



ABAC Adjudication Panel Determination No. 28/20

Product: Grill'd
Company: Grill'd
Media: Digital & Outdoor
Date of decision: 21 April 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 digital and outdoor marketing by Grill’d (“the Company”) and arises from a complaint received 16 March 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 16 March 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

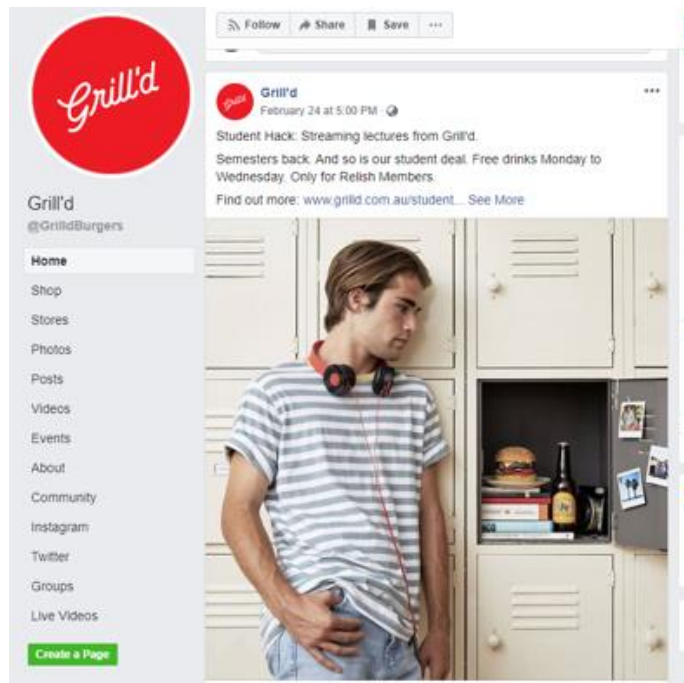
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for these marketing communications.

The Marketing Communications

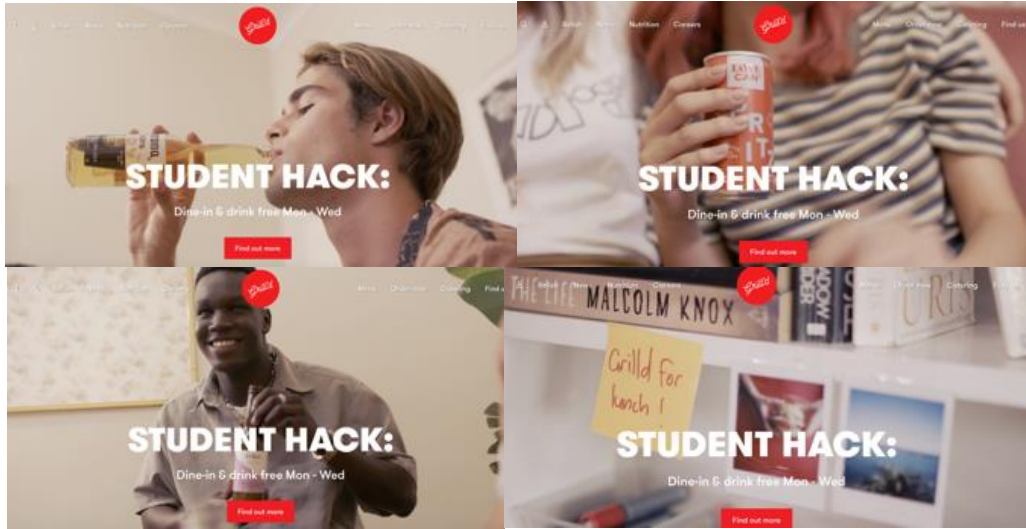
10. The complaint relates to the following outdoor and digital advertisements for a “Dine in & drink free” promotion for students:
 - Sandwich board at the entrance to a Grill’d store



- Grill'd Facebook post of 24 February 2020



- Grill'd website - rolling short video images on the home page



- Grill'd website - when accessing "Find out More" at: <https://www.grilld.com.au/news/latest/grilld-student-offer>



Living the student life? Claim a drink on us Mon - Wed

Join Relish and be registered as a student to grab a drink on us, every Monday through to Wednesday*. With or without the buzz, it's your choice. Take your pick from our fridge-full of a/c and non-alc bevs.

[JOIN RELISH](#)

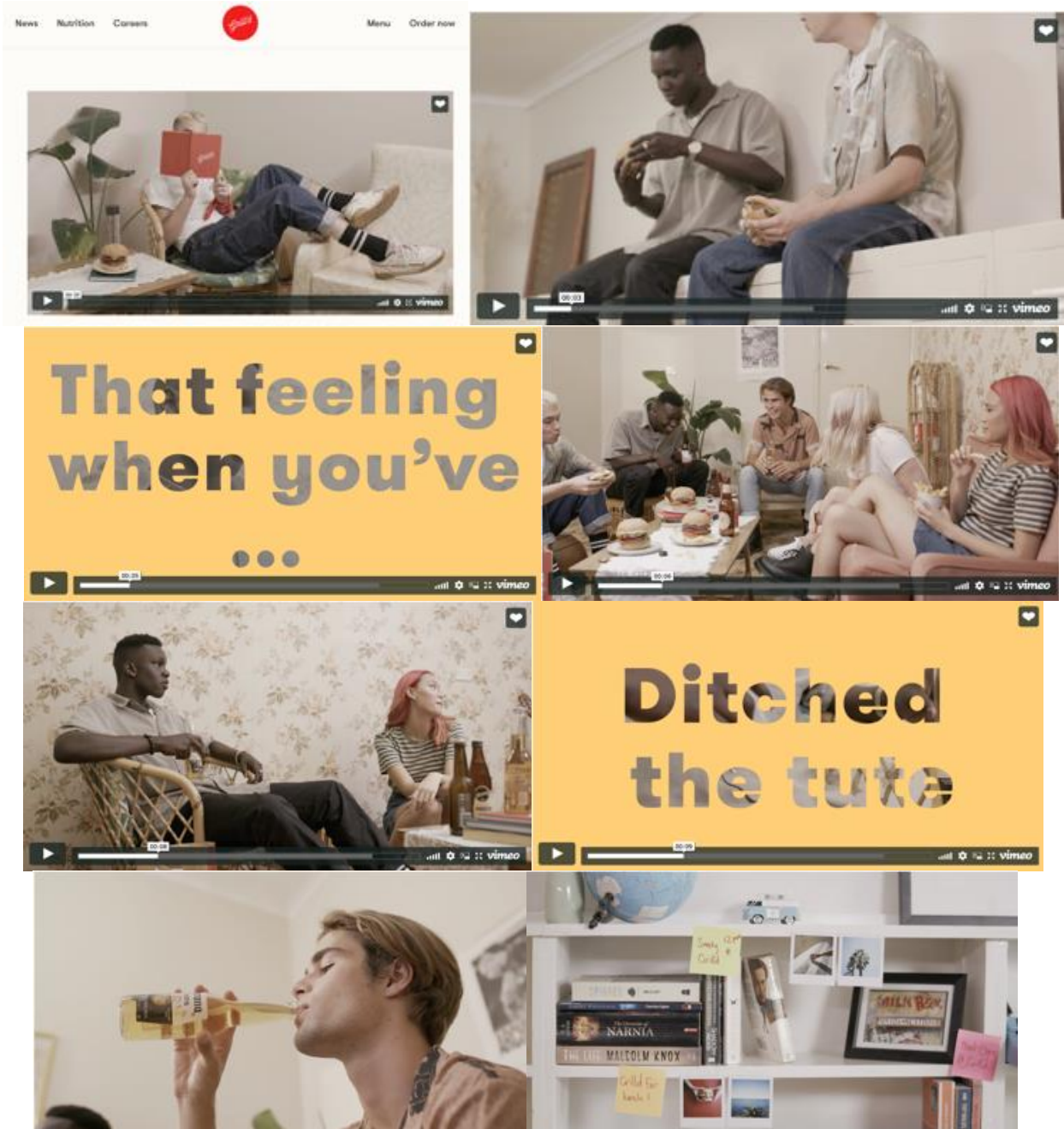
Once you're in Relish you'll unlock:

- Free drink on your birthday
- Free chips after your second visit
- Free drink after your fifth visit
- Invites to surprise shindigs
- Exclusive menu trials

Feed your feels

We've picked our best bevs to suit your mood. Watch below and take notes.

- Grill'd website - Vimeo video at bottom of page accessed via "Find out more" which includes a series of short videos interspersed with messages and accompanied by a contemporary soundtrack.



**Pulled an
all-nighter**

**Need
a lil' love**



**Submitted
the
assignment**



**All the feels?
Get Grill'd**

The Complaint

11. The complainant objects to the marketing as the promotion offering young people free alcohol, would be hugely persuasive and feeds into the current binge drinking culture as:

- the text would really appeal to a young audience as it uses 'cool' text e.g. 'B's GET DEGREES';
- provides free drinks to a highly influenced part of our community who won't have a lot of money to splash around;
- it is irresponsible to feed into our alcoholic culture and get our young people hooked; and
- the T&C's state that High-School students can be eligible too.

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;
- (b)(i) have Strong or Evident Appeal to Minors;
- (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;
- (b)(iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - they are not visually prominent;
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment;

13. Part 6 of the ABAC Code provides:

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 20 April 2020. The principle points made by the Company are:
 - We think it's important to acknowledge that the student promotion in question has been run by Grill'd for several years. Specifically, students who dine-in at a Grill'd restaurant, are entitled to a single free drink with the purchase of a burger or salad. The drink can be alcoholic or non-alcoholic. The advertising campaign includes a number of images of young adults in educational settings with both non-alcoholic and alcoholic drinks. We think it's important to acknowledge that the aim of the imagery is not to encourage people to drink irresponsibly, but to live sociably and well and to come and enjoy the Grill'd dine in experience with a free drink.
 - In designing the advertisements, our team has been prudent to consider Section 2 of the AANA Advertiser Code of Ethics. Specifically, the advertisement does not encourage excess consumption of alcohol as the complaint suggests; and the terms and conditions clearly state that customers are entitled to one drink (alcoholic or non-alcoholic) with the purchase of a burger or salad on Monday to Wednesday. Further, the terms and conditions clearly state that to be eligible, a person must be aged 18 years of age or over, with valid age identification. The advertisement makes no reference to "high school" students as the complaint suggests. A minor would not be able to obtain an alcoholic beverage even if they wished to.
 - In designing the advertising, we did not seek Alcohol Advertising Pre-vetting Service Approval. We felt that the campaign was not controversial and therefore such advice was not necessary in this instance.
 - The campaign is positioned to appeal to University Students. The references used to depict "student lifestyle" include props such as post it notes; headphones; university lockers, reference to qualifications ie degrees. These are used to appeal to students and reflect an appreciation of student lifestyle. The promotion is aimed at students promoting the offer of a single drink (alcoholic or non-alcoholic) with the purchase of a main meal.
 - The styling and context is used to appeal to students in social settings, or studying and makes language references specifically relating to tertiary education including, tutes, studying for exams or completing assignments (pulled an all-nighter). The terms and conditions of the advertisement state that the promotion is only valid for consumers over 18 years of age. Our agency put forward adult only models for the campaign, however we have learned that the models used in the campaign are aged between 19 and 25 years of age. So, all are aged over 18 years of age, however they are not all over 25 years of age. Whilst we acknowledge the ABAC code, which you have brought to our attention, we would still say that the people and imagery that have been used in our campaign are appropriate and do not encourage under-

age drinking and do not encourage the wrong behaviours. Further, our campaign is broadly targeted at drinks including non-alcoholic drinks (advertising images supplied that include non-alcohol beverages) and 70% of the students who take up the offer, opt for a non-alcoholic beverage which highlights the advertisements are not “over-marketing” alcohol as the main choice. We will, however, be mindful of the specific elements of the ABAC code for future advertisements.

- We look forward to your consideration of the above and please don't hesitate to contact us if you require any other information.

The Panel's View

15. Grill'd is an Australian chain of hamburger based fast food outlets which first emerged in Melbourne in 2004. The chain has expanded across Australia apparently through a combination of franchise and company owned stores. The marketing of the chain places an emphasis on its burger offerings being 'healthier' than its competitors. While primarily a food outlet, Grill'd stores are licensed and to the extent the chain markets alcohol availability and specific alcohol beverages, its marketing communications will fall within the scope of the standards contained within the ABAC.
16. Part of the Company's promotional strategy involves a customer loyalty program dubbed 'Relish'. Relish members receive benefits including free food items and drinks both alcoholic and non-alcoholic. To increase membership of the Relish program the Company has directed some of its marketing towards students. It is the portrayal of alcohol in some of its student focussed marketing which has attracted the concern of the complainant.
17. The complaint identifies a number of marketing communications ranging from 'A frame' posters outside stores to digital marketing carried on the Company's website and its Facebook Page which it is argued encourage irresponsible use of alcohol. Specifically, the complaint contends that the marketing targets minors including high school students and also 'feeds into current binge drinking culture'.
18. The ABAC provides in Part 3 (b) that alcohol marketing must not have strong or evident appeal to minors (under 18 year olds). Further, individuals featuring in alcohol marketing communications must be least 25 years of age. Part 3(a)(i) of the Code provides that alcohol marketing must not show or encourage excessive or rapid consumption of alcohol. Assessment of whether the standards have been complied with is to be based upon the probable understanding of an alcohol marketing item by a reasonable person taking the content of the marketing as a whole.
19. Unlike an alcohol retailer such as a bottle-shop or some hotels or a bar, the Company's primary business is not the sale of alcohol. Rather, the Company's stores sell food and drinks, including alcohol beverages, are an incidental part of the sale of food items. It's likely that much of the Company's marketing does not feature or even reference the sale and consumption of alcohol and the Company did not seem to have a strong understanding of the ABAC requirements. That said, the particular marketing items identified in the complaint clearly feature alcohol

products and make a 'free drink' part of the promotional offer available to students. This means the marketing does fall within the ambit of the ABAC scheme.

20. The aim of each of the marketing communications is to encourage 'students' to become members of the Relish loyalty program. Once a member and upon presenting proof of being a current high school, university or TAFE student, the student member can access the benefit of one free drink on Monday to Wednesday. This drink can be alcoholic or non-alcoholic. The Company makes it clear that a person under 18 years old would not be served alcohol and there is no reason to think that Grill'd stores do not comply with the relevant State liquor licensing laws regarding the responsible sale and consumption of alcohol on their premises.
21. While the complainant raised a concern about the marketing 'feeding a culture of binge drinking', there is no basis to conclude that the marketing is encouraging excessive alcohol consumption in breach of Part 3(a)(i) of the Code. All alcohol use shown in the marketing is moderate. One scene in a video on the Company's website did show a young women in front of a bathtub full of drinks and ice. A reasonable person, however, would probably understand the scene as suggesting a party was going to be held and any alcohol in the bathtub would be consumed by multiple people over a period of time and not by one person in an excessive manner.
22. In contrast, it is the Panel's belief that the marketing does breach the Part 3(b) standard regarding strong or evident appeal to minors. Firstly, the Company itself concedes that the young men and women featured with alcohol products are not, in all or possibly any of the marketing material, aged 25 years or over as required by Part 3(b)(iii) of the Code.
23. The marketing is directed towards 'students'. While the student benefits of the Relish membership can be accessed by high school students, it can be accepted that the marketing material is targeting university and TAFE students and not high school students as such. It is also true that most university students (and even more so for TAFE students) are not 'school leavers' ie first year students aged 17 or 18 directly in university from high school but are in fact either young adults or so called 'mature' students. That said, the Company uses talent in the marketing material who are evidently late teens or early twenties.
24. The marketing in its thematic, language and scenarios would be likely to appeal strongly to students in the 17 year old 'first year' school leaver group of students and hence falls within the first test of the definition of strong or evident appeal to minors in the ABAC.
25. In finding the marketing, namely the website images and videos showing/promoting alcohol use and the Facebook post of 24 February, in breach of the Code, the Panel is not ruling that it is impossible to have a student focussed membership campaign for the Relish loyalty program. Care however needs to be taken when making alcohol a feature of such a campaign. If the Company wishes to continue to feature alcohol as opposed to simply its food offerings in its marketing, it should utilise the ABAC pre vetting service to obtain an independent assessment of its marketing communications prior to release onto the market.
26. The complaint is upheld in relation to Part 3(b) and dismissed in relation to Part 3(a)(i) of the Code.