



ABAC Adjudication Panel Determination No. 77/20

Product: Beer
Company: Winghaus by Bavarian
Media: Outdoor
Date of decision: 22 June 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 an outdoor advertisement by Winghaus by Bavarian (“the Company”) and arises from a complaint received 5 June 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 June 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 obtained for this marketing communication (18144).

The Marketing Communication

10. The complaint relates to the following advertisement at Wynyard Station in the Sydney CBD.



The Complaint

11. The complainant objects to the advertisement as the size of the beer is clearly encouraging excess alcohol consumption and appears to be 1L size which would possibly be over the recommended daily limit for a woman.

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

The Company's Response

13. The Company responded to the complaint by email dated 10 June 2020. The principal points made by the Company were:

- a) The ad in question was submitted and approved by ABAC, #18144 prior to our running it.
- b) The size of the glasses' presentation is 500ML Steins.
- c) Winghaus by Bavarian practices strict RSA controls and has Plans of Management that adhere to and enforce these rules. At no time was it our intent to suggest the rapid or excessive consumption of alcohol (beer as depicted). We have a wide range of non-alcoholic beverages including non-alcoholic beer that is served in the same sized 500ML glasses.

The Panel's View

- 14. Winghaus is the name of food and drink venues which have a sports bar theme. The venue is a 'spin-off' from the Bavarian chain of Australian restaurants which take their inspiration from German Beer Halls. A common feature between the Bavarian and Winghaus venues appears to be the availability of various beers served in beer steins.
- 15. To promote a new Winghaus location at Sydney's Circular Quay, the Company placed a billboard at the Wynyard railway station. The billboard calls out the availability of 'wings (chicken wings), beers and sports' and other venue features such as 20 large screens to watch sports. The billboard shows a picture of two women in oversized football jumpers each holding a full stein of beer. The complainant believes the sheer volume of alcohol contained in the beer steins is promoting excessive consumption and would exceed the recommended daily alcohol limit for women.
- 16. It should be noted that Winghaus is a licensed premise and is subject to the regulatory oversight of Liquor and Gaming NSW which is part of the NSW Department of Customer Service. The remit of the Department includes the responsible service of alcohol requirements imposed on licensed premises such as those operated by the Company. Alcohol marketing is a shared regulatory space with government liquor licensing authorities focussing on the promotion and service of alcohol within premises and the ABAC scheme focus being on how alcohol use is portrayed to the wider community beyond those actually consuming alcohol inside clubs, pubs, restaurants and the like. The point being that the actual operation of Winghaus in terms of serving alcohol and ensuring patrons do not consume excessively so as to become intoxicated is over-sighted by the Department.
- 17. The ABAC in Part 3(a) provides that an alcohol marketing communication (which includes a billboard) must not show or encourage excessive consumption of alcohol or consumption inconsistent with Australian Alcohol Guidelines. The Guidelines are produced by the National Health and Medical Research Council and provide guidance on limiting risk from alcohol consumption. For current purposes the guidelines can be taken as no more than two standard drinks on any day reduces the lifetime risk of harm and no more than four standard drinks on a single occasion. Put simply an advertisement should not encourage the consumption of more than four standard drinks in a drinking session, nor suggest it is acceptable to drink more than two drinks every day in succession.

18. The Company advises that the women depicted on the billboard are holding 500ml steins. While the picture does not show the women actually swallowing the beer, a reasonable person would assume the women are consuming the beer. The question is whether the image would be interpreted as encouraging excessive consumption or consumption inconsistent with the Alcohol Guidelines.
19. In assessing the consistency of a marketing communication with an ABAC standard the Panel is to adopt the standpoint of the probable understanding of the marketing item by a reasonable person taking its content as a whole. The reference to a 'reasonable person' means that the life experiences, values and opinions common in a majority of the community is the benchmark. A person who takes a different interpretation to the message in an ad is not 'unreasonable' but possibly their interpretation would not be shared by the majority of people.
20. The Panel does not believe the billboard is in breach of the Part 3(a) standard. In reaching this conclusion the Panel noted:
 - the billboard is primarily promoting the Winghaus new venue at Circular Quay with the availability of alcohol being a feature of the venue;
 - while the picture of the women would probably be taken as an illustration of the availability of beer, rather than a call to action to consume alcohol, it is a reasonable assumption that each woman depicted will consume the stein of beer they are holding;
 - the demeanour of the women does not suggest that either has been affected by alcohol consumption;
 - a 500ml stein, if containing full strength beer, is the equivalent of 1.98 standard drinks; and
 - there is no reasonable implication from the billboard that the women will necessarily consume further alcohol and in any event the consumption of two 500ml steins of full-strength beer by a single person is not inconsistent with the Alcohol Guidelines.
21. The complaint is dismissed.