



ABAC Adjudication Panel Determination No. 93/20

Product: Fireball Whisky
Company: Southtrade International
Media: Digital (Facebook)
Date of decision: 13 July 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 post promoting Fireball Whisky by Southtrade International (“the Company”) and arises from a complaint received 2 July 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

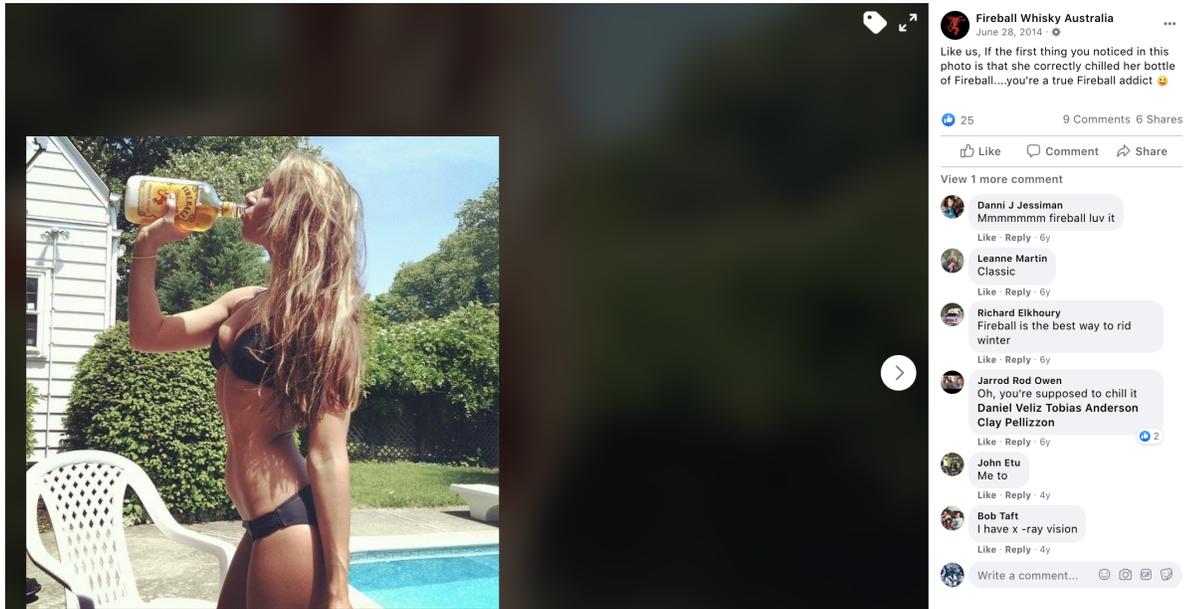
7. The complaint was received on 2 July 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 Facebook post on 28 June 2014 by Fireball Whisky.



The Complaint

11. The complainant objects to the marketing as it shows someone drinking whisky straight from a bottle which could encourage excessive and rapid consumption of spirits.

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 2 July 2020 advising that the post has been removed and is over six years old, predating the current team. All prior marketing is being reviewed.

The Panel's View

14. This determination concerns a post made on 28 June 2014 on the Company's Facebook Page. The post shows a woman drinking directly from a bottle of Fireball Whiskey. The accompanying text reads - 'Like us, if the first thing you noticed in this photo is that she correctly chilled her bottle of Fireball... you're a true Fireball addict.'

The complainant takes the post to be encouraging the rapid and/or excessive consumption of alcohol.

15. Part 3(a)(i) of the ABAC provides that an alcohol marketing communication (which includes Facebook posts) must not show or encourage the excessive or rapid consumption of an alcohol beverage. Assessment if the standard has been breached is to be undertaken from the probable understanding of the marketing communication by a reasonable person.
16. The Company notes that the post is over six years old and was made before the current leadership team of the Company was in place. No argument was made that the post was consistent with the standard, nor was it conceded that the post was in breach of the standard. The Company has however removed the post upon receiving the complaint.
17. The Code does not define 'excessive consumption'. The Australian Alcohol Guidelines recommend that no more than four standard drinks should be consumed on any one single occasion in order to minimise the risk of harm from alcohol use. If a marketing communication would be probably understood as encouraging consumption beyond four standard drinks on a single occasion, then it would likely be encouraging excessive consumption. Moreover, a marketing item might suggest excessive consumption if it showed or implied:
 - a single individual apparently consuming multiple drinks on a single occasion;
 - a person or persons apparently affected by alcohol through their speech, demeanour and behaviours; or
 - placing a large quantity of alcohol with one or two people where the background scene suggests that they alone and immediately will consume the alcohol.
18. The image does not show the woman consuming multiple drinks but rather depicts her drinking directly from a bottle of the product. The complainant seems to interpret the post as that the women will drink more than the equivalent of 120ml (given the alcohol to volume content of the product and exceeding four standard drinks) and may drink this amount rapidly (say in a continuous swallow). On balance the Panel does not believe it is likely the post as a whole would be understood to breach the standard. It is noted:
 - drinking a spirit directly from the bottle (as opposed to a ready to drink spirit product or a stubbie of beer) can raise an inference of excessive consumption however;
 - the accompanying text contextualises the image by drawing attention to the way the woman is dressed and that the product has been chilled (this may be objectifying but this is not the issue in question);
 - the text does not allude to a level of consumption or raise a suggestion of excessive or rapid consumption;

- the woman does not appear affected by alcohol; and
 - there are no other visual cues of excessive consumption in the photograph e.g. empty bottles.
19. Finally, it is noted that the post in question is over six years old. While a determined viewer can find posts of this age, it is unlikely the post would now come to the attention of an average consumer of the material on the Company's Facebook Page. This does not excuse material which is inconsistent with good marketing standards, but it tends to make the benefit of the complaint process somewhat more marginal than a focus on material more likely to be viewed by current consumers of the platform.
20. The complaint is dismissed.