



ABAC Adjudication Panel Determination No. 37/20

Product: Windsor Bottleshop
Company: Windsor Hotel
Media: Outdoor
Date of decision: 12 May 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a digital outdoor advertisement for the Windsor Bottleshop (“the Company”) and arises from a complaint received 24 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 24 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 a digital billboard attached to the frontage of the Windsor Hotel at 112 Mill Point Rd, South Perth stating, "When nothing goes right, go left - into the Windsor Bottleshop" followed by different alcohol products and their prices.

The Complaint

11. The complainant objects to the use of a double entendre to promote the consumption of alcohol when "nothing goes right", which can be interpreted to suggest that alcohol can be used to self-medicate, going directly against the "drink responsibly" message.

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)(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;
 - (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 6 May 2020. The principal points made by the Company were:
 - a) The Windsor Hotel wishes to inform of our compliance with a recent advertising complaint to ABAC regarding a digital sign at the corner of the hotel. Please note, that the sign was removed effective immediate.
 - b) The complaint against a sign that stated "When nothing goes right, go left – into the Windsor Bottleshop" was simply a play on words from a physical aspect. Passers-by who sit idle in their cars at the intersection of Mill Point Road & Mends St, heading East, can see the digital sign that sits on the corner of hotel that faces west. To gain access to Windsor Cellars, passers-by from this viewpoint would physically have to turn left into Windsor Cellars, instead of driving on and turning right. In our opinion, and from a physical standpoint, there was no innocuous double entendre to promote the consumption of alcohol.
 - c) To reiterate, the intended messaging behind this sign was to purvey a physical action, therefore we do not believe the sign breached Part 3 (c)(i)-(iv) of the code.

The Panel's View

14. The Windsor Hotel is located in South Perth and consists of a hotel with bars and food areas as well as a drive through bottle-shop. The Hotel is on the busy Mill Point Road and uses an electronic billboard to direct marketing towards passing vehicle traffic. This determination concerns a message on the billboard which read- 'When nothing goes right, go left- into the Windsor Bottleshop'.
15. The complainant took this message to be a 'double entendre' with the literal meaning referencing the flow of the traffic and the second meaning implying that alcohol is a response to a problem - 'when nothing goes right'. The Hotel responded saying it intended no double meaning along the lines suggested by the complainant but was merely making a play on the direction to the physical location of the drive through. It stated that the message has been discontinued but argues it was not in breach of the ABAC standards.
16. The ABAC provides that an alcohol marketing communication must not suggest that alcohol use may contribute to a change in mood or be a cause of success or is needed as an aid to relaxation. Therefore, if the billboard would be reasonably interpreted as saying that alcohol is a solution to a problem or can help if things aren't 'going right' in your life, then this message would be inconsistent with ABAC standards.
17. The assessment of the meaning of a marketing communication is to be from the probable understanding of the marketing by a reasonable person. The concept of the 'reasonable person' is borrowed from the Australian common law system and means that the benchmark is the interpretation likely to be shared by a majority of the community with life experiences, values and opinions commonly found in the community. In essence, it means the most likely understanding of a message and not an interpretation that is possible but is not the most probable.
18. On balance the Panel believes the billboard message was in breach of the standard contained in Part (c)(i) of the Code. In reaching this conclusion the Panel noted:
 - while the Hotel may not have intended to give a message about alcohol leading to a change in mood, the test is not the intention of a marketer but rather how the marketing communication would probably be understood by a reasonable person;
 - it is likely the message would be understood both as a play on the direction of travel to access the bottleshop and as a reference to alcohol as being a response when 'nothing goes right' meaning when things aren't going well;
 - a reasonable implication is that the presence or consumption of alcohol will be a cause or contributor to a significant change in mood.
19. The complaint is upheld.