



ABAC Adjudication Panel Determination No. 42/20

Product: Wine
Company: Elbourne Wines
Media: Digital (Instagram)
Date of decision: 19 May 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 Instagram marketing communication by Elbourne Wines (“the Company”) and arises from a complaint received 5 May 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 5 May 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 Instagram marketing communication by Elbourne Wines.



The Complaint

11. The complainant objects to the advertisement as it is suggesting that alcohol is a necessity and that wine would make it easier to survive the COVID-19 restrictions. Evidence shows that in the long-term, alcohol consumption can contribute to increased stress, anxiety, and depression. It should not be promoted as a solution to surviving the COVID-19 pandemic.

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 email dated 18 May 2020. The principal points made by the Company were:
- a) We are a small family winery in the Hunter Valley & we rarely "advertise". It was a hurried "boosted post" that I placed on Social media in an attempt to stimulate some sales as we have been affected like many by the bushfire season & now COVID-related closure of tourism in the Hunter Valley.

- b) The boosted post I thought had to go through an “approval process” or vetting process by Instagram/Facebook, so given this was approved I thought nothing more on this at the time....
- c) Having seen your email on 6/5/20 I promptly removed any posts relating to this on both Facebook & Instagram.
- d) Once again apologies if someone took offence & we will look to have professionals handle any advertising in the future & most probably avoid Social media advertising who approved the ad in the first instance.

The Panel's View

14. Elbourne Wines is a boutique winery in the Hunter Valley consisting of only 8 acres of vines and a small annual production run of around 400 cases in total. As well as its limited single vineyard wines, the Company offers accommodation in a single cottage. The Company like many small businesses has been severely impacted by the current COVID-19 pandemic after also being affected by the 2019/20 bushfires. The Company explains it rarely 'advertises' but due to the current difficult business conditions it undertook some social media promotion. This determination concerns an Instagram post from the Company.
15. The post shows a photograph of four wine bottles with an accompanying text message which reads-' Need extra wine to help get through the lock down? Why not try an @elbournewines "sampler" 4 pack' followed by pricing and purchasing information. The post was noticed by the complainant and a concern raised that the message of the post suggests that alcohol is a necessity and would make it easier to survive the governmental restrictions imposed to contain the pandemic.
16. Part 3(c)(i) of the ABAC provides that an alcohol marketing communication (which includes social media posts) must not suggest that alcohol use may contribute to a significant change in mood. Part 3(c)(iv) goes on to prohibit alcohol marketing from suggesting the consumption of alcohol offers any therapeutic benefit. The assessment of the consistency of a marketing communication with a standard is from the probable understanding of a reasonable person taking the content of the marketing communication as a whole. This benchmark means that if a marketing message could be interpreted in several ways, it is the most probable interpretation to an average member of the community which is to be adopted and not a possible but less likely interpretation.
17. In responding to the complaint, the Company explained its circumstances, apologised if 'someone took offence' and removed the post from Instagram and Facebook. The Company did not directly address the question as to whether the post was inconsistent with the relevant ABAC standards.
18. The issue turns on how a reasonable person would most probably understand the meaning of the sentences - 'Need extra wine help get through the lock down'. 'Why not try a ... sampler 4 pack ...' While it may have been the intention of the Company to communicate online delivery of its sampler pack as a means to secure wine supplies consistently with the social distancing imperative of the lockdown restrictions, the more probable interpretation is that additional alcohol will assist a

person 'get through' (cope) with the restrictions of the pandemic. This sentiment is inconsistent with Part 3(c)(i) of the Code.

19. In upholding the complaint, the Panel notes the Company's intention to have 'professionals' advise on its marketing in the future. To this end the Company should consider the ABAC pre vetting service as an independent source of advice on the consistency of marketing communications with good practice standards prior to use in the market.