



ABAC Adjudication Panel Determination No. 72/19

Product: Beer
Company: Ainslie Football and Social Club
Media: Digital
Date of decision: 26 October 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 email promotion by the Ainslie Football and Social Club (“the Company”) and arises from a complaint received 24 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 24 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

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 this marketing communication.

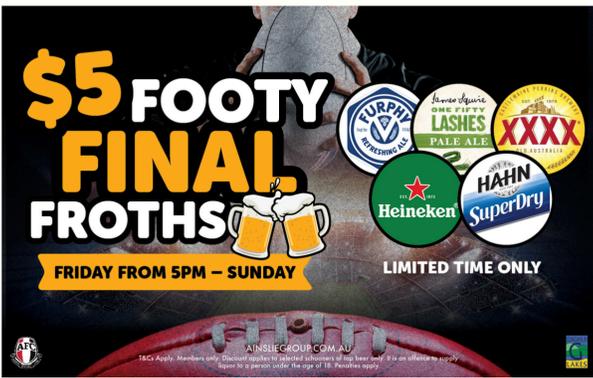
The Marketing Communication

10. The complaint relates to the following email promotion.

From: Gungahlin Lakes Club <info@ainslegroup.com.au>
Date: 11 October 2019 at 3:10:16 pm AEDT
To:
Subject: Cheap beers during all FOOTY FINALS!



GUNGAHLIN LAKES



\$5 FOOTY FINAL FROTHS
FRIDAY FROM 5PM – SUNDAY
LIMITED TIME ONLY

WE'VE GOT THE BEST VALUE FOOTY FINAL BEERS IN TOWN! 🍻
The Lakes is the perfect destination to catch all of the AFL & NRL Footy Finals action! Grab your mates, pop on your team colours and watch every game live & loud on our new MEGA SCREEN!

PLUS to celebrate Footy Finals, we're pouring \$5 schooners every Friday from 5pm - Sunday until October 6th!

\$5 Footy Final Froths includes:

- Furphy
- One Fifty Lashes
- XXXX
- Heineken
- Hahn SuperDry

FRI 27TH SEPT
Rabbitohs Vs **Raiders** 7:50pm

SAT 28TH SEPT
Richmond Vs GWS Giants 2:30pm
Storm Vs Roosters 7:50pm

Available at your local Ainslie Group Venue.
Terms and Conditions apply. Discount applies to schooners only. Members Only.

The Complaint

11. The complainant is concerned that the email which offers “Cheap beers for all footy finals” promotes cheap alcohol for people to drink during a sports match.

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

The Company's Responses

13. The Company responded to the complaint by email dated 22 October 2019 as follows:
- I refer to the complaint received by the ABAC in relation to the EDM campaign by the Ainslie Football and Social Club Limited sent to members on 24 September 2019. I understand the complaint referenced some concern around the messaging by the club in relation to "Cheap Beer".
 - I can confirm that the EDM subject line did reference "cheap beer" and whilst a poor choice of words, did not in any way breach the relevant ACT code or legislation. Furthermore, it is my opinion that the EDM did not encourage the excessive consumption of alcohol or promote irresponsible behaviour through the consumption of alcohol. As you are aware the specific promotion ended at the conclusion of the 2019 football finals and is no longer being promoted nor available to members. The Ainslie Football and Social Club Limited does not promote the excessive consumption of alcohol and has a strong and compliant history on the responsible service of alcohol.
 - In future the club will be more cognisant of the language it uses in relation to EDM campaigns and the inference certain language may have on our community.

The Panel's View

14. The Gunghalin Lakes Golf Club is located in Canberra's northern suburbs. The Club is based on a golf course opened in 1996 and features a restaurant and other bar areas that serve alcohol. The Club holds a liquor license and is regulated by an ACT government agency- Access Canberra- pursuant to the provisions of the Liquor Act 2010(ACT).
15. The regulation of alcohol marketing in Australia falls within a shared regulatory space with primary responsibility for promotional activities occurring on licensed premises resting with government authorities while the ABAC scheme focusses

on marketing and promotions directed to wider audiences beyond patrons within premises. There is some overlap between the requirements found in State and Territory licensing regimes on responsible alcohol promotion and ABAC standards with both regulatory regimes having common policy goals.

16. In this case the Club has conducted an email promotion based upon the 2019 AFL and Rugby League final series. The complainant believed the promotion to be irresponsible as it featured the availability of 'cheap beer'. Presumably the complainant believed this might lead to excessive alcohol consumption. The Club maintains that while the email subject line of 'cheap beer' was a 'poor choice of words' the actual conduct of the promotion was conducted consistently with ACT requirements and did not encourage excessive consumption.
17. The ABAC does not purport to regulate the price at which alcohol is sold. Nor does ABAC regulate the actual conduct of 'happy hours' by licensed premises. The ABAC remit goes to the marketing communication i.e. the email itself, and whether a reasonable person would understand the email as encouraging excessive or rapid consumption, or irresponsible or offensive behaviour related to alcohol use.
18. The Panel does not believe the email taken as a whole would be understood as encouraging the excessive or irresponsible use of alcohol. The message in the email was to promote the Club as a good venue to watch the football finals. Moderately priced beer is used as a selling point, but a reasonable person would not likely interpret the email as saying that it is acceptable to consume excessively.
19. Accordingly, the complaint is dismissed.