



ABAC Adjudication Panel Determination No 86/24

Product: Strawberry Cloud Cocktail
Company: The Belrose Hotel
Media: Digital – Facebook and Instagram
Date of decision: 18 June 2024
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 6 June 2024 in relation to The Belrose Hotel (“the Company”) naming a cocktail Strawberry Cloud (“the product”), and its presentation on the Company’s social media accounts.
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

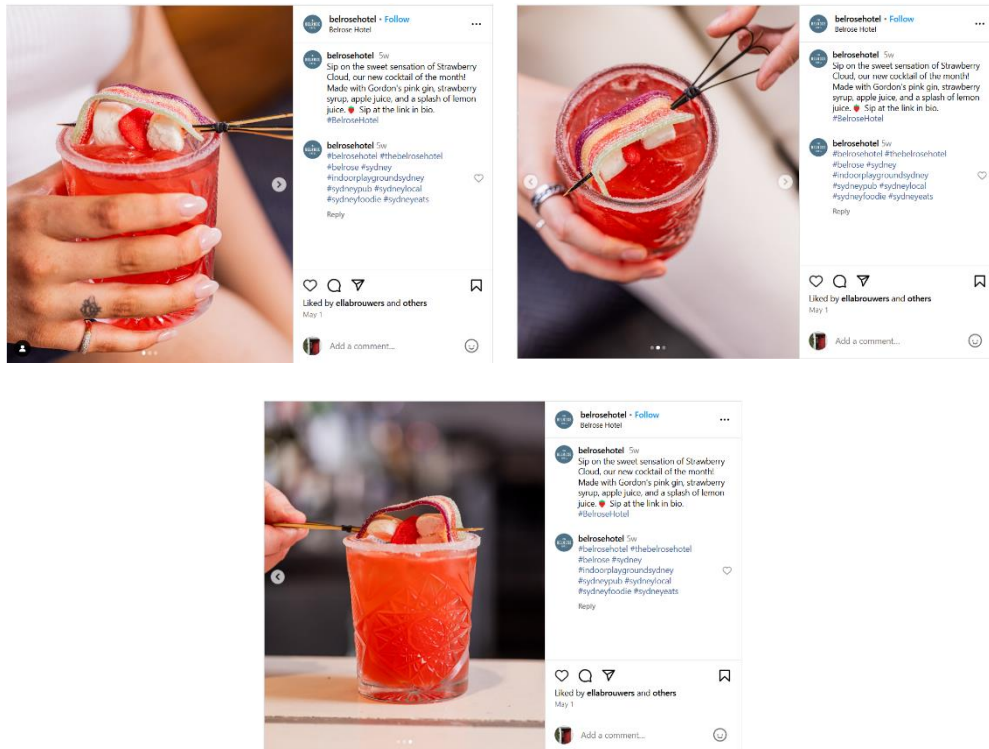
7. The complaint was received on 6 June 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

Pre-vetting Advice

- A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the social media posts.

The Marketing

- The complaint relates to the name of a cocktail, a post made to the Company's Facebook and Instagram pages and which is also a sponsored advertisement:



Complaint

11. The complainant objects to the marketing as follows:
- It is argued that the cocktail displayed in the posts has a strong appeal to minors as evidenced by:
 - The cocktail is named 'Strawberry Cloud' which is in reference to a popular confectionary produced by Trolli and is often marketed towards minors.
 - Furthermore, the cocktail itself looks similar to other popular non-alcoholic drinks available at venues such as a 'pink lemonade'.
 - Additionally, the cocktail 'garnish' includes:
 - The use of popular confectionery (rainbow sour strap and marshmallows) which are primarily marketed to minors.
 - A reference to the cocktail's namesake (Strawberry Cloud) by the use of a strawberry sandwiched between two marshmallows creating the illusion of a 'strawberry cloud'

The ABAC Code

12. Part 3 (b)(i) of the Code provides that An Alcohol Marketing Communication must NOT:
- (i) have Strong or Evident Appeal to Minors, in particular;
 - (A) specifically target Minors;
 - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
 - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
 - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company Response

13. The Company responded to the complaint by email on 12 June 2024. Its primary comments were:
- The cocktail being promoted was our cocktail of the month for May.
 - We practice responsible service of alcohol in our premises.
 - We are a family friendly venue.
 - This cocktail is only for consumption on premise.
 - Acknowledging the concerns raised, we have since changed the name of the cocktail on our social media to “Strawberry Surprise”.
 - We have made our team aware of the concerns and this will be considered with our cocktail of the month moving forward and any other marketing we do.

The Panel’s View

14. The Belrose Hotel is located in Sydney’s Northern Beaches. It is a licensed venue that sells food and alcohol. The Hotel’s menu is available from its website and shows a standard array of pub meals as well as alcoholic and non-alcoholic drinks. Included on its cocktail list are a number of ‘signature cocktails’ with one cocktail made with ‘Gordon’s pink gin, lemon juice, apple juice and strawberry’. This determination arises from social media posts promoting this cocktail.
15. The posts show a picture of the cocktail garnished with pieces of confectionery. The accompanying text states - ‘Sip on the sweet sensation of Strawberry Cloud, our new cocktail of the month! Made with Gordon’s pink gin, strawberry syrup, apple juice and a splash of lemon juice.’
16. The complainant contends that the ‘cocktail displayed’ has strong appeal to minors due to its name of ‘Strawberry Cloud’ referencing a popular confectionery that is marketed towards minors and the cocktail looking like a non-alcoholic drink such as pink lemonade. Further it is argued the confectionery garnish shown in the posts increases the appeal of the cocktail to minors and cements the connection to the Strawberry Cloud lolly.
17. As mentioned in paragraph 2, alcohol as a product and alcohol marketing falls within a shared regulatory space and this complaint is at the intersection of direct government regulation of alcohol products and the marketing standards contained in the ABAC Scheme. This is because the underlying concern of the complainant is about the cocktail itself as much as it is about the marketing on social media.

18. Several points regarding the respective roles of the ABAC Scheme and NSW Liquor and Gaming as the relevant government regulator should be noted namely:
- ABAC does not regulate physical beverages with this responsibility resting with government agencies and the NSW Liquor Act enabling the Minister and Departmental Secretary to declare a specified liquor product to be removed from sale in NSW as being undesirable on grounds that include the product's attraction to minors;
 - the responsible service of alcohol within licensed venues in NSW is regulated by NSW Liquor and Gaming.
19. In short, the complainant's concern about the Hotel having a cocktail sharing a name with a type of confectionery and the cocktail potentially having an appearance or taste that appeals to minors are not issues for the ABAC Scheme but the NSW regulator. The jurisdiction of the ABAC Scheme is therefore confined solely to the marketing of the cocktail via the social media posts.
20. The complaint brings into play the ABAC standard in Part 3 (b)(i) of the Code which provides that an alcohol marketing communication must not have strong or evident appeal to minors. This standard might be breached if the marketing:
- specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an Adult;
 - uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; and
 - creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors.
21. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;

- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
 - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
22. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
23. Assessment of the consistency of a marketing communication with a Code standard is from the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and attitudes found commonly in the community is the benchmark.
24. The Hotel has acknowledged the concerns expressed in the complaint and advised the name of the cocktail has been changed to 'Strawberry Surprise'. It was pointed out that the cocktail is only available for consumption on premise and responsible service of alcohol standards are practiced.
25. The Panel does believe the social media posts have strong appeal to minors and hence are in breach of the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:
- the cocktail's name of Strawberry Cloud combined with the confectionery garnish readily identifies the posts imagery with a product likely to be familiar and popular with many minors;
 - the post's imagery is relatable to minors and creates an illusion of a smooth transition from a non-alcoholic to alcoholic beverage;

- taken as a whole, a reasonable person would probably understand that the posts have a strong or evident appeal to minors.
26. While the Panel has upheld the complaint, it should again be stressed that the underlying concern about the physical cocktail and its appeal to minors properly rests with the government regulator and not the ABAC Scheme. It might be reasonably concluded that the more appropriate forum for the complaint is NSW Liquor and Gaming, noting the Liquor Promotion Guidelines issued by the regulator go to promotional activities by licensees, such as the Hotel, must not have special appeal to minors.
27. The complaint is upheld.