



ABAC Adjudication Panel Determination No. 125/18

Product: BWS
Company: Endeavour Drinks Group
Media: Print
Date of decision: 13 November 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns print advertising for BWS by Endeavour Drinks Group (“the Company”) and arises from a complaint received 17 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 17 October 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 obtained for the content of this marketing communication (16409).

The Marketing Communication

10. The complaint relates to the following print advertisement with magnet.



The Complaint

11. The complainant objects to the marketing as:
- Alcohol is known in economics as a demerit good, that is, a good which can have negative impact on both the consumer and on third parties (called negative externalities). Such impacts include health problems to the consumer like hangover and long term liver disease and increased levels of crime and cost in treating disease.
 - Keeping alcohol away from places where it is easy to buy like supermarkets would help to reduce over-consumption. Now this ad makes it even easier by suggesting if you need booze (are addicted?) just use your phone or computer (act on impulse) and spend \$50 to get \$50 worth of booze for the price of \$40.
 - BWS does not consider the cost on third parties; this is market failure where consumers do not pay their full external costs. It is the free rider problem of expecting others to pick up the tab by consumers not considering the consequences of excessive alcohol consumption when being egged on by BWS.

The ABAC Code

12. 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;
- (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 29 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 encourage excessive consumption of alcohol or irresponsible behaviour related to the consumption or presence of alcohol. It is our view that the Ad does not encourage excessive consumption of alcohol or irresponsible behaviour related to the consumption or presence of alcohol.
 - d) We believe the Ad does not show or encourage excessive or rapid consumption, misuse or abuse of alcohol or irresponsible behaviour related to the consumption or presence of alcohol in breach of Part 3(a)(i) or 3(a)(ii) of the Code. The focus of the Ad is ordering and delivery. The Ad draws attention

to the option of delivery, as opposed to the conventional method of purchase via a visit to store and transporting items from the store oneself. Delivery, and express delivery, are driven by convenience and service, and this is what the Ad is about. The Ad does not focus on, nor make any suggestions or implications about, alcohol consumption. Delivery, and express delivery, do not encourage excessive consumption of alcohol or irresponsible behaviour related to alcohol.

- e) The distinction between alcohol purchase and consumption has been considered by the Panel in a previous decision (Determination No. 9 & 14/16), in which the Panel observed that: “ ...There is a clear distinction between the purchase of an alcohol product and the pattern of its subsequent consumption. Alcohol by its nature is a product with a relatively long shelf life in that it can be stored for months or in the case of wine and spirits, for years, prior to its use. It does not follow that simply because alcohol products are home delivered that a person will then engage in binge drinking, any more than a person purchasing a product in store at a bottle shop will engage in subsequent excessive or rapid consumption of the product purchased.”
- f) 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 such as BWS on Demand to ensure that alcohol is not delivered to someone who is under 18 years of age or someone who is intoxicated.
- g) The reference to ‘need’ and ‘to the rescue’ are references to the purchase decision and the convenience of delivery (as opposed to visiting a store). Seeing the Ad as a whole, we believe a reasonable person would understand that the Ad was conveying a message about delivery and convenience. We do not believe that a reasonable person would understand the Ad as referring to alcohol abuse or addiction, or any genuine ‘rescue’ taking place.
- h) Finally, we should note that we have been advised the last distribution of the Ad took place in the week ending Sunday 23 September 2018.
- i) For the reasons outlined above, we believe the complaint should be dismissed, and the Panel should determine that there has been no breach of the Code.

The Panel’s View

- 14. BWS is a major alcohol retailer which offers a home delivery service. In promoting its home delivery service the Company has been distributing marketing items consisting of print material accompanied with a magnet. The magnet contains a

message and the Company's web address. Typically a magnet of this kind would be placed on a refrigerator.

15. The message conveyed by the printed material advises of a marketing offer by which a consumer using the delivery service will be offered a \$10 discount on their first order. The message also contains the strapline "On Demand To The Rescue". The magnet also uses this strapline together with the phrase "Need booze? Stay right where you are. We'll be there ASAP".
16. The complainant makes an economic argument about the true cost of alcohol use in terms of health problems and the product's role in criminal activity. It is contended that alcohol companies do not pay for the full cost of the product's use in society, with additional health costs, for instance, met by the community and not the alcohol industry. While this argument may or may not be valid it is certainly beyond the scope of the ABAC and no code standard goes to issues of this type.
17. The ABAC provides that alcohol marketing must not encourage excessive consumption or irresponsible behaviour that is related to alcohol use. The complainant's contention is that the marketing encourages impulsive use of alcohol and that the reference to "Need booze" implies a possible addiction to alcohol. The Company disputes such an interpretation would be taken from the marketing and that the distinction between the purchase of alcohol and its subsequent consumption needs to be appreciated.
18. There is no ABAC requirement which prohibits home delivery of alcohol products by retailers. The ABAC does not deal with issues such as where alcohol might be purchased. Questions of this type are dealt with in State liquor licensing laws which regulate retail outlets, sales within supermarkets or general stores and the availability of alcohol in public places, such as parks. Accordingly, the question of home delivery facilitating an impulse purchase of alcohol as opposed to a consumer having to travel to a store to purchase alcohol is not an ABAC issue.
19. The message "Need booze" could in a particular context be inconsistent with ABAC standards. For instance, if the probable understanding of an advertisement was that a person needed alcohol to be successful in life or to cope with a problem, such a message would be in breach of the Code. The complainant believes the reference to "Need booze" implies alcohol addiction.
20. The Panel does not believe the marketing communication breaches the Code. The reference to "Need booze" and "On Demand To The Rescue" would be probably understood within the context of the convenience to the consumer of home delivery. It would not be taken as endorsing or normalising alcohol addiction.
21. Accordingly, the complaint is dismissed.