



ABAC Adjudication Panel Determination No 101/21

Product: Alcohol Delivery
Company: Liquoroo Australia Pty Limited
Media: Broadcast Radio
Date of decision: 7 June 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 radio advertising for Liquoroo (“the Product”) by Liquoroo Australia Pty Limited (“the Company”), which was heard on 7HO FM between 7:00am and 9:00am on a weekday. It arises from a complaint received on 3 May 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 3 May 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 content or placement of the marketing communication.

The Marketing & Placement

10. This determination relates to the placement of a radio advertisement, which was heard on 7HO FM between 7:00am and 9:00am on a weekday.
11. The script of the radio advertisement is as follows:

Put the snags on and ***forgotten something?***

Need a coldie, a Cab Sav but forgot to go the bottle O?

Before everyone decides to shoot through

You know what you gotta do!

Get onto **Liquouroo!**

In under thirty minutes, Wine, Beer or Spirits,

Liquouroo will deliver it directly to you!

And you'll get a **real kick** out of their fast service too!

Download the app or **hop** online... **Liquouroo** dot com dot au

Here's what you do! ... *get it till late* ...**with Liquouroo!**

The Complaint

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

[The marketing]...was telling people to down load the app to have beer wine and spirits delivered to your home. It was advertised in conjunction with racing.

[I object to the advertisement] because your code states that advertising gambling and alcohol together is a breach of the code of practice.

Also to advertise this during the day when minors are most likely to be listening is irresponsible.

The ABAC Code

13. 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.

14. Part 6 of the ABAC 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.

The Company's Response

15. The Company and 7HO FM responded to the complaint by phone call and email on 28 May 2021. The principal points made were:

- The radio advertisement was broadcast on 7HO FM and not Triple M.
- The Liquoroo ad does not reference alcohol and racing together whatsoever and our station, (7HOFM), does not cover racing in any way, shape or form.
- I have also run numbers from our latest survey (below) which reflect that 84% of our breakfast audience are over the age of 18 years.

Survey: Hobart 2021
Demographic: 10+ All People
Statistic: Breakfast Cume Reach (00s)

	Hobart 2021
7HO FM	508
Total	2,000

Survey: Hobart 2021
Demographic: 18+
Statistic: Breakfast Cume Reach (00s)

	Hobart 2021
7HO FM	427
Total	1,796

- As such I do not believe we have contravened any regulations.

The Panel's View

16. This determination relates to a radio advertisement promoting the Liquoroo alcohol delivery app. The complaint raises concerns that the radio advertisement was broadcast in conjunction with racing and was broadcast during the day when minors are most likely to be listening.
17. The AANA Wagering Advertising Code administered by Ad Standards includes restrictions on wagering advertisements encouraging wagering in combination with the consumption of alcohol, however, the ABAC Code doesn't include a restriction on alcohol advertisements being broadcast during racing. In any event, the Company and the radio station 7HOFM have advised that the Liquoroo advertisement was only broadcast on 7HOFM and that radio station does not broadcast any racing.

18. The ABAC Code includes a placement rule that restricts alcohol advertising to broadcasts where the audience is reasonably expected to comprise at least 75% adults. The Company and 7HOFM have supplied data that the audience for the 7HOFM breakfast segment is 84% adult. Accordingly, the broadcast of the radio advertisement did not breach ABAC placement rule 3.
19. The complaint is dismissed.