



## ABAC Adjudication Panel Determination No. 147/20

**Product:** Various alcohol beverages  
**Company:** TEEG Pty Limited (Kingpin Bowling Alley)  
**Media:** Digital screens  
**Date of decision:** 10 November 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 marketing for alcohol beverages to be purchased at the venue by TEEG Pty Limited (“the Company”) and arises from a complaint received 12 October 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

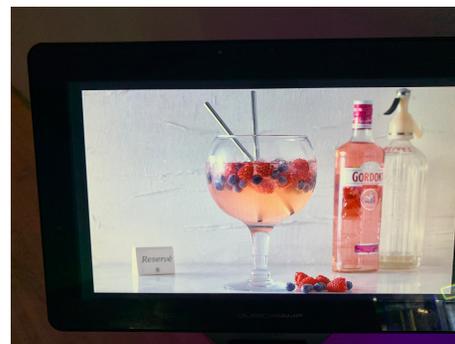
7. The complaint was received on 12 October 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 advertisements shown on screens at a licensed bowling alley, for in-house purchases of alcohol beverages.
11. Some examples of advertising seen at the venue after the complaint was received are:



## The Complaint

12. The complainant objects to the marketing as:
- When they arrived with a child at the bowling alley at about 9am on a weekday during the school holidays, they found the alcohol advertising to be overwhelming.
  - The average age of children at the bowling alley was about 10 or 11 years.
  - Beer and cocktails/mocktails were being advertised constantly as they were bowling.
  - They believe that a responsible private venue should adhere to alcohol advertising guidelines, similar to television.

## The ABAC Code

13. Part 2 of the ABAC Code provides that the Code does not apply to:
- (ii) point of sale Marketing Communications initiated by Alcohol Beverage retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol Beverages has no control over the point of sale Marketing Communication.
14. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors
  - (b)(iv) be directed at Minors through a breach of any of the Placement Rules
15. Part 6 of the ABAC Code provides:
- A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

### **Placement Rules** means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.

- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

**Strong or Evident Appeal to Minors** means:

- (ii) 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**

16. The Company responded to the complaint by email dated 27 October 2020. The principal points made by the Company were:
- The copy of your letter that was provided to me did not include images of the material that the complainant took issue with however I understand that the relevant material is the 'Pork and Pint' offer currently available at the venue (the 'Offer') and a handful of videos depicting the process of making a series of cocktails available at the venue (the 'Videos').
  - The Offer and the Videos were not submitted for Alcohol Advertising Pre-vetting Service as they constitute internal point of sale marketing communications initiated by an alcohol beverage retailer and are therefore not subject to the ABAC Responsible Alcohol Marketing Code ('Code').

- The Offer and the Videos do not breach Part 3(b)(i) of the Code as the Code does not apply for the reason set out in the paragraph above. Even if the Code did apply, the Offer and the Videos would not breach Part 3(b)(i). We note that:
  - Pork crackling is included in the Offer as the Offer comprises a plate of pork crackling and a pint of beer. In this context the pork crackling is far more likely to appeal to adults than it is to minors. The remaining elements which have been identified (berries, slices of orange and orange juice) are included in the Videos as they are ingredients in the cocktails showcased in the videos. The inclusion of these ingredients is akin to including an image of an apple in an advertisement for apple cider and it is not reasonable to suggest that, in this context, these elements appeal strongly to minors nor to suggest that they are any more attractive to minors than they are to adults;
  - The pale pink colour of the cocktail showcased in one of the Videos is attributable to one of its ingredients. The colour has not been used gratuitously and, given the fact that the Video depicts the preparation of the cocktail by a bartender at a bar, and that the cocktail is poured into a glass that is commonly associated with alcoholic beverages, the cocktail could not reasonably be confused with a soft drink;
  - The colours used in the Offer and the Videos are the natural colours of the items depicted therein. The colours are not likely to appeal strongly to minors nor are such colours any more likely to appeal to minors than they are to adults; and
  - The beer depicted in the Offer is clearly identifiable as an alcoholic beverage. The Videos each contain a number of visible alcohol cues including the bartender preparing the cocktails, the bar at which the cocktails are prepared, cocktail shakers and the spirits that are used to prepare the cocktails.
- The Offer and the Videos are internal point of sale marketing communications intended to showcase products available for purchase at the venue. The Offer and the Videos are therefore not subject to the Code or the requirements regarding the composition of audiences contained therein.
- TEEG remains committed to the responsible service and promotion of alcohol and to ensuring compliance with all applicable liquor licensing laws and regulations. Please do not hesitate to let me know if you require any further information in order to determine the complaint.

## The Panel's View

17. During the October 2020 school holidays in South Australia, the complainant attended a Kingpin Bowling Alley in the company of a child. The complainant was concerned that the entertainment facility (the facility offers laser skirmish and arcade games as well 10 pin bowling) displayed extensive advertising for alcohol products on the digital screens in the venue. The complaint arises from this concern.
18. The starting point is to determine if the in-venue advertising conducted by the Company falls within the scope of the ABAC requirements. As a first proposition the Code applies to all marketing communications for alcohol beverages and alcohol retailers conducted by a producer, distributor, or retailer of alcohol beverages. The principal business of the Kingpin venue is not alcohol sales. Given, however, that the venue sells and serves alcohol products, the Company is an alcohol retailer and hence its marketing to the extent it includes the promotion of alcohol products can potentially fall within the ambit of the ABAC Code.
19. That said the ABAC excludes some forms of alcohol marketing from its operation. One exclusion is "Point of Sale" marketing communications initiated by alcohol retailers provided that a producer or distributor of alcohol beverages has no control over the point-of-sale marketing communication. The reason ABAC does not include retailer point of sale marketing is because the focus of the ABAC Scheme is the marketing of alcohol to the wider community i.e. via mediums such as TV or digital platforms, print etc rather than how alcohol is promoted within the confines of a licensed premises.
20. The primary regulation of premises that serve alcohol in South Australia is contained in the Liquor Licensing Act under the responsibility of the Office of the Liquor and Gambling Commissioner. The Commissioner has issued a General Code of Practice which in part deals with the promotion and advertising of alcohol. Part 8 of the Code provides that a licensee must not promote or advertise their business in a way that tends to encourage minors to consume liquor.
21. The marketing which concerned the complainant consisted of advertisements on video screens in the venue. The ads were for generic alcohol products e.g., beer served with food in some instances and in other instances were for cocktails made with identified brands such as Gordons gin and Johnnie Walker whiskey. There are two threshold issues namely:
  - are these advertisements point-of-sale retailer marketing, and if so
  - does an alcohol producer or distributor have control over the marketing?

22. The ABAC does not provide a definition of “point-of-sale” marketing. However, a common-sense understanding of the term is that it is marketing material located within a venue selling alcohol products which is directed at and visible to the customers within the venue. If the marketing material was positioned so that it was directed to people outside the venue e.g. placed in a window of a retailer to attract passers-by, then it would not be point of sale marketing. In this case the marketing was visible to the patrons of the bowling alley and can be regarded as point-of-sale marketing communications.
23. The second issue is whether the identified alcohol brand owners e.g., Johnnie Walker featured in the advertisements had control over the advertising. On this point the Company has advised that it created the video screen advertisements, and that no alcohol brand owner was involved in or aware of the advertisements. This means that the advertisements fall within the point-of-sale exception and hence are not subject to the ABAC standards.
24. It is appreciated that this outcome will be disappointing for the complainant who has raised a genuinely felt concern about the extent of alcohol advertising within a venue which has children in attendance. That said, the Company maintains that it is operating consistently with its obligations under State liquor licensing laws and that its alcohol advertising does not have content which is appealing to minors.
25. The complaint is dismissed.