



ABAC Adjudication Panel Determination No 228/21

Product: W Seltzer
Company: Wayward Brewing Co
Media: Instagram Post
Date of decision: 2 November 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”) concerns an Instagram post for W Seltzer (“the Product”) by Wayward Brewing Co (“the Company”). It arises from a complaint received on 22 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 the 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 meet 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 22 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 an 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

10. The complaint concerns the following Instagram post:



The Complaint

11. The complainant objects to the marketing communications as follows:

- *It encourages unhealthy drinking habits.*

The ABAC Code

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

- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.

The Company's Response

13. The Company responded to the complaint by email on 23 September 2021. Its principal comments were:

- It is never our intention to promote unhealthy relationships with alcohol and we understand how this could be perceived to promote unhealthy drinking habits. We have taken the post off of Instagram and will be more mindful when creating future posts.

The Panel's View

14. W Seltzer is part of the Wayward Brewing Co based in Sydney's inner west. The brewery added an alcoholic seltzer range to its product list in October 2020. The Company employs social media platforms to promote its products and this determination concerns a post on the Company's Instagram account.

15. The post is a text statement on a light purple background that reads - 'my exercise routine consists of sweating out alcohol so I can go drinking again'. The statement is accompanied by the Company logo. The complainant believes the post to be irresponsible as it encourages unhealthy drinking habits.

16. Part 3 (a)(i) of the ABAC provides that an alcohol marketing communication (which includes Instagram posts) must not encourage excessive or rapid consumption of an alcohol beverage, misuse or abuse of alcohol. The Company, while not expressly conceding the post was inconsistent with the ABAC standard, did accept it could be perceived as promoting unhealthy drinking habits and removed the post.

17. The Panel believes the post would most probably be taken as humorous rather than seriously advocating unhealthy alcohol use. That said, the humour relies on an assumed shared understanding by the reader that excessive alcohol consumption can be 'sweated out' and consumption resumed. This message, whether offered seriously or made as a joke, does not model responsible alcohol use consistent with the Part 3 (a) standard.
18. The complaint is upheld.