



ABAC Adjudication Panel Determination No 247/21

Product: Vodka Collection
Company: Newy Distillery
Media: Television
Date of decision: 29 October 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 television advertising by Newy Distillery (“the Company”). It arises from a complaint received on 18 October 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 18 October 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 communication.

The Marketing Communication

10. The complaint relates to a television advertisement, which can be viewed on YouTube at the following link and is also described below:

<https://www.youtube.com/watch?v=m9Yt6bIPVdc>

The 15 second advertisement is set to music and shows a group of people walking along the beach, picking up bottles of Newy Distillery Vodka. They then stop for a picnic, and consume some of the vodka. The following screenshots are provided to assist with visualisation of the advertisement:



The Complaint

11. The complainant objects to the marketing as follows:
 - *As a lifesaver I know that mixing alcohol and swimming is a dangerous combination, therefore I think they should remove this ad so teenagers and young people don't get the wrong idea.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (d) show (visibly, audibly, or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

13. The Company responded to the complaint by email on 25 October 2021. The principal comments made by the Company were:
 - We have discussed the matter with the WIN TV Networks legal team who pre-vetted the video before being aired. The legal team believe that the advertisement does not breach any of the ABAC or advertising guidelines. The screening of this advertisement also complies with the following guidelines - <https://clearads.com.au/wp-content/uploads/2019/09/free-tv-commercial-television-industry-code-of-practice-2018.pdf> - they draw reference to section 6.2.
 - They would also like to highlight that none of the people in the video are wearing swimwear or in the water, there are also no towels in sight – as they are not wearing swimwear and not possessing any towels, the advertisement does not imply that any of the people shown will go in the water after consuming alcohol. All people in the advertisement have been selected as they are over 30 and do not appear as though they could be misinterpreted to be under 25. They have assured us that the video was filmed by the WIN Networks filming team who specialise in alcohol advertisement and have made sure that no guidelines have been breached.
 - Accordingly, the WIN network and Nine Networks have considered the ABAC complaint and recommended not to withdraw the advertisement at this stage but asked we inform them if the ABAC has a different recommendation.

The Panel's View

14. This determination relates to a television advertisement for Newy Distillery's vodka collection. The advertisement shows people walking along a beach and picking up bottles of Newy Distillery product, from which they pour drinks after stopping for a picnic.
15. The complaint raises a concern that the advertisement promotes drinking and swimming activities. This brings into play Part 3 (d) of the Code, which requires that a marketing communication must not show the consumption of an alcohol beverage before or while swimming (or for that matter, undertaking any other activity that, for safety reasons, requires a high degree of alertness or physical coordination).
16. Promoting an alcohol product using beach or ocean scenes is not prohibited by ABAC standards, but the standard contained in Part 3 (d) does impose some reasonably straightforward obligations when there are beach or ocean depictions of alcohol products namely:
 - do not show or imply that alcohol is being consumed during the use of the water e.g., swimming or wading in the ocean; and
 - do not create a scene where it can be reasonably implied that a person will consume alcohol and then go into the ocean.
17. For example, a person can be shown drinking alcohol on a beach or the foreshore if it is clear the person is not going to go into the water. This might be because the person is fully clothed, or the time of day establishes that any swimming would have finished for the day.
18. The Company argues that none of the people in the video are wearing swimwear or are in the water, and there are also no towels in sight.
19. Assessment of the consistency of a marketing communication with a Code standard is from the viewpoint of a reasonable person taking the content of the marketing item as a whole. This means if a marketing communication can be understood in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.
20. The Panel does not believe the television advertisement breaches the Part 3 (d) standard as there is no depiction or direct implication that the people shown consuming alcohol will then swim in the ocean. The advertisement depicts fully clothed people walking and picnicking on a beach, without towels or any other items that would suggest they will swim in the ocean after their picnic.
21. The complaint is dismissed.