



ABAC Adjudication Panel Determination No 138/21

Product: Chartreuse
Company: Spirits Platform
Media: Digital (Instagram)
Date of decision: 16 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 Instagram advertising for Chartreuse (“the Product”) by Spirits Platform (“the Company”). It arises from a complaint received on 21 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

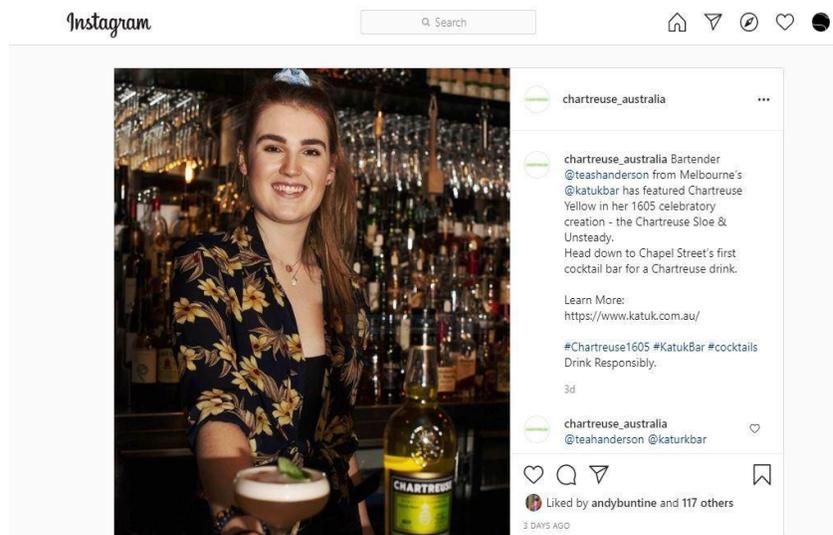
7. The complaint was received on 21 May 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 content or placement of the marketing communication.

The Marketing

10. This determination relates to the following Instagram post:



The Complaint

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

Clicking on the link in the caption for @teashanderson shows that she lists her age as 22 on her IG profile.

This post is showing a 22 year old prominently serving alcohol. This is a breach of the code.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
- they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.

The Company's Response

13. The Company responded to the complaint by email on 25 May 2021. The principal points made by the Company were:
- Thank you for advising us of this unfortunate complaint.
 - The individual in the image was not paid for the activity and was also placed within an age restricted environment (both on our Chartreuse Instagram account and within the image environment of the bar @katuk bar in Vic). The Chartreuse Account is Age Restricted to 18+. Any ad served was and is restricted to 18+ as well.
 - In any case, we confirm that the image has been removed on both Chartreuse Australia Facebook and Instagram pages.

The Panel's View

14. This determination relates to an Instagram post with an image of a Melbourne bartender serving a Chartreuse cocktail of her creation. The complainant is concerned that the post includes an image of a 22 year old in breach of ABAC standards.
15. The relevant ABAC standard in Part (b)(iii) provides that an alcohol marketing communication must not depict a visually prominent adult under 25 years of age unless the person shown is not a paid model or actor and the marketing communication in which they are shown has been placed within an age restricted environment.
16. The Chartreuse Australia Instagram account is age restricted and the Company has advised that the bartender shown in the post was not paid by them. In these circumstances the exception applies and the post is consistent with the ABAC standard in Part (b)(iii).
17. The complaint is dismissed.