



ABAC Adjudication Panel Determination No. 32/20

Product: Thirsty Camel WA
Company: Thirsty Camel WA
Media: Digital (Facebook)
Date of decision: 14 April 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 digital marketing by Thirsty Camel WA (“the Company”) and arises from a complaint received 2 April 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 2 April 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 the following Facebook post on the Thirsty Camel Bottleshops WA Facebook account.



The Complaint

11. The complainant objects to the marketing, referencing part 3 (a) & (c) of the ABAC, as it is insensitive and irresponsible for a liquor retailer to reference the consumption of an illegal hallucinogen when we are facing a global public health crisis and our health system is under enormous pressure.

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)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

The Company's Response

13. The Company responded to the complaint by letter dated 7 April 2020. The principal points made by the Company were:
- a) Thirsty Camel Bottleshops take the responsible advertising and marketing of alcohol seriously and undertake to comply with ABAC and AANA Code requirements plus relevant advertising, alcohol and marketing guidelines.
 - b) In response to a complaint about a Thirsty Camel WA Facebook post and in consideration of the ABAC Code, the following is submitted:
 - The Thirsty Camel WA (TC WA) Facebook page is managed externally as branding and entertainment to our Facebook audience.
 - The Facebook audience of over 28k, opt-in with an expectation of entertaining 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) The post was not submitted to the ABAC Pre-vetting Service as it contains no association with alcohol.
 - d) The post comments on the current circumstances in which we find ourselves with COVID19 and a lack of grocery items on shelves. It relates a tale of foraging, cooking mushrooms and hearing music. It does not articulate anything other than this. There is no suggestion of influence or for others to take any action.
 - e) ABAC Code 3(a)(ii) relates to alcohol consumption and portrayal in advertising and marketing. The post has no association, inference or suggestion of alcohol in any manner whatsoever.
 - f) ABAC Code 3(c)(i) & (iv) relates to alcohol use or misuse - the post has no association with alcohol.
 - g) Thirsty Camel WA are cognisant of the ABAC Code under which we operate and vigilantly aim to meet it. This post, however, has absolutely no relationship to alcohol in any sense. The post is a simple tale which does not seek to exert any influence, suggest any action nor draw any conclusions. The complainant's opinion that the post is detrimental to public health, is disputed and the post is not considered to be in contravention of the AANA Code.
 - h) We are disappointed that this post has raised concern, and the ire of an individual complainant. It is our belief the post would not be taken by a reasonable member of the community to be anything other than light entertainment, providing relief in these stressful times. Irrespective of the above, we understand the complainant's motives and have consequently taken the post down.

The Panel's View

14. In March 2020 Australia adopted a series of measures and restrictions to deal with the COVID-19 pandemic. It would be fair to say that these restrictions on everyday life and the consequent impacts on the economic life of the nation are the most widespread since the Second World War.
15. Not surprisingly, the pandemic has become the backdrop for much everyday communication occurring in Australia and this has extended to the Facebook Page of the Company. The Company uses its Facebook Page not to promote individual products or product pricing but as a means to further its branding and its engagement with its customer base. The Company explains its posts are 'entertaining', relate to topical events and are largely presented in a humorous manner.
16. On 28 March, a post on the Facebook Page referenced the shortages in the supermarkets and made a joke about making risotto from foraged mushrooms. The clear inference being that the mushrooms were hallucinogenic. The complainant believed the post to be irresponsible and insensitive as the health system is under pressure due to the pandemic. The Company contends the post makes no reference to alcohol use and breaches no ABAC standard.
17. While the complainant is no doubt genuine in raising the concern, the post is not a breach of the ABAC because:
 - the post does not allude to the presence or consumption of alcohol, nor does it imply any offensive or irresponsible behaviour related to the use of alcohol;
 - the post is humorous and would be taken by a reasonable person to be making a light-hearted comment about the shortages of goods in supermarkets as a result of hoarding behaviours;
 - drug use is not being seriously suggested and a reasonable person would not interpret the post in the way advanced by the complainant; and
 - in any event, even if the post was to be interpreted as contended by the complainant the relevant marketing practice standard is to be found in the AANA Code of Ethics and not the ABAC.
18. The complaint is dismissed.