



ABAC Adjudication Panel Determination No. 142/20

Product: Vodka Soda &/ Gin Soda &
Company: Ampersand Projects
Media: Outdoor
Date of decision: 2 October 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 outdoor marketing for Vodka Soda & by Ampersand Projects (“the Company”) and arises from a complaint received 22 September 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 22 September 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 an outdoor advertisement painted onto the wall of the side of shop premises on Irwell Street near the corner of Acland Street, St Kilda in Melbourne.



The Complaint

11. The complainant objects to the marketing as the 'graffiti' style mural is done in a 'street art' genre with no 'responsible alcohol consumption' messaging. It is also in between various other street art murals, attractive to some minors.

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. Part 6 of the ABAC Code provides:

Strong or Evident Appeal to Minors means:

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

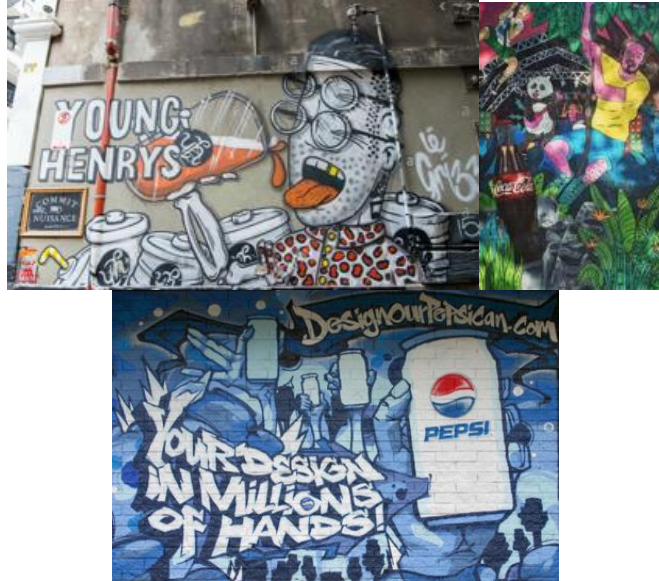
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using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

The Company's Response

14. The Company responded to the complaint by letter dated 29 September 2020. The principal points made by the Company were:
- a) First and foremost, we confirm that Ampersand Projects is committed to marketing alcohol responsibly and acting within the ABAC guidelines. We do not condone irresponsible marketing practices, nor do we condone any marketing activity of alcohol to minors.
 - b) The artwork has been hand-painted in a traditional signwriting method using paint brushes (not aerosols). It is a premium way of illustrating a photographed image. It is meant to be photo-realistic in its appearance. We argue that this style of artwork is more similar in appearance to a regular printed billboard than a street art mural.



- c) Our artwork does not feature stylised fonts, bright colours, cartons or caricatures; features that are typically found in graffiti styles of artwork. (examples)



- d) The advertising depicts 3 cans of our products; vodka soda and, gin soda and, a lime. The social media handles listed are age-gated at 18+. The reference to BWS store nearby is another age-gated environment (being a liquor store for adults only).
- e) The advertising was commissioned to run from 10/2/20 to 2/3/20. As a result of COVID lockdowns, the advertising agency has suffered adverse effects to their business. Accordingly, they have not booked another client for this site and the advertising has remained visible to this day. Being based in Sydney, we were not aware of this situation, nor were we aware of the fact that it had been modified, covering important information. Similarly, as a result of the Melbourne COVID lockdowns, no one from the agency had been able to survey the site, and accordingly they were not aware of any changes. As highlighted by the Red and Yellow Circles in the below image, the advertising has been modified by a third party (the site owner) unbeknown to us or the advertising agency. The site owner has painted over several sections of the advertisement. They have done this to cover graffiti done by vandals. This has been done by the site owner genuinely attempting to preserve the artwork (at some point over the last 6 months). In doing so, the 18+/Enjoy Responsibly message in the top right corner has been painted over.



Refer to red circle – 18+, Enjoy Responsibly message

Red circle: The entire "dark grey" section has been re-painted. This is not part of the original artwork and has been done without our knowledge. While not fully done with the right intentions, the site owner has inadvertently covered the 18+/Enjoy Responsibly message.

- f) For the above reasons, we submit that the style of the artwork used in our advertisement does not have strong or evident appeal to minors.

Location

- g) Acland St in St Kilda is a cosmopolitan hub known for its bars and restaurants. The precinct is predominately frequented by adults, due to nature of the surrounding licenced premises.



- h) Irwell St is a quiet side street. There is no other street art or murals in close proximity. It is not an area that attracts minors. Being close to a carpark, one could reasonably assume that a great majority of people passing the advertising are adults that have just parked their car.

Street View of Irwell St (opposite the advertisement)



Adjacent Carpark



- i) We submit that the location of the advertisement is not adjacent or in close proximity to other street art murals and does not have strong or evident appeal to minors.

Birds Eye View of Area
Advertisement highlighted in red.



- j) We have thoroughly reviewed the ABAC and AANA Codes and will take guidance from the best practice guidelines moving forward. We are aware of the ABAC's pre-vetting service and will make use of this for any potential campaigns in future.

The Panel's View

- 15. This determination concerns an outdoor advertisement for the pre-mixed products vodka and soda and gin and soda produced by the Company. The advertising is in the form of a painted sign on the external wall of a building adjacent to the Melbourne restaurant and shopping precinct of Acland Street. The complainant believes the mural is irresponsible as it is similar to graffiti or street art and will be attractive to some minors. Further, it is contended the advertising lacks a 'drink responsibly' message.
- 16. Part 3(b) of the ABAC provides that an alcohol advertisement must not have strong or evident appeal to minors. Assessment of compliance with a standard is from the viewpoint of a reasonable person. This means the values, opinions, and life experiences within the majority of the community is the benchmark.
- 17. The Company argues the advertising is consistent with the Code requirements. It is contended the mural is traditional signwriting using paint brushes and is photo-realistic in appearance and does not resemble the stylised fonts, bright colours, cartons etc typically found in graffiti or street art. It is explained the advertising was only booked for a limited time, but due to COVID impacts has remained in place for a much longer period. During this extended stay, a 'drink responsibly' message was vandalised and then painted over by the owner of the building without the Company's or its advertising agency's knowledge.
- 18. It should be noted that there is no ABAC requirement for an alcohol marketing communication to contain a 'drink responsibly' message. It has become common for such messages to be used, however a failure to include this message is, of itself, not a breach of the ABAC. It is also noted that there are no other wall paintings near

the ad. A Google street view search did show some graffiti in a carpark not too far away from the ad's location, but this was far closer to vandalism (aerosol tags) than 'street art'.

19. The Panel does not believe the advertising has strong or evident appeal to minors. The ad shows a straight depiction of the Company's products. It is done attractively, but the fact the ad is a painted sign as opposed to a photograph of the same products seems immaterial to how a reasonable person would understand the message of the ad. It does not in the Panel's opinion resemble graffiti, nor have other features to make the ad strongly appealing to minors.
20. The complaint is dismissed.