying general goods whereas other states only permit alcohol to be sold in free-standing premises. In Victoria alcohol can be sold in shops also offering general products, although there are regulations about the location of the alcohol products within a dedicated area within the store.
18. For its part the ABAC does not go to the issue of State licensing laws and which businesses can or cannot sell alcohol. Rather the ABAC provides standards as to the content of alcohol marketing and rules about the use of media by which alcohol marketing is communicated. It is the placement rule regarding outdoor advertising which is raised by the complainant's concern regarding the potential influencing of persons under the age of 18.
19. The ABAC seeks to have alcohol marketing directed towards adult audiences. With digital media this is possible given the capacity to restrict access to sites through various gateways and filters. It is clearly not possible to target outdoor advertising such as billboards or posters in shop windows in the same way.
20. Rather, the applicable placement rule restricts outdoor advertising to areas beyond 150m line of sight of schools. There is no restriction as such on placing posters in shop windows and the Mackie Road Supermarket is not in the vicinity of a school.
21. On this basis and the fact that no concern is raised about the content of the posters being strongly appealing to under 18 year olds, the complaint is dismissed.