



ABAC Adjudication Panel Determination No 120/22

Product: Thirsty Camel Bottleshops (Victoria)
Company: United Inn-Keeper Association Ltd
Media: Radio
Date of decision: 19 December 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”) arises from a complaint received on 12 December 2022 and concerns a radio advertisement for Thirsty Camel Bottleshops (“the Product”) by United Inn-Keeper Association Ltd (“the Company”).
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 12 December 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 sought for the marketing.

The Marketing Communication

10. The complaint relates to the words “hydrate responsibly” spoken at the conclusion of a number of radio advertisements for Thirsty Camel Bottleshops.

The Complaint

11. The complainant objects to the marketing as follows:
 - *In an attempt at a warning at the conclusion of many radio advertisements, the Thirsty Camel branded ads say “hydrate responsibly”. Presumably as a way to differentiate themselves from many other advertisers who use the warning “drink responsibly”, where in the context of the advertising “drink responsibly” is known to mean drink ‘alcohol responsibly’.*
 - *I object to the use of the phrase “hydrate responsibly” as it is factually inaccurate, misleading, and grossly irresponsible. Medical science has proven the consumption of alcohol dehydrates the body. Therefore, to suggest, or imply, that by responsibly drinking alcohol you are hydrating yourself is straight out lying and unethical. The advertiser should in fact state that alcohol should be consumed responsibly.*

The ABAC Code

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

- (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company's Response

13. The Company responded to the complaint by letter emailed on 13 December 2022. The principal comments made by the Company were:

- Thank you for giving us the opportunity to articulate a response to the ABAC complaint case 120/22 relating to our radio advertising of Thirsty Camel, specifically the statement “hydrate responsibly”.

Alcohol Advertising Pre-vetting Service Approval

- This radio ad followed a script and used language we have used for many years. Whilst this specific ad did not receive Alcohol Advertising Pre-vetting Service Approval, the language and specifically the statement, “hydrate responsibly”, have been approved by ABAC many times in the past. With this in mind, we were working under the belief that our “hydrate responsibly” statement met ABAC guidelines. Some recent examples of ABAC submissions where marketing content containing our Hydrate Responsibly logo have been approved are listed below:
 - Approval 20559
 - Approval 20823
 - Approval 20868
 - Pre-approval 933-2022 (catalogue / in store poster)
 - Approval 4551

Responsible depiction of the effects of alcohol

- We do not believe the statement in question contravenes any element of the code and in no way offers a therapeutic benefit. The complaint states that Hydrate Responsibly is factually incorrect, which we strongly dispute. The word hydrate is a noun (not a verb) and used instead of the word, drink. The fact the complainant correctly understood our statement to mean drink

responsibly, illustrates that it's fair to assume the vast majority of people interpret the statement as it is intended – to drink alcohol responsibly.

- The radio script has been included below. You can see from this there are no statements or implications made around therapeutic benefits, specifically to alcohol being hydrating. The “hydrate responsibly” statement is positioned at the end of the ad and sped up. This is standard treatment/positioning of the well-known “drink responsibly statement” in radio ads promoting alcohol, supporting the fact that majority of listeners would interpret this as Thirsty Camel’s version of the “drink responsibly statement”.

Radio Script:

BBQs and bevvy's.
Catch ups and celebrations.

Summer is calling. And so is Thirsty Camel bottleshops
<Thirsty Camel SFX 1 Sec>

With specials on all your favourites including

Great Northern Super Crisp 3.5% 30 Can Block – 51.99, Jack Daniel's Double Jack & Cola 6.9% 10 Pack – 56.99, Roku Gin 700ml – 58.99.

Catalogue out now at thirstycamel.com.au. The Camel is Calling this summer
<Camel Sfx 3 sec>

Ends 11 Dec. Prices may vary in country areas. Hydrate responsibly. <faster>

- Thirsty Camel Bottleshops takes the responsible promotion and consumption of alcohol very seriously and this is clearly detailed on our marketing communications and website. Whilst we feel that we are currently working within ABAC guidelines we will adhere to the findings of this case when producing radio ads in the future.

The Panel’s View

14. This determination arises from a complaint about Thirsty Camel radio ads that include the phrase “hydrate responsibly” in the ‘terms and conditions’ addendum at the ad’s conclusion. The complainant is concerned that:
 - the advertiser has used “hydrate responsibly” in lieu of the words “drink responsibly”, often spoken or shown in alcohol advertisements;
 - the listener knows that the words “drink responsibly” in the context of an alcohol advertisement means to “drink alcohol responsibly”; and

- By substituting the word “drink” with “hydrate” the listener is led to believe that the responsible consumption of alcohol will result in hydration benefits, which is erroneous.
15. In response to the complaint, the advertiser has advised that:
- there are no statements or implications made around therapeutic benefits, specifically to alcohol being hydrating;
 - the fact that the complainant correctly understood our statement to mean drink responsibly, illustrates that it’s fair to assume the vast majority of people interpret the statement as it is intended – to drink alcohol responsibly.
 - while the particular script was not given ABAC pre-vetting approval, the phrase has been included in a number of other radio scripts that have been approved with no issue taken with the expression.
16. The Part 3 (c)(iv) standard has the policy intent that alcohol marketing must not suggest that alcohol use offers any positive health benefit. The substance of the radio ad is unexceptional in that it provides pricing information on several alcohol products and directs listeners to a catalogue. At the conclusion of the ad, terms and conditions regarding the price offer are read out very quickly with the last phrase being “hydrate responsibly”.
17. Responsibility messages in alcohol ads are not required by the ABAC or any other regulatory regime applying to alcohol marketing. In recent years the messages have become commonplace (but by no means universal) with “drink responsibly” most used, although other variations are also employed. Given there is no mandated requirement for the messages, there is no accepted protocol about the language to be used.
18. In physiological terms it is simply a fact that one of alcohol’s impacts on the human body is dehydration. The extent of this impact depends on what type of alcohol is consumed, how much is consumed and whether a person also drinks water at the same time. Accordingly, an alcohol marketing communication that makes a positive claim that alcohol is hydrating is in breach of the ABAC standard and a number of Panel determinations have found ads as inconsistent with the Code for this reason - for instance see Determination 44/18.
19. This however does not automatically mean the Company’s use of ‘hydrate responsibly’ is in breach of the ABAC standard. This is because the test is how a reasonable person would understand the reference within the context of the ad as a whole. If it is not uncommon that the words “hydrate” and “drink” are used

somewhat interchangeably and the average listener would not take the ad as making a claim that alcohol offers the health benefit of hydration, then the ad would not breach the Code.

20. On balance, the Panel does not believe that the advertising breaches Part 3 (c)(iv) standard. It was noted:
 - the words “hydrate responsibly” are included with terms, conditions and disclaimers at the conclusion of the advertisement. While still a part of the marketing, the phrase is separate and distinct from the substance of the advertisement that clearly and actively promotes the products and calls the consumer to action.
 - there are no references to hydration or other health benefits in the substance of the ad. The marketing does not explicitly connect the alcohol products mentioned with any particular attributes such as health benefits; and
 - it was common ground between the complainant and Company that “hydrate responsibly” would be understood as meaning drink responsibly. It is unlikely that the majority of the community would then go on to draw the further inferences taken by the complainant. More probably a listener will take “hydrate” and “drink” as interchangeable terms in the context of the ad.
21. While not finding a breach of the standard, the Panel strongly recommends that the Company cease using the phrase “hydrate responsibly” and simply use “drink responsibly”. It is intended to provide a responsibility message, and it would be best to just use direct language rather than rely on terms which may raise concerns as evidenced by the complaint.
22. The complaint is dismissed.