



ABAC Adjudication Panel Determination No. 9-10/18

Product: 1573
Company: Luzhou Laojiao Co Limited Sales Company
Media: In Stadium/Television
Date of decision: 5 February 2019
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 the placement of advertising for 1573 by the Company on hoardings in stadiums during the Australian Open Tennis 2019 and arises from two complaints received on 17 and 21 January 2019.
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 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, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 6. The complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 17 and 21 January 2019.
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 complaints were determined within this timeframe.

Pre-vetting

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 the advertisements.

The Placement

10. Advertising for 1573 was seen by the complainants during the Australian Open Tennis.

The Complaints

11. The first complainant saw the advertising for the spirits on the canvas hoardings behind the players in Rod Laver Arena during the 2019 Australian Open and expressed concern that strong alcohol should not be advertised in association with sporting excellence, especially during the day and during school holidays when children will be watching.
12. The second complainant saw the advertising during a Channel Nine broadcast of the Australian Open noting that the brand is displayed in both the Rod Laver Arena, and Margaret Court Arena, and Court 2 has been rebranded as 1573 Arena. The second complainant was concerned that:
 - a) the sports competition is watched by a large free-to-air TV audience, including children
 - b) children do not need to be shown alcohol brandings in any form of advertising
 - c) alcohol abuse in Australia is associated with a set of serious social and public health issues and problems in our community.

The ABAC Code

13. Part 2b of the ABAC Code provides that the Code does not apply to:
 - (v) Sponsorship.
14. 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.
15. Part 6 of the ABAC Code includes definitions including:

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.

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

The Company's Responses

16. The Company responded to the complaint by letter from Tennis Australia dated 25 January 2019. The principal points made by the Company were:
 - a) Tennis Australia is the organiser of the Australian Open and makes this submission in support of our sponsor, Luzhou Laojiao Co Limited Sales Company (LZLJ). DMG Fine Wine/Evershine Australia Trading is merely LZLJ's Australian distributor of 1573 and was not responsible for the advertisement and does not have a direct relationship with Tennis Australia.
 - b) LZLJ is a sponsor of the Australian Open and the advertising in question was created by Tennis Australia as part of the suite of sponsorship benefits granted to LZLJ pursuant to an agreement. Accordingly, it is clearly 'Sponsorship' for the purposes of the ABAC Code and as a result the ABAC Code does not apply to by virtue of Part 2(b)(v).
 - c) We further note that the advertisement in no way encourages irresponsible consumption of alcohol, nor can it be said to have a strong and evident appeal to minors. This is especially the case where it only forms part of the periphery of the television coverage, where viewer's attention is directed at the feats of the elite tennis players on court.

The Panel's View

17. The Australian Open is one of the four major international tennis tournaments which comprise the 'Grand Slam'. Played in Melbourne each January the tournament is broadcast nationally over the 9 Network and relayed across the world via free to air and subscription television as well as social media channels.

18. The tournament is run by Tennis Australia which enters into sponsorship arrangements by which various companies seek to have their brands associated with the Australian Open in return for financial support to Tennis Australia. Media reports indicate the tournament has up to 28 official sponsors extending from financial institutions, car manufacturers, grocery supermarkets, soft drink brands and alcohol beverage brands.
19. In October 2018 Tennis Australia announced it had secured 'a significant partnership deal with leading Chinese Baijiu brand Luzhou Laojiao in the largest Chinese sponsorship deal in the history of the tournament'. Luzhou Laojiao is the producer of the wine branded '1573'. It is the court side advertising hoardings promoting 1573 which have attracted the two complaints.
20. While 1573 is available for purchase in Australia it is clear that the primary market which Luzhou Laojiao was seeking to reach through its association with the Australian Open was its domestic market in China and a wider international market particularly in Asia. The Open is promoted by Tennis Australia as Asia's Grand Slam event and media reports indicate that the tournament attracts a large and growing audience in countries such as Japan. In China, television audiences for 2019 Open increased noticeably and 377 million viewers accessed games via the Chinese social media platform Weibo.
21. The concerns raised by the complainants went to the court side advertising hoardings both as a form of in stadium marketing and through the incidental transmission of images of the hoardings in conjunction with the television broadcast of matches. The concern expressed wasn't about the content of the message on the hoardings nor is it directed particularly at 1573 as a specific alcohol product. Rather the concern is more at a principle level arguing that it is undesirable that any alcohol product should be associated with a high profile sports event given the potential viewing of the advertising by under 18 year olds.
22. The ABAC applies to alcohol marketing occurring within Australia subject to certain exceptions. The Code in both its content standards and the Placement Rules does not apply to sponsorship of sporting events. This exception captures the placement of brand names or logos on things such as
 - the name of a competition
 - on a player uniform or guernsey
 - a stadium name or hoardings at a stadium which simply state the name of the alcohol product and/or logo but don't go to the promotion of brand attributes.
23. The exception does not include associated advertising of the product which references the existence of the sponsorship arrangement. In this case the promotion is the brand name at the tennis stadium and this is a direct manifestation of the sponsorship arrangement. Accordingly the hoardings fall within the sponsorship exception.
24. The Panel recognises that the question of the desirability or otherwise of the sponsorship of sports by alcohol companies is contested by some in the

community. Ultimately this is an issue of public policy to be determined by government and is well beyond the remit given to the Panel.

25. The complaints are dismissed.