



ABAC Adjudication Panel Determination No. 37/19

Product: Loxton Hotel
Company: Loxton Hotel
Media: Digital (Facebook)
Date of decision: 13 June 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the Facebook page for the Loxton Hotel (“the Company”) and arises from a complaint received 29 May 2019.
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;

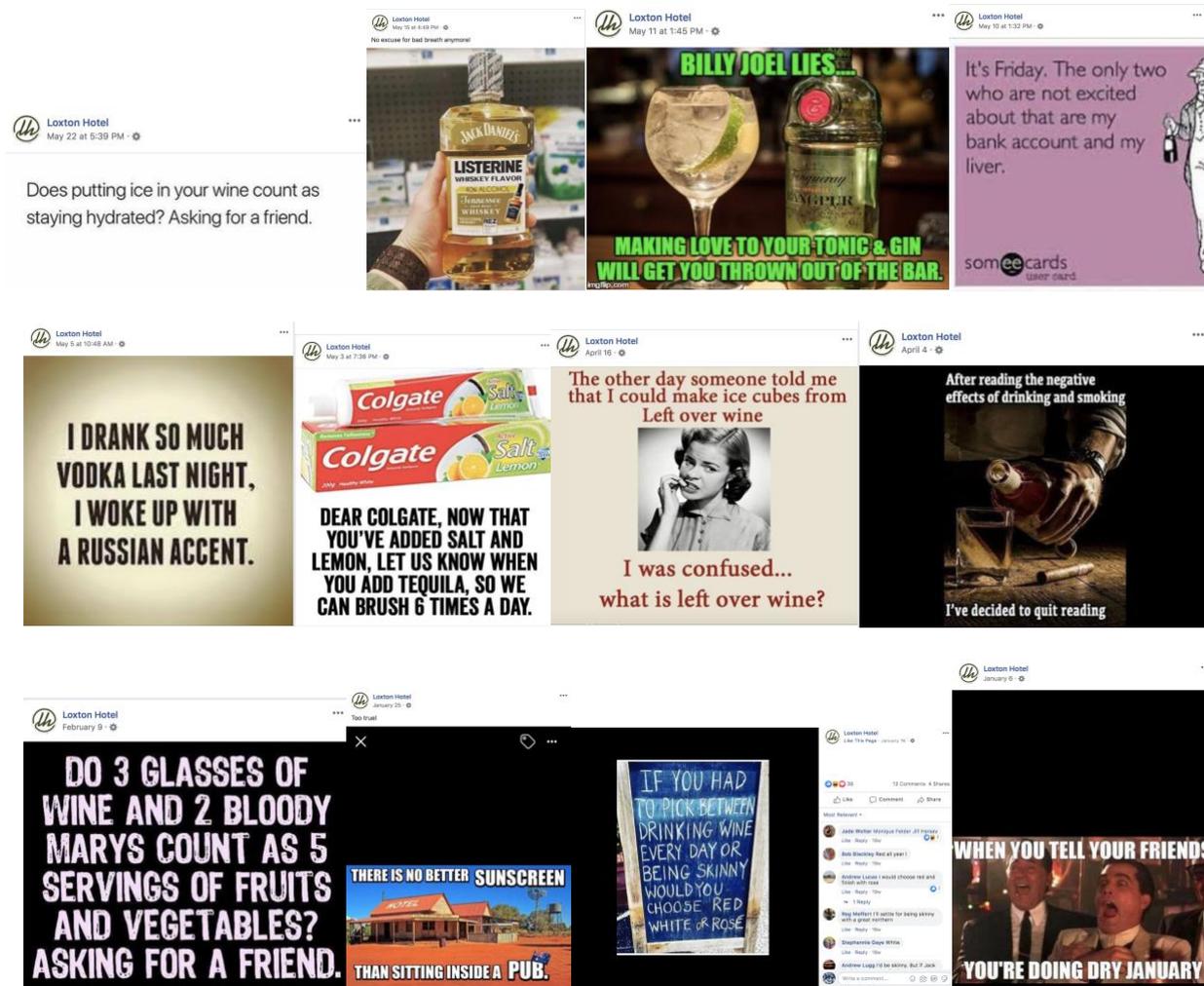
- (b) Industry codes of practice:
- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast 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 – which places 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 the other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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 29 May 2019.
8. The Panel endeavour 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 has been determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features 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 marketing communication.

The Marketing Communication

10. The complaint refers to photos and memes on the Company's Facebook account that promote irresponsible/excessive consumption of alcohol. Examples follow.



The Complaint

11. The complainant is concerned that:
- many of the memes and photos on the Loxton Hotel Facebook page promote irresponsible alcohol consumption, eg promoting blacking out, replacing fruit and vegetables with alcohol, making light of liver failure and suggesting it is better to drink alcohol than be thin and healthy;
 - it is irresponsible for a business that sells an addictive drug to be promoting its unlimited consumption to the point of liver failure/blackouts etc;
 - the business is in a rural area where people are already more vulnerable to mental health problems and addiction and the business appears to be trying to make money from addiction and misery; and

- d) the business appears to be flaunting the rules around responsible service and marketing of alcohol by backhandedly encouraging excess consumption with humour.

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's Response

- 13. The Company responded to the complaint by letter dated 11 June 2019 advising that the Loxton Hotel ("the Hotel") is not a signatory to the ABAC Code and as such is not required to comply with the Code. The Hotel will therefore not accept the Panel's decision in relation to the complaint. The Hotel will, however, review its social media policy to ensure all posts are made in accordance with the rules and regulations applicable to the Hotel.
- 14. ABAC noted when reviewing the Loxton Hotel Facebook page on 12 June 2019 that all the marketing communication examples in paragraph 10 had been removed.

The Panel's View

- 15. Loxton is a small town on the Murray River in the Riverland district of South Australia. The Loxton Hotel services the district and promotes itself and its activities via a Facebook page. This determination deals with a number of posts on the Company Facebook page.
- 16. The Company is not a signatory to the ABAC Scheme and hence has not contractually bound itself to meet ABAC Standards. While the Scheme covers the alcohol industry as a whole, including retailers such as hotels, most hotels like the Loxton have not joined the scheme as formal signatories. Given the vast majority of alcohol beverage marketing is conducted by alcohol producers and major retail outlets such as BWS and Liquorland which are members, the Scheme operates effectively within a self-regulatory commitment basis. On occasions when non signatories receive complaints about their marketing, the Panel's overwhelming experience has been that these entities accept the desirability of good practice in alcohol marketing and co-operate and abide with the adjudication process.
- 17. On this occasion the Loxton Hotel has advised that as it is not a signatory it will not abide by a Panel decision in relation to the complaint. It will however 'review its social media policy to ensure all its posts are made in accordance with the rules and regulations applicable to the Hotel'.

18. The sale and promotion of alcohol in South Australia like in all States and Territories is a shared regulatory space. Primary responsibility for the regulation of licensed premises such as the Loxton Hotel rests with the State government pursuant to the Liquor Licensing Act (SA) 1997. Under the Act, the Liquor and Gambling Commissioner has issued Codes of Practice to guide licensees in meeting their statutory obligations as holders of a liquor license. One of these Codes is the Liquor Licence General Code of Practice guidelines.
19. The guidelines go to various matters as to how a hotel should meet its licence responsibilities. In part the guidelines provide that a 'licensee must not promote, advertise, conduct or permit the conduct, promotion or advertisement of their business in a way that tends to encourage the rapid or excessive consumption of liquor or that discourages a responsible attitude to the consumption of liquor'. Further details are given as an example of how this guideline might be breached such as 'using language, slogans or images that promote or encourage patrons to get drunk, drink excessively or drink rapidly'.
20. This policy objective in the government guidelines is mirrored in Part 3 (a)(i) and (a)(ii) of the ABAC. The ABAC applies to social media marketing as does the government requirements. The ABAC Scheme works cooperatively with direct government regulation and the Scheme will advise the relevant government authority if it makes a finding of a breach of an ABAC standard that is mirrored in state regulation and which the licensed entity fails to act upon. This means the Panel will make a decision on the complaint consistent with its functions within the shared regulatory regime for alcohol marketing in Australia.
21. The complainant has identified a series of posts which it is argued promote irresponsible attitudes to alcohol consumption and excessive consumption. Part 3 (a) of the Code provides that alcohol marketing must not encourage excessive consumption or irresponsible behaviour related to alcohol use.
22. In assessing if an ABAC standard has been breached the Panel is to adopt the standpoint of the probable understanding of the marketing item by a reasonable person. This means that the life experiences, values and opinions commonly held in a majority of the community is to be the benchmark.
23. The Panel believes that a reasonable person would take the posts as humorous (or at least an attempt to be humorous) and not seriously advocating that a person should adopt unsafe and excessive patterns of alcohol consumption. Australians have a robust sense of humour and while some might find the attempted humour in the posts a little hackneyed, it wouldn't be taken as overly offensive.
24. That said, the humour is based upon an assumed and shared experience about over drinking. And it is this underlying message that excessive consumption is both common and acceptable that makes the posts inconsistent with the Part 3 (a) standard.
25. The Panel notes that the Hotel has removed the posts which is an appropriate course of action. There are numerous ways in which humour can be used in marketing an alcohol retailer consistently with the ABAC standards. The ABAC pre-vetting service provides independent reviews of marketing communications prior to public release and it is a service regularly used by non-signatories to the ABAC Scheme. The Hotel might

wish to seek advice in the future from the pre-vetters, at least if a major marketing campaign is proposed.

26. Accordingly, the complaint is upheld.