



ABAC Adjudication Panel Determination No 171/21

Product: Grey Goose Vodka
Company: Bacardi Martini Australia Pty Limited
Media: Instagram
Date of decision: 19 July 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 21 June 2021. It concerns the placement of four different Instagram posts which market Grey Goose Vodka (“the Product”) by Bacardi Martini Australia Pty Limited (“the Company”). The marketing was posted to the @nadiafairfax Instagram account.
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 June 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 four different Instagram posts marketing Grey Goose Vodka on the @nadiafairfax Instagram account.

The Complaint

11. The complainant has the following concerns about the marketing:
 - *Nadia Fairfax @nadiafairfax (194K followers) partnered with alcohol brand Grey Goose Vodka late last year and earlier this year (18 Feb, 22 Jan, 14 Dec, 12 Dec) and none of her posts for the brand have #ad #spon #Advert #Advertising #PaidPartnership or #PaidPromotion.*
 - *I would have thought this would be even more critical given it is a alcohol brand and many of Nadia's followers could be under the age of 18yrs old!!!*

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 Response

14. The Company responded to the complaint by letter emailed on 23 June 2021 and supplementary email on 13 July 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The Instagram posts did not receive pre-vetting approval however the ABAC code was provided to the influencer as part of our brief to ensure compliance.

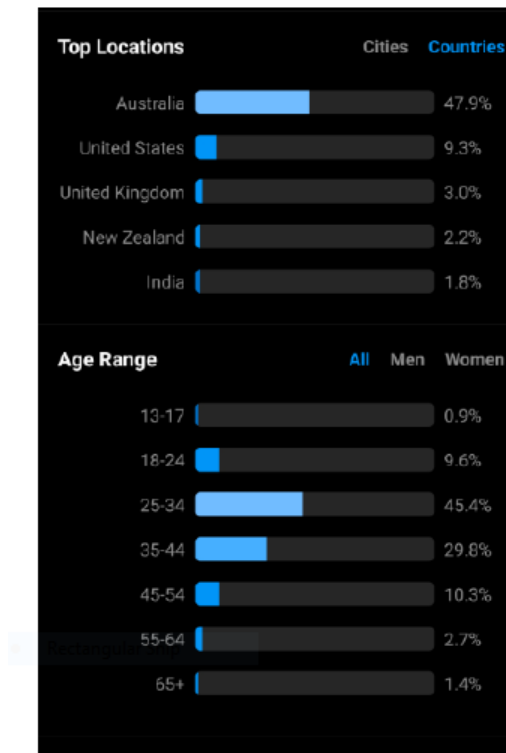
Marketing Communications within Scope

- The Instagram posts are Marketing Communications within the scope of the Code. As outlined above, a copy of the Code was also shared as part of the brief to Nadia for content production.
- Bacardi-Martini has an agreement with Nadia Fairfax to promote Grey Goose Vodka on her Instagram page. This is reflected in the #NFAlignment reference that appears on her sponsored posts to declare the partnerships.
- This was a collaboration with Nadia Fairfax and Grey Goose. Nadia produced the content for posting on her channel in line with a brief we provided that also included instructions relating to the ABAC Code.

- We can request for the posts to be taken down if we are found to be in breach of the Code.

Responsibility toward Minors

- The marketing does not breach Part 3 (b)(iv) of the Code by being directed at Minors through a breach of any of the Placement Rules.
- The Grey Goose sponsored posts were organically posted to Nadia’s Instagram account where her audience is less than 1% under 18yo – a much lower proportion compared to the general population. The following is a screenshot of Nadia’s audience:



- For all our influencers we do an audit of their followers to ensure that they meet global guidelines and general population standards ahead of commissioning them. We do not however ask for them to age gate the post. Nadia’s audience was less than 1% under 18 yo.
- The Instagram posts do not appear alongside content primarily aimed at Minors. Nadia’s posts are very much anchored in lifestyle, fashion and travel topics that are aimed at inspiring adults through sophisticated and highly crafted content. There are no specific aspects that would appeal to Minors.

The Panel's View

15. This complaint relates to Instagram posts by social media influencer, Nadia Fairfax, promoting Grey Goose Vodka. Two concerns are raised, firstly that the posts do not make clear that they arise from a commercial relationship with the brand and are advertisements, and secondly that minors following Nadia Fairfax could view the alcohol advertising.
16. The first issue falls within the AANA Code of Ethics and may be considered by the Ad Standards Community Panel. The second issue raises the question of whether the placement of the posts was consistent with the ABAC Placement Rules.
17. The Company explains that the posts arose from a collaboration between Nadia Fairfax and Grey Goose and does not dispute that the Instagram posts are alcohol marketing communications within the scope of the ABAC Code. In fact, the Company briefed the influencer on compliance with the ABAC Code.
18. While the complainant's principal concern is about the proper identification of the posts as paid advertisements, the reference to many of the followers of Ms Fairfax being under 18 brings into play several of the ABAC Placement Rules. The Rules have the policy aim that alcohol marketing should to the extent possible be directed towards adults and away from minors.
19. Rule 2 obliges an alcohol marketer to utilise available age restriction controls to exclude minors from the audience of a marketing communication, such as posts over social media. Given the direct relationship between the Company and Ms Fairfax, this obligation to exclude minors applies to the posts on Ms Fairfax's Instagram account.
20. The Company has supplied data that shows Ms Fairfax's followers are almost exclusively adult, however it does not seem that the Company has asked Ms Fairfax to age restrict her posts. Since October 2020, advice from Instagram is that it is possible to age restrict individual posts without having to apply this setting to a person's entire account. The intent of Placement Rule 2 is that an alcohol marketer should utilise the practically available age restriction controls. This step has not happened and hence the Company is in breach of this Rule.
21. The other applicable Placement Rules have not been breached. Rule 3 is related to the reasonably expected audience of a marketing communication, and it is apparent from the data supplied that Ms Fairfax's posts will be seen by an adult audience well exceeding the 75% benchmark set in the ABAC rule. Further, the content of Ms Fairfax's account is adult in nature and is not primarily aimed at minors. This means Rule 4 has been complied with.
22. The complaint is upheld in relation to Placement Rule 2.