



ABAC Adjudication Panel Determination No 141/21

Product: Liquor Delivery
Company: Tipple Group Pty Ltd
Media: Electronic Direct Mail (Email)
Date of decision: 2 July 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 a complaint received on 21 May 2021 and concerns Electronic Direct Mail marketing by Tipple Group Pty Limited (“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 complaint raises concerns under the ABAC Code and accordingly are 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

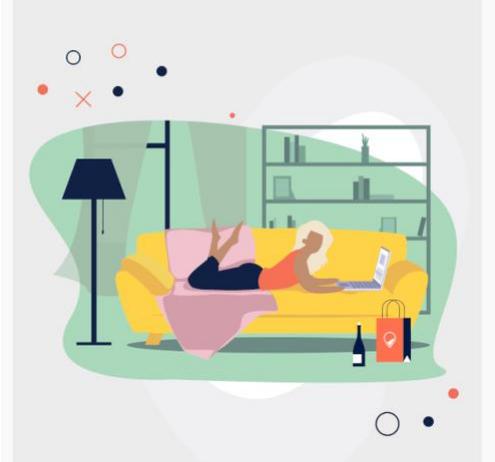
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing.

The Marketing

10. This determination relates to a marketing email sent by the Company to the complainant:

PRIMARY

 **Tipple** 11:06 am
Re: Tough week?
Life isn't perfect, but your weekend-ins can... ☆



Life isn't perfect, but your weekend-ins can be.

Movie marathons, healthy/unhealthy takeaway food (hey it's your body, you do what you like, don't worry about what everyone else thinks - you do you!), warm cosy blanket and your favourite wine or beers delivered... aaahh yes 🥰 that to us is a *Perfect Weekend-In*.

All weekend long, get \$20 off all wines, beers, spirits & more!

Use code **PERFECT** to claim your \$20 off*.

[CLAIM YOUR \\$20 OFF NOW →](#)

The Complaint

11. The complainant has the following concern about the marketing:
 - *Advertising alcohol to consumers as a coping mechanism or a crutch, especially for any potential current recovering alcoholics, is pretty disgusting.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company Response

13. The Company responded to the complaint by email on 23 June 2021. Its principal comments were:
 - While Tipple is not a signatory to the ABAC scheme, we fully support the framework and always seek to comply with the code's spirit and intent across our marketing efforts. The email communication referenced in the complaint was not submitted for pre-vetting approval to the best of my knowledge.
 - Upon reviewing the complaint, we do not believe that the email referenced suggests in any way that the consumption of alcohol can contribute to a significant change in mood or environment, that the consumption of alcohol is a necessary aid to relaxation or that the consumption of alcohol provides any therapeutic benefit.
 - While the complainant's interpretation of the email's subject line is regrettable and in no way intended on our part, we believe that a reasonable person viewing the communication in context would not perceive it as such considering the email's copy is heavily focused on

promoting the convenience of delivery and not the consumption of alcohol, which plays a minor role in the email's copy and message.

- When viewed in context of the email's full copy (provided below for reference) we believe that we are not in breach of the code and look forward to hearing your decision regarding the complaint.

Subject: Tough Week?

Content: Life isn't perfect, but your weekend-ins can be. Movie marathons, healthy/unhealthy takeaway food (hey it's your body, you do what you like, don't worry about what everyone else thinks - you do you!), warm cosy blanket and your favourite wine or beers

delivered... aaahh yes  that to us is a Perfect Weekend-In.

The Panel's View

14. Tipple is an alcohol delivery service operating across Sydney and Melbourne. The complaint concerns an email from Tipple on 21 May promoting the delivery of alcohol over the weekend with the subject 'Tough week?'.
15. While the Company states it supports responsible alcohol marketing, it is not a signatory to the ABAC scheme and hence has not contractually committed itself to the standards contained in the Code. That said, the Company has responded that they fully support the ABAC framework.
16. The complainant received one of the Company emails and has raised a concern about advertising alcohol to consumers as a coping mechanism or a crutch, especially for any potential current or recovering alcoholics. Part 3 (c) (i) and (iv) of the ABAC provides that an alcohol marketing communication must not suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment, offers any therapeutic benefit or is a necessary aid to relaxation.
17. The assessment of the consistency of a marketing communication against an ABAC standard is from the standpoint of the probable understanding of the marketing item by a reasonable person taking the content of the marketing as a whole. This means if the message in the marketing communication could be understood in several ways, it is the most likely interpretation which is to be preferred over a possible but less likely understanding of the marketing item.
18. The subject line of the email poses a question- Tough Week? The email shows an image of a woman lying on a couch in a lounge room looking at a laptop. Next to the woman is an unopened bottle of wine and a bag (given the context- possibly a bag in which the wine was delivered to the woman's location). The accompanying

body of the email explains the components of a potential perfect weekend- movie marathon, takeaway food, cosy blanket and 'your favourite wine or beers delivered'. Then the offer of \$20 off the purchase is explained.

19. On balance, the Panel believes the email does breach the ABAC standard in Part 3 (c) (i). The Panel noted:

- the email positions a 'perfect weekend' as an answer to the question of 'Tough Week?';
- a perfect weekend comprises several relaxing and stress free components including 'favourite wine or beers delivered';
- the role of alcohol is emphasised by showing the woman in a relaxed pose next to the bottle of wine; and
- drawn together, the most likely implication is that alcohol is a contributor to the perfect weekend, which is a significant change in mood or environment from a tough week.

20. The complaint is upheld.