



ABAC Adjudication Panel Determination No 190/21

Product: Disney Themed Cocktails
Company: Bella Vista Hotel
Media: Facebook
Date of decision: 7 September 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 Facebook marketing by the Bella Vista Hotel (“the Company”). It arises from a complaint received on 2 August 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:
 - 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;

- 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 2 August 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 advertising.

The Marketing

10. The complaint concerns the following Facebook post:

10:35 4G

< Bella Vista Hotel

#bellavistahotel #essentialsexpress #supportlocal

Home Photos Videos Posts Communi

Bella Vista Hotel 3 d · 🌐

Introducing our 3 special release DISNEY themed cocktails in conjunction of our Virtual Disney Trivia Night this Friday! 🥳

👠 Glass Slipper 1L \$40 // Vodka, Alize, Lemon & Sugar

🦊 Hakuna Matata 1L \$40 // White Rum, Malibu, Orange, Pineapple & Sugar

👸 Princess Ariel Fruit Drink (No Alcohol) 500ml \$7 // Apple, Orange, Cranberry & Grenadine

Available to purchase at Essentials Express Warehouse Drive-Thru from 12pm this Friday July 30 until sold out! 🚗

Disney Trivia is BOOKED OUT
However we have just released RSVPs for Sex and the City Virtual Trivia Night, Friday August 6! More info 📱 <https://fb.me/e/1C88bQ1Gm>

92 175 comments 10 shares

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www.bellavistahotel.com.au

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The Complaint

12. The complainant is concerned about the advertising as follows:
- *A photo of a fruit punch and two cocktails with Disney themed names and designs. The text outlines the cocktails ingredients and Disney theme.*
 - *This post would strongly appeal to minors advertising non-alcoholic and alcohol products side by side. The packaging on these products does not indicate that they are alcoholic and the packaging is likely to appeal to minors through the Disney theme. The packaging does not show alcohol strength.*

The ABAC Code

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors.

14. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Response

15. The Company responded to the complaint by email on 3 August 2021. Its principal comments were:
- *Very tough times for hospitality and pubs in particular, we are trying very hard to keep some of our staff employed and the community spirit alive.*
 - *We offer a drive through contactless service serving food and drinks and other essential items.*

- *While those themed cocktails were a one off and haven't been sold before or since we strongly reject the claims of the complaint.*
- *It is disappointing that someone would take the time to complain about this, but not surprising in today's environment.*
- *We also don't have any intention of serving those cocktails again.*
- *The only way to buy those cocktails was by **driving** to the venue and purchasing them.*
- *It was promoted on Bella vista **Hotel** Facebook page.*
- *The venue is an **over 18** venue and minors are not allowed entry without supervision when we are open, but we are **not open** and any purchases can only be made through drive through where the appropriate ID checks are taken.*
- *The packaging has information that indicates ingredients, alcohol content and standard drink size on the back of the label and was clear on the post as well for contents.*

The Panel's View

16. The Bella Vista Hotel is in the Hills district of Greater Western Sydney. Like all hotels in Greater Sydney, the Bella Vista Hotel has been closed to face to face customers since late June 2021 due to government restrictions dealing with a wave of the Covid pandemic. In order to maintain some operations, the Company has continued with a drive through contactless service for alcohol sales and has run some online activities. One such activity was a Disney themed virtual trivia night.
17. As part of the trivia night, the Company made available for sale a few pre-made cocktails which could be collected via the drive through service. It is a Facebook post for these cocktails which has attracted the complaint. The cocktails were both alcoholic - 'Glass Slipper' and 'Hakuna Matata' and non-alcoholic - 'Princess Ariel'. Each cocktail came in a clear plastic bottle and carried a printed tag attached to the neck of the bottle with contained the cocktail's name.
18. The complainant contended the Facebook post would strongly appeal to minors given the post combined alcohol and non-alcoholic products, used Disney names and displayed the cocktails in packaging which did not indicate if the products were alcohol beverages. This concern raises Part 3 (b) of the ABAC which provides an alcohol marketing communication must not have strong or evident appeal to minors.

19. The Company replied to the complaint by explaining that the Disney themed cocktails were a one off, and available only via the drive through. It is argued that the packaging did advise of the ingredients, alcohol content and standard drink size on the back of the tag label.
20. It is reasonably clear that the beverages would not be sold outside of the confines of a bar within the Hotel as a licensed premise in non-Covid impacted circumstances. Normally any concerns about the beverages' name sold in a hotel would fall more directly under the NSW Liquor Licensing regime than it would the ABAC. That said, the Facebook post does fall within the ambit of a 'marketing communication' for the purposes of the ABAC and needs to meet the standards of good marketing practice.
21. The Panel believes the post does breach the Part 3 (b) standard. It is noted:
 - The image of the alcohol product raises a potential confusion with a soft drink;
 - The product names such as Glass Slipper suggests Disney children's entertainment e.g., Cinderella; and
 - While the post does have text providing greater context and information about the alcohol content of the cocktails, a reasonable person would take the post as a whole as having a strong appeal to minors.
22. While finding the post in breach of the Code standard, the Panel does acknowledge the circumstances in which the Company is operating, and it is unlikely that many reasonable persons in the community would be particularly troubled by the one-off promotion.