



ABAC Adjudication Panel Determination No 122/22

Product: Wrest Point Hotel Casino
Company: Federal Group
Media: TV – Free to Air
Date of decision: 11 January 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 16 December 2022 and concerns a television commercial for Wrest Point Hotel Casino (“Wrest Point”) by Federal Group (“the Company”). The marketing was seen on free-to-air television.
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 under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 16 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 obtained for marketing (Approval Number 4231).

The Marketing Communication

10. The complaint relates to a television commercial for Wrest Point, a brief description of which is provided below:

<p>The advertisement commences with a long-distance shot zooming in on Wrest Point, and then swaps to footage of people dining and playing Keno.</p> <p>Voice Over (VO): <i>Wrest Point is the place to play.</i></p>		
<p>VO: <i>Play with friends and family.</i></p>		
<p>People are then shown watching live entertainment.</p> <p>VO: <i>Play the night away.</i></p>		
<p>The scene then changes to people at various casino tables.</p> <p>VO: <i>Play that hunch.</i></p>		
<p>We then see some people drinking beer while eating.</p> <p>VO: <i>Play with mind blowing flavours.</i></p>		
<p>A bar scene follows, where a bartender is seen sliding a drink towards a patron, who picks up the drink.</p> <p>VO: <i>Or just play up a little.</i></p>		

We next see three people holding drinks and dancing.

The advertisement concludes with a blue screen showing an illustration of the Wrest Point building, beneath which are the words “West Point. Come Play”.

VO: *So, what are you waiting for? Come on – come play.*



The Complaint

11. The complainant objects to the marketing as follows:

- *This ad is showing girls on a dance floor with drinks in their hands. This is a health and safety issue.*

The ABAC Code

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

- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company’s Response

13. The Company responded to the complaint by letter emailed on 6 January 2023. The principal comments made by the Company were:

- Wrest Point submits that Section 3(d) of the Code is not breached by its television advertisement for the following reasons:
 - This provision of the Code clearly contemplates activities that an ordinary person would understand requires “a high degree of alertness” for safety reasons. The provision expressly references higher risk activities such as driving a motor vehicle or a boat, or operating machinery. Wrest Point submits that dancing does not require the high level of alertness that is necessary to drive a motor vehicle or a boat or operate machinery. Nor does dancing carry the kinds of safety risks posed by driving a motor vehicle or a boat, or operating machinery. Dancing is an activity that commonly occurs within licensed premises and the type of dancing that is shown in Wrest Point’s television advertisement can be safely undertaken without a high degree of alertness.

- Dancing is not an activity that, for safety reasons, requires “a high degree of physical co-ordination”. The definition of dancing in the Cambridge Dictionary is “to move the body and feet to music”. The type of dancing that is shown in Wrest Point’s television advertisement can be safely undertaken with a low level of physical co-ordination.
- Accordingly, Wrest Point’s marketing communication did not show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination.
- Wrest Point’s marketing agency obtained ABAC pre-vetting approval for this television advertisement on 11 November 2022. A copy of the pre-vetting approval notice is attached for your reference.
- Wrest Point thanks ABAC for the opportunity to respond to this complaint and advises it will continue to utilise the ABAC pre-vetting service for alcohol marketing communications in the future.

The Panel’s View

14. The Wrest Point Hotel Casino (‘Wrest Point’) is located in Sandy Bay, a suburb of Hobart, Tasmania. It opened in early 1973 and was Australia’s first legal casino. In addition to gambling, the venue provides accommodation, dining, live entertainment and four different bars. It is a television advertisement promoting the various experiences offered by Wrest Point that has drawn this complaint.
15. The advertisement shows people in various areas of Wrest Point drinking, dining, watching live entertainment and gambling. It concludes by showing three people in a bar area holding drinks while they are dancing.
16. The complainant is concerned that dancing while holding a drink is a health and safety issue. This raises Part 3 (d) of the ABAC which provides that an alcohol marketing communication must not show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical coordination.
17. The Company has responded by contending that:
 - Part 3 (d) of the Code expressly references higher risk activities such as driving a motor vehicle or a boat, or operating machinery;
 - dancing neither:
 - requires the high level of alertness that is necessary to drive a motor vehicle or a boat, or operate machinery; nor
 - carries the kinds of safety risks posed by driving a motor vehicle or a boat, or operating machinery.

- dancing is an activity that commonly occurs within licensed premises and the type of dancing that is shown in Wrest Point's television advertisement can be safely undertaken without a high degree of alertness.
18. The policy intent of the Part 3 (d) standard is that alcohol marketing should not model alcohol consumption before or in conjunction with activities that are inherently dangerous such as driving a motor vehicle or swimming. This is because alcohol impacts on a person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.
 19. The assessment as to whether a marketing communication is consistent with a Code standard is from the viewpoint of the probable understanding of the marketing item of a reasonable person. This means the values, opinions and life experiences shared commonly within the community is the benchmark.
 20. Dance is a physical activity that covers highly demanding physical performance at one end of the spectrum eg a professional ballet dancer, to a slow shuffle of the feet and not much else at the other end of the spectrum. It would not be appropriate to show alcohol consumption in conjunction with some forms of dance but a reasonable person would not be concerned on safety grounds with a scene of people on the dance floor at a wedding toasting the bride and groom.
 21. It is not uncommon for women in nightclubs to quietly dance while holding a drink (the concern with drink spiking being one reason). Of course, injury is possible with any physical activity involving movement, and there is a risk that spillage may make the floor slippery. That said, the Panel does not believe the television advertisement breaches Part 3 (d) standard. The women are dancing on an uncrowded dance floor and a reasonable person would not likely believe unsafe behaviour was being modelled.
 22. The complaint is dismissed.