



ABAC Adjudication Panel Determination No. 44/20

Product: Hugh Hamilton Wines
Company: Hugh Hamilton Wines
Media: Digital (Facebook)
Date of decision: 2 June 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 a Facebook marketing communication by Hugh Hamilton 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 marketing communication on Facebook.



The Complaint

11. The complainant objects to the advertisement as:
- it suggests that 9 bottles of wine should be consumed over 14 days, which encourages alcohol consumption inconsistent with the Australian Alcohol Guidelines – section (3)(a)(i);
 - “Get your hands on 14 Hugh Hamilton goodies ... to help you through your 14 day journey” implies that alcohol is a necessity, and suggests that wine would make it easier to survive the COVID-19 restrictions – sections (3)(c)(i) and (3)(c)(iv); and
 - “Who knew solitary confinement could taste this good” is inappropriate and suggests alcohol will contribute to a significant change in mood or environment.

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

- (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 18 May 2020. The principal points made by the Company were:
 - a) I don't think we have implied that alcohol is necessary to survive isolation. It was intended to be a light-hearted post promoting a diverse pack of products, many of which are not alcohol products. The pack was a really nicely balanced combination of wine, gourmet food goodies along with recipes for cooking, a polishing cloth for good stem ware, playing cards for some recreation and even a bottle of our non-alcoholic Shiraz cordial, which is reflective of our view that people should have alcohol free days and balance their beverages.
 - b) We are a boutique producer of fine wine and we have never used tactics to encourage overconsumption, it is inconsistent with the premium nature of our products. We have certainly never targeted inappropriate audiences such as minors or any other group who are not in a position to process wine messages.
 - c) We did not receive pre-vetting of the message; the unprecedented COVID-19 environment is very fast paced.
 - d) The message does not encourage excessive consumption, there is no obligation to consume all the wine by one person in 14 days.
 - e) There is no inference that the pack will significantly change someone's mood, provide a therapeutic benefit or provide relaxation
 - f) I cannot see how any reasonable person would be of the view that this pack needs to be consumed in excess. If anything, it was a very balanced pack of less than a dozen wines along with other food, kitchen and other items.

The Panel's View

14. The Hamiltons of South Australia lay claim to be the oldest surviving grape growing and wine making family in Australia. The Company has three vineyards in the McLaren Vale region which produce a variety of wine styles. This determination concerns a Facebook post promoting a '14 Day Isolation Pack' which the complainant contends is inconsistent with several ABAC standards.
15. The post references the COVID -19 pandemic and government restrictions imposed to contain the spread of the virus. The Company explains the promoted 'Isolation Pack' consists of a combination of nine bottles of wine, 'gourmet food' including non-alcoholic shiraz cordial, cooking recipes and playing cards. To the complainant the post encourages alcohol consumption inconsistent with Australian Alcohol Guidelines and suggests that alcohol is a necessity that makes it easier to survive the pandemic restrictions and will contribute to a significant change in mood or environment. Each of these contentions will be addressed in turn.

16. The Company believes the post is consistent with ABAC standards. It is argued the post is light-hearted and the pack is constructed with wines and non-alcoholic items which is 'reflective of our view that people should have alcohol free days and balance their beverages'. The Company goes on to contend that no excessive consumption is encouraged nor does the post infer the pack will significantly change someone's mood or provide a therapeutic benefit.
17. The Australian Alcohol Guidelines are produced by the National Health and Medical Research Council and provide guidance on alcohol use in a manner that can reduce the risk of harm. The Guidelines are a detailed document but for current purposes in assessing the consistency of the post with the relevant ABAC standard, the guidelines can be taken as:
 - no more than two standard drinks on any day reduces the lifetime risk of harm (guideline 1); and
 - no more than four standard drinks on a single occasion (guideline 2).
18. The complainant takes the post to be encouraging the consumption of 9 bottles of wines over a 14-day period by a single individual. This would amount to over four standard drinks for 14 consecutive days and such a rate of consumption would be inconsistent with the Guidelines. The issue is whether the post would be fairly interpreted as contended by the complainant.
19. In assessing if an alcohol marketing communication is compliant with a Code standard, the Panel is to adopt the probable understanding of the marketing item by a reasonable person taking its content as a whole. The 'reasonable person' test is drawn from the common law system and means that the life experiences, values and opinions found commonly in a majority of the community is to be the benchmark. If the marketing can be interpreted in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding.
20. The Panel does not believe the post would be understood as encouraging excessive consumption or consumption beyond the Alcohol Guidelines. In reaching this conclusion the Panel noted:
 - the '14-Day Isolation Pack' name given to the package is a reference to the pandemic constraints on everyday Australian life as at the time of the post. A reasonable person would take the reference to be to the background circumstances and would be viewed similarly to marketing references to say Christmas or winter or another background circumstance, for example a Christmas pack would not necessarily mean all the alcohol in the pack is to be consumed at Christmas;
 - the post is promoted by reference to pandemic restrictions but would not be most likely understood as saying all of the wine supplied in the pack should be consumed in a 14 day period by one person;
 - the more likely understanding is that the reference to 14 days is marketing puffery playing on the "14 day self-isolation" period and the fact that the pack includes 14 products (both wine and non-alcoholic products) rather than a serious suggestion that all 9 wines are consumed within a 14 day self-isolation period;

21. The second concern raised by the complaint is that the post suggests alcohol is a necessity and makes it easier to survive the pandemic restrictions and that such sentiments are contrary to the ABAC standards in Part 3 (c)(i) and (c)(iv). These standards provide alcohol marketing cannot suggest that alcohol consumption may contribute to a significant change in mood or offers a therapeutic benefit.
22. While the language used in the post can be taken in different ways, the Panel believes the most probable interpretation would be shaped by the overall tone of the post which is akin to- 'make the best of the social isolation requirements of the pandemic by trying some products (alcoholic and non-alcoholic) and activities such as cooking (recipes in the pack)'. The post doesn't assert any positive health benefits to alcohol use. The post also can't fairly be said to be attributing alcohol to a significant change in mood.
23. The complaint is dismissed.