



ABAC Adjudication Panel Determination No. 30/20

Product: Wine
Company: Thirsty Camel WA
Media: Digital (Facebook)
Date of decision: 6 April 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital marketing by Thirsty Camel (“the Company”) and arises from a complaint received 26 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 26 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 Communication

10. The complaint relates to the following two Facebook posts on the Thirsty Camel Bottleshops WA Facebook account.



The Complaint

11. The complainant objects to the marketing as:
- both Facebook posts encourage excessive consumption of alcohol inconsistent with Australian Alcohol Guidelines:
 - the video of the frog dancing discusses drinking 8 bottles of wine over two days; and
 - the photo of the trolley full of wine has the caption "stocking up the bunker for the weekend" which implies that all the wine would be consumed in one weekend;
 - the health system and police are under huge pressure preparing for and responding to the COVID-19 pandemic and the opportunistic use of a health crisis to promote and sell more alcohol hardly seems consistent with principles of responsible marketing; and
 - the Thirsty Camel Bottleshops WA Facebook page is accessible when you are not logged in to Facebook, indicating there is no age restriction control in place.

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;

- (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;
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules.

13. Part 6 of the ABAC Code provides:

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.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

The Company's Response

14. The Company responded to the complaint by letter dated 1 April 2020. The principal points made by the Company were:

- a) Thirsty Camel Bottleshops take the responsible advertising and marketing of alcohol seriously. We are aware of the ABAC Code requirements and undertake practices in line with ensuring compliance with all relevant advertising, alcohol and marketing guidelines.
- b) In response to a complaint about two Thirsty Camel WA Facebook posts, and in consideration of the ABAC Code, the following is submitted:
 - The Thirsty Camel WA (TC WA) Facebook page is managed externally as a social media marketing tool and does not undertake direct product nor price advertisements for alcohol.
 - The page is managed primarily as branding and entertainment to our Facebook audience.

- The Facebook audience of over 28k, opt-in expecting to view social commentary posts relating to topical events, largely presented in a humorous manner.
 - The page is age restricted to 18+ and material is aimed at our predominate audience demographic of 25-44 years, 56%. (14%, 18 -24 years, 30%, 45+)
- c) Thirsty Camel WA (TC WA) outsource the daily running of the Facebook page to an external agency who have been given guidelines regarding appropriate content and where unsure of material submit this for approval. Whilst these two posts were not submitted to this office we are of the opinion that they do not contravene the relevant Codes, expectations of the general community nor our Facebook audience.
- d) The two posts identified by the complainant involve topical comments about the current circumstances in which we find ourselves as a society, in regards to COVID19 and the necessary restrictions this has imposed on society. This situation is now part of our daily lives, social conversations and the dominant topic across all media.
- e) **Post - Trolley of Wine** - Repost from a popular Facebook page:
- The post continues ongoing commentary across the TC WA Facebook page about the current social conditions relating to the panic buying of goods, in particular, toilet paper and water.
 - The portrayal of the trolley full of wine makes a statement about current events in which people have overreacted in their buying and been criticised by much of society as a result.
 - The minor comment “stocking up the bunker for the weekend” continues this theme as a dig at the overreaction by identifying how ludicrous the suggestion is.
 - There is no bunker, no implication that the reader should panic buy anything, nor consume such a quantity over any given period.
 - The post image and text do not suggest or infer that panic buying or purchasing a trolley of wine is something that the reader should do. Any suggestion of such would be counter to previous posts on the TC WA page which reject the idea of panic buying of any goods.
 - It is disputed that any reasonable person would infer that the post suggests actions such as buying excess wine, consuming it over a limited period or that the writer intends to do so either.
- f) **Video Post - Kermit the Frog Dancing** - Repost of a popular video 4.4m views

- The post message about self-imposed isolation and the difficulties this is placing on everyone acknowledges that this is a stressful period and that we are not alone.
 - The video of 'Kermit', a puppet, happily dancing to 'Dreams'..You want your freedom, speaks to all of us at this time.
 - The authors comment about self-quarantine speaks to responsibility, while the reference to 8th bottle of wine is used purely to try to explain the dancing frog.
 - The character Kermit is a puppet, obviously fictional and not able to drink.
 - The comment Relate? Is a rhetorical question about our current circumstances of frustration, isolation and physical distancing.
 - There is no impetus to take any form of action as a result of the post other than enjoy a light-hearted moment of a puppet dancing and listen to a song that resonates during this time.
 - It is contended that no reasonable person would be influenced by a puppet, that there is no intention to influence any type of behaviour and that the post would not be taken by most members of the community, to be anything other than entertainment.
- g) **Age Restrictions to Thirsty Camel Bottleshops WA Facebook Page** - The TC WA Facebook page has an age restriction of 18+. These were confirmed in 2014 when the page commenced daily management by Media Today and remain in place, see screenshot - Age Restriction. The TC WA Facebook page is not visible unless logged into Facebook, see screenshot - Login required.
- h) Thirsty Camel WA are cognisant of the Codes under which we operate and vigilantly aim to meet them. Whilst we are disappointed that these posts have caused concern we do not believe that the complaints are warranted. The posts in question are provided as social commentary and for entertainment value only. Neither suggests or implies any type of behaviour or action should be undertaken by the reader, let alone encourages excessive or rapid consumption of alcohol nor irresponsible or offensive behaviour.
- i) Thirsty Camel take considerable measures to ensure the responsible service of alcohol and to this end pre-emptively advised our Bottleshops to introduce buying limits; prior to the government mandate to do so. We do not support excessive purchases nor consumption. Thirsty Camel WA welcomes your review of this complaint.

The Panel's View

15. Thirsty Camel are a major alcohol retailer group in Western Australia. The Company explains that it maintains a Facebook Page as a social media marketing tool to further the Company's brand, as opposed to being a vehicle to advertise individual products and prices. The brand positioning of the Company might be described as irreverent, with

a focus on humour. This determination concerns two posts on the Facebook site which the complainant contends promote excessive alcohol consumption. Further, the complainant believes the Company's Facebook Page has not been age restricted as required by the ABAC Placement Rules.

16. Both posts occur against the backdrop of the worldwide pandemic which has severely impacted on the Australian community. The posts were not created as such by the Company but are reposts of content created by others. The first post is a short video of Kermit the frog dancing and the second shows a picture of a shopping trolley filled with bottles of wine. Both posts are accompanied with a text comment which shape how the video and picture would be understood.
17. The complainant takes the message to be that consumers are being encouraged to use alcohol to excess to cope with the stress of the pandemic. This is seen as highly irresponsible. In contrast the Company contends the posts simply add a little humour to some of the behaviours which have occurred in the community such as the hoarding of basic items like toilet paper.
18. The test the Panel is to apply in assessing the consistency of a marketing communication with an ABAC standard is the probable understanding of the material by a reasonable member of the community. This includes the life experiences common in a majority of the community which are currently being shaped by the new normal of living responsibly with the pandemic. Equally, Australians have a robust sense of humour and a reasonable person would view the posts understanding that they are humorous.
19. The Panel believes the posts are in breach of the Part 3 (a)(i) standard. Both posts are light-hearted and would not be seriously taken as advocating excessive alcohol consumption. The humour, however, is based upon an assumed shared experience that alcohol and excessive alcohol use could be a response to the extraordinary circumstances of the pandemic. It is this assumed shared understanding that excessive alcohol use is a prop to deal with stress or that it is an essential item to be 'hoarded' in huge amounts, which makes the posts contrary to the ABAC standard.
20. The second issue raised by the complaint is that the posts on the Company's Facebook Page were not age restricted. The ABAC requires that available age restriction controls be applied to exclude minors from accessing alcohol marketing on digital platforms. The Company contends its Page is age restricted and this was verified by a test conducted by the Panel's Executive Officer at the time the complaint was received. Possibly, the complainant accessed one of the posts directly from the Facebook feed of the private individual from whom the Company reposted to its Page. Probably each day hundreds of thousands of posts are made by private individuals on various social media platforms which reference alcohol in some way. These posts are not captured by the ABAC scheme unless an alcohol entity adopts the material by bringing it within the domain of a site controlled by the alcohol marketer. This happened here, but the Company's site did appear to be age restricted as required by the ABAC.
21. Accordingly, the complaint is upheld in relation to Part 3(a)(i) and dismissed in relation to Part 3(b)(iv).