



ABAC Adjudication Panel Determination No 183/20

Product: The Bottle-O
Company: Independent Brands Australia
Media: TV – On Demand
Date of decision: 29 December 2020
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”) concerns television advertising for The Bottle-O (“the Product”) by Independent Brands Australia (“the Company”). It arises from a complaint received on 1 December 2020.
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 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 meeting 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 1 December 2020.
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 independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the marketing communication (Approval Number 18841).

The Marketing Communication

10. The complaint relates to a television advertisement for The Bottle-O, as described below.
11. The ad shows a Bottle-O employee walking through his local town smiling and waving to local community members, who take it in turns to sing a line from a version of Katrina and the Waves' "Walking on Sunshine". The advertisement concludes with footage of the employee arranging stock and smiling as he says "G'Day. How can I help you?"
12. The following are the lyrics to the song, as well as a description of the people singing various lines as the Bottle-O employee walks past them:

Two people in front yard	Hey there goes the man from the Bottle O. He's a really cool guy.
Two concrete workers	And every time we see him in the neighbourhood he says hi.
Choir in park	He tells us a joke. We all laugh. Yeah that's how it rolls.
Two cyclists	Cause his friend and my friends are all friends you know how it goes.

Cricket team and spectators	He's there for us every time. Bottle-O.
Pharmacists	Whether it's beer or wine. Bottle-O.
Fundraising BBQ	Together in sunshine. Bottle-O.
Moped rider	And he's got a big sign.

The Complaint

13. The complainant objects to the marketing as follows:

- *The ad depicts a Pharmacist in a chemist shop singing praise to the Bottle-O man. It clearly displays a Pharmacist in a white coat being supportive of the Bottle-O store. As Pharmacists are Healthcare professionals, just the same as General Practitioners, it is therefore inappropriate for them to be supporting a store that sells only alcohol.*

The ABAC Code

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

- (a)(ii) show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
- (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company Response

15. The Company responded to the complaint by email dated 22 December 2020. The principal points made by the Company were:

- On behalf of Australian Liquor Marketers, I would like to respond to complaint 183-20 against a recent campaign for The Bottle-O. As signatories to The Code, we are well aware of our duties to market our brands in a responsible way.
- The intent of the campaign is to show our lead character "Johnno" as part of the local community. Our company is a network of independent retailers across the country and our mission is to champion their success.

- By being independent it is in the nature for our retailers to be integral parts of communities across Australia and not unreasonable in any way to expect them to be friendly and convivial toward other members of the community. To this end it is our strong belief that the marketing does not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol.
- Furthermore, it is our strong belief that the advertisement does not suggest that a pharmacist endorses the use of alcohol but is merely being friendly and waving to another member of the community which would be a very realistic expectation in local communities all across Australia.
- We remain committed to the ABAC code and remain committed to our own duty to only ever market our brands in a responsible and non-offensive way.

The Panel's View

16. This determination concerns a television advertisement for the alcohol retailer The Bottle-O. The ad aims to position the retailer, as a small independent business, as a part of the local community. It does this by showing 'Johnno' from the local Bottle-O walking through the town and being warmly received by various people including two women in the shop window of a chemist store. Given the dress of the women, it is reasonable to assume one of the women is a pharmacist and the other is an employee of the chemist.
17. The complainant believes the ad is inappropriate because a pharmacist, as a healthcare professional, should not be depicted in an alcohol advertisement at all and certainly not shown as supporting an alcohol retailer. Part 3(a)(ii) of the ABAC provides that an alcohol marketing communication must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage. Part 3(c)(iv) provides that alcohol marketing must not suggest that alcohol offers any therapeutic benefit.
18. In assessing if an alcohol marketing communication is consistent with a Code standard the Panel is to adopt the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means that the life experience, values, and opinions common in a majority of the community is to be the benchmark. If the message to be derived from the marketing item can be understood in several ways, then it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.
19. The Company argues that the ad does not breach the ABAC. It is contended the ad shows people being friendly and convivial to each other and the pharmacist is

not endorsing alcohol use as such but is being friendly to another member of the community.

20. The Panel understands the point being made by the complainant, however the ad is not in breach of the ABAC. Alcohol is a lawful product, and it can be marketed provided the marketing depicts alcohol use in a moderate and responsible manner. Showing a pharmacist smiling and waving at an employee of an alcohol retailer is not 'offensive behaviour' as intended by Part 3(a)(ii) as this provision is aimed at alcohol affected behaviour such as being drunk or engaging in anti-social behaviour contributed from using alcohol. Nor can the ad be fairly understood as saying alcohol offers a positive health benefit as prohibited by Part 3(c)(iv). It is clear the chemist scene is in the context of depicting a variety of community members and the pharmacist is not offering an opinion that alcohol use is good for you.
21. The complaint is dismissed.