



ABAC Adjudication Panel Determination No 75/21

Product: Wine
Company: Bacchus Family Wine
Media: Instagram
Date of decision: 12 April 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 an Instagram post for Bacchus Family Wine (“the Company”). It arises from a complaint received on 6 April 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 6 April 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 marketing.

The Marketing

10. This determination relates to the following post on the Company's Instagram page:



The Complaint

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

This post uses minors to advertise their wine, this photo is not a natural situation and minors should not be used to sell wine.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol.

The Company's Response

13. The Company responded to the complaint by email and phone call on 8 April 2021. The principal points made by the Company were:
 - We will get this image removed immediately, and make sure there are no other images on Instagram or anywhere else in our marketing with minors and alcohol.
 - We will also complete the ABAC online training course to ensure we are fully aware of the Code requirements.
 - We are very sorry for any offense caused.

The Panel's View

14. Part 3 (b) of the ABAC contains a key standard for responsible alcohol marketing, namely that alcohol marketing communications (which include Instagram posts) must not have strong or evident appeal to minors. The standard has several components with (b)(ii) providing that minors should not appear in alcohol marketing unless only in an incidental role and where is no implication they will consume or serve alcohol.
15. The Company has posted to its Instagram account a photograph of a man- presumably a father- with three young children. All of them are holding bottles of the Company's product. The accompanying text references the pending availability of the 2019 vintage.
16. The complainant is concerned that the post uses minors to advertise the product and the photograph is not a natural situation. In responding to the complaint, the Company has removed the post and undertaken to do some training on the ABAC standards.
17. The Panel finds that the Part 3 (b)(ii) standard has been breached. While a father with children is a natural situation and the children would not be taken to be consuming or serving alcohol, the photograph was clearly staged for the purposes of the post. This staging of the photograph and the centring of the wine with the children breaches the standard.
18. The complaint is upheld.