



ABAC Adjudication Panel Determination No. 30/16

Product: Wine
Company: Barwon Heads Wine Store
Media: Outdoor/Digital
Complainant: Confidential
Date of decision: 12 February 2016
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement by Barwon Heads Wine Store (“the Company”) that was photographed and posted by the KRock radio station on their facebook page and arises from a complaint received 1 February 2016.
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. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
 4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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 February 2016.
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.

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 not obtained for this marketing communication.

The Marketing Communication

10. The advertisement was in the form of an A-Frame blackboard on the pavement out the front of the Barwon Heads Wine Store. On 30 and 31 January 2016, the Cadel Evans Great Ocean Road Race took place, with the route running past the Barwon Heads Wine Store. For the purposes of the race, a sign reading "Spring 200m" was positioned on the side of the route. The A-frame was positioned under this race sign. The blackboard had the following messages on each side written in chalk:

"Keep your fluids up! (There's plenty of water in wine)"

and

"or walk into the wine store".

The Complaint

11. The complainant objects to the marketing for the following reasons:
 - a) Self promoting during an international bike race; and
 - b) The item promotes drinking irresponsibly using health (water) to promote alcohol.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

The Company's Response

13. The Company responded to the complaint by letter dated 4 February 2016. The principal points made by the Company were:
 - a) As a small, independent local business, we seek to engage with the Barwon Heads community; humour is a key element of this and to date our signage has been well received by locals. Our temporary blackboard A-Frame is changed daily and our signs are meant to be lighthearted musings. We are sorry that the complainant took exception to our humour on the day of the Cadel Evans event. The blackboard was on display for

the day trade only and was changed the next day to reflect a different message.

- b) In response, we certainly never meant for our signage to be taken seriously, nor did we mean to be offensive in any way. Our temporary sign was not intended to promote excessive drinking and in no way was meant to suggest rehydration could be obtained by drinking wine.
- c) Given the number of people who visited our town during the event, it seemed appropriate to cite the race to engage with our supporters. It was undertaken in, and complementary to, the very commercial spirit in which international cycling operates.
- d) The great sport of international cycling is enabled by business relationships in the form of sponsorship and promotion. Cadel Evans and his fellow race participants are supported and enabled by the commercial agreements they enter into with business: one need only see the branded outfit Cadel wears when he rides to appreciate this.
- e) It was in the spirit of this mutually beneficial relationship between business and cycling that we traded on the day of the race; as did all other local businesses that rely on seasonal and event trade in order to remain viable and provide a service to our community throughout the year.
- f) I appreciate the opportunity to respond to the complaint regarding our signage and look forward to a favourable outcome.

The Panel's View

- 14. The Cadel Evans Great Ocean Road Race was launched as a new annual international cycling event in 2015. The route of the race commences in Geelong and runs through Barwon Heads, the hometown of Cadel Evans, and then along the Great Ocean Road before finishing in Geelong.
- 15. The Barwon Heads Wine Store, according to its website, is an independent liquor merchant which commenced operations in December 2014. The store owners apparently employ a number of standard marketing techniques, including the use of an A-frame blackboard upon which messages are placed. The blackboard was placed along the route of the cycling race for a single day on about 30 January 2016.
- 16. The blackboard contained the message "Keep your fluids up! (There's plenty of water in wine)" on one side and on the other side "or walk into the wine store". The blackboard was positioned under an official race sign advising competitors that a sprint component of the race was approaching in 200m.

17. KRock is a Geelong based radio station. The station placed a photograph of the wine store's blackboard on its Facebook page. It was the Facebook page which was viewed by the complainant, who became concerned about the marketing item.
18. The complainant does not approve of the wine store using the cycling race for "self-promotion". This concern however raises no standard of good marketing practice under the ABAC. The second concern expressed is that the blackboard message promotes irresponsible drinking of alcohol by its reference to water. This concern does raise an ABAC standard which requires that alcohol marketing must not suggest that consumption of alcohol offers any therapeutic benefit.
19. The Barwon Heads Wine Store is not a signatory to the ABAC Scheme and has not made a contractual commitment to conduct its marketing consistent with ABAC standards. This is not particularly surprising as the ABAC Scheme was only extended in July 2014 to expressly cover "Retailer advertising" and while major liquor retailers such as Coles and Woolworths are Code signatories, smaller independent retailers have not as yet joined the scheme. The wine store has however fully cooperated with the Panel process and this enabled the decision to be made.
20. In response to the complaint, the wine store has said that it's blackboard messages are generally a light-hearted means to engage with the local community. The messages are changed regularly and this particular message was used for a single day during the cycle race. It is argued that the message was not intended to suggest rehydration could be obtained by drinking wine.
21. In assessing if a marketing communication is consistent with a Code Standard the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person, taking the content of the marketing item as a whole. The 'reasonable person' concept establishes that a common sense approach is to be adopted.
22. The Panel does not believe a 'reasonable person' would find the message concerning in the way it is presented. It is unlikely that the message would be taken as seriously saying consumption of wine offers a therapeutic benefit, namely rehydration, but rather would be taken as a playful remark relating to the bike race signage to attract attention to the store.
23. Accordingly, the complaint is dismissed.