



ABAC Adjudication Panel Determination No. 55/19

Product: Glass Brasserie
Company: Hilton Hotel
Media: Print
Date of decision: 13 September 2019
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 an advertisement for a lunch promotion at Glass Brasserie by the Hilton Hotel (the Company) and arises from a complaint received 26 August 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, 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 26 August 2019.
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 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 concerns the following advertisement:



The Complaint

11. The complainant is concerned that by offering unlimited alcohol within a fixed time frame the promotion encourages excess consumption and may attract individuals that are attracted to excessive consumption causing unsafe consumption and behaviour.

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;

The Company's Response

13. The Company responded to the complaint on 2 September 2019. The principal points made by the company were:

- a) Whilst we appreciate the existence of the ABAC Responsible Alcohol Marketing Code, neither Glass Brasserie nor Hilton Sydney are signatories of the code.
- b) The advertisement does not breach Part 3(a)(i) of the ABAC as the advertisement does not use specific wording similar to or that encourages 'excessive or rapid consumption' or 'misuse or abuse of alcohol', nor does it specify a quantity of alcoholic beverages that will be available to be consumed. The term 'bottomless' is used widely across Australia and specifically across venues within Sydney. The term 'bottomless' signifies to the customer, *that more than one* alcoholic beverage will be provided to them during a 2 hour period, should they *wish* to consume more than one. Allowing a 2 hour period to consume more than one alcoholic beverage at a venue that practices the responsible service of alcohol, whilst also consuming a five course food menu, does not violate liquor laws or licensing in New South Wales.
- c) The advertisement also does not specify that, as a business, we encourage or permit our patrons to consume a specific volume of alcoholic beverages during a stated period. The advertisement communicates that for the cost of \$75 per person, a patron will receive a five course share menu, *and more than one* alcoholic beverage. The advertisement also, does not specify that beer will be provided for a 4 hour period, the only time period noted in regards to alcohol consumption is 2 hours.
- d) We appreciate the concerns of our customers, therefore, to ensure any future misperception, we have noted the following text on all of our advertisements – *'RSA laws apply. Glass brasserie practices the responsible service of alcohol'*. Glass Brasserie and Hilton Hotel Sydney comply with RSA laws and whilst we appreciate that as a business we identify this, we understand the value of including this in our advertising.

The Panel's View

- 14. This determination concerns an advertisement for the 'Glass' restaurant located within Sydney's Hilton Hotel. The advertisement was placed in the Sydney Morning Herald and promoted a Sunday Brunch curated by the well-known chef Luke Mangan. The brunch comprised a five course share menu and included '2hr bottomless Aperol Spritz and French Rose'. In addition, the ad stated in bold print 'Father's Day special - bottomless beer for all dads!'.
- 15. The complainant has interpreted the ad as encouraging excessive alcohol consumption by offering unlimited alcohol within a fixed time. It is contended that the promotion may attract individuals wanting to consume excessively and lead to unsafe behaviour.
- 16. The Hilton Hotel is not a signatory to the ABAC scheme but has cooperated with the Panel's processes to facilitate the making of this determination. It argues that the ad is not in breach of the ABAC and that the term 'bottomless' is understood as meaning that a customer will receive more than one alcoholic beverage in a 2 hour period. It is pointed out the alcohol is served in conjunction

with a meal and that a promotion of this type is consistent with liquor licensing laws.

17. The regulation of alcohol use in Australia is a shared responsibility. As referenced by the Company, the Hilton is a licensed premise under the Liquor Act 2007 (NSW) and is regulated by Liquor and Gaming NSW, a state government agency. The Government has produced Liquor Promotion Guidelines to assist licensees to meet their obligations under NSW law. The Guidelines state that licensees should understand how their promotions operate within the broader national regulatory frameworks for alcohol advertising such as the ABAC.
18. Both the ABAC and the NSW Guidelines go to marketing and promotions not encouraging excessive consumption of alcohol. The NSW Guidelines provide a promotion should not:
 - use emotive descriptions or advertising that encourages irresponsible drinking;
 - involve the provision of free drinks or discounts for a limited duration that create an incentive to consume liquor more rapidly than otherwise; or
 - otherwise encourage irresponsible, rapid or excessive consumption.
19. The Guidelines deal with 'happy hour' style promotions. It is recognised that such promotions are not prohibited but need to be run carefully. Some comments include that such promotions available earlier in the day are less problematic than those after 10 pm, the duration should be no more than 2 hours and stockpiling of unconsumed drinks should not be permitted.
20. For its part, the ABAC provides that an alcohol marketing communication must not encourage the excessive or rapid consumption of alcohol. Assessment of an ad's consistency with the standard is from the probable understanding of the ad by a reasonable person taking the content of the ad as a whole.
21. The Panel does not believe the ABAC standard has been breached. In reaching this conclusion the Panel has noted:
 - the ad is promoting a brunch with the principal selling point being a meal curated by a 'celebrity chef' rather than the availability of alcohol;
 - the term 'bottomless' in relation to the availability of a particular alcohol beverages raises the prospect of excessive consumption;
 - this prospect is however mitigated by the time of day, the defined period to which the alcohol is available, the limited types of beverages to which the offer applies and the association with the serving of the meal; and
 - taken as a whole the ad would not be taken by a reasonable person as encouraging excessive consumption.
22. Accordingly, the complaint is dismissed.