



ABAC Adjudication Panel Determination No 7/22

Product: Basic Babe Alcoholic Sparkling Water
Company: Basic Babe
Media: Instagram
Date of decision: 14 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 Instagram marketing of Basic Babe Alcoholic Sparkling Water (“the Product”) by Basic Babe (“the Company”). It arises from a complaint received on 24 January 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 24 January 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. Pre-vetting approval was not obtained for the marketing communication.

The Marketing

10. The complaint concerns Instagram marketing of the Product by the Company:



The Complaint

11. The complainant objects to the marketing as follows:
- *The advertisement looks as if it is marketing alcohol to minors. The girls pictured in the advertisement barely look 18.*
 - *I thought it was a rule that alcohol companies had to use models who were over the age of 23 or something close. These girls do not look like this at all. It is careless of the brand and they should be more careful.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol.
 - (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.

The Company's Response

13. The Company responded to the complaint by letter emailed on 9 February 2022. Its principal comments were:
- At Basic Babe, we take our responsibility to our community very seriously and are always conscious to ensure we promote safe and responsible consumption of alcohol.
 - Basic Babe is a lifestyle brand and regularly combines product images and shots, with lifestyle shots which are not advertising the product. The Instagram post referred to in the complaint below is an example of a lifestyle shot, whose only purpose is to promote friendship, strong women and female bonds. It is beyond disappointing that someone has felt the need to report this post to ABAC for breaching guidelines when it was designed to inspire and empower women.

- We have subsequently removed the post and would like to thank you for your feedback.

The Panel's View

14. This determination concerns an Instagram post for the alcoholic seltzer Basic Babe. The post features a photograph of three young women with accompanying text -That weekend feeling #drinkbasicbabe. The complainant believes the post is marketing alcohol to minors and 'the girls pictured in the advertisement barely look 18'.
15. Part 3 (b) of the ABAC establishes standards for alcohol marketing showing responsibility towards minors. In part the standard requires that images of minors not be used in alcohol marketing unless the minor is shown in an incidental role in a natural setting (like a family BBQ) and where there is no implication that the minor will consume or serve alcohol. Further, adults appearing in alcohol marketing must be aged at least 25.
16. The question of the age of a person shown in alcohol marketing is simply one of fact. The Company was asked to advise the age of the three women in the Instagram post. The Company did not answer the question, but submitted that the post was a 'lifestyle shot' which did not advertise their alcoholic seltzer. Rather the post had the purpose to 'promote friendship, strong women and female bonds'.
17. The implication from the Company's response is that they do not believe the post was an alcohol beverage marketing communication and hence the age of the women was not relevant. If this is the Company's belief, then it is mistaken. The post displays the Company's name, its logo and branding and hashtags which reference the link to the Company's product such as #soda, #sparkling, #carbonatedwater. It is not required for a post (or other marketing material) to actually show a picture of the product or the product being consumed for the post to be an alcohol marketing communication. Inclusion of the alcohol product's name and branding will generally be sufficient to establish the marketing item as alcohol marketing.
18. In the absence of any information about the actual age of the women featured in the post, the Panel is obliged to make an assessment of the apparent age of the women. While assessing age is no easy task, the Panel believes the women are almost certainly under the age of 25 and quite possibly may not be 18. Accordingly, the post is in breach of the Part 3 (b) standard.
19. The complaint is upheld.