



ABAC Adjudication Panel Determination No 13/21

Product: Man vs Schnit
Company: Tre Compari Pty Limited (Schnithouse Hilton)
Media: Menu
Date of decision: 11 February 2021
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 the promotion of Man vs Schnit (“the Product”) by Tre Compari Pty Limited (“the Company”) on its menu. It arises from a complaint received on 3 February 2021.
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:
 - 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;
 - 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 3 February 2021.
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 the advertising.

The Marketing

10. The complaint refers to the promotion of Man vs Schnit on a menu, as shown in the photo below. Man vs Schnit provides that if a patron consumes 1kg of chicken schnitzel, chips, sauce of their choice and a litre of beer or cider within 45 minutes, they will receive a Schnithouse cap, free dessert and their name and picture will appear on Shnithouse's Facebook page. There is also the potential to be shown on the Top 10 Wall of Fame.



The Complaint

11. The complainant is concerned about the advertising as follows:
 - *The menu for Schnithouse Hilton contains an eating challenge called Man vs Schnit. The challenge involves eating a large schnitzel with chips and drinking a litre of beer or cider.*
 - *The menu challenges participants to consume a beverage. This is a breach of the code, section 3(a)(iii).*

The ABAC Code

12. Part 2 of the ABAC Code provides that the Code does NOT apply to:
 - (b)(iv) 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.
13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(i) Show or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (a)(iii) Challenge or dare people to consume an Alcohol Beverage.

The Company's Response

14. The Company responded to the complaint by letter emailed on 4 February 2021. The principal points made by the Company were:
 - We have been operating this brand for over 6 years now and I must say that this is the first complaint of any kind relating to this challenge.
 - May I firstly point out that within the complaint "Advertised Product or Service", it has stated Alcohol. Our challenge clearly states Man v Schnit not Man v Beer/Cider. The main emphasis with regards to an advertising perspective is the food with the beer or cider being an accompaniment.
 - The complaint implies that we are encouraging patrons to consume 1 litre of beer or cider on its own when in fact the beverage is served with in excess of 1kg of food so the effect of the beer/cider on the consumer is clearly reduced than if consumed on its own.

- Only a very small percentage of patrons actually attempt the challenge and of these only very few actually complete it.
- What is also important to note is that those that attempt the challenge never consume additional food or alcohol whether successful or otherwise.
- Also, in all this time we have never had anyone who has attempted the challenge experience any adverse reactions or effects as a result of their attempt and there have been no reports of irresponsible behaviour.
- The challenge is only advertised on our menu and not on any signage or other promotional material inside the premises.
- Our new menu currently being printed has a change stating are you “up for the challenge” as we had a lady complete the challenge recently. (Changed from are you man enough)
- I note also that many other venues are offering similar challenges and many bars/clubs are serving multiple spirit shots such as an “ABC” which contain multiple standard drinks in one shot glass, available without having to consume food.

The Panel’s View

15. Located in the Adelaide suburb of Hilton, the Schnithouse is a restaurant/beer house which offers casual dining and full bar facilities. As the name implies, the venue offers chicken schnitzels as well as other food choices. One of the menu offerings is entitled 'Man v Schnit or Man v Wings' and it is the description of this menu choice which has attracted the complaint. The Man v Schnit menu choice reads as follows:
 - For those that can handle a big Schnit! 1KG Chicken schnitzel, chips and sauce of your choice + 1L of Beer or Cider!
 - The challenge is to be completed in 45 minutes
 - All food on the plate, except garnish is to be eaten
 - No Sharing
 - Finish the beer or cider!
 - Complete the challenge and you will receive a Schnithouse cap, FREE Dessert and your name and picture on our Facebook page & Top 10 Wall of Fame! Dine in only. Are you man enough to take the challenge?

16. The complainant contends this menu entry is contrary to the ABAC standard in Part 3 (a)(iii) which provides that an alcohol marketing communication must not challenge or dare people to consume an alcohol beverage. While the complainant displays a commendable knowledge of the ABAC standards, there are important aspects of the scope of the ABAC Scheme and considerations about the overall regulatory regime governing alcohol marketing which lead the Panel to conclude that the complaint is not within the Panel's remit.
17. The regulation of alcohol as a product and the marketing of alcohol beverages falls into a shared regulatory space with different levels of government as well as industry sponsored codes of practice all playing a role in how alcohol is made available and marketed to the community. As the Schnithouse sells alcohol beverages, it is required to be licensed pursuant to the South Australian Liquor Licensing Act 1997. The Act sets out the legislative framework for alcohol sales in the State and the obligations imposed on the holders of a liquor licence. These obligations are amplified in a General Code of Practice which aims to ensure that the sale and supply of alcohol occurs in a manner that minimises the harm from excessive alcohol consumption. Responsibility for the enforcement of the Liquor Licensing Act and General Code of Practice rest with the Liquor and Gambling Commissioner.
18. To some extent the liquor licensing regime and the ABAC Scheme overlap as both go to the responsible marketing/promotion of alcohol beverages. For instance, both the ABAC and the Code of Practice have provisions about:
 - alcohol not being advertised to encourage minors to consume and
 - promotions and advertising not encouraging rapid or excessive alcohol consumption.
19. While the State regulatory regime has general application to the promotional activities of licence holders, the Liquor and Gambling Commissioner has a focus on the practices occurring within premises whereas the ABAC is focused upon the marketing of alcohol to the wider community and not the promotional activities directed at the patrons within a pub, club, or licensed restaurant. This difference in focus of the two regulatory schemes is also reflected within the terms of the ABAC.
20. Part 2 of the ABAC deals with the application of the Scheme with Part 2(b) expressly excluding certain materials from the scope of the Code. Part 2 (b)(iv) excludes '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.' While 'point of sale' is not defined, the Panel in previous determinations has explained that point of sale material is directed at an

audience within a venue and not the wider community. A menu used by patrons within a restaurant is a point-of-sale item. It is noted that the Company's menu in the Man v Schnit challenge does not promote a branded beer or cider but references the beverages in a generic sense.

21. Drawing this together, the Panel concludes:

- that the Schnit house menu is retailer point of sale material and hence the ABAC standards do not apply to the Man v Schnit reference;
- the overall regulatory regime applying to alcohol promotion by a licensed premise in South Australia establishes that the Liquor and Gambling Commissioner is the more appropriate forum for a complaint of this nature than the ABAC Scheme; and
- the underlying concern is about the challenge not meeting responsible service of alcohol requirements more than the way the challenge is expressed on the menu.

22. The complaint is dismissed.