



ABAC Adjudication Panel Determination No 197/23

Product: Lil' Juicy
Company: 3 Ravens Brewery
Media: Outdoor Billboard
Date of decision: 30 December 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 12 December 2023 in relation to the placement of advertising for 3 Ravens Lil' Juicy (“the Product”) by 3 Ravens (“the Company”), as well as 3 Ravens branding placed on a building opposite a school.
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 12 December 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.

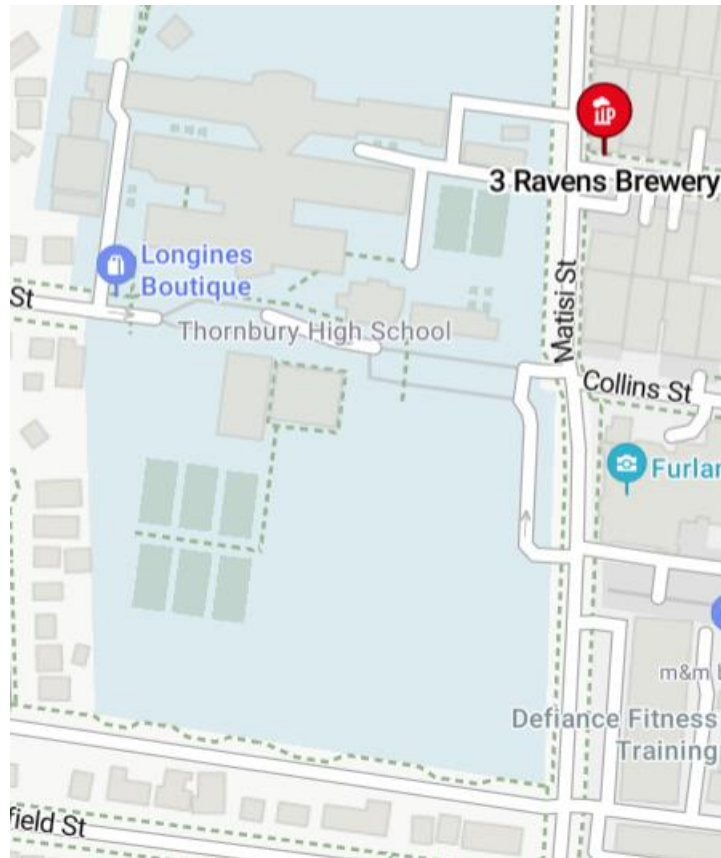
Pre-vetting Clearance

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 not obtained for the placement of the marketing.

The Marketing

10. The complaint relates to the placement of advertising for 3 Ravens Lil' Juicy as well as 3 Ravens branding placed on a building opposite a school.





Complaint

11. The complainant objects to the marketing as follows:
 - *Alcohol and a brewpub are being advertised within 10 or so metres of Thornbury High School.*

The ABAC Code

12. Part 4 of the ABAC Code provides that:
 - (a) An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing and an Alcohol Alternative Marketing Communication must comply with code provisions regulating the placement of Alcohol Alternative marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).

The Company Response

13. The Company responded to the complaint by letter emailed on 20 December 2023. The principal comments made by the Company were:

- We appreciate the opportunity to respond to the complaint made about our marketing communication. We take our commitment to responsible alcohol marketing seriously and strive to adhere to the ABAC Responsible Alcohol Marketing Code (the Code) in all our marketing efforts. Given the information provided in the attached report on the ABAC Responsible Alcohol Marketing Code Review, our understanding is that the transition for implementation of the new Code is as follows:
 - Complaints received prior to 1 August 2023 will be considered against the existing Code.
 - Complaints received between 1 August 2023 and 31 December 2023 will be considered against the new Code UNLESS the complaint relates to Part 4(c) of the revised Code OR relates to a marketing communication that has been continuously in market from 31 July 2023, with complaints meeting those two criteria being considered against the existing Code.
 - All complaints received on or after 1 January 2024 will be considered against the new Code regardless of when the marketing communication entered the market.
- In light of this, and considering the specific questions posed in the complaint, we would like to address the following:

Alcohol Advertising Pre-vetting Service Approval

- The placement of the alcohol marketing communications referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval. We acknowledge that this is an area for improvement in our processes and will ensure that future marketing communications undergo this important step.

Placement of the marketing

- We have reviewed the placement of 3 Raven's signage and a poster advertising Lil' Juicy in light of the Code. We strongly feel that our advertising is not in breach of any part of 3(b)(iv) of the old code or Part 4 of the new code.
- Regarding the Lil Juicy advertising, the style of beer is clearly displayed on the can.

- Whilst taking this stance we have still decided to have it replaced with a Community event poster that we are hosting at a local bowls club.
- We would still appreciate being able to promote beers that we offer on our building in line with the ABAC Code as being able to market our products on the outside of our venue is an integral part of our operation.
- When considering part 4 of the new code none of the advertising is primarily aimed at minors and it is placed in a spot where the audience is reasonably expected to comprise at least 80% Adults with school drop off and pick up being a very minor part of the day and a majority of people that sight the advertising being adults that are connected to local businesses and other adults that attend our venue.
- We understand that according to the Outdoor Media Association (OMA) Alcohol Advertising Policy, OMA members do not display alcohol advertising on fixed Out of Home (OOH) signs that are located within a 150-metre sightline of a primary or secondary school. We are currently investigating whether our signage complies with this policy and will take necessary actions if it does not.
- We can confirm that placement of the advertising is within 150 metres line of sight of Thornbury High School. All brewery signage has been approved by local laws and has been continuously in the market from 31 July 2023.
- 3 Ravens is Melbourne's Oldest Independent Brewery and has been manufacturing and supplying beer from our premises at 1 Theobald Street, Thornbury since 2003. We have a brewery, bar and coworking space at our premises with advertising and signage located on our premises to promote our business. Without such advertising, no one would know where we are or what we do which would have a detrimental impact on our business. All advertising is considered and responsible and is never directed at minors or is it in breach of the current ABAC Responsible Alcohol Marketing Code.
- We understand that the Panel is not indicating a belief that our marketing breaches the Code. We appreciate the Panel's diligence in ensuring that all aspects of the Code are considered in its deliberations. We are committed to adhering to the Code and promoting responsible alcohol consumption. We will take immediate action to rectify any areas of non-compliance identified in this process.
- Thank you for bringing this matter to our attention. We look forward to your guidance and decision on this matter.

The Panel's View

Introduction

14. In 2003, 3 Ravens Brewery established a brewhouse in Theobald Street in the Melbourne suburb of Thornbury. The site, where the Company currently both brews beer and operates a public bar, was originally a commercial warehouse and is situated near the Thornbury High School. The High School was opened in 1962.
15. Along the rear wall of the brewery in Matisi Street several small billboards have been placed on the building. It is unclear as to when the billboards were installed but it would seem to have been relatively recently. The complainant is concerned about the placement of signage for 3 Ravens on the Matisi Street side of the building and an ad for a Company's beer- Lil' Juicy Hazy Mid Strength Pale Ale - in one of the billboards. It is argued that it is inappropriate for alcohol to be advertised so close to a school.

The ABAC Placement Standards

16. The ABAC Placement Standards have the policy aim that alcohol marketing should be directed towards adults and to the extent possible away from minors. The standard in Part 4 (a) provides that marketing must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies. For outdoor installations, the relevant media industry code is the Outdoor Media Association (OMA) Alcohol Policy.
17. The general requirement in the OMA policy is that alcohol advertisements cannot be placed on billboards or buildings within 150 metres line of sight of a school. The policy however is qualified in section 3.4 to not apply to "advertising located on premises that sell alcohol where the advertising directly relates to the business of the venue. This is known as "on-premise advertising".
18. In response to the complaint, the Company advised that:
 - placement of the advertising is within 150 metres line of sight of Thornbury High School;
 - all brewery signage has been approved by local laws;
 - advertising and signage located on its premises is to promote its business. Without such advertising, no one would know where it is or what it does, which would have a detrimental impact on its business; and

- it does not believe it has breached the Placement Standards, but on receipt of the complaint replaced the Lil' Juicy poster with one promoting a community event it is hosting at a local bowls club;
19. While it is not usual, sometimes schools and businesses that sell alcohol such as hotels are located quite close to each other. Often this reflects the pattern of the development of a suburb where a hotel might be long standing and then shifts in population density sees a school opened. In the current case, it might be surmised that this area of Thornbury was at one time commercial and industrial and the warehouses in the area first originated from this period. The school was built in the early 1960's. More recently from the 2000's onwards Thornbury has seen restaurants and bars opened with the Company being an early example of the boom in craft brewing in Australia in the last 15 or so years.
 20. Whatever the sequence of events, the OMA policy and hence the ABAC Standard recognise the exception to the 150 metres exclusion for alcohol ads near schools if the ad "relates directly to the business of the venue" on which the ad is placed. This means it is not a breach of the ABAC for the Company to have its name on its own premises, even though this means the name is within 150 metres of the school.
 21. The position regarding the placement of alcohol ads on the billboards is a little more nuanced. The OMA and ABAC requirement would permit the Company to advertise an alcohol product that is available for sale by the Company i.e. one of the Company's range of beers. The billboards could not be used by another alcohol marketer to advertise either another venue like a hotel nor a product not brewed by the Company at its brewery.
 22. Drawing this together:
 - the Company can have the "3 Ravens Brewery" name placed on its premises; and
 - the ad for Lil' Juicy Hazy Mid Strength Pale Ale can be placed on the billboard given this is a Company produced beer made at the Theobald Street location.
 23. The complaint is dismissed.