



ABAC Adjudication Panel Determination No 66 & 70/24

Product: Gorae Soju
Company: Gorae Soju
Media: Instagram
Date of decision: 27 May 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from two complaints received on 23 April and 1 May 2024 in relation to an Instagram post for Gorae Soju (“the product”) by Gorae Soju (“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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaints Timelines

7. The complaints were received on 23 April and 1 May 2024.
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 following Instagram post:

Off work late?
hungry, but too tired to cook?
try **A WHOLE BOTTLE OF SOJU**

a whole bottle of soju for dinner
no snacks no real food
just a whole bottle of soju

and then just go to bed
you will certainly not regret drinking a whole
bottle of soju

goraesoj • Follow
ILLIT • Midnight Fiction

goraesoj 2w
Off work late, but you don't want to order or make food? We got you! Just drink some soju and call it a day!!

Is this you? Don't worry it can be our little secret.

#sojumeme #alcoholmeme #soju #koreandrink #korean #easymealideas

desmoinescitycouncil 1w
give your marketing director a FAT RAISE good GOD
2,165 likes Reply

View all 5 replies

lvpxm_ 2w
Drank half a bottle. Hana over for

Liked by redcarter and others
April 9

Add a comment...

The Complaint

11. The complainants object to the marketing as follows:

- *The ad promotes skipping a meal in favour of consuming an excessive quantity of alcohol. It promotes dangerous drinking and romanticises addictive behaviour. ... this has come up as "Suggested for you" content.*
- *Advertising "it's our little secret" is wrong, sends the wrong message to consumer and shouldn't be allowed. It's also encouraging "a whole bottle of soju".*

The ABAC Code

12. Part 2 of the ABAC Code provides that:

- (a) Parts 3 and 4 of the Code APPLY to all Alcohol Marketing Communications.

Alcohol Marketing Communication is defined as meaning a marketing communication for alcohol, in any media, generated by or within the reasonable control of an alcohol producer, distributor or retailer that has a describable link to Australia.

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

- (a)(i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:

(A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day); or

(B) Alcohol consumption while pregnant or breastfeeding.

The Company's Response

14. The Company responded to the complaint by email on 10 May 2024. The principal comments made by the Company were:
- *Thank you so much for reaching out to us on the issue. We are based in North America and only available on the east coast of America. We haven't planned on expanding our business outside of the U.S. Therefore, it won't be available in Australia. If you have any questions or concerns, please feel free to contact us anytime.*

The Panel's View

15. This determination relates to a complaint received about a post made to the Instagram account of Gorae Soju.
16. Alcohol is a global product and social media platforms such as Instagram are equally global in their reach. In contrast, the ABAC scheme is limited in its reach to marketing which is linked to Australia. This is reflected in the Code which describes its application to a 'marketing communication for alcohol, in any media, generated by, for, or within the reasonable control of an alcohol producer, distributor or retailer, that has a discernible and direct link to Australia'.
17. This means the Scheme and the remit of the Panel do not extend to every alcohol marketing item which can be accessed in Australia over a global digital platform. To fall within the ambit of the Scheme the marketing item must have a discernible and direct link to Australia such as:
- the Instagram account is under the control of an Australian alcohol marketer; or
 - the product being marketed is available for sale in Australia from an Australian retailer; or
 - the Instagram account is under the control of an international entity however there is a discernible and direct link to Australia so there is an Australian entity to which the ABAC obligations can attach.
18. The Company has advised that the post was intended for its US followers, and that it has never sold products in Australia. Internet searches by ABAC support that the Company does not have a discernible link to Australia. For instance:
- it has a US physical address on its website;

- the product is showing as being stocked in the US; and
 - the product does not appear to be stocked in Australian alcohol retailers.
19. Accordingly, although the Instagram account might be accessible to someone in Australia given the global and ubiquitous nature of the internet, the regulatory regime applying to the marketing contained on the account is properly that of the United States. It is the US to which the marketing is directed and the product is being sold.
20. While the complainant is raising a legitimate point about the marketing message in the post, the Company and its marketing does not fall within the ambit of the ABAC Scheme. Accordingly, the complaint is dismissed on jurisdiction grounds.