



ABAC Adjudication Panel Determination No. 147/18

Product: Prosecco
Company: Brown Family Wine Group
Media: Outdoor
Date of decision: 10 December 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 outdoor marketing for Prosecco by Brown Family Wine Group (“the Company”) and arises from a complaint received 27 November 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 Code”) – 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 and Policies – which place 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

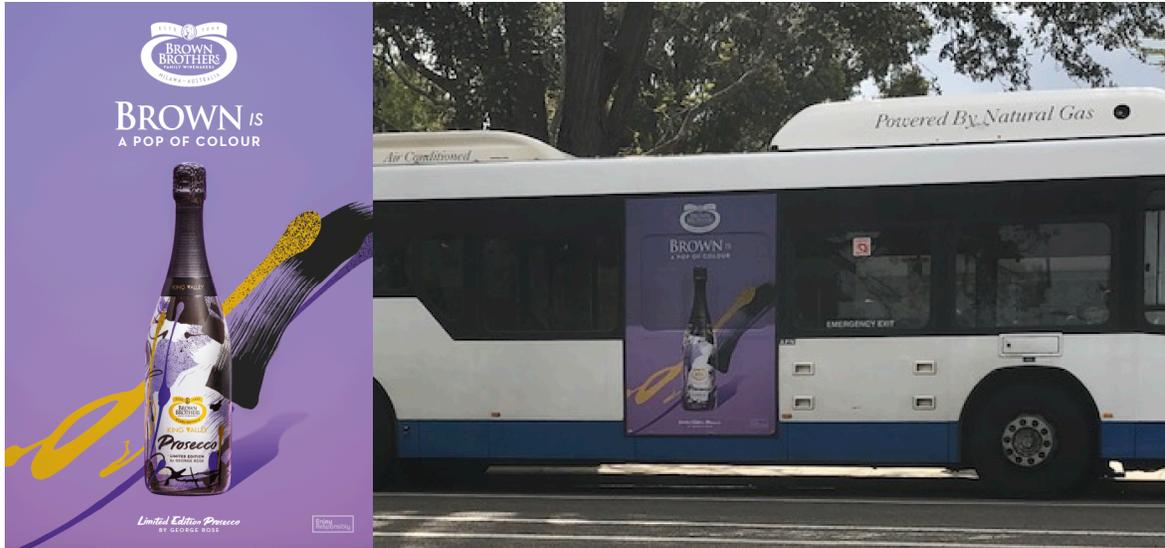
7. The complaint was received on 27 November 2018.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 (16654).

The Marketing Communication

10. The complaint relates to the following advertisement.



The Complaint

11. The complainant objects to the marketing as:
 - The advertisement was displayed on the side of a State Transit school bus used exclusively for minors that collects and distributes children from Epping Boys High School to their homes and was seen between 2.45 and 3:40pm on Friday, 2 November;
 - The placement of the advertisement exposes children to the marketing while waiting for, boarding and alighting from the bus and to other children travelling to school in cars or via other buses at bus stops during the peak school travel period; and
 - It is visually appealing to minors due to the colourful packaging of the bottle and advertisement which would entice underage children to want to purchase and try the beverage.

The ABAC Code

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

- (b)(i) have Strong or Evident Appeal to Minors;
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules

13. Part 6 of the ABAC Code provides:

Placement Rules means:

- (i) 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).

- (ii) 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
- (iii) 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)
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

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

14. The Company responded to the complaint by email dated 3 December 2018. The principal points made by the Company were:
- a) Black and Gold are Brown Brothers masterbrand colours and a core component of our core Prosecco bottle design. The use of Purple is part of the overall Limited Edition bottle design and was designed for shelf stand out and impact, and is based on George Rose' (artist) signature design style.
 - b) The creative is part of a wider communications buy featuring Limited Edition Prosecco nationally. A pop of colour is the campaign headline, the 'pop' represents the pop of a Sparkling wine/Prosecco bottle and the 'colour' component refers to the Limited Edition bottle design.
 - c) We want you to assure you that the advertising you reference is not on a school bus. The bus is part of the STA (State Transit Authority) fleet.

- d) It's a state/public bus that stops at all the public bus stops around Sydney, including bus stops outside of schools, including the boys school in question. Buses are booked out of depots and change routes on a daily basis so it's possible that this bus may or may not pass by this school (or others) again.
- e) Outdoor companies adhere to the standards of the OMA (Outdoor Media Association). The OMA's code of ethics is in line with the ASBs (Advertising Standards Bureau) regulations and for fixed signage there is a 150m proximity exclusion from school zones for alcohol advertising, however this is not applicable to transit advertising.
- f) We take compliance very seriously and in this case have ensured adherence to the ABAC and OMA codes of practice, and will ensure we continue to do so.

The Panel's View

- 15. The Company is currently running a campaign for its products which is utilising outdoor sites such as billboards, bus sheds and public buses. One of its executions for a Prosecco has been placed on a bus which is servicing routes in Sydney. The ad on the bus was seen by the complainant while the bus was servicing students attending Epping Boys High School.
- 16. The complainant makes two basic points. Firstly it is inappropriate for an alcohol ad of any type to be on a bus transporting school students. Secondly this particular ad due to its use of a colourful design would be enticing to children and encourage underage drinking. The complaint therefore raises both an ABAC content standard and a Placement Rule.
- 17. The content standards apply to all alcohol marketing communications irrespective of the medium by which the advertising is conveyed. One of the standards is that marketing must not have strong or evident appeal to minors. The Placement Rules aren't about what message an ad might contain about alcohol use, but rather the rules are directed to the medium by which the ad is communicated. The rules have the aim to better direct alcohol marketing towards adults and away from under 18 year olds.
- 18. The ad consists of a picture of a bottle of the product against a purple background. The bottle has an artistic packaging design. A splash of gold colour as if delivered by a paintbrush is positioned behind the bottle. The strapline 'Brown is a pop of colour' is used which links the brand name to the pop art influence of the ad design. The Company explains the ad is based on the style of the artist George Rose. Rose was trained as a graphic designer and is known for the use of bold colours. Her work is often large such as murals and other public place installations.
- 19. While the ad uses bold and eye-catching colours it is passive in nature. There are no characters or themes would could be said to be particularly engaging to minors. The reference to 'pop' would be taken not as a euphemism for soft drink but as a play on the sparkling nature of the product. Taken as a whole the Panel does not believe the ad has strong appeal to under 18 year olds.

20. The relevant Placement Rule is rule (i). This rule incorporates into the ABAC the terms of media industry body codes which regulate the placement of alcohol marketing. The Outdoor Media Association Alcohol Policy provides restrictions on the placement of alcohol ads on outdoor sites within 150 metres of a school. The Policy however does not contain any provision which limits the use of buses for alcohol ads.
21. Since the commencement of the Placement Rules in November 2017, the Panel has considered several complaints about alcohol ads on buses which have been used to transport school students. There is an evident tension between a rule which does not permit an alcohol ad on a bus shelter shed outside a school but says nothing about an ad appearing on the bus that stops at the shed to collect student passengers.
22. In part the complication arises in that there is no uniformity as to how various Transit Authorities or private bus companies assign buses to particular routes. Certainly the operators of buses don't appear to run a filter as to which bus is going to be allocated a route on a given day based on what advertising might be on the side of the bus. Hence in some previous decisions alcohol companies have given advice that they have been able to seek to exclude a bus from servicing a school route, while in other cases this does not appear possible. Here the Company advises the bus is not a 'school bus' but part of the fleet which might or might not again go past Epping Boys High School.
23. In any event, the placement of an alcohol ad on a bus is not a breach of the ABAC irrespective of whether the bus in question finds itself ferrying school students in great numbers or not. Hence while the Panel acknowledges the genuine concern of the complainant, the complaint cannot be upheld.
24. Accordingly the complaint is dismissed.