



ABAC Adjudication Panel Determination No. 22/19

Product: Sesion Tequila
Company: Sesion Tequila
Media: Digital (Instagram)
Date of decision: 27 March 2019
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 marketing for Sesion Tequila (“the Company”) and arises from a complaint received 14 March 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 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 the other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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 14 March 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 complaint has been determined within this timeframe.
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 marketing communication.

The Marketing Communication

10. The complaint refers to a regram by @SesionTequila of the following post by one of its followers with the caption "only tied down when we want to be".



The Complaint

11. The complainant is concerned that this image was OK in the 1970s. Not in 2019. It is using sex to sell alcohol and putting naked women, bondage, and booze together is totally irresponsible.

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. Sesion Tequila responded to the complaint by emails dated 14 & 18 March 2019 advising that:
 - The image was shared from an Instagram account with the comment "only tied down when we want to be", intended to reflect an attitude towards choices and being in control of one's own decisions. The woman is wearing a shirt that has bondage written on it but the woman in the image is not engaging in or suggesting a sexual act herself. She is eating from a packet of crisps which are placed between her legs. The woman is attractive and clearly has sex appeal but it does not encourage irresponsible or offensive behaviour as there is no suggestion that the consumption of alcohol would lead to sex or bondage.
 - The image was posted to the account by the agency that works with Sesion Tequila to manage the Instagram account. It was removed at the request of internal stakeholders at that agency and the client was then notified. The post was permanently removed within 20-30 mins after posting.

- Measures have been put in place so that this type of image will not be allowed to be used in the future

The Panel's View

14. This determination concerns the posting on the social media platform Instagram of an image by an agency acting on behalf of the Company. The image is sexually provocative and in the opinion of the complainant is entirely inappropriate. It is contended the combination of a 'naked women, bondage and booze is totally irresponsible' and reflects an attitude towards women found in the 1970's and should not be used in 2019.
15. Alcohol marketing is subject to several codes of practice and at its core the concerns raised by the complaint fall within the ambit of the AANA Code of Ethics. This code applies to marketing irrespective of the product being promoted and contains requirements going to the portrayal of sexuality as well as the obligation that advertising should meet community standards in relation to sexism and the depiction of women. The concern that the Instagram post offends contemporary standards therefore falls for consideration by Ad Standards rather than the ABAC scheme.
16. The ABAC contains standards for the marketing of alcohol as a specific product which are in addition to the generic requirements in the Code of Ethics. The relevant ABAC standard for the issues raised in the complaint provides that alcohol marketing must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.
17. In responding to the complaint the Company advised that the post was made by its social media agency and was in effect a poor decision by a staff member of the agency. This decision was overturned within the agency and the post removed within 30 minutes of the post occurring and all of this happened without reference to the Company itself. While this may have been the sequence of events, the responsibility for marketing lies with an alcohol industry participant and the actions of an agent are taken for ABAC purposes to be the actions of the alcohol company.
18. The issue for the Panel is to assess if the ABAC standard has been breached. In making this assessment the standpoint of the probable understanding of the marketing communication by a reasonable person is to be adopted. This means that the opinions, values and life experiences common in a majority of the community is the benchmark. A person who takes a different interpretation of the marketing item is not 'unreasonable' but possibly their interpretation would not be shared by a majority of the community.
19. The Panel does not believe the post breaches the ABAC standard. In reaching this conclusion the Panel has noted:

- the post does not depict alcohol use or the presence of alcohol nor does the demeanour of the woman shown indicate she is affected by the use of alcohol;
- the reference to bondage is drawn from the woman's t-shirt and the text accompanying the image, however there is no depiction or implication that alcohol use has occurred or that the woman is not in control of the situation; and
- while the depiction of a woman's body (without showing her face) in the manner adopted by the post raises legitimate questions of sexism and personal agency, these are issues for Ad Standards under the Code of Ethics and not the ABAC scheme as such.

20. Accordingly the complaint is dismissed.