



ABAC Adjudication Panel Final Determination No. 76/20

Product: My 9 to 5 Medicine
Company: Chaos Wines
Media: Packaging
Date of decision: 14 July 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) concerns the packaging for My 9 to 5 Medicine by Chaos Wines (“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”) – 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 – which places 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 the other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.
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 the marketing communication.

Marketing Communication

10. The following product packaging is referred to in the complaint.



The Complaint

11. The complainant is concerned the product:

- implies wine is needed to survive '9 to 5' ie survive their work; and
- implies that wine is medicine, which is in direct opposition to research about the serious health problems that alcohol causes.

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; or
 - (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 12 June 2020. The principal points made by the Company were:
- Although it may feel like it sometimes, working a 9 to 5 job is not a death sentence and nothing is required to survive working from 9am to 5pm. The product in question does not suggest that its use is needed for survival. I'm sure if a medicine did exist that saves us from a 9 to 5 job there would be song and dance and worldwide rejoice, but unfortunately the best we can do is take solace in the fact that a good laugh is the next best thing, which my label makes obvious. The indication that something is 'lifesaving' requires the declaration that death is possible without its use, at no point on my label is it indicated that death is a possibility, or that its consumption or ownership will save a life.
 - Having a 9 to 5 job is not a medical ailment; the association between having a job and the labelled wine using the word "medicine" is purely comical and not designed to be interpreted or misunderstood as anything but comical. I understand from a layman's view someone might make an alternative association or might take offence as they take actual lifesaving medicine for a condition. Therefore, I will use an alternative word in the next stock order to become more compliant with Part 3(c)(iv) of the Code and less offensive to potential customers. I believe a cross or plus insignia on a cartoon wine glass is not a medical association and exists as added visual design to the label. Although a first aid cross or Red Cross is a universal symbol of protection and neutrality in armed conflict, my design is not red nor is the same thickness of a first aid cross. Chaos wine does not offer any medical devices, drugs, medical supplies, or neutrality in armed conflict. Chaos wine sells wine which incorporates a fun and purely comical label to customers. The cartoon plus sign is designed to indicate the cartoon wine glass does not contain wine and does not convey a medical or therapeutic association.

The Panel's View

14. Chaos Wine is produced in the Riverina region of New South Wales. The Company's website explains that the Company's branding was inspired by the 'boring selection' of wine on the Australian market and the desire to 'spice things up a bit'. Included in the Company's range of wines are a series named and labelled 'My 9 to 5 Medicine' which cover the varieties of Moscato Rose, Shiraz and Chardonnay'. It is the packaging (name and labelling) of these wines which has attracted the complaint.

15. On 27 June 2020 the Panel made a provisional determination that the product packaging was in breach of Part 3 (c)(iv) of the Code and consistent with the rules and procedures applying to decisions concerning product packaging, the Company was afforded an opportunity to seek a rehearing of the provisional determination by making further submissions. The Company has not sought a rehearing and the Panel has proceeded to make a final determination of the complaint.
16. The complaint raises two concerns. Firstly, it is argued that the packaging implies that wine is needed to survive the workday. Secondly, the reference to wine as a medicine implies wine offers a health benefit when in fact alcohol use can cause health problems. A complaint of this nature raises two ABAC standards namely that alcohol marketing communications must not:
 - suggest that alcohol may create or contribute to a significant change in mood or environment (Part 3(c)(i)); or
 - suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation.
17. The Company argues that:
 - working 9 to 5 is not a death sentence and the packaging wouldn't be taken as asserting that wine is needed to survive work;
 - equally a 9 to 5 job is not a medical ailment and the reference to medicine is purely comical; and
 - overall the packing is fun and while it is possible to read the medicine reference literally, this is not how it would be actually understood.
18. In assessing the consistency of a marketing communication with an ABAC standard the Panel is to adopt the viewpoint of the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means the life experiences, values and opinions common in a majority of the community is the benchmark. If there are several ways in which a marketing communication can be interpreted, it is the most likely rather than a possible interpretation which is to be preferred.
19. The Panel does not believe the Part 3(c)(i) standard is breached but does believe the Part 3(c)(iv) standard has been breached. In reaching this conclusion the Panel noted:
 - a reasonable person has both a sense of humour and sufficient life experience to understand the product name and label is not making a claim that wine is an actual medicine;
 - the '9 to 5' reference would most likely be understood as meaning the work day;

- 'medicine' and the cross symbol in the context of the packaging would most likely be understood as a light-hearted play on the use alcohol is sometimes put to be a stress release or as a means to relax after a work day;
- while a reasonable person would not likely take the packaging as making a serious assertion to the effect that 'wine is a medicine to treat the ill of a work day' it is making an assumption that it is a common and shared experienced to use alcohol to relax;
- it is this assumed shared understanding of alcohol consumption as an acceptable means to aid relaxation which is inconsistent with the Part 3(c)(iv) standard; and
- the packaging cannot be reasonably interpreted as claiming that use of alcohol is necessary to 'survive a work day' as argued by the complainant. Equally, the packaging of itself is not showing or implying a transformation of mood or environment and hence Part 3(c)(i) is not breached.

20. Accordingly, the Panel makes a final determination that the product packaging is in breach of Part 3(c)(iv) of the Code.