



ABAC Adjudication Panel Determination No. 35/20

Product: Latitude 34 Wine Company
Company: Latitude 34 Wine Company
Media: Digital (Email)
Date of decision: 29 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 an email marketing communication by Latitude 34 Wine Company (“the Company”) and arises from a complaint received 16 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 16 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 email marketing communication by Latitude 34 Wine Company.

[View this email in your browser](#)



LATITUDE 34
WINE COMPANY

Your parent-teacher skills at their limit?












Wine Can Help!

30% Off & Free Delivery these School Holidays
Support Local!

Using the code: **BREAK34** get **30% off** the entire
Latitude 34 Wine Co. Online Store Range this Week. **Free Delivery** for all orders
over \$100 in WA.

Available for 14 Days Only. Minimum 6 Bottle Orders. (Excludes Self-Isolation Packages)

BUY NOW

Sales Policy
Applies to all Wine Sales

Please note that as a legal requirement under our liquor licence, all sales need to be of 6 or more bottles of Wine.
These can be mixed bottles of any product, so please grab a few!
Also be a result of this legal requirement, all promotional codes or coupons only work for 6 or more bottles.
This by no means implies that you need to drink all of these at once, although you may be tempted, these wines are
designed for sharing and special occasions.

Copyright © Latitude 34 Wine Co., All rights reserved.
www.latitude34wineco.com

Our Western Australian mailing address is:
wine@latitude34wineco.com

Want to change how you receive these emails?
You can update your preferences or unsubscribe from this list.

The Complaint

11. The complainant objects to the advertisement as it suggests that wine is an aid to relaxation and will reduce stress.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
 - (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 27 April 2020. The principal points made by the Company were:
 - a) Firstly; we note for the record that we are not signatories to the ABAC Code of Conduct, and at this stage are not inclined to be bound to the ABAC Code of Conduct.
 - b) Secondly; we note for the record that Wine Business activities including grape growing has been deemed an "essential service by the Australian Government and we operate in this sector and we are committed to provide this essential service under COVID-19 restrictions. The most obvious impact of the COVID-19 pandemic on the domestic wine market in Australia has been the reduction to zero in the on-premise channels since 22 March 2020, when all licensed on-premise outlets were required to close. We advise that we are a private family owned business, which was heavily reliant on the on-premise sector for a large proportion of our sales.
 - c) We refer to the ABAC Rules and Procedures as found on your website at www.abac.org.au we note that under clause 5.2 there is no requirement for Pre-Vetting of Private Emails. We confirm that we did not undertake any Pre-Vetting for the Post. We note that the complainant received a private email.
 - d) We have considered the comments contained in the complaint and we do not believe that the post suggested the consumption of alcohol offers a therapeutic benefit or is an aid to relaxation. We believe that drinking in moderation should occur during COVID-19, whilst acknowledging along with the Australian Government, and DrinkWise that the consequences of COVID-19 can create stress and anxiety. We note that the Drink Wise Ambassador, Dr Andrew Rochford, talked about the dangers of excessive drinking during self-isolation and under times of extreme stress. It is clear from the communication from the Australian Government and DrinkWise that COVID-19, self-isolation and parent-teaching causes high levels of stress. Does the ABAC deny this? Dr Rochford also reminds that with schools closed and kids at home for extended periods, it is essential that parents continue to be good role models, particularly if choosing to consume alcohol in front of their

children. We are a strong supporter of moderate Wine consumption. And we will continue to utilise the resources of DrinkWise in our cellar door and service of alcohol.

- e) Further with regards to the comments around “care packages” as a family owned and operated agricultural business, we do “care” about our subscribers and customers and we will continue to promote as “care packages” as do numerous other wine and alcohol producers who are alcohol producers who are suffering financial and mental stress under COVID-19.

The Panel’s View

14. Latitude 24 Wine Co is a Western Australian winery located in the Margaret River/Blackwood Valley region of the State. It is a family owned business established in 1997 which produces wines from a 120 hectare estate. As explained by the Company in its response to the complaint, the business has been severely impacted by the restrictions flowing from the COVID-19 pandemic with its principal sales through on-premise licensed venues not currently available. As a result, the Company is heavily dependent on online sales including promotions conducted via direct emails to a subscriber list of customers.
15. The complainant received one of the Company emails and has raised a concern about the marketing message in the promotion. While the Company states it supports responsible alcohol marketing, it is not a signatory to the ABAC scheme and hence has not contractually committed itself to the standards contained in the Code. That said, the Company has responded to the issues raised in the complaint and has cooperated with the complaint process.
16. The email promotion, like much of the communication occurring in Australia in April 2020, alludes to the extraordinary circumstances occasioned by the pandemic and government restrictions and controls to limit the spread of the virus. One significant measure has been self-isolation, and another has seen the partial closure of schools and the requirement for parents to home school. The email shows a young woman, presumably a mother endeavouring to deal with two young children while fielding a telephone call and using a laptop. The message with the photograph asks- 'Your parent-teacher skills at their limit?. Wine can help! The email goes on to detail a discount offer and free delivery for a range of product combinations.
17. The Complainant contends the email messaging is undesirable as it suggests that wine is an aid to relaxation and will reduce stress. Part 3(c)(iv) of the ABAC provides that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation. Assessment of whether an ABAC standard has been breached is based upon how a reasonable person would probably understand the marketing item.
18. The Company responds to the complaint by pointing out that both wine production and alcohol sales are permitted activities under government pandemic controls and certainly online sales and marketing of alcohol is not constrained by social distancing restrictions. It is argued that the email does not suggest the consumption of alcohol offers a therapeutic benefit or is an aid to relaxation. It is contended that excessive alcohol consumption is not an appropriate reaction to the stress occasioned by self-isolation and that parents need to model responsible behaviours

if choosing to consume alcohol. The Company states it is a strong supporter of moderate wine consumption and that it utilises resources from Drinkwise in its cellar door and service of alcohol.

19. The concern of the complainant, however, is not about the email marketing encouraging excessive alcohol consumption but that alcohol is an aid to relaxation. This clearly relates to the photograph and framing message which poses a question- 'Your parent- teacher skills at their limit?' and the apparent answer- 'Wine can Help!'. The Panel believes the juxtaposition of the photo and message does breach the Part 3 (c) (iv) standard given:

- The photo establishes a parent juggling young children while attending to a phone call and checking something on a laptop. The woman's expression is not relaxed. At a minimum she is having to concentrate to manage the multiple and simultaneous tasks.
- That the woman is dealing with a stressful situation is reinforced by the question referencing 'skills' being 'at their limits?'.
- The statement 'Wine Can Help!' would be reasonably taken to be a response to the question of 'your parent-teacher skills at their limits?'.
- Taken as a whole a reasonable person would understand the question, answer and photograph as suggesting that alcohol consumption (wine) can assist in dealing with the demanding and stressful situation faced by the woman.

20. It is hardly surprising that the current circumstances occasioned by the pandemic might be referenced by the Company in its marketing communications with its customer base. And as the Company points out, the pandemic control restrictions imposed by government on businesses do not preclude the production and sale of alcohol beverages. The Company like many thousands of businesses have been severely impacted by the pandemic and it is a stressful time for the entire community including the owners and staff of the Company. It is still important however that marketing does not suggest that alcohol consumption is required to relax and deal with the stress of the pandemic.

21. The complaint is upheld.