



ABAC Adjudication Panel Determination No 14/22

Product: Coco-Ho
Company: Mexink Pty Limited
Media: Website
Date of decision: 23 February 2022
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 the website marketing of Coco-Ho (“the Product”) by Mexink Pty Limited (“the Company”). It arises from a complaint received on 2 February 2022.
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

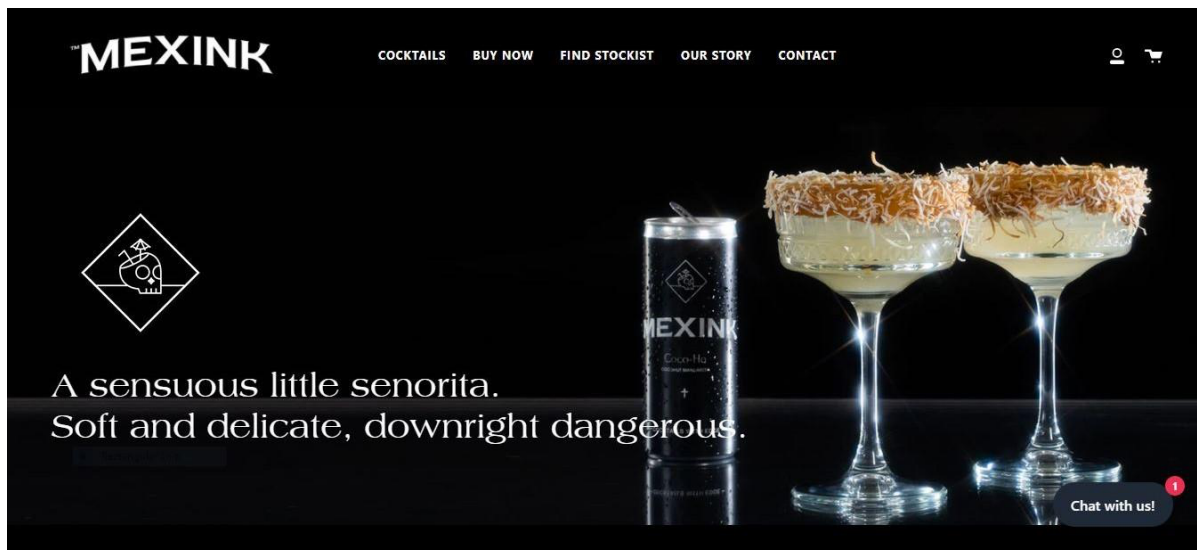
7. The complaint was received on 2 February 2022.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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. While the Company did obtain pre-vetting advice about aspects of its proposed marketing, it has not obtained approval for its product branding or its website entry concerning the product.

The Marketing

10. The complaint concerns marketing on the Company's website:



The Complaint

11. The complainant objects to the marketing as follows:

- *Firstly, it's called Coco-Ho (like a ho as in a woman??) and they've described it as follows:*

"A sensuous little senorita. Soft and delicate, downright dangerous."
- *The drink contains 2.5 standard drinks in 250mls which is downright dangerous!*
- *I feel they are insinuating some kind of sexual appeal from drinking this drink, they're also appealing to people over the fact it's "dangerous" in terms of it being strong.*
- *the label looks like it's missing some legal requirements.*

The ABAC Code

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

- (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.
- (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.

The Company's Response

13. The Company responded to the complaint by letter emailed on 8 February 2022. Its principal comments were:

Alcohol Advertising Pre-Vetting Service Approval

- We can confirm that at the conception of our brand design process, our draft packaging (including the existing Coco-Ho product name and its tagline) were included in pre-vetting application reference number 762/21.
- Whilst several pieces of valuable feedback were received during our consultation with the pre-vetter (which we gratefully took on board, and made significant changes to our packaging and marketing as a result of

the advice), no issues with the Coco-Ho product name nor the tagline now in question were raised.

Product name and website tagline

- The product name Coco-Ho directly means:
 - ‘Coco’ as in coconut, as the primary flavour of the beverage
 - ‘Ho’ is in stop/look.
- Ho is defined as a stop; a halt; a moderation of pace. In nautical terms, ‘ho’ is a common interjection used to attract attention to something sighted, usually by lookouts. For example, “Sail ho!” (another boat is visible), “Land ho!” (land is visible), “Man ho!” (a town is visible).
Reference: <https://www.wordsense.eu/ho/>
- So the Coco-Ho product name literally means “Stop, there’s coconuts!”. This nautical ‘nod’ is in line with our beach/nautical brand heritage & other advertising. Coco-Ho also rhymes with Kokomo, a famous Beach Boys song.
- ‘Coco-Ho’ is not a sexual term, but rhyming alliteration used to give the reader an understanding of the character of the product in light of its exotic taste. Further, if any sexual meaning is derived by a consumer, there is nothing in the advertisement that connects the consumption of the product to sexual success.
- We can also confirm that to date, MEXINK has not received any feedback regarding the interpretation of ‘Ho’ in Coco-Ho being in reference to the slang term.
- The tagline “sensuous seniorita” is regarding the taste profile of the drink which is appealing to the senses.
- We cite the advice provided during the pre-vetting consultation where some of our other marketing mentioned the terms “playful, passionate, powerful”. We were advised this is acceptable if it is referring to the taste, not alcohol content.
- In line with that, in this case, both the use of “sensuous” and “dangerous” simply refers to how good the taste/flavour is and its appeal to the senses (in particular, taste, smell and touch as it rolls over your tongue). This is particularly clear when you consider it in the context of the full sentence, which includes “soft and delicate” – which are very commonly

used flavour/taste profile descriptors across the alcoholic beverage industry, and not related to alcoholic content.

- In summary, we note:
 - ‘Downright dangerous’ is simply alliteration used to give the reader an understanding of the character of the product in light of its exotic taste. In that regard, ‘dangerous’ is not a literal representation that qualifies the content or strength of the alcoholic beverage or the intoxicating effect of that beverage.

Further, it cannot be seen as ‘encouraging the choice’ of a consumer on that basis.

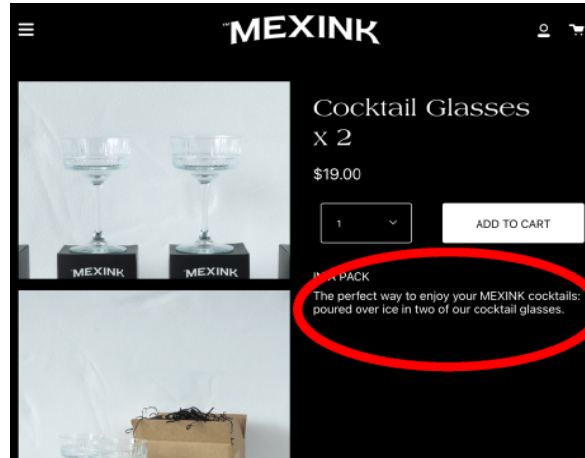
- ‘Sensuous little senorita’ is simply alliteration used to give the reader an understanding of the character of the product in light of its exotic taste. While ‘sensuous’ may refer to a person’s sexual attraction, the term is sufficiently broad enough in this context not to have a sexual import as there are no accompanying images to give this impression nor is it intended as a literal representation in that regard.

Further, if any sexual meaning is derived by a consumer, there is nothing in the advertisement that connects the consumption of the product to sexual success.

- A Further General Note Regarding MEXINK’s Commitment to Responsible Advertising:
 - Regarding the complainant’s concerns about the strength of MEXINK cocktails, we would like to note that MEXINK has taken extra steps to support responsible consumption.
 - All of our packaging (both cans and boxes), as well as webstore content, promote that each 250ml can is actually designed to be shared across two serves (two cocktail pours):



- As such, we sell accompanying cocktail glasses for this purpose:



- All other alcoholic information including ABV % and 2.56 standard drinks are also clearly displayed on the label as per industry requirements.

The Panel's View

14. The Company's range of ready to drink (RTD) pre-mixed cocktails came onto the Australian market in 2021. The range consists of four different margarita style cocktails, with one of the range branded as 'Coco-Ho'. The Coco-Ho is made from tequila, lime juice, triple sec and coconut. It is the description of the Coco-Ho on the Company's website that has drawn the complaint.
15. The Company's website describes the Coco-Ho as 'A sensuous little senorita. Soft and delicate, downright dangerous.' The description is combined with photographs of a can of the product and two cocktails. The complainant believes the website marketing to be insinuating sexual appeal from consuming the product and that there is an implication that the product is 'dangerous' because it is strong.
16. The nature of the complaint potentially enlivens two ABAC standards. These standards provide that an alcohol marketing communication:
 - must not encourage the choice of an alcohol beverage by emphasising its alcohol strength or intoxicating effect - Part 3 (a)(iv);
 - must not show the consumption or presence of alcohol as a cause of or contributor to the achievement of sexual or other success - Part (c)(ii).
17. On the Part 3 (a)(iv) standard, the complainant points to the fact that the product contains 2.5 standard drinks in a 250ml can, which is contended to be 'dangerous'. The Company responds by arguing that:

- the product's packaging and marketing reference the product being designed to make two cocktails;
 - the reference to 'dangerous' on the website description relates to the exotic taste of the product and not the alcoholic strength of the product.
18. The ABAC has no role in regulating the physical characteristics of an alcohol beverage e.g. its alcohol strength, taste or colour. Responsibility for these matters and the general approval for a beverage to be on the market rest directly with Australian governments and regulations such as the Australia New Zealand Food Standards Code. It is the Food Standards Code for instance, that provides the detail of what information must be contained on the labelling of an alcohol beverage regarding the alc/vol content.
19. The ABAC is confined to how an alcohol product is marketed. It is not permitted to emphasise the alcohol strength of a product in a way that encourages a consumer to choose the product because of its strength. This might be done by giving more than factual information about the alcohol strength or using emotive language in describing the strength of a product.
20. In assessing if a marketing communication is compliant with an ABAC standard, the Panel is to adopt the viewpoint of how a reasonable person would probably understand the marketing material. This means the benchmark is the values, life experiences and opinions found in most members of the Australian community.
21. The Panel does not believe the website entry on the product breaches the Part 3 (a)(iv) standard. It is noted:
- neither the text description nor the images make a reference to the alcohol strength of the product;
 - the information about the alc/vol content of the product is not prominently displayed on the can label and in any event, the image of the can on the website is not of a size that makes finding the strength of the product easy;
 - given this, there is no context to interpret the word 'dangerous' as referring to the alcoholic strength of the product; and
 - rather the text would likely be regarded as puffery often used in marketing and would be understood by a reasonable person in this light.
22. The complainant contended that the brand name including 'Ho' alludes to a woman and this with the description of - 'A sensuous little senorita. Soft and delicate, downright dangerous' implies the use of the product leads to sexual appeal. If this is a fair interpretation of the website marketing, then the website entry may well be inconsistent with the ABAC standard in Part 3 (c)(ii).

23. The Company provided background about the name of the product in which the name 'Coco-Ho' was argued to have several geneses from nautical themes to a Beach Boy song, with none of the inspiration related to comparing the product with a woman. While this background is of interest, the test is not what the Company had in mind when coming up with its marketing messaging, but how a reasonable person would most likely understand the marketing.
24. In popular culture, the term 'Ho' is associated with a description of a promiscuous woman, although the context of the use of the term could extend from a cheeky term of endearment between friends to a pointed insult. The website description of the product clearly gives the drink a feminine persona - 'A sensuous little senorita'. The issue is whether a reasonable person would interpret the website entry as suggesting the use of the product will cause or contribute to the achievement of sexual success.
25. On balance, the Panel does not believe the website entry breaches the Part 3 (c)(ii) standard. The Panel noted:
- the product name itself is not likely to be taken as suggesting sexual success, with the 'Coco' term referencing the coconut flavour and 'Ho' most likely taken as being used for the rhyme than seriously suggesting a sexual meaning;
 - that said, the 'Ho' term could in particular contexts give rise to an implication of sexual activity;
 - for instance, if the product was placed with say a couple interacting in a romantic setting or placed with sexually suggestive imagery, then the product name could contribute to an understanding about the product leading to sexual success; and
 - in the current context, the website entry would most probably be understood as marketing puffery rather than a suggestion that the use of the product will lead to a sexual outcome.
26. The complaint is dismissed.