



ABAC Adjudication Panel Determination No 266/21

Product: Alcohol delivery
Company: BoozeBud
Media: Television
Date of decision: 14 December 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 television advertising for alcohol delivery (“the Product”) by BoozeBud (“the Company”). It arises from a complaint received on 18 November 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 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 18 November 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 television advertisement (Approval Number 20258).

The Marketing

10. The complaint refers to a television advertisement, which can be viewed at the following link:

<https://youtu.be/e7BMyoXCj2o>

The following is a brief description of the advertisement:

Dance music plays throughout the advertisement, which is set in a darkened environment with flashing lights.

The advertisement commences by showing the arms and hands of a person reaching out to pick up a box. There is a BoozeBud delivery docket taped to the box, indicating that it contains two bottles each of Pimm's, Jagermeister and Fireball.

We next see the words "Tennis Clubbing", and a picture of two tennis racquets and a tennis ball superimposed on a darkened scene. A disco ball is hanging from the ceiling and trophies and pennants are displayed in the background.



Various scenes ensue, showing people dancing...



...as well as a person pushing their friend in a shopping trolley past a display of alcoholic drinks...



...and a person sitting on a raised tennis umpire's chair.



The advertisement concludes with a person going to a door to retrieve some bottles from a box. The box has the words "We know you're excited" printed on it. The dance party can be seen in the background through the opening. A voiceover says "Whatever you're excited for. Boozebud."



The Complaint

11. The complainant is concerned about the television advertisement as follows:
 - *Tennis players drinking tequila and having a crazy dance party.*
 - *It appeared the tennis players were dancing crazily after tequila.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
 - (c)(iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement.

The Company's Response

13. The Company responded to the complaint by letter emailed on 25 November 2021. The principal points made by the Company were:

Alcohol advertising pre-vetting service

- Whilst BoozeBud are not signatories to the ABAC Code of Conduct, we ensured that we received ABAC pre-approval (Approval #20258) of our TV Advertisement concepts, storyboards & final assets prior to going live, as BoozeBud is committed to ensuring our communication materials do not promote or encourage any irresponsible consumption of alcohol.

Alcohol is not related to a change in mood or environment

- An alcoholic beverage is present in the marketing however it is featured for less than 2 seconds (6:22 – 7:19, and 13:05 – 13:12) throughout the 15" ad. The alcohol bottles showcased (Jägermeister, Pimm's and Fireball) are closed and full when shown. The alcohol is shown in the context of having been delivered by BoozeBud and is essentially a background element to an existing dance party. The complainant states that the television advertisement showcases "tennis players drinking tequila and having a crazy dance party" and that "it appeared the tennis players were dancing crazily after tequila". However, this is not correct, as the ad does not showcase anyone drinking alcohol, and there is no tequila featured throughout the ad.
- The advertisement does not depict the arrival of a delivery of alcohol to the party and does not suggest the partygoers are acting differently due to the arrival of the delivery. The delivery is already present at the start of the ad, where the party is already ongoing, and the ad simply depicts partygoers picking up the box at the start of the ad, and picking up bottles out of the box at the end. Both times the alcohol is depicted as simply being present at the party (having been delivered previously) but does not suggest a change has

taken place due to its presence. The party in between these bookending scenes is depicted as already being in full swing and there is no suggestion that the alcohol delivery has caused the party or contributed to it in any way.

- The ad ends with the voiceover “Whatever you’re excited for, we’re here for it”. This is a clear indication the alcohol will come after the excitement of the event, not during or part of the excitement, nor the cause of the excitement itself. BoozeBud has one of Australia’s best ranges of alcohol and is the perfect destination if you are planning for an event or occasion that you are excited about. Their role is not to create the excitement for the event, but to sell and deliver the alcohol for events and occasions Australians are already excited about.
- BoozeBud offers same day, next day and 2-4 day delivery options in Sydney, the market where the advertisement has been distributed. We do not offer immediate delivery services e.g. <30 mins or 1 hour, therefore we did not depict the arrival of an alcohol delivery at the Tennis Clubbing event as this would misrepresent our service. The BoozeBud box featured in both the opening & closing frames does not depict an alcohol delivery.
- In summary, as there is no delivery of, nor consumption of alcohol throughout the advertisement, the reasonable person cannot assume that the tennis players are acting differently due to the arrival or consumption of alcohol. The tennis clubbers are merely excited about their dance party.

Alcohol not related to success or achievement

- Alcohol is shown to be present at a celebration, however no drinking of alcohol is depicted. Further, the alcohol is not linked to the cause of the celebration in any way, it is merely depicted as being a small part of the same.
- It should be noted that the tennis clubbers’ behaviour and energy do not change from the beginning to the end of the advertisement - it remains fun, vibrant and energetic throughout, therefore not representing a change in behaviour caused by the delivery of alcohol.
- There is no indication throughout the advertisement that the Tennis Clubbers are celebrating an event, success or achievement. The Tennis Clubbers are simply having a dance party together which they are excited about, and the concept itself is intended as a parody of night clubs, with tennis clubs serving as the comparative subject. It is intended to be a light-hearted and humorous depiction of something that is normally mundane being depicted as highly energetic and fun, and the delivery of the alcohol is simply intended to show that alcohol deliveries are a service that is valuable in the context of holding a celebration, and not the cause of the celebration itself.

- There is no indication throughout the advertisement that alcohol caused or contributed to any success or achievement, as there is no element of success or achievement showcased in the advertisement. Further, there is no suggestion that alcohol is the cause of the success of the party or the general mood present at the party.
- On this basis, we submit that the complaint should be dismissed on the grounds that the ad does not infringe any section of the ABAC.

The Panel's View

14. This determination relates to a television advertisement for BoozeBud's alcohol delivery service. Entitled "Tennis Clubbing", the advertisement is set in a darkened nightclub type environment, with music playing and there being a disco ball and flashing lights. People are shown dressed in tennis attire, dancing and also engaging in other antics, such as being pushed in a shopping trolley. There are other tennis related references, including trophies and pennants, a tennis racquet and balls and a raised umpire's seat.
15. The ad does not show any alcohol consumption as such. Rather alcohol is either referenced or depicted as follows:
 - the opening scene shows a box with a BoozeBud docket which has printed on it three alcohol product brand names;
 - three unopened bottles of different alcohol products sitting on a table are seen in the scene of the man being pushed in a shopping trolley; and
 - the final scene shows bottles (presumably of alcohol) being removed from a box sitting outside the dance venue and taken into the venue.
16. The complaint raises the concern that the advertisement shows tennis players dancing crazily after using alcohol. This concern brings into play Part 3 (c) of the ABAC which provides that the consumption or presence of alcohol:
 - must not suggest that alcohol creates or contributes to a significant change in mood or environment; or
 - if alcohol is shown as part of a celebration, suggest that alcohol is a cause of or contributed to the success or achievement being celebrated.
17. The Company argues that the television advertisement is consistent with the ABAC standards. Its primary contentions are:
 - the alcohol delivery is positioned when the mood and nature of the dance party are already established;

- the consumption of alcohol is not shown;
 - the ad ends with the voiceover “Whatever you’re excited for, we’re here for it”, indicating that the alcohol will come after the excitement of the event, not during or part of the excitement, nor the cause of the excitement itself;
 - there is no indication that alcohol caused or contributed to any success or achievement, as there is no element of success or achievement shown in the advertisement; and
 - alcohol is not shown as the cause of any success or the general mood of the party.
18. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community are to be the benchmark. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their understanding would not be shared by most people.
19. The Panel believes the advertisement does not breach the Part 3 (c) standard. The Panel noted:
- the ad is a parody of a dance club by positioning somewhat nerdy and older tennis players in a high energy scenario of an event more associated with young adults;
 - the mood of the ad’s scenario is set prior to the introduction of alcohol and remains constant;
 - although it could be reasonably expected that alcohol would be consumed at a dance party, no actual alcohol consumption is shown;
 - the premise of the ad, supported by the voiceover “Whatever you’re excited for, we’re here for it” is that the Company will deliver to events that you are excited about, suggesting that the excitement is due to the event itself rather than the alcohol delivery;
 - it is permissible under the Code to show alcohol as part of a celebration provided alcohol is not depicted as a cause of the celebration; and
 - taken as a whole, the ad would be understood as promoting the delivery service of the Company to events of all types rather than alcohol use significantly changing a mood or causing a celebration.
20. The complaint is dismissed.