



ABAC Adjudication Panel Determination No. 98/20

Product: BWS
Company: Endeavour Drinks Group
Media: Print
Date of decision: 29 July 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 a print advertisement for BWS by Endeavour Drinks Group (“the Company”) and arises from a complaint received 15 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 15 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 obtained for this marketing communication (18413).

The Marketing Communication

10. The complaint relates to the following full page print advertisement on page 2 of the Courier Mail on Wednesday 15 July 2020.



The Complaint

11. The complainant objects to the marketing as:
- it is deceptive, appearing to be an ad promoting an app for delivery of Italian food; and
 - underage young people could easily order alcohol if they installed the app.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors

13. Definition in Part 6 of the ABAC provides:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;

- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

The Company's Response

14. The Company responded to the complaint by letter dated 27 July 2020. The principal points made by the Company were:
- a) We understand that the ABAC Adjudication Panel (Panel) is considering whether or not the Ad breaches Part 3(b)(i) of the ABAC Responsible Alcohol Marketing Code (Code). This response addresses advertising, marketing and retail activities under the control of Endeavour Drinks, which includes BWS.
 - b) Endeavour Drinks' aim is to be Australia's most responsible retailer of alcoholic beverages. In 2013, we formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. Prior to becoming a signatory, Endeavour Drinks demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. Endeavour Drinks maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are relevant in this context.
 - c) As part of our community charter, 'Our Community, Our Commitment', Endeavour Drinks has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
 - ID25 (ask for ID from anyone who looks under 25);
 - Don't Buy It For Them (stopping secondary supply to minors);
 - our Intoxication Policy (refusal of service to anyone who may be intoxicated); and
 - Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses.
 - d) In marketing alcoholic products, Endeavour Drinks is fully aware of the Code's requirement not to have a strong or evident appeal to minors. It is our view that the Ad does not breach Part 3(b)(i) or any other parts of the Code.
 - e) The Ad features a bottle of red wine being poured into a glass and the words "Reds for any Italian dish". The Ad is primarily about the pairing of red wine with Italian food. The Ad goes on to mention that BWS has many red wine

options which are accessible in its stores and online, which is reinforced by the words 'Bellissima Wine Selection', a play on the acronym BWS. Finally, the Ad mentions that BWS offers delivery and suggests that the audience should try the BWS app.

- f) None of the elements of the Ad - being red wine, Italian food, a reference to in store and online alcohol purchase options and a mobile application - in themselves, have a strong or evident appeal to minors. The Ad as a whole is mature, does not contain any elements that would ordinarily have a strong or evident appeal to minors, and as such, as a whole would not appeal to minors.
- g) The Code relates to the marketing of alcohol, not the sale of alcohol which is regulated by strict liquor licensing laws in each state and territory of Australia; and in accordance with those laws, the online purchase and delivery of alcohol is subject to strict RSA (Responsible Service of Alcohol) protocols which are designed to prevent the service or supply of alcohol to minors. This also applies to the BWS app, a mobile application which is merely an alternative channel or medium for the online purchase of alcohol. In any case, from an advertising and marketing perspective, we believe that the online purchase and delivery of alcohol, in itself, does not have a strong or evident appeal to minors.
- h) For the reasons outlined above, we believe that the complaint should be dismissed on the basis that the Ad is not in breach of the Code.

The Panel's View

- 15. This determination concerns a print advertisement for the Company published in Brisbane's Courier Mail. The complainant believes that the ad was misleading as it appeared to be an ad for an app allowing for the delivery of Italian food whereas it was an ad for the liquor retailer BWS. One result of the ad being misleading, according to the complainant, is that minors could easily order alcohol if they installed the app.
- 16. In large measure the complainant's concerns fall outside of the remit of the ABAC Scheme, as issues of misleading and deceptive marketing are regulated by the Australian Competition and Consumer Commission and State Fair Trading authorities. Further, it should also be noted that the regulation of alcohol home delivery and the various safeguards required to ensure alcohol cannot be surreptitiously purchased by minors is by State and Territory liquor licensing authorities. The single issue for consideration under the ABAC is whether the print ad has strong or evident appeal to minors contrary to the standard in Part 3(b) of the Code.
- 17. In assessing if an alcohol marketing communication breaches an ABAC standard, the Panel is to adopt the standpoint of the probable understanding of the marketing material by a reasonable person. This means that the life experiences, values and opinions held commonly in a majority of the community is the benchmark. If it's possible to interpret the marketing item in several ways, it is the most probable understanding which is to be preferred over a possible but less likely understanding of the marketing message.

18. The Panel does not believe the ad breaches the ABAC standard. It is noted:
 - the print ad features a stylised combination of food dishes and the Company logo drawn to bring to mind wine glasses;
 - the colour is dark and mature and not bright and contrasting which might have more appeal to minors;
 - the theme of the ad is mature, and its subject matter seems unlikely to appeal strongly to under 18 year olds; and
 - taken as a whole the ad would not draw the attention of minors.

19. The complaint is dismissed.