



ABAC Adjudication Panel Determination No 89/24

Product: Wine
Company: St Johns Wine
Media: Digital – Facebook and Instagram
Date of decision: 15 July 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 17 June 2024 in relation to a social media post by St Johns Wine.
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 17 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

9. 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

10. The complaint relates to a post made to the Company's Facebook and Instagram pages:



Complaint

11. The complainant objects to the marketing as follows:
 - *Three women, drinking wine and eating pizza. They look under aged.*
 - *Depicts young women consuming alcohol. Can be viewed as under aged consumption.*

The ABAC Code

12. Part 3 (b) of the Code provides that An Alcohol Marketing Communication must NOT:
- (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role and there is no implication they will consume or serve Alcohol; or
 - (iii) depict in a visually prominent manner:
 - (A) paid models, actors or Influencers that are and appear to be Adult but are under 25 years of age; or
 - (B) other people that are and appear to be Adult but are under 25 years of age UNLESS the depiction has been placed within an Age Restricted Environment.

The Company Response

13. The Company responded to the complaint by email on 20 June 2024. Its primary comments were:
- The first thing we have done is remove the post, we aim to have full integrity in all we do, and if someone has perceived these women to look under 25 and complained we take it on board and act.
 - The marketing referred to in the complaint was not submitted for Alcohol Advertising Pre-vetting Service Approval.
 - As I have children between 20 and 25, I see the women in the photo as being clearly above 25.
 - My social media lady sourced the photo, we cannot provide those DOB etc.
 - Perhaps older people may see these women as under 25, my secretary who is in this age bracket sees them clearly older than herself.
 - Ad was placed on social media, therefore not in a restricted environment.
 - Thank you for bringing this to our attention, we appreciate there is an organisation that monitors advertising.

The Panel's View

14. Between them the ABAC standards Part 3 (b)(ii) and (iii) of the Code prohibit the use of minors or persons under the age of 25 in alcohol marketing communications unless in limited and narrow circumstances that are not relevant in this case. The complainant has submitted that a social media post from the Company breaches this standard by showing three young women who might be minors but are certainly under the age of 25.
15. The Company upon receiving the complaint removed the post. It explained that it sourced the photo of the women without knowing their identity or age and presumably the photo was taken from the large number of stock photos available for promotional purposes. It was contended however that in the Company's opinion the women appear to be over 25.
16. The question of the age of a person is obviously one of fact. Given that the actual identity of the women is unknown, the Panel is obliged to make its own assessment based on the appearance of the photo. It is often quite difficult to assess the age of someone, and factors such clothing, the use of makeup and the setting a person is placed will all influence the perception of age.
17. The Panel believes the women are over the age of 18 and hence are not minors. It is a far more marginal assessment if each of the women are most likely aged under 25. On balance, the Panel believes that the blonde woman in the middle of the group appears a little younger than her companions and may well be aged under 25.
18. On this basis, the Panel believes it is more probable than not that the Part 3 (b) (iii) (A) standard has been breached and accordingly the complaint is upheld.