



ABAC Adjudication Panel Determination No 52/21

Product: Riot Wine Co
Company: Asahi Beverages
Media: Instagram
Date of decision: 16 April 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”) arises from a complaint concerning an Instagram post (“the Marketing”) by Riot Wine Co (“the Product”). It was received on 31 March 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:
 - (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 31 March 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 Instagram posts.

The Marketing

10. This determination relates to the following Instagram post:



The Complaint

11. The complainant has the following concerns about the marketing:

Swimming and riding inflatables in open water is a high-risk activity. Riot should not be suggesting that people participate in high-risk activities while drinking.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

13. The Company responded to the complaint by letter emailed on 13 April 2021. The principal points made by the Company were:
- The marketing did not receive Alcohol Advertising Pre-vetting Service Approval.
 - We agree that the post in question meets neither the ABAC standard under Part 3(d) of the Code nor our own internal standards.
 - It has been removed from Riot Wine's social channels.
 - We note that the image in question had been posted 79 weeks prior to the complainant finding it, and although it has no bearing on the acceptability of the post, we do also note that both the post and the event depicted in the image occurred well before Riot Wine had been acquired by Carlton & United Breweries.
 - Asahi Beverages is committed to ensuring our promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. I apologise unreservedly that this piece of historical collateral did not meet those standards.

The Panel's View

14. As accepted by the Company, the post identified by the complainant is a breach of Part 3 (d) of the Code. This is because the post depicts the consumption of alcohol during activities which require a high degree of alertness or physical coordination to be performed safely.
15. The Company explains the post was made prior to the brand being acquired by the Company and is quite old. It is unlikely a member of public would now come across the post unless it was being searched for. That said, alcohol marketers have a responsibility to maintain long lived digital sites in good order, consistently with ABAC requirements.
16. The complaint is upheld.