



ABAC Adjudication Panel Determination No. 122/18

Product: BWS
Company: Endeavour Drinks Group
Media: Digital
Date of decision: 25 October 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns advertising on Spotify for BWS by Endeavour Drinks Group (“the Company”) and arises from a complaint received 8 October 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 8 October 2018.
8. The Panel endeavours 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 obtained for the content of this marketing communication (16719).

The Marketing Communication

10. The complaint relates to the following audio advertisement heard on Spotify:

[Dramatic background music]

Presenter: When Phil Parkes arrived home he stepped into a disaster.

Phil: I forgot the wine. Would you believe it?

Presenter: Phil's wife who was prepping pasta had asked him to pick up a bottle.

Phil: She was livid. But to be fair I did have one job. Two if you count washing up.

Presenter: Suddenly Phil's natural instincts took charge.

[Dramatic background music stops]

Phil: My brain just lit up [bell rings]. BWS On Demand. Delivers right to your door.

[Relaxed background music starts]

Presenter: With the same range and prices of his local, BWS came to the rescue.

Phil: [Ha] Saved me from a night on the couch. That's for sure.

[T&C]: Search BWS. Always drink responsibly.

The Complaint

11. The complainant objects to the marketing as it is dramatised and in a very serious tone that suggests something of great importance and significant implications, such that when the issue is revealed as having forgotten to bring a bottle of wine and the solution is to have it delivered immediately, it felt like the advertising was trivialising the significance of alcoholism and alcohol dependency and its impact on relationships.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;

The Company's Response

13. The Company responded to the complaint by letter dated 22 October 2018. The principal points made by the Company were:
 - a) This response addresses advertising, marketing and retail activities under the control of Endeavour Drinks Group (**EDG**), which includes BWS. EDG's ambition is to be Australia's most responsible retailer of alcoholic beverages

and as part of that commitment is a signatory to the ABAC Scheme. Prior to becoming a signatory, EDG demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. EDG maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context.

- b) As part of our community charter, 'Our Community, Our Commitment', EDG has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
 - i. ID25 (ask for ID from anyone who looks under 25);
 - ii. Don't Buy It For Them (stopping secondary supply to minors);
 - iii. our Intoxication Policy (refusal of service to anyone who may be intoxicated); and
 - iv. Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses, and implementation of the award-winning training program "Safe".
- c) In marketing alcoholic products, EDG has been fully aware of the requirement not to show or encourage irresponsible behaviour related to the consumption or presence of alcohol. It is our view that the Ad does not encourage irresponsible behaviour related to the consumption or presence of alcohol.
- d) We believe the Ad does not encourage irresponsible behaviour related to the consumption or presence of alcohol in breach Part 3(a)(ii) of the Code.
 - i. We believe the Ad does not encourage irresponsible behaviour related to the consumption or presence of alcohol in breach Part 3(a)(ii) of the Code.
 - ii. The Ad uses tongue-in-cheek humour to convey the message that delivery of goods, and specifically express delivery, is convenient and can be timely.
 - iii. The Ad makes light of a well-known stereotypical situation - a situation which can feel problematic at the time but in reality has minimal implications. A reasonable person would understand that the Ad was using humour and making light of this well-known stereotype, to call out the convenience and timely delivery offered by the BWS on Demand service. A reasonable person, listening to the Ad in its entirety, would understand that the use of dramatic voice-over and words and phrases such as 'disaster', 'livid', 'night on the couch' and

'rescue', are forms of obvious exaggeration, aimed at over-playing the stereotypical situation to create tongue-in-cheek humour. We do not believe that a reasonable person would genuinely believe a 'disaster' was taking place or that any genuine 'rescue' occurred.

- iv. Further, in response to the complaint received by ABAC, we do not believe the Ad makes any suggestion about alcohol dependency or its impact on relationships. Even on a very literal interpretation (which was not intended and a reasonable person would not adopt), the focus of the storyline was the failure of a person to complete a task that he committed to do, the resulting disappointment of his partner and his ability to find a solution to his original failure.
- v. The Ad focuses on ordering and delivery, not the consumption of alcohol. Express delivery, in itself, does not encourage excessive consumption of alcohol or irresponsible behaviour related to alcohol. Express delivery and home delivery are driven by convenience and service. There is no suggestion in the Ad that the couple would engage in irresponsible behaviour related to the consumption or presence of alcohol.
- vi. The responsible service of alcohol is a very important part of EDG's operations, including for the BWS on Demand service. EDG's responsible service initiatives outlined earlier, including ID25 and our Intoxication Policy, apply to our delivery services to ensure that alcohol is not delivered to someone who is under 18 years of age or someone who is intoxicated.
- vii. We should also note that the Ad concludes with the statement "Always drink responsibly", which emphasises our commitment to the responsible service and marketing of alcohol.

The Panel's View

- 14. BWS is a major Australian alcohol retailer and is part of the Woolworths Group. Currently the Company is promoting its home delivery service via an advertising campaign inclusive of audio executions placed on digital platforms including the music streaming platform, Spotify. This complaint concerns one of the audio executions.
- 15. The ad creates a scenario of a pending 'disaster' which turns out to be a man arriving home having forgotten to purchase a bottle of wine to share with his wife over dinner. This disaster is averted by use of the company's home delivery service for alcohol products. To the complainant the ad is highly irresponsible as it trivialises alcoholism and its impact on relationships. In the Company's opinion the ad is a tongue in cheek way to explain the availability of the home delivery service and would not be taken as contended by the complainant.

16. The Code requires that alcohol marketing not encourage irresponsible or offensive behaviour that is related to alcohol use. If the ad was dismissing the impact of alcoholism or encouraging alcohol use that could cause a person to form an alcohol addiction, then it would breach the ABAC. The Panel must determine if the ad can fairly be construed in this way.
17. The test to be used in assessing the consistency of an ad to a Code standard is the viewpoint of the reasonable person. This means that the opinions, life experiences and values shared by a majority of the community is the benchmark. A person who interprets an ad in a different way is not 'unreasonable' but possibly their interpretation would not be shared by a majority of the community.
18. In the Panel's opinion the ad does not breach the ABAC standard. The ad is using humour by creating a contrast, with its initial music and tone, between something that could be serious, with a common enough life experience which is not really serious at all. A reasonable person would likely understand the ad in this way and not take from it that alcohol misuse was being encouraged or alcoholism trivialised.
19. Accordingly the complaint is dismissed.