



ABAC Adjudication Panel Determination No 36/23

Product: The Glenlivet Scotch Whisky
Company: Pernod Ricard Winemakers
Media: Billboard – Bus Stop
Date of decision: 9 April 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”) concerns billboard marketing for The Glenlivet Scotch Whisky (“the Product”) by Pernod Ricard Winemakers (“the Company”). It arises from a complaint received on 27 February 2023.
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 27 February 2023.
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 the marketing communication (Approval Number 2350).

The Marketing Communication

10. The complaint relates to billboard marketing at a bus stop, as shown below:



The Complaint

11. The complainant objects to the marketing as follows:

- *This advertisement, to a reasonable person, appears to be encouraging viewers to consume alcohol in a reckless, careless or excessive manner by 'breaking the rules'. Additionally, this 'breaking the rules' can be interpreted as breaching the law. This raises several questions of compliance with various sections of Part 3(a) of the Alcoholic Beverages Advertising Code that should lead the Board to adjudicate modification or withdrawal of this advertisement.*

- *The copy of this advertisement tells viewers that if they 'obey the rules' then they will 'miss the fun'. The logical deduction from this is that if a person wants to have fun then they shouldn't follow the rules. This is backed up by the prominent main copy 'Who gives a dram about the rules'. The use of the word 'dram' is a clever, but easily worked out, play on the word 'damn'. Again, this supports the idea that viewers should ignore the rules when consuming the advertised product in order to have fun.*
- *The Macquarie Dictionary defines 'rule' as:*

a principle or regulation governing conduct, action, procedure, arrangement, etc.
- *This definition, per the Dictionary, can be taken to include laws and a reasonable member of the community would also think of a law as being a type of 'rule'.*
- *The strongest reason why this advertisement should be modified or withdrawn lies in Part 3A(ii) of the Code. This section prohibits advertisements which 'encourage irresponsible or offensive behaviour'. It should not be a matter of contention that reckless behaviour, excessive consumption or violating the law are irresponsible forms of behaviour. The way the copy in this advertisement has been worded encourages these types of behaviour by direct implication. By encouraging viewers to break the rules in order to have fun, this advertisement suggests that something highly pleasurable could come out of those behaviours. In turn, this encourages them. A reasonable member of the community with no disadvantage or vulnerability could easily misinterpret these words and someone with vulnerability (e.g. cognitive impairment, young age) would be highly likely to. For these reasons, Part 3A(ii) of the Code appears to have been breached by this advertisement.*
- *A weaker ground, that should be considered nonetheless as it poses interesting questions for the Board, is that this advertisement may breach Part 3A(i) of the Code. This section prohibits 'encouraging...consumption inconsistent with the Australian Alcohol Guidelines'. The Guidelines would be considered by many reasonable people to be a 'rule' in that it sets out normative principles for Australians to follow when consuming alcohol. By suggesting that people should break the rules to have fun, this*

advertisement may appear to encourage the breaking of the Guidelines as a way to have fun. This is admittedly a weaker ground and it is accepted that some people would not have the foresight to consider the Guidelines in this light. However, it is worth considering whether this advertisement could be seen by people in this way especially in light of the work that has been done by the states, territories and Commonwealth as well as organisations such as DrinkWise to promote the Guidelines in the community.

- *This advertisement falls well below community standards and the Code (particularly Part 3A(ii)) by suggesting that the way to have fun while consuming alcohol is by breaking the rules. It is not. All alcohol products should be consumed responsibly and you don't do this by breaking the rules. Rules protect the community from harm and need to be followed. This appears to have been forgotten when writing the copy for this advertisement and as a result it ought to be adjudicated as needing modification or withdrawal.*

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.

The Company Response

13. The Company responded to the complaint by letter emailed on 3 March 2023. The principal points made by the Company were:

- We refer to the above complaint and your letter dated 28 February 2023. Thank you for the opportunity to respond.
- Pernod Ricard Winemakers Pty Ltd (Pernod Ricard Winemakers) is a signatory to the Alcohol Beverages Advertising Code Scheme (ABAC) and

takes compliance with the ABAC Responsible Alcohol Marketing Code (Code) very seriously. We are committed to the responsible marketing of our products and always endeavour to abide by the Code as well as other applicable advertising codes and laws. As a member of the global Pernod Ricard Group, we are also committed to the responsible marketing and consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.

- The complaint relates to a bus shelter advertisement for The Glenlivet Scotch Whisky, located near the corner of Marion Street and Foster Street, Leichhardt NSW 2040 (Advertisement).

Alcohol Advertising Pre-vetting Service Approval

- The Advertisement was submitted to AAPS on 19 May 2022 (Application No. 62-2022) and received AAPS approval on 20 May 2022 (Approval No. 2350).

Responsible and moderate portrayal of Alcohol Beverages

- The Glenlivet “Obey the Rules. Miss the Fun.” campaign objective is to broaden representation of whisky drinkers by challenging an outdated stereotype that whisky is a man’s drink, hence the choice to feature the actress Anna Paquin and a piano in a unique, bright shade of pink – stereotypically considered a feminine colour – rather than a traditional black or white piano. “Obey the Rules. Miss the Fun.” is a campaign tagline referring to the unwritten rules of traditional whisky consumption, including who should typically drink it. The headline, “Who gives a dram about the rules” is an extension of this tagline, being a play on words by replacing the word “damn” with the word “dram”.
- The Oxford Dictionary defines the word “dram” as:
a small drink of whisky or other spirits.
- The Advertisement features The Glenlivet 12 Year Old Single Malt Scotch Whisky which has 40% alcohol by volume (ABV). Under the Australian Alcohol Guidelines, a standard drink for a spirit with 40% ABV is 30 millilitres, and it is recommended that healthy adults drink no more than four standard drinks on any one day to reduce the risk of harm from alcohol.

- We include a responsible drinking message and – as a proud industry contributor to DrinkWise Australia – the DrinkWise.org.au website in all our advertising wherever possible to help promote a responsible drinking culture in Australia.
- We submit that the Advertisement does not breach Part 3(a)(i) of the Code, as the words “Who gives a dram about the rules” – referring to “a dram” in the singular – and “Obey the rules. Miss the fun”, together with the depiction of Ms Paquin posing at a piano and holding a whisky glass containing approximately two standard drinks, and the words “Enjoy responsibly” and “Get the facts DrinkWise.org.au” does not result in the Advertisement showing or encouraging excessive or rapid consumption of alcohol, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines, nor does the Advertisement encourage reckless or careless alcohol consumption.
- We would never encourage people to break the law or to engage in irresponsible or offensive behaviour.
- For the reasons set out in our response above, and noting that the dominant visual is of Ms Paquin merely posing at a pink piano with a ‘dram’, we submit that the Advertisement taken as a whole does not breach Part 3(a)(ii) of the Code, as it does not show or encourage irresponsible or offensive behaviour related to the consumption or presence of alcohol, nor does it in any way encourage viewers to break the law.
- We wish to reiterate that Pernod Ricard Winemakers is committed to the responsible marketing of its products and upholding compliance with the Code. Pernod Ricard Winemakers maintains strict internal and external processes to help ensure compliance.

The Panel’s View

Introduction

14. This determination has arisen from a complaint about advertising for Glenlivet Scotch Whisky positioned on a bus shelter shed. The ad shows actor Anna Paquin in a green dress, seated in front of a pink piano, holding a glass that presumably contains the product. The ad contains the taglines ‘Who gives a dram

about the rules' and, in smaller letters, 'Obey the rules. Miss the fun' and a picture of a full-size bottle of the product in the bottom right corner.

15. The complainant contends the ad is irresponsible in several respects, namely:

- it appears to be encouraging viewers to consume alcohol in a reckless, careless or excessive manner by 'breaking the rules' - this arises because of a direct implication of the words 'Who gives a dram about the rules' and 'Obey the rules'. Miss the fun';
- 'breaking the rules' can be interpreted as breaching the law, or also as disregarding the Australian Alcohol Guidelines' and
- it tells viewers that if they 'obey the rules' then they will 'miss the fun'. The ad encourages viewers to ignore the rules when consuming the advertised product in order to have fun.

16. 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 excessive consumption or the misuse or abuse of an alcohol beverage - Part 3 (a)(i); and
- showing or encouraging irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage - Part 3 (a)(ii).

17. The Company submits the post does not breach the ABAC standards for the following reasons:

- The Glenlivet 'Obey the Rules. Miss the Fun.' campaign objective is to broaden representation of whisky drinkers by challenging an outdated stereotype that whisky is a man's drink. It is referring to the unwritten rules of traditional whisky consumption, including who should typically drink it.
- Ms Paquin is shown holding a whisky glass containing approximately two standard drinks, which does not portray excessive consumption; and
- The advertisement includes the words 'Enjoy responsibly' and 'Get the facts DrinkWise.org.au'.

Reasonable implications and extrapolations

18. The baseline assessment of whether a marketing communication is inconsistent with an ABAC standard is the 'reasonable person' test. This test is sourced from the Australian common law system and means the marketing communication is assessed from the standpoint of the probable understanding 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 contention of the complainant is that the ad is encouraging a range of antisocial and irresponsible behaviours related to alcohol use arising from the reasonable implications to be drawn largely from the taglines used in the ad. It is worth reflecting for a moment on the use of implications and extrapolations in assessing marketing against ABAC standards.
20. It is quite usual for marketing (not simply alcohol marketing) to rely on a combination of direct messaging and unstated implications when constructing a marketing communication. Equally the ABAC standards refer to implications in how a marketing communication would be understood - for instance see Part 3 (a)(i) and (ii) and Part 3 (c)(ii) and (iii) and Part 3 (d).
21. A simple example of a direct implication is a scene in a bar with two people sitting at a table with glasses of alcohol in front of them. The ad might not show the two people actually drinking the alcohol, but the scene in a bar with glasses of alcohol draws a direct implication that alcohol consumption is occurring.
22. An extrapolation is a step beyond an implication and assumes that particular behaviours or actions might take place from a depicted scene. For instance, in the same bar scene described above, if the two people are shown sitting with say eight glasses of alcohol on the table, then it can be implied that they are consuming alcohol and also extrapolated by the number of glasses, that each is going to consume eight glasses each. This in turn could be reasonably taken as showing/encouraging excessive alcohol consumption.
23. As a general guide, the greater the number of assumptions required about extrapolated actions/behaviours the less reasonable it becomes to safely assume the behaviour is likely to occur. For example, a retailer runs an ad advising of the promotion of a \$10 discount on the purchase of two six packs of beer as opposed to the normal price on the purchase of a single six pack. This ad then attracts a

complaint that the ad is encouraging excessive alcohol consumption. The extrapolated actions underpinning the complaint are:

- because of the discount, a consumer buys two six packs instead of the normal single pack; and
- the consumer then drinks the additional purchased alcohol in the same amount of time that they would normally consume a single six pack; and
- as a result, the consumer has been encouraged by the ad to drink in an excessive manner.

24. This extrapolation is however not sound. Firstly, even it is assumed the ad does result in two six packs being purchased instead of a single six pack, it does not follow the beer will be consumed excessively as:

- beer has a long shelf life and can be stored for many months;
- the product can be consumed by multiple people not just a single person;
- the ad goes to the encouragement of the choice of the discounted product and does say anything about the pattern of its subsequent consumption (it is entirely supposition about how the purchased product is later used); and
- there is no reasonable basis to conclude that the ad is encouraging excessive alcohol consumption.

25. In the current case, the complainant contends the ad taglines of 'Who gives a dram about the rules' and 'Obey the rules, miss the fun' give rise to the reasonable implication of the encouragement of excessive alcohol consumption, reckless behavior and potentially breaking the law and having fun by breaking rules while drinking alcohol.

26. The Panel does not believe the various implications and extrapolations drawn by the complainant can reasonably be drawn. Firstly, the ad has to be taken as a whole and the most prominent visual feature of the ad is the woman sitting quietly with the product next to a piano. This image does not support a message of recklessness or excessive alcohol consumption, or general antisocial alcohol fueled behaviour. Further:

- the 'don't follow the rules' taglines within the context of the ad is more likely to be understood as referencing the usual choice of drink by women than an encouragement of anti-social behaviour or excessive alcohol use;
- the woman does not appear affected by alcohol and is shown with a moderate serve in her glass;
- it is not against the ABAC standard to associate alcohol use with fun or enjoyable activities, provided it is not suggested that alcohol is needed to achieve a fun time, or the introduction of alcohol changes a mood or environment;
- taken as a whole, a reasonable person would not consider the ad is promoting excessive alcohol consumption or the misuse or abuse of alcohol. Nor does the ad suggest alcohol is required to achieve success.

27. The complaint is dismissed.