



ABAC Adjudication Panel Determination No. 2/20

Product: Furphy, Matsos & Single Fin
Companies: Lion & Gage Roads Brewing
Media: Outdoor
Date of decision: 21 January 2020
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 outdoor advertisements located in a train station, on the exterior of a train and inside a train by Lion and Gage Roads Brewing (“the Companies”) and arises from a complaint received 2 January 2020.
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 2 January 2020.
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 the content of the Furphy marketing communication.

Marketing Communication Placement

10. The following advertisements were seen by the complainant at Wolli Creek and Sydenham train stations.



The Complaint

11. The complainant is concerned that children and people who abuse alcohol are exposed to alcohol advertising on the NSW Government Transport System.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (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.

Lion Response

14. Lion responded to the complaint by letter dated 14 January 2020 advising that:
- Lion works closely with outdoor media buying agency Universal McCann (UM) to ensure Part 3(b)(iv) of the Code is adhered to when determining the placement of advertisements for our portfolio of brands.
 - The placement of the advertisement referred to by the complainant does not breach Part 3(b)(iv) of the Code by directing the marketing at minors by its ability to be viewed by children using public transport. I have attached a compliance report from Move, the software utilised by the Outdoor Media Association (OMA) to ensure outdoor advertising sites are compliant with the ABAC. The owner of the advertising sites, oOh! has included every panel at Wolli Creek station and Sydenham station, as it was not possible to identify the exact panel in question from the photograph of the advertisement supplied by the complainant. Wolli Creek and Sydenham train stations are not within 150 metres of a school. The closest school to the Wolli Creek and Sydenham station sites is Tempe High School, which is more than 500 metres from Wolli Creek station and 900m from Sydenham station.
 - As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance. As part of Lion's marketing approvals processes, the advertisements for Furphy were subject to:
 - internal legal review and advice from an external legal firm specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation;
 - review by Lion's internal marketing compliance team to ensure its adherence to all relevant advertising codes; and
 - review and approval through ABAC's external and independent pre-vetting service (AAPS) at both concept and final stages, receiving approval before going to market.

The Panel's View

15. The complainant has noticed alcohol advertising at a train station, on the exterior of a train and inside a train and expressed concern that children and people who abuse alcohol are exposed to alcohol advertising on the NSW public transport system.

16. The ABAC contains standards which go to the messages contained within alcohol marketing and rules about the placement and location of alcohol marketing communications. The complainant doesn't raise a point about the message within the specific advertising but is worried about any alcohol being located in high visibility areas such as train stations and on trains themselves. This means the complaint is to be assessed against the ABAC Placement Rules.
17. The rules have a policy aim to direct alcohol marketing towards adults and away from minors. This is more directly feasible when marketing is conducted over digital channels as these often enable age restrictions to be applied. For advertising carried on outdoor sites such as billboards, it is not possible to stop minors from viewing the advertising, and the rules adopt a more modest goal. This is that the ads cannot be placed within 150 metres of a school.
18. The advice from the Company is that the two train station sites are not within 150 metres of a school and hence the Placement Rule has not been breached. There is no ABAC restriction on alcohol advertising being located on public transport such as trains. Some State governments do restrict alcohol advertising on railway land or placement on trains and buses, but no such restriction is in place in NSW.
19. Accordingly, the complaint is dismissed.