



ABAC Adjudication Panel Determination No. 7/20

Product: Various
Company: ALDI Stores
Media: Print
Date of decision: 17 February 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 catalogue marketing for various alcohol products by ALDI Stores (“the Company”) and arises from a complaint received 22 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 Code”) – 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 and Policies – which place 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 the 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 22 January 2020.
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 page 8 of an ALDI stores catalogue as included following.

ALDI LIQUOR AVAILABLE IN SELECTED STORES. SEE ALDI.COM.AU

8 ALDI LIQUOR

17-18_NBW_ACT_W55_CR_28-29.indd All Pages

ALDI SUPPORTS THE RESPONSIBLE SERVICE OF ALCOHOL. IT IS ILLEGAL TO PURCHASE ALCOHOL FOR PEOPLE UNDER 18.

Hurry in store for Liquor Special Buys™ limited stocks available

STUDIO: RETOUCHING: CREATIVE: PROOF READER: PROJECT MANAGER: STUDIO LEAD/PRODUCTION: First Look Files Second Look Files Approval Files Checklist - Proof/Upload

ON SALE WEDNESDAY 29 JANUARY
FLIP THE CATALOGUE FOR SPECIAL BUYS™

The Complaint

11. The complainant objects to the marketing as it suggests it is a good idea to buy alcohol for romantic purposes, when there is nothing romantic about being with someone who has been drinking, nor regrets of accepting sexual advances that otherwise would not have been agreed to.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success

The Company's Response

13. The Company responded to the complaint by letter dated 5 February 2020. The principal points made by the Company were:
- a) ALDI takes the responsible promotion of alcohol very seriously. While not a signatory to the Alcohol Beverages Advertising Code Scheme (**ABAC Code**), ALDI has practices and policies in place to ensure that all of its advertising complies fully with all official advertising codes.
 - b) The Guidance Notes on the ABAC Code make clear that compliance with the Code is to be assessed in terms of "the probable understanding of [the Advertisement] by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole", and that the test of the reasonable person is intended as "a reflection of the standards and attitudes of contemporary Australian society".
 - c) As to Part 3(a)(ii), ALDI submits that the reference to Date Night in the Advertisement is not capable of being understood by reasonable consumers as "encouraging irresponsible or offensive behaviour" of any kind: there is nothing "irresponsible" or "offensive" about a couple consuming alcohol when out on a "date night". Nor is the Advertisement capable of being reasonably understood as "encouraging the use of alcohol when dating".
 - d) As to Part 3(c)(ii), ALDI submits that the reference to Date Night is not capable of being understood by reasonable consumers as implying that alcohol is required in order for a date to be successful. We note that the Guidance Notes on this part of the ABAC Code make clear that "there is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration.." and that it is permissible to "...depict the presence of alcohol in a romantic situation, provided there is no suggestion it has caused or contributed to the achievement of sexual or other success."
 - a) For the reasons set out above, ALDI submits that there is nothing about the Advertisement that breaches either the ABAC Code or any other official Australian advertising code. We respectfully request that the complaint be dismissed.

The Panel's View

14. This determination concerns an advertising catalogue for the supermarket chain ALDI. In part the catalogue features a range of alcohol products and one section of the catalogue's alcohol layout shows some pictures of products, with their prices and the text 'Date Night'. The complainant has taken this combination of the words 'Date Night' to suggest that alcohol is needed for 'romantic purposes' and alcohol use can lead to unwise sexual choices.
15. The ABAC provides that alcohol marketing must not:
- encourage irresponsible or offensive behaviour that is related to alcohol use;
 - or

- portray alcohol as a cause of or contributing to the achievement of social or sexual success.
16. In assessing compliance with a Code standard, the Panel is to adopt the standpoint of the probable understanding of the marketing communication by a reasonable person taking the content of the marketing as a whole. This means the benchmark is the life experiences, values and opinions likely to be common amongst a majority of the community. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their understanding would not be shared by a majority of the community.
 17. It would be a common experience in the Australian community for a couple going on a date to consume some alcohol. The ABAC does not prohibit the portrayal of the presence and use of alcohol in a social setting. What is not permitted is the suggestion that alcohol is needed to make a date successful or that alcohol be used to induce a sexual encounter. The question is whether the ALDI marketing catalogue could be fairly considered by a reasonable person as suggesting these things.
 18. The Panel does not believe the catalogue breaches the ABAC standard. Certainly, the conjunction of the pictures and prices of the alcohol products with the heading 'Date Night' seeks to link a 'date' with alcohol. But this is not against the Code requirements. The marketing cannot be reasonably interpreted as making claims that alcohol will lead to the date being successful or that romance or sexual interactions will occur if alcohol is used. The advertisement doesn't suggest any particular level of consumption. It is a passive depiction of unopened bottles of products with pricing information.
 19. The complaint is dismissed.