



ABAC Adjudication Panel Determination No 62/22

Product: Baxter Vodka
Company: Thirsty Group
Media: Instagram
Date of decision: 23 August 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Instagram marketing for Baxter Vodka (“the Product”) by Thirsty Group (“the Company”). It arises from a complaint received on 16 August 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:
 - (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 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 16 August 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 communications

The Marketing Communication

10. The complaint relates to an Instagram post by the Company, showing a photoshopped billboard:



The Complaint

11. The complainant objects to the marketing as follows:
- *Implications of needing to be drunk to associate with others, using alcohol to excess to enable "lowering of standards".*
 - *Misogynist tones due to male hand feeding alcohol to facilitate the lowering of standards in a young woman.*

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.
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.
 - (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 Response

13. The Company responded to the complaint by email on 17 August 2022. The principal points made by the Company were:
- Thanks for forwarding through the complaint, I passed it onto the agency that handles our social media and they said they see nothing wrong with the post and were actually quite shocked and not impressed at how the complaint wrongfully 'gendered' the post as the image is of a female hand and it was created by a female designer. The original image is below and as you can see, the model definitely wouldn't be happy to hear she got wrongfully gendered.
 - They also defended the post's premise by saying as there isn't any reference to drinking, all standards listed by the ABAC are met.



The Panel's View

14. According to the Company website, Baxter Vodka was created in 2017 by two friends, and is based in Melbourne. Their product is marketed as being 'friendly to the environment, free from artificial additives and, most importantly, 100% Australian'. One avenue of marketing for the Company is its Instagram account, and it is a post to this account which has drawn the complaint.
15. The post is an image of a photoshopped billboard atop a building. The billboard depicts a hand holding a bottle of Baxter Vodka, with the accompanying message - 'Because standards aren't going to lower themselves'. The post is accompanied by text reading 'Australia's #1 matchmaker since 2017 😊', along with the hashtags #BanterWithBaxter, #BaxterVodka, #Vodka, #Party, #Australian Vodka, #NightOut, #Bars, #Clubs and #DateNight.
16. The complainant contends that the post is highly irresponsible. It is argued the import of the message is that alcohol consumption is necessary to socialise successfully and that alcohol will lower the standards of a young woman. Further, it is argued the post is misogynist particularly by showing the vodka in the hands of a man who is seeking to lower the standards of a woman.
17. The nature of the complainant's concern potentially raises the consistency of the marketing with several ABAC standards, namely the prohibition on alcohol marketing communications:
 - showing or encouraging misuse or abuse of an alcohol beverage - Part 3 (a)(i)

- showing or encouraging irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage - Part 3 (a)(ii)
 - showing the consumption or presence of alcohol as a cause or contributor to the achievement of social or sexual success - Part 3 (c)(i).
18. The assessment of whether a marketing communication is inconsistent with an ABAC standard is from the standpoint of the probable understanding of the marketing communication by a reasonable person. This means that the benchmark is the values, opinions and life experience shared by most members in the community.
 19. The Company submits the post does not breach the ABAC standards. Firstly, it states that a woman is holding the product and not a man as interpreted by the complainant. Secondly, it is argued that as the post does not reference drinking, then all ABAC standards are met.
 20. With respect, the Company's contentions are misconceived. Firstly, it is by no means clear from the image of the hands in the post that the person holding the product is a woman. In any event, the gender of the person holding the bottle is not decisive in understanding the message in the post.
 21. The post is quite clearly associating the presence of the product (and by direct implication the consumption of the product) with the 'lowering' of standards. A reasonable person is sufficiently worldly to understand that the post is in effect suggesting that a reason to use the product is to lower inhibitions and as a result enhance social interactions and likely achieve social/sexual success. This message is directly reinforced by the accompanying text- 'Australia's #1 matchmaker since 2017 😊'
 22. There may be a further dimension to this message if it is assumed to be coming from a man using alcohol to lower standards as opposed to a woman, but in either case the message is inconsistent with the responsible portrayal of alcohol use.
 23. The ABAC standards regarding responsible alcohol marketing are widely drawn. It is not required to show physical consumption of a product for the relevant standards to be breached. The juxtaposition between the presence of the product (including its branding and not simply an image of a bottle or glass of the product) and messaging suggesting or encouraging irresponsible alcohol use is sufficient to contravene the Part 3 (a) and (c) standards.
 24. The complainant has raised concerns about the post having misogynist undertones. While understanding the point being made, the Panel does not believe the post would be most likely understood as suggesting men use the

product to get women intoxicated. The prevailing pink colour of the billboard image and the notion of 'lowering standards' are more suggestive that the messaging is directed to women. Rather the message seems to be that a woman might use the product to adjust her own standards.

25. It is noted the Company took advice about the marketing from an advertising agency. It is strongly recommended that the Company and its agency seek advice from the ABAC pre-vetting service in devising marketing messaging and/or utilise the education and training materials on the ABAC website to improve their understanding of good practice in alcohol marketing.

Conclusion

26. The complaint is upheld in respect to Parts 3 (a)(i) and (c)(ii).