



ABAC Adjudication Panel Determination No 93/21

Product: Basic Babe
Company: Alcoholic Sparkling Water
Media: TikTok
Date of decision: 1 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”) concerns the placement by Basic Babe (“the Company”) of marketing for its Alcoholic Sparkling Water (“the Product”) on TikTok. It arises from a complaint received on 20 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 20 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 Placement

10. This determination relates to the placement of Product marketing on TikTok.

The Complaint

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

There is no age gate on the page, it is accessible to all.

TikTok the platform is primarily used by people under 18.

Roy Morgan polling suggests that the use of this platform is about 40% 10-13 year olds and 30% 14-17 year olds.

Without an age gate on this page/platform these videos are highly likely to be placed in front of minors using the platform. With a platform so heavily used by minors, it is not appropriate for alcohol advertising to be placed on TikTok.

The videos on these pages take challenges and dances that are throughout the platform and assimilate their marketing communications. There is no distinction on the video that it is not appropriate for minors. The suggestion that the page is only for 18+ would not be relevant in the way that content is consumed on the platform. People will see videos first then if they are interested be directed to the profile second.

"Australia's 'digital natives' born this century have grown up surrounded by powerful and frictionless technology as the norm and have taken quickly to TikTok. The highest rate of usage is for 'tweens' aged 10-13 years old with

nearly 40% on TikTok and teens aged 14-17 years old with almost 30% on the platform." - From [http://www.roymorgan.com/findings/8538-launch-of-tiktok-in-Australia-June-2020-202010120023#:~:text=%E2%80%9CTikTok%20is%20most%20popular%20amongst,or%20Generation%20Alpha%20\(746%2C000\)](http://www.roymorgan.com/findings/8538-launch-of-tiktok-in-Australia-June-2020-202010120023#:~:text=%E2%80%9CTikTok%20is%20most%20popular%20amongst,or%20Generation%20Alpha%20(746%2C000)

The ABAC Code

12. 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.

13. 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.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

The Company's Response

14. The Company responded to the complaint by email on 21 April 2021. The principal points made by the Company were:

- We assumed that TikTok was no different to Facebook and Instagram for advertising and to stick to the ABAC guidelines in the same format. Now learning that the platform has no way of stopping minors from viewing your

posts etc we have decided to make our page unviewable and we will no longer use that platform.

The Panel's View

15. TikTok is a relatively recent addition to the social media platform environment having been available outside of its origins in China only from August 2018. The basic facility of the platform is the creation and sharing of short videos. This is the second occasion that a complaint has raised the use of TikTok by an alcohol company.
16. In Determination 114/20 the Panel considered a complaint that raised the same issues, namely whether posting videos promoting an alcohol brand on TikTok is consistent with the ABAC placement standards.
17. The complainant contends that TikTok is not a suitable platform for alcohol marketing as:
 - There was no age gate on the marketing material;
 - The platform is primarily used by people under 18;
 - The videos on these pages take challenges and dances that are throughout the platform and assimilate their marketing communications. There is no distinction on the video that it is not appropriate for minors. The suggestion that the page is only for 18+ would not be relevant in the way that content is consumed on the platform. People will see videos first then if they are interested be directed to the profile second.
 - Roy Morgan polling suggests that about 40% of 10-13 year olds and 30% of 14-17 year olds use this platform
18. TikTok Australia have been contacted for current information in relation to their platform and on 27 May 2021 provided official advice as set out in Attachment A. In summary, TikTok Australia have advised:
 - TikTok's policies explicitly exclude paid advertising for alcohol in Australia;
 - TikTok community guidelines restrict the way in which alcohol can be shown in posts/content;
 - TikTok will remove content that violates their community guidelines;
 - TikTok includes safety features that can be applied by minors and/or their parents;
 - data regarding audience demographics are commercial in confidence; and

- while TikTok do have younger people aged between 13 and 18 using the platform, the Australian user base is expanding and "ageing up", with significant and growing usage in the over 18 cohort.
19. The ABAC Placement Rules do not mandate which social media platforms can or cannot be used for alcohol marketing communications. Rather the Rules create a cascading set of requirements on marketers which are related to the technical capacity of the particular communication medium to target marketing towards adults and away from minors. With digital platforms, the applicable rules are:
- available age restriction controls to exclude minors are to be utilised (Rule 2);
 - if there are no age restriction controls, then a marketing communication may only be placed where the audience is reasonably expected to comprise at least 75% adults (Rule 3); and
 - no placement of a marketing communication with programs or content primarily aimed at minors (Rule 4).
20. It appears that TikTok does have options for minors (alone or in conjunction with parents) to choose safety settings to enable a curating of the posts which will be fed to the user e.g. Family Pairing and Restricted Mode. There does not however appear to be 'age restriction controls' available to an alcohol marketer seeking to engage with the platform which enables minors to be excluded from posts made by the marketer.
21. Official demographic data on the age of Australian users of TikTok is not available, however, publicly available information supports the platform's popularity among under 18 year olds. TikTok Australia have advised "*while we do have younger people aged between 13 and 18 using our platform, the Australian user base is expanding and "ageing up", with significant and growing usage in the over 18 cohort.*" Without access to an age demographic breakdown of users and given the apparent popularity of the platform with under 18 year olds, together with TikTok's position on alcohol advertising, it is not reasonable to expect that the current audience of posts on TikTok would be at least 75% adult as required by Placement Rule 3.
22. Accordingly, the Panel finds that the Company's placement of posts on TikTok is inconsistent with Placement Rule 3.

Attachment A

From TikTok Australia:

From the outset, it is important to note that TikTok has extremely stringent advertising policies, which explicitly **exclude** paid advertising for alcohol. Details of our advertising policies are available [here](#) and are strictly enforced by our teams. These policies include the prohibition of: "Ads promoting alcoholic beverages, (wine, beer, spirits etc) alcohol clubs/subscription services and alcohol making kits."

With regard to younger users and the TikTok community more broadly, our highest priority is their safety and wellbeing. Our [Community Guidelines](#) make clear what is and is not allowed on our platform, which includes specific provision for content related to alcohol. The Community Guidelines read:

We do not allow the depiction, promotion, or trade of drugs or other controlled substances. The trade of tobacco and alcohol products is also prohibited on the platform.

Do not post, upload, stream, or share:

- Content that depicts or promotes drugs, drug consumption, or encourages others to make, use, or trade drugs or other controlled substances
- Content that offers the purchase, sale, trade, or solicitation of drugs or other controlled substances, alcohol or tobacco products (including vaping products)
- Content that provides information on how to buy illegal or controlled substances
- Content that depicts or promotes the making of illicit alcohol products
- Content that depicts or promotes the misuse of legal substances, or instruction on how to make homemade substances, in an effort to become intoxicated

Our Community Guidelines apply to everyone and everything on TikTok. We proactively enforce them using a mix of technology and human moderation. We also encourage our community members to use the [tools we provide on TikTok](#) to report any content they believe violates our Community Guidelines.

We will remove any content – including video, audio, livestream, images, comments, and text – that violates our Community Guidelines. Creators are notified of our decisions and can appeal if they believe no violation has occurred. We will suspend or ban accounts and/or devices that are involved in severe or repeated violations; we will consider information available on other platforms and offline in these decisions. When warranted, we will report the accounts to relevant legal authorities.

As well as the above mentioned mechanisms to manage potentially problematic content on TikTok, we have a range of safety tools and resources that are available to [younger users](#) and [parents and care givers](#) to support the safe use of our platform.

Tools include Family Pairing which allows parents and teens to customise their safety settings based on individual needs. A parent can link their TikTok account to their teen's and set controls including:

- **Screen Time Management:** Decide how long your teen can spend on TikTok each day. You can set your teen's screen time limit directly from your own account, and if your teen has multiple devices, the set time limit will apply to each device individually.

- **Restricted Mode:** Restrict the appearance of content that may not be appropriate for all audiences.
- **Search:** Decide whether your teen can search for content, users, hashtags, or sounds.
- **Discoverability:** Decide whether your teen's account is private (your teen decides who can see their content) or public (anyone can view their content).
- **Suggest account to others:** Decide whether your teen's account can be recommended to others.
- **Direct Messages:** TikTok users become eligible for Direct Messages at 16. Parents may restrict who can send messages to the connected account, or turn off direct messaging completely. Please note: direct messaging is automatically turned off for registered accounts between the ages of 13 and 15.
- **Liked videos:** Decide who can view the videos your teen liked.
- **Comments:** Decide who can comment on your teen's videos.

Data regarding our audience demographics are commercial in confidence. While we cannot provide a breakdown of demographic information, it is true to say that while we do have younger people aged between 13 and 18 using our platform, the Australian user base is expanding and "ageing up", with significant and growing usage in the over 18 cohort. A number of the comments made in the referred complaint are not reflective of TikTok's Australian community attributes, or necessarily accurate as to how the platform operates and what the user experience is like. To this end, we would encourage engagement with the platform to ensure familiarity with its operation and content is understood in a meaningful way.

TikTok Australia is highly engaged with our trust and safety teams regarding the Alcoholic Beverages Advertising Code Scheme, its aims and operation, and how it may relate to user generated content on our platform. We are continually working to improve our platform to ensure the safety and wellbeing of the TikTok community.