



ABAC Adjudication Panel Determination No 224/21

Product: Free can of beer for partially vaccinated people
Company: Lord Gladstone Hotel
Media: Internet
Date of decision: 27 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 information posted on the OzBargain.com.au website about The Lord Gladstone Hotel (“the Company”) offering a free takeaway tinnie of Young Henry’s beer to patrons who can provide proof of receiving their first dose of any COVID-19 vaccination. It arises from a complaint received on 16 September 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 16 September 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 communication.

The Marketing

10. The complaint concerns information posted to the OzBargain website at the following link. A screenshot is also provided below.

<https://www.ozbargain.com.au/node/651315>

The screenshot shows the OzBargain website interface. At the top, there is a navigation bar with 'OzBargain' logo and links for 'Deals', 'Live', 'Forums', 'Comps', 'Pages', 'Login', and 'Join'. Below this is a sub-navigation bar with 'Dining & Takeaway', 'Freebie', 'Beer', and 'Wine'. The main content area features a deal titled '[NSW] Free Beer for Vaccinated Guests at The Gladstone Sydney (Takeaway), Free Wine at Glass Brasserie'. The deal is posted by 'Levity' on 15/09/2021, with 125+ votes and 0 comments. The text of the deal describes a promotion at The Lord Gladstone Hotel, where patrons receive a free takeaway tinnie of Young Henrys beer and a free wine at Glass Brasserie upon showing proof of vaccination. A 'Go to Deal' button is visible at the bottom right of the deal post.

The Complaint

11. The complainant objects to the marketing communication as follows:
 - *They are offering free alcohol [to people who can provide] proof of vaccination.*
 - *People shouldn't be coerced into vaccination with bribery for a substance that has killed far more people... ie alcohol.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.

The Company's Response

13. The Company was advised of the complaint on 21 September 2021 and responded by email on the same day. Its principal comments were:
- We were not aware that our promotion was posted on the website ozbargain.com by the user Leivity.
 - The promotion we are running is providing 1 complimentary 375ml can of Young Henry's beer to individuals over the age of 18 years of age who have can show proof they have been fully vaccinated. The promotion is restricted to 1 can per individual for one time only. We were provided with 8 cases (24 cans a case) initially by the supplier young Henry's.
 - This was a marketing exercise for us, an opportunity for exposure of the business rather than an opportunity to increase sales, although that has been seen in food sales more so than alcohol sales.
 - Just to reiterate, we have no connection to the account responsible (Leivity) for posting about our promotion on the website ozbargain.com. Only aware of it via this email, although it does make some negative feedback we have received from patrons opposed to the covid 19 vaccination make sense now.
 - We aren't actively promoting the original promotion anymore as the "hype" we received from the original media release has since died down quite a bit. The promotion was set to run for the month of September, so we will not be redeeming any patrons requests for the promotion as of Friday the 1st of October 2021 (10 days time).

The Panel's View

14. The Lord Gladstone Hotel is located in the Sydney suburb of Chippendale. In the month of September 2021, the Hotel ran a promotion whereby patrons who had received a covid vaccination could redeem a can of Young Henry's beer. A listing of the promotion on the OzBargain aggregator website has attracted the complaint.
15. OzBargain is a popular site for consumers seeking deals and discounts on a wide range of goods and services. The site provides a platform for members of the public to submit, share and critique available discounts or other promotions from businesses. To access an identified 'bargain' found on the site requires the consumer to go directly to the business in question.
16. The Company explains it developed the promotion to increase sales and attract some publicity. In this regard, the Hotel is similar to a number of Australian businesses which have linked promotional activities and special deals or benefits to consumers who have become vaccinated against the Covid virus. The complainant takes issue with the promotion as 'people shouldn't be coerced into vaccination with bribery for a substance that has killed far more people i.e. alcohol'.
17. The Company advises that it did not place the entry on the OzBargain site and was unaware of the entry until it received the complaint from the Panel for response. This is consistent with the apparent operating model of OzBargain that features individual consumers posting the details of 'bargains' and this does not seem to require the prior knowledge or consent of the relevant business.
18. Accordingly, the OzBargain entry would not be a 'marketing communication' for ABAC purposes, as the Company did not generate or have reasonable control over the post being placed on the OzBargain website. That said, while the complainant came across the Hotel's promotion via OzBargain, it was the promotion itself which is the core of the complainant's concern rather than how it is described on OzBargain.
19. The applicable ABAC standard provides that an alcohol marketing communication (which could include promotional activities) must not encourage irresponsible behaviour that is related to the consumption of alcohol. Assessing if a standard has been complied with is from the standpoint of the probable understanding of the marketing by a reasonable person. This means the values, opinions and attitudes commonly held by most people is the benchmark.
20. The Panel does not believe the Company's promotional activity of offering a single can of beer to a vaccinated person would be regarded by a reasonable person as encouraging irresponsible behaviour related to alcohol use. In fact, a reasonable member of the community would be highly supportive of measures being taken by

businesses across the board to increase the take up of the Covid vaccines amongst the community as the most effective way to protect public health and assist the return of 'normal' business and economic life.

21. It is recognised that promotional activities which gift alcohol as a prize or reward need to be conducted carefully and in a manner which is consistent with the responsible and moderate use of alcohol. The promotional activity of the Company meets this requirement noting:
 - a single can of beer is the gift being offered per vaccinated person; and
 - the Therapeutic Goods Administration has issued a permission which expressly allows alcohol to be offered as recognition for people who have been vaccinated under the national Covid-19 vaccination program.
22. The complaint is dismissed.