

ABAC Adjudication Panel Determination No. 101/19

Product: Tipple
Company: Tipple Group Pty Ltd
Media: Outdoor
Date of decision: 27 November 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor advertisements inside a Sydney Light Rail train (“the Company”) and arises from a complaint received 11 November 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:

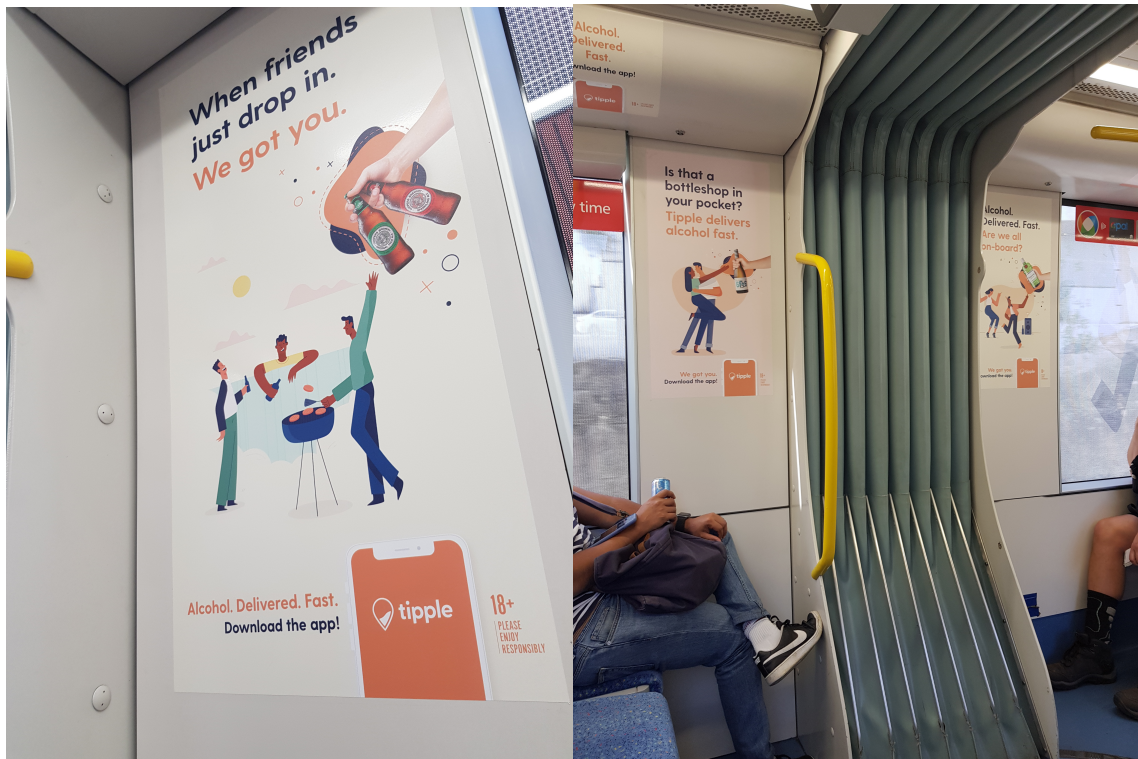
- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television 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 11 November 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 obtained for this marketing communication.

Marketing Communication Placement

10. The following advertisements for Tipple were placed inside a Sydney Light Rail train.



The Complaint

11. The complainant notes that public transport is used by kids, this advertising clearly shows the serving of alcohol and his child started laughing about the cartoon style advertisements and told him 'it was a cool app' and 'that you could get beer with it'.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules

13. Part 6 of the ABAC Code includes definitions including:

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

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) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (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.

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Response

14. The Company responded to the complaint by letter dated 21 November 2019 advising that:
 - Tipple holds Responsible Advertising practices and harm minimisation to the community as a core value. Tipple ensures that alcohol is not available to minors or intoxicated patrons on its platform by ensuring that all couriers hold the relevant RSA competencies, achieved through a robust training framework that is uniquely specific to online, same day delivery of Alcohol. Where appropriate, Tipple clearly displays 18+ and responsible consumption messaging.

- Tipple's chosen advertising provider for the Sydney Light Rail is a member of the governing body for Outdoor, the Outdoor Media Association (OMA). They ensure that all advertising which runs on the Sydney Light Rail abides by the OMA Code of Ethics which outlines that members will only display advertising that adheres to the following advertising codes of practice:

Australian Association of National Advertisers (AANA) Code of Ethics
 AANA Environmental Claims in Advertising and Marketing Code
 AANA Code for Advertising and Marketing Communications for Children
 AANA Food and Beverages Advertising and Marketing Communications Code
 AANA Wagering Advertising & Marketing Communication Code
 The ABAC Responsible Alcohol Marketing Code
 The Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising
 The Therapeutic Goods Advertising Code
 The Weight Management Industry Code of Practice

- The ad you are referring to was submitted to ABAC for alcohol advertising pre-vetting to ensure it met all relevant standards and NSW legislation. Approval from ABAC was provided by the advertiser prior to the campaign being accepted.
- Tipple uses graphics to illustrate real world scenarios. Tipple does not believe that this imagery is any more appealing than photography of the same situations occurring in a real life setting.
- In Tipple's view, the placement does not breach Part 3 (b)(iv) of the Code.

The Panel's View

15. Tipple is an Uber style home delivery service for alcohol products. Advice from the Company's website is that the service is available to over 150 suburbs across Sydney and Melbourne. The service is based on a customer using an app to select products which are then collected from a participating alcohol retailer and delivered to the customer's address.
16. The Company has placed some advertising promoting its service within light rail carriages operating in Sydney. The complainant was using one of the trains in the company of a child and was worried about the alcohol advertising both in its use of a cartoon style which was argued to appeal to children and that it was placed on public transport. This raises the ABAC content standards and the Placement Rules.
17. The relevant content standard provides that alcohol marketing must not have strong or evident appeal to minors. This might occur if the marketing communication uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal

strongly to minors. The complainant contended that the ad was in a cartoon style which attracted the attention of their child.

18. In assessing the consistency of an ad with an ABAC standard the Panel is to have regard to the probable understanding of the ad by a reasonable person taking its content as a whole. This means that the values, opinions and life experiences common in a majority of the community is the benchmark. A person having a different interpretation is not 'unreasonable' but possibly their take on the advertising would not be shared by a majority of the population.
19. The Panel does not believe the ad can fairly be said to have strong or evident appeal to minors. The ad uses drawn characters, but these characters are adult in depiction and seen in adult settings. The drawings do not resemble children's cartoons and taken as a whole, including the accompanying messaging, the ads do not have strong appeal to under 18 year olds, but rather would appeal to older audiences.
20. Further, the placement of the ads on the trains does not breach the Placement Rules. The rules go to matters such as the use of age restriction controls on marketing carried by digital platforms and limitations on where alcohol ads can be placed on billboards (not within 150 metres of a school) but contain no restriction of ads on a bus or train.
21. Accordingly, the complaint is dismissed.