



ABAC Adjudication Panel Determination No. 50/16

Product: N3 Tapas Bar
Company: N3 Tapas Bar
Media: Digital
Complainant: Confidential
Date of decision: 22 April 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 a digital advertisement for N3 Tapas Bar (“the Company”) and arises from a complaint received 29 March 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 29 March 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 marketing communication appeared on the Company's Facebook page and featured a promotion for half price alcohol beverages on Wednesdays named "Weekday Drunk".

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N3 Tapas Bar

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24 March at 01:35 · Public · in [Timeline Photos](#)

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The Complaint

11. The complainant is concerned that the promotion encourages excessive intake of alcohol that can contribute to a change in mood or environment.

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
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;

The Company's Response

13. The Company responded by email dated 15 April 2016 advising that the reference to the word "Drunk" in the promotion was removed two weeks earlier.

The Panel's View

14. N3 Tapas Bar is a bar and restaurant licensed to serve alcohol. The complaint concerns an advertisement of weekly specials on the Company's Facebook page, promoting half-priced alcoholic beverages on Wednesdays with the phrase "Weekday Drunk".
15. The complainant contends that the advertisement encourages the excessive consumption of alcohol through the suggestion that alcohol consumption can contribute to a change in mood or environment. Following the complaint, the Company advised that the word "drunk" was removed from the advertisement. No further argument was made by the Company to contend that the Facebook post was consistent with the ABAC standards.
16. The relevant ABAC standards are contained in section (a) and (c)(i) of the Code, which relate to the demonstration or encouragement of the excessive or rapid consumption of alcohol, offensive behaviour, and the suggestion that alcohol may create or contribute to a significant change in mood or environment.
17. In determining if a Code standard has been breached, the Panel is to consider the probable understanding of a marketing communication by a reasonable person, taking its content as a whole. The reference to a "reasonable person" is

drawn from the Australian Common Law system and means that the benchmark is the opinions, attitudes and values which are held by a majority of the community.

18. The Panel believes that the Facebook post is inconsistent with the section (a) and (c)(i) standards. Clearly, the reference to 'weekday drunk' within the context of the advertising of half price alcohol drinks implies excessive consumption is being encouraged. Equally, a reasonable person could take the reference to suggest offensive behaviour and a change in mood might occur due to excessive alcohol use.
19. Accordingly the complaint is upheld.