



ABAC Adjudication Panel Determination No 65/22

Product: Venue
Company: Manly Club on Gilbert Park
Media: Signage, Clothing & Instagram
Date of decision: 7 September 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 18 August 2022 and concerns marketing for The Manly Club on Gilbert Park (“the Club”) on clothing (rashies), signage at the Surftag Series and in posts made to the Surftag Instagram page.
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 potentially under the ABAC Code and accordingly requires a Panel determination.

The Complaint Timeline

7. The complaint was received on 22 August 2022.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

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 sought for the marketing.

The Marketing Communication

10. The complaint relates to the name of the Manly Club on Gilbert Park appearing on clothing (rashies) worn by underage participants in the Surftag Series, who are shown on the Surftag Instagram page standing in front of signage also showing the name and logo of the Club.

The Complaint

11. The complainant objects to the marketing as follows, and also submitted screenshots of the marketing:
 - *The Manly Club on Gilbert is a licensed venue No. LIQC300228363.*
 - *It appears they are sponsoring surf carnivals for underage participants.*
 - *This has a strong appeal to minors.*
 - *They are doing this through a variety of company insignia appearing on signage, surf shirts, and websites for these under 18 events. This insignia is also appearing at underage events such as the JUNIOR SURFTAG (Under 18's) event <https://surftag.au/schedule/>.*

5:35 @surftag.au

Event Schedule

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|---|---|-----------------|-------------------|
| 1 | JUNIOR SURFTAG (Under 18's) Presented by Guzman Y Gomez | 13/14 August | Dee Why Beach |
| 2 | GROMMET'S SURFTAG (Under 14's) Presented by Surf Culture Bondi | 27/28 August | Queenscliff Beach |
| 3 | WOMEN'S SURFTAG Presented by BEACHFOX | 10/11 September | Dee Why Beach |
| 4 | MASTER'S SURFTAG (Over 40's) Presented by THE MANLY CLUB | 24/25 September | Curl Curl Beach |
| 5 | MEN'S SURFTAG Presented by @surftagseries | 1/2 October | Queenscliff Beach |



The ABAC Code

12. Part 2(a) of the Code provides that the Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
- brand advertising (including trade advertising)
 - competitions
 - digital communications (including in mobile and social media and user generated content)
 - Alcohol Beverage product names and packaging
 - advertorials
 - alcohol brand extensions to non-alcohol beverage products
 - point of sale materials
 - retailer advertising
 - Marketing Collateral
13. Part 2(b) of the ABAC Code provides that the Code does NOT apply to:
- (iv) Sponsorship
14. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors;
- (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.

(b)(iv) be directed at Minors through a breach of any Placement Rules.

15. Part 6 of the ABAC Code provides that:

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property or event or activity, in return for which the sponsored party agrees to be associated with or promote the Sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

Strong or Evident Appeal to Minors means:

- (i) likely to appeal 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 Club's Response

16. The Club responded to the complaint by letter emailed on 29 August 2022. The principal comments made by the Club were:

- The Manly Civic Club (ABN 23 000 108 743) trading as The Manly Club on Gilbert Park is a Registered Club in NSW, with the registration number LICQ300228363.
- Beyond the sale of alcoholic beverages, The Manly Club on Gilbert Park offers food through its restaurant and café, as well as provides entertainment.
- There are a series of contests in the Global Surftag Series. We will be the principal sponsors of the Masters (over 40's) Surftag Contest. I

assume the fact that we are sponsors of that event has resulted in our name being displayed on clothing worn by all participants.

- The Manly Club on Gilbert Park had control over the design of banners. It did not have control over clothing or other marketing associated with the series. Upon receiving this letter, the organiser of this series was immediately contacted, made aware of this letter of complaint, and a request to take down banners, etc from future junior events, as well as our name appearing on clothing be covered if at all possible was made.
- The Manly Club on Gilbert Park had no control over the design of clothing, nor does it have any control over what appears on the Surftag Instagram page.
- The Company's logo does not appear on clothing (ie rashies). Nothing appears on clothing (ie rashies) other than the company name.
- The marketing is not likely to appeal strongly to minors and is not specifically targeted at minors.
- The marketing does not have a particular attractiveness for a minor beyond the general attractiveness it has for an adult.
- A reasonable person would realise that we are participating in the promotion of a community surfing competition, not trying to sell alcohol! It has no appeal to minors.

The Panel's View

17. The Manly Club on Gilbert Park is named for its location in the beach-side suburb of northern Sydney, and the park that it overlooks. Its facilities include a bar, lounges and an all-day dining restaurant, with areas being available for private functions. Club events are also held at the venue, including live music, trivia nights and footy finals viewing. As would be expected of a registered club of this nature, it has a liquor licence and sells alcohol for on premise consumption.
18. Surftag is a surfing competition that has been run in Australia since 2001. The competition is akin to a relay race where a team of five surfers from a surf club compete against another club. Each surfer in a team is to ride two waves before 'tagging' the next surfer. Time limits apply. Originally a male competition, Surftag now includes women, 'grommets' (surfers under 14), juniors (under 18-year-olds) and masters (over 40-year-olds).
19. The website for Surftag contains a page which lists the competition's sponsors. The sponsors are entities centred mostly on Sydney's northern beaches and

include a food retailer, a brand of sunscreen and real estate agent. The Club is included in the list. In addition to its website, Surftag has social media accounts including on the platform Instagram. Its posts on the Surftag Instagram account that are the basis of the complaint.

20. The complainant objects to the Club as a licenced venue sponsoring surf carnivals for underage participants. The complaint identified several Instagram posts that showed minors wearing clothing including the name of The Manly Club on Gilbert Park and other of the Surftag sponsors. The posts also showed junior participants standing in front of signage also featuring the name of the Club.
21. On its face, the complaint raises a concern that potentially triggers the ABAC standard regarding alcohol marketing not having strong or evident appeal to minors. There are however two threshold issues, namely
 - is the Club an entity whose activities fall within the scope of the ABAC Scheme and if so;
 - are the particular examples of marketing identified in the complaint - Club branding on clothing, Club branding on signage and the posts on the Surftag Instagram account - subject to the ABAC standards.
22. As noted in paragraph 2, the ABAC Scheme sits within a shared regime that regulates the marketing of alcohol beverages. The jurisdiction of the Scheme does not extend to every reference to alcohol made over broadcast or social media but is confined to 'marketing communications in Australia generated by or within the reasonable control of a marketer'. The Code then defines a 'marketer' to mean a producer, distributor or retailer of alcohol beverages. The term 'retailer' is not further defined by the Code.
23. If an alcohol retailer is any person or entity that sells alcohol beverages to another person, then it encompasses a potentially huge number of entities and businesses. At one end (and the entities generally involved in the ABAC Scheme) are retailers such as BWS or Liquorland which are clearly in the business of marketing and selling alcohol beverages to the public. At the other end are businesses that do sell alcohol beverages, but very much a minor and subsidiary component of their operations.
24. For example, Virgin airlines sells alcohol to customers on its domestic flights in Australia and hence is an 'alcohol retailer'. If a person was however asked to name an alcohol retailer, it is unlikely many people would have Virgin airlines at the front of their minds.

25. Within this continuum of entities involved with alcohol sales, the Club would be recognised as an entity that sells and serves alcohol as part of its operations, but not as its sole activity. That said, it is a licensed venue and accordingly it can be regarded as an alcohol retailer for the purposes of the ABAC Scheme.
26. When alcohol sales are part but not the primary component of a business operation, it follows that not every item of marketing produced by the entity falls within the intended ambit of a 'marketing communication' for ABAC purposes. To use the Virgin airlines example again, a television ad for Virgin that promoted the airline as the best choice for holiday travel would not intersect with ABAC obligations. This ad has no reference to alcohol beverages and common-sense dictates that it is not an alcohol beverage marketing communication even though Virgin sells alcohol and hence is an alcohol retailer.
27. On the other hand, if in a fanciful scenario Virgin ran an ad promoting unlimited alcohol drinks for customers flying Sydney to Perth, then this ad would fall within the ABAC Scheme's remit. This is because the alcohol sales part of the Virgin business is referenced in the ad.
28. Applying this to the Club, for a marketing communication to fall within the scope of the ABAC Scheme, the actual item of marketing must reference alcohol in some discernible way. So, if the Club ran a newspaper ad promoting 'two for one cocktails' at its bar, then this ad would fall within the reach of the ABAC Scheme. But an ad that promotes 'value meals' at its restaurant and makes no mention of alcohol, would not be within the scope of the ABAC Scheme.
29. The complaint goes to the Club's sponsorship of the Surftag competition. The terms of the sponsorship are not known, but evidently Surftag is acknowledging the Club's support via its website and by including the Club's name on signage and on clothing (rashies) worn by surfers in the competition. Images of both the signage and participants wearing the clothing have been posted on the Surftag Instagram account.
30. Part 2 of the ABAC provides that the Code provisions do not apply to sponsorships. This limited exception means that the name of an alcohol product or company can be placed on signage and the outfits of a sporting team e.g. a football jumper. The ABAC standards do however apply to marketing referencing or flowing from a sponsorship arrangement.
31. Finally, it should be noted the Instagram posts were made by Surftag on its account and not made by the Club. The ABAC Scheme does not purport to regulate surfing competitions or the social media of Surftag. The ABAC

standards however will capture the posts if the Club can be regarded as having 'reasonable control' over the posts. This might occur if the Club has a relationship with Surftag that gives the Club an entitlement to approve the posts in advance, or the ability to demand that Surftag remove the posts.

32. Drawing all this together, the Panel concludes that the marketing identified by the complainant does not fall within the scope of the ABAC Scheme so as to enable a Panel decision on the concerns raised as:
- the Club is a 'mixed business' which includes the service of alcohol as part of its wider operations;
 - marketing communications from the Club that reference branded alcohol beverages or the availability of alcohol from Club venues do fall within the ABAC obligations but marketing not referencing alcohol is not within the scope of the ABAC Scheme;
 - the marketing items in question mention the Club name alone and make no reference to alcohol beverages or the availability of alcohol at the Club;
 - further, the placement of the Club name on signage at a Surftag event and on competition gear worn by Surftag surfers is a direct manifestation of the Club sponsorship of Surftag and falls within the exception to the Code in Part 2;
 - the Part 2 exception does not cover the Instagram posts, which is a marketing communication that flows from the sponsorship but is not within the sponsorship directly;
 - the posts however only show the Club's name and make no reference to alcohol beverages or the availability of alcohol at the Club.
33. It is acknowledged that the complainant is raising a legitimate point about the sponsorship of sporting activities of under 18 year olds by a licensed venue. The Club itself stated its intended support was for the masters competition (over 40-year-olds) and not the events for minors. It has asked Surftag to remove references to the Club from the activities involving minors. This is an appropriate and responsible step for the Club to take.
34. Given the examples identified in the complaint do not fall within the scope of the ABAC Scheme and/or are covered by the remit of a 'sponsorship', the complaint is dismissed.