



ABAC Adjudication Panel Determination No 231/21

Product: The Bottle-O
Company: Australian Liquor Marketers
Media: Television
Date of decision: 8 November 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for The Bottle-O (“the Product”) by Australian Liquor Marketers (“the Company”). It arises from a complaint received on 29 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:
 - (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 the 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 29 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 obtained for the marketing communication (Approval Number 18841)

10. The Marketing Communication

11. The complaint relates to a 30-second television advertisement for the Bottle-O, which is described below.

The ad shows a Bottle-O employee walking through his local town smiling and waving to local community members, who take it in turns to sing a line from a song set to the tune of "Walking on Sunshine" by Katrina and the Waves.

The following are the lyrics to the song, as well as a description and screenshot of the people singing various lines as the Bottle-O employee walks past them:

Two people in a front yard	Hey, there goes the man from the Bottle-O. He's a really cool guy.
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Cricket team and spectators	<p>He's there for us every time. Bottle-O.</p> 
Pharmacists	<p>Whether it's beer or wine. Bottle-O.</p> 
Fundraising BBQ	<p>Together in sunshine. Bottle-O.</p>



Motor scooter rider

And he's got a big sign.



The advertisement concludes with footage of the employee arranging stock and smiling as he says “Right-O. How can I help you?”



The Complaint

12. The complainant objects to the marketing as follows:

- *This particular ad...tries to make out the person in the ad as being a benefit to the community because he sells alcohol while quite the opposite is true.*
- *Trying to normalise alcohol abuse is unacceptable. Every person in this ad is singing about what a great guy he is because he sells alcohol, this is an unrealistic and dangerous viewpoint.*
- *This ad...ends with him standing beside a fully stocked display of Bourbon Whiskey and offering it in a way that suggests drinking alcohol in large amounts is ok. It's not ok.*
- *There is even one person in the ad operating a motorcycle while promoting this irresponsible alcohol consumption.*
- *This ad is accompanied by a repetitive, catchy jingle that I feel is designed to appeal to younger and underage viewers.*
- *I feel this ad should be removed due to its appalling promotion of the use of what is essentially a dangerous drug, and making the seller of this drug some sort of local hero.*

The ABAC Code

13. 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.
- (b)(i) have Strong or Evident Appeal to Minors.
- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

- (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,

14. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal to strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minors 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 confectionery 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 2 November 2021. The principal comments made by the Company were:

- On behalf of Australian Liquor Marketers, I would like to respond to complaint 231/21 against a recent campaign for The Bottle-O. As signatories to The Code, we are well aware of our duties to market our brands in a responsible way.
- The intent of the campaign is to show our lead character "Johnno" as part of the local community. Our company is a network of independent retailers across the country and our mission is to champion their success. By being independent it is in the nature for our retailers to be integral parts of communities across Australia and not unreasonable in any way to expect them not to be more or less friendly and convivial toward other members of the community than any other member of the community.

- We believe it is entirely probable for any reasonable person to assume that the reason he is standing in front of a row of bourbon bottles is because he is standing in his store of stocked alcohol. This is a depiction of the typical stock levels of a typical store. We do not believe that there is any suggestion he is promoting excessive consumption by the depiction of Johnno, straightening bottles of inventory neatly and saying “How can I help you?”. This would be considered in our belief to be a typical greeting of any retail store owner.
- We reject the objection to the soundtrack having any appeal to minors. The soundtrack is derived from the famous song ‘Walking on Sunshine ‘ by Katrina and the Waves first released in 1983. The soundtrack is more likely to induce memories for a Gen Xer than any other generation. Gen X being defined by those born between 1965 and 1980. To this end, it is our strong belief that the marketing does not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol. Furthermore, it is our strong belief that the advertisement does not suggest that a pharmacist endorses the use of alcohol but is merely being friendly and waving to another member of the community which would be a very realistic expectation in local communities all across Australia.
- We remain committed to the ABAC code and remain committed to our own duty to only ever market our brands in a responsible and non-offensive way.

The Panel’s View

16. This determination concerns a television advertisement for the alcohol retailer, The Bottle-O. The ad aims to position the retailer, as a small independent business, as a part of the local community. It does this by showing “Johnno” from the local Bottle-O walking through the town and being warmly received by various people, including people in their front yard, a cricket team and spectators, pharmacy workers and sausage sizzle fundraisers. All are singing a song about the guy from the Bottle-O, to the tune of “Walking on Sunshine” by Katrina and the Waves.
17. The advertisement in this complaint is a cut down, 30 second version of a longer ad which was the subject of a previous complaint considered in Determination 183/20. The previous complaint raised a concern that the ad is inappropriate because a pharmacist, as a healthcare professional, should not be depicted in an alcohol advertisement at all and certainly not shown as supporting an alcohol retailer. As the current complaint raises different concerns, the Panel will assess

the advertisement's consistency with the ABAC standard against the newly raised concerns.

18. These new concerns can be summarised as follows:

- the marketing is attempting to normalise alcohol abuse;
- the Bottle-O employee is depicted standing alongside a large amount of alcohol, offering it in a way that suggests drinking alcohol in large amounts is acceptable;
- every person in this ad is singing about what a great guy the Bottle-O employee is because he sells alcohol;
- a person in the ad is operating a motorcycle while promoting irresponsible alcohol consumption; and
- the ad is accompanied by a repetitive, catchy jingle that is designed to appeal to younger and underage viewers.

19. These concerns raise various parts of the ABAC Code, which will be considered in turn below. In assessing if an alcohol marketing communication is consistent with a Code standard the Panel is to adopt the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means that the life experience, values, and opinions common in a majority of the community are to be the benchmark. If the message to be derived from the marketing item can be understood in several ways, then it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.

Responsible and moderate portrayal of Alcohol Beverages

20. The complainant's concerns that the advertisement encourages consumption of a large amount of alcohol and attempts to normalise alcohol abuse brings into play Part 3 (a)(i) of the ABAC which provides that a marketing communication must not encourage excessive consumption or misuse or abuse of alcohol.

21. The complainant is particularly concerned that The Bottle-O employee is depicted standing alongside a large amount of alcohol, offering it in a way that suggests drinking alcohol in large amounts is acceptable.

22. In response to the complaint, the Company explains that:

- the advertisement depicts typical stock levels of a typical store; and

- there is no suggestion that the employee is promoting excessive consumption by the depiction of Johnno, straightening bottles of inventory neatly and saying “How can I help you?”.
23. The Panel believes that the marketing is consistent with the Part 3(a) standard, noting the following:
- the advertisement does not show the consumption of any alcohol, and does not portray anyone who looks or is behaving as though they have consumed an excessive amount of alcohol;
 - the employee is standing alongside a stocked shelf, which looks very much like that found often in alcohol retail outlets. In this setting, a reasonable person would understand that the alcohol present would be purchased and consumed by multiple customers over a period of time, and that excessive consumption by any one individual cannot be inferred; and
 - there is no ABAC standard that prohibits alcohol consumption being portrayed as ‘normal’ if normal equates to a pattern of consumption by adults no greater than that detailed in the Australian Alcohol Guidelines.

Responsible depiction of the effects of alcohol

24. The complainant’s concern that “every person in this ad is singing about what a great guy the Bottle-O employee is because he sells alcohol” raises Part 3(c)(ii) of the Code. This standard does not allow marketing to show the alcohol use as a cause or contributor to the achievement of personal, business, social, sporting, sexual or other success.
25. In response, the Company argues that:
- the intent of the campaign is to show the lead character “Johnno” as part of the local community; and
 - the Bottle-O’s independent retailers are integral parts of communities across Australia, and it is reasonable to expect them to be as friendly and convivial as other members of the community.
26. The Panel believes that the marketing is consistent with the Part 3(c) standard, noting that a reasonable person would understand that:

- bottle-shops are staffed by people who live and may be active within the community;
- like other retailers, bottle-shop employees may be appreciated by their clientele for providing good customer service and stocking a wide range of products;
- the marketing is seeking to differentiate the Bottle-O from its competitors (including online sales channels) by highlighting its local community connections and attentive customer service; and
- the standard goes to the introduction of alcohol causing the achievement of success whereas the ad positions the main character as being popular prior to his role at the Bottle-O is established.

Alcohol and Safety

27. The complainant's concern that a "person in the ad is operating a motorcycle while promoting irresponsible alcohol consumption" raises Part 3(d) of the Code, which does not allow a marketing communication to show 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. This includes being in control of a motor bike.
28. The Panel believes that the marketing is consistent with the Part 3(d) standard, noting that although the person is depicted as being in control of the motor bike, there is no indication that they are or have been drinking alcohol.

Responsibility toward Minors

29. The complainant is concerned that the advertisement is accompanied by a repetitive, catchy jingle that is designed to appeal to younger and underage viewers.
30. This concern brings into play Part 3 (b)(i) of the ABAC which provides that an alcohol marketing communication must not have strong or evident appeal to minors. This standard might be breached if the branding:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and

- uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
31. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - illusion of a smooth transition from non-alcoholic to alcoholic beverages;
 - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
32. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element which shapes how a reasonable person will understand the item.
33. The Company denies that the soundtrack appeals to minors. It is argued that:
- the soundtrack is derived from the famous song “Walking on Sunshine” by Katrina and the Waves first released in 1983; and

- the soundtrack is more likely to induce memories for a Gen Xer than any other generation. (Gen X being defined by those born between 1965 and 1980.)
34. The Panel believes that the marketing is consistent with the Part 3 (b)(i) standard, noting that:
- The soundtrack does not have particular attractiveness for a minor beyond the general attractiveness it has for an adult. It is inspired by the popular and enduring song “Walking on Sunshine”, which has an upbeat and catchy tune, and is likely to be recognised by people of all ages. However, it is not specifically a children’s song and is likely to appeal most to those who remember it from the peak of its popularity in the 1980s. Further, the lyrics have been changed for the advertisement, with the most recognisable line “walking on sunshine” being removed, and it is unlikely that the revised lyrics would appeal to children.
 - Taking into consideration the advertisement as a whole, there is no strong or evident appeal to minors. It does not specifically target minors and does not use imagery designed to appeal to children. The people featured are clearly adults, undertaking typically adult activities that are unlikely to capture the attention of minors.
35. At a higher level, the complaint is raising a general objection about alcohol marketing. This is a valid view, but is beyond the scope of the Panel’s jurisdiction and is essentially a public policy decision for government.
36. The complaint is dismissed.