

ABAC Adjudication Panel Determination No. 69/19

Product: Heart Starter Special
Company: Star Liquor Warehouse Richlands
Media: Digital
Date of decision: 3 October 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a Facebook post by Star Liquor Warehouse Richlands (“the Company”) and arises from a complaint received 17 September 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 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 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 September 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 was completed in this timeframe.

Pre-vetting Clearance

- 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 these marketing communications.

The Marketing Communications

- The complaint relates to the following Facebook post.

Virgin 4G 06:03 100%

 **Star Liquor Warehouse Richlands** Saturday at 11:31

The ol breakfast for champions.

Redbull & J... See more



👍🤔❤️ 137 115 comments 22 shares

👍 Like 🗨️ Comment ➦ Share

📅 🎥 🏠 👤³ 🔔² ☰

The Complaint

11. The complainant is concerned that this is inappropriate advertising of alcohol and suggests a medical benefit from alcohol consumption.

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
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation

The Companies' Responses

13. The Company responded to the complaint by letter dated 27 September 2019. The principal points made by the Company are:
 - Upon receiving the complaint, the published post was promptly removed.
 - We are looking at incorporating the ABAC Code and Best Practice Guidelines into our staff induction and training modules to ensure ongoing compliance with the ABAC Code.
 - We have analysed the published picture against the Code and have deemed that given the nature of bundle purchasing in the industry this particular ad would not be considered as having shown any excessive consumption through visual creative or that it would encourage offensive or rapid consumption behaviour. The extrapolated pricing of this advertised bundle relative to the average cost of a standard 700ml finds that the price is a disincentive to purchase given our advertised price of this bundle set at a premium.
 - The ad did not show offensive behaviour and did not have a call to action or directly imply excessive consumption. This tagline is well known contemporary vernacular and the publisher was attempting at drawing on the reputation of the product that it was historically, assimilating it with the product that the store was promoting. Given that breakfast is an early day meal and that it may be considered that a viewer had felt that it implied consuming early in the day we removed this ad, although we don't consider it breaches the Code.

- Describing the product as a heart starter does refer to requiring excess consumption, however, there may be an interpretation deeming that its reference is to increase bodily function given the Red Bull product included. We have removed this ad as a result, but there was no direct implication that excessive consumption or offensive behaviour is being encouraged.
- The advertisement contains the product Red Bull which is commonly known for its ability to provide a form of energy to a consumer. Under no circumstances was the publisher intent on establishing the perception that sound health advice was being provided. Given the nature of this complaint and the bordering on what may be deemed a suggestion that this bundle may offer a form of physiological benefit we have removed this ad.
- I will also be contacting ABAC to better understand if there are any other measures that we can take to ensure compliance with marketing guidelines other than those that we have referred to.

The Panel's View

14. Star Liquor is a retail chain of alcohol retailers with over 50 outlets. One of the outlets is a warehouse located in the Brisbane suburb of Richlands and this determination concerns a post on the Richlands Star Liquor Facebook Page. The post promotes the sale of the alcohol product Jagermeister in conjunction with the energy drink Red Bull.
15. The post shows a picture of the two products joined together with sticky tape with a sign reading, 'Heart Starter- \$7 Special'. The accompanying text with the post reads 'The ol breakfast for champions'. The complainant contends this post is irresponsible and suggests a medical benefit from alcohol consumption.
16. The Star Liquor group is not a signatory to the ABAC scheme in contrast to Australia's three largest alcohol retailers, namely Woolworths, Coles and the Metcash group. That said the response to the complaint shows a willingness to meet good community standards in alcohol marketing and full cooperation has been offered in the Panel processes enabling the determination to be made.
17. Part 3 (a) of the Code provides an alcohol marketing communication such as a Facebook post must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage. Further, it cannot be suggested that the consumption of an alcohol beverage offers any therapeutic benefit (Part 3(c)).
18. The Company argues the post is not in breach of the Code standards and it is rejected that the post would be understood as offering health advice and this was not intended. The post was, however, removed upon receiving the complaint, to avoid any risk it might be mistaken as implying a health benefit or suggesting consumption should occur early in the day.

19. The Panel believes the Company was correct to remove the post. Most likely a reasonable person would not interpret the post as seriously suggesting that a health benefit would flow from drinking alcohol with an energy drink. The promotion of the simultaneous consumption of a very high caffeine drink with a high alcohol to volume product such as Jagermeister is, however, undesirable and can be taken to be inconsistent with the spirit of the ABAC if not the letter of Part 3(a)(ii).
20. The Company has indicated it will use ABAC materials in staff induction and training modules. Further, the Company would be well advised to use the ABAC pre-vetting service, at least in developing major marketing campaigns. Best practice would see the Star Liquor Group joining its fellow major retail groups in becoming an ABAC signatory.
21. The complaint is upheld in relation to Part 3(a)(ii) and dismissed in relation to Part 3(c)(iv).