



ABAC Adjudication Panel Determination No. 128/19

Product: Drinks Voucher
Company: Woolshed on Hindley
Media: Digital (Facebook)
Date of decision: 7 January 2020
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 Woolshed on Hindley (“the Company”) and arises from a complaint received 23 December 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 23 December 2019. The Panel endeavours to make a decision within 30 business days of the receipt of a complaint and this complaint has been determined within that timeframe.
8. 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 Facebook post.

The Marketing Communications

9. The complaint refers to the following Facebook Post by @WoolshedAdelaide which includes a video clip of a young boy dancing on his own.



The Complaint

10. The complainant is concerned that the ad:
 - depicts the children as the ones drinking; and
 - implies a change in mood from drinking alcohol.

The ABAC Code

11. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;

The Company's Response

12. The Company did not respond to the complaint.

The Panel's View

13. This determination concerns a post on the Hotel's Facebook page. The post promotes a competition run on 7 September 2019 where the prize was a drinks voucher worth \$150. To win, a viewer of the post had to tag someone 'who could relate to the video attached to the post. The video was of a young boy in a cowboy outfit dancing. The accompanying text read - 'I don't really like tequila but one shot won't hurt'- 3 hours later.
14. The complainant raises the use of a child in the post and the implication that alcohol consumption will lead to a significant change in mood. The ABAC provides that children should not feature in alcohol marketing unless shown in an incidental role in a natural situation and where there is no implication the child will consume or serve alcohol. Further, it is not permitted to suggest that alcohol use will cause or contribute to a significant change in mood.
15. The Hotel is not a signatory to the ABAC scheme and is not contractually bound to meet Code standards nor abide with Panel determinations. On past occasions the Hotel has not accepted the ABAC standards but has removed Facebook posts held by the Panel to be in breach of the Code. On this occasion the Hotel did not respond to the complaint.
16. The video would not of itself be a breach of the Code. It seems to be a family video of a child dancing at a family gathering. It was likely posted to some generic site such as YouTube or Tik Tok and then utilised by the Hotel for the purposes of its Facebook marketing. It is the combination of the video with the text which gives the post its message.
17. The post is intended to be humorous and a reasonable person would interpret it in that way. The humour is based on an assumed shared experience of many viewers of a person not intending to consume alcohol excessively but in fact their behaviour does see excessive consumption occur. As a result, the person does something originally unintended - like dancing hours later - because of the effect of alcohol use.
18. The post does breach the Code standards. As has been mentioned in previous determinations, the Hotel is directly regulated under the Liquor Licensing Act 1997 (South Australia). The regime applying to the Hotel as a holder of a liquor licence imposes obligations to not advertise or permit promotion of their business in a way that tends to encourage the rapid or excessive consumption of liquor or that discourages a responsible attitude to the consumption of liquor. It is likely the post is in breach of the Hotel's licence requirements.
19. The complaint is upheld in relation to Part 3 (b)(ii) and Part 3 (c)(i) of the Code.