



ABAC Adjudication Panel Determination Nos 133, 134 & 135/21

Product: Venue
Company: Woolshed on Hindley
Media: Social Media - Instagram & Facebook
Date of decision: 21 June 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”) arises from three complaints received from a single complainant on 21 May 2021 and concerns social media advertising by Woolshed on Hindley (“the Company”).
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 21 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 marketing.

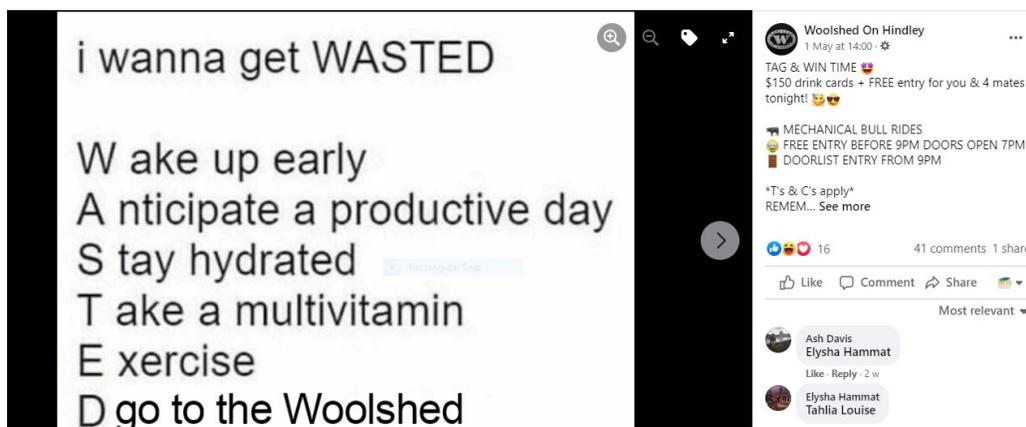
The Marketing

10. This determination relates to the following Instagram posts:

Social Media Post 1 (Facebook):



Social Media Post 2 (Facebook):



Social Media Post 3 (Instagram):



The Complaint

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

Social Media Post 1 (Facebook):

This post suggests that 27 beers would be an acceptable amount of drinking. This promotes excessive drinking and suggests alcohol can cause a change in mood.

Social Media Post 2 (Facebook):

This post encourages excessive drinking to the point of getting wasted.

Social Media Post 3 (Instagram):

This post suggests customers could experience a change in mood after an excessive amount of shots.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines?

- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.

The Company Response

13. The Company's representative responded to the complaints by email on 7 June 2021. The principal points made on behalf of the Company were:
- At the outset, the venue makes it plain that it acknowledges no wrongdoing whatsoever. The ABAC has no jurisdiction, power or ability to supervise, sanction or regulate the Woolshed. That power is reposed in the Commissioner of Consumer and Business Services, in SAPOL, and in other Government bodies.
 - ABAC has not shared the identity of the complainant/s. The Woolshed accordingly has no means of verifying the veracity of the complaint, its origin or any other matters relevant to the complaints. It is of significance that the media posts are of considerable antiquity. In that sense they posed no danger to the public at the time of the complaints, and it is entirely unclear why the complaints were directed to the ABAC in the first place. ABAC is not a well-known organisation; it is not a Government body; it has little to no day to day involvement with the hospitality industry. It is respectfully suggested that if SAPOL and CBS took no action over the posts concerned, then perhaps ABAC should have acted likewise.
 - Regardless, the Woolshed has removed the posts concerned.

The Panel's View

14. This complaint relates to three posts on the Hotel's Instagram account. The complainant raises a concern that the posts all reference excessive consumption and posts 1 & 3 also imply implies a significant change in mood when drinking alcohol.
15. The Hotel is not a signatory to the ABAC scheme and is not contractually bound to meet Code standards nor abide with Panel determinations. The Hotel has responded to the complaint advising they have removed the posts but do not accept any wrongdoing and do not accept the Panel has any jurisdiction.
16. Part 3 (a) (i) provides that an alcohol marketing communication should not show, directly imply or encourage excessive alcohol consumption. All three posts reference excessive alcohol consumption, an individual drinking 27 beers, getting wasted and consuming 5 shots (which a reasonable person would take to mean alcoholic shots).

17. The Panel notes that the post is intended to be humorous and a reasonable person shares the Australian robust sense of humour. That said, the 'shared' experience which the humour in the posts draws upon is that of engaging in excessive alcohol consumption. It is this assumption that it is common and as a result implicitly acceptable to consume to excess that makes the post breach the Part 3(a)(i) standard.
18. Part 3 (c) (i) provides that alcohol marketing must not suggest that alcohol use will cause or contribute to a significant change in mood. Posts 1 & 3 also breach this standard by suggesting in post 1 that after 27 beers an individual will have the confidence to participate in karaoke and in post 3 suggesting that after 5 shots an individual is like someone else.
19. It is acknowledged that the Hotel is not bound to comply with the ABAC standards and Panel decisions. However, the Hotel is directly regulated under the Liquor Licensing Act 1997 (South Australia). The regime applying to the Hotel as a holder of a liquor licence imposes obligations to not advertise or permit promotion of their business in a way that tends to encourage the rapid or excessive consumption of liquor or that discourages a responsible attitude to the consumption of liquor. There is a degree of overlap between liquor licensing promotional restrictions and the ABAC standards. State liquor licensing bodies tend to focus on responsible service and promotion of alcohol within licensed premises, whereas ABAC's focus is on the marketing by distributors, producers and retailers (including licensed premises) of alcohol to the wider community.
20. The complaint is upheld.