



ABAC Adjudication Panel Determination No 3/21

Product: Wine
Company: Get Wines Direct
Media: Digital - Internet
Date of decision: 3 February 2021
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 internet advertising by Get Wines Direct (“the Company”). It arises from a complaint received on 7 January 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 7 January 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 following internet banner advertisement.



The Complaint

11. The complainant is concerned about the advertising as it was appearing on websites viewed by their children.

The ABAC Code

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

(b)(iv) be directed at Minors through a breach of any of the Placement Rules.

13. Part 6 of the Code provides that:

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 Placement Policy).

- (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).

The Company's Response

14. The Company responded to the complaint by letter emailed on 19 January 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service

- All Get Wines Direct's marketing content in question was QA'd/vetted by the legal team at Quantcast to ensure they're inline with the guidelines they have for serving alcohol-related advertising banners in AU. However the ABAC pre-vetting service was not used.

Responsibility toward Minors

- Our creatives are tracked via cookies and will follow a client across the web. We also have provided 100's of affiliates with the use of our creatives via Commission Factory (www.commissionfactory.com).
- Get Wines Direct & their partners are already using restriction controls to exclude minors from viewing marketing material and the retargeting of over-age customers via cookies also serves this purpose BUT if a minor is sharing an account, platform or device with their parent, guardian, or anyone over 18+, software cannot identify whether the user is 18+ and the user of the device / platform / account will be targeted. The marketing material in question is part of a retargeting campaign and the complainant in question is a customer of ours, it is the complainant's

responsibility to monitor the internet activity / use of a minor under their protection.

- The team at Quantcast do not collect Personally Identifiable Information, all decisions are based on what age brackets infer the online user fits into. If inferred that they are under the age of 18, they are not included in their targeting pools for ANY campaign. Bidding starts at 18+.
- All accounts created must be 18+ & a birthday is requested upon use / purchase of products.
- We are an online alcohol retailer, none of our content is aimed / targeted towards anyone under the age of 18+.

The Panel's View

15. Get Wines Direct is a longstanding online retailer of wine, with the Company carrying around 300 products from various well known and niche wine producers. The Company markets its products and home delivery service via a range of online media platforms. The complaint concerns a pop-up banner advertisement which has appeared on a number different sites visited by the complainant. The issue raised by the complainant is not the content of the advertisement but that it appears on sites visited by the complainant's children.
16. The ABAC Placement Rules create obligations on alcohol marketers to take action to have their marketing communications directed towards adults and away from minors. In relation to internet carried marketing, the rules require that:
 - available age restriction controls be utilised to exclude minors (Rule 2);
 - if there are no age restriction controls, then the marketing can only be placed where the audience is reasonably expected to be at least 75% adult (Rule 3); and
 - the marketing is not placed with programs or content primarily aimed at minors. (Rule 3).
17. The complaint was framed in general terms and did not identify which sites or platforms over which the banner ad was seen. Accordingly, it is not possible to assess Rules 3 and 4, as this needs information as to the platform e.g., was it Facebook, or Instagram or results arising from a Google search and the actual content involved e.g., a specific YouTube video. Hence this determination is confined to examining the Company's practice regarding its marketing generally and its use of age restriction controls.

18. The Company explains that its marketing 'creatives' are 'tracked via cookies and will follow a client across the web'. It claims it is using age restriction controls to exclude minors and 'retargeting of over-age customers via cookies also serves this purpose'. The Company mentions the limitation of age restriction controls, namely that the age controls and the user profile characteristics which heavily influence the type of products and services which will be directed towards a user, are set to the principal user of the device or account. In other words, if a child is using a device or account primarily held by their parent, then the controls and targeting will still assume the user is an adult and not a minor.
19. The operation of age restriction controls differs from platform to platform, and some are more effective in excluding minors than others. Without more detail about the actual platforms involved, it is not possible to precisely assess the Company's compliance with the ABAC Rules. On the information at hand, it appears the Company is satisfying the Placement Rules.
20. The complaint is dismissed.