



ABAC Adjudication Panel Determination No. 107/17

Product: Liquor Barons
Company: Liquor Barons
Media: Outdoor
Complainant: Confidential
Date of decision: 24 November 2017
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 an outdoor advertisement by Liquor Barons (“the Company”) and arises from a complaint received 23 October 2017.
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 23 October 2017.
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 was 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 obtained for this marketing communication (15648).

The Marketing Communication

10. The complaint relates to an outdoor advertisement for Liquor Barons located on freeway south before the Mandagoorup exit seen on 22 October 2017. The Company has supplied the following outdoor advertisement.



The Complaint

11. The complainant is concerned that an advertisement by an alcohol retailer with the statement “I can see your house from here” and “you need more wine” is not appropriate in an area known to have significant drug and alcohol issues and is encouraging people to drink excessively and/or whilst driving.

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;
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
 - (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 16 November 2017. The principal points made by the Company were:

- a) Liquor Barons Co-operative Ltd has demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles and maintains strict internal and external processes in addition to those required by the ABAC Scheme.
- b) The advertisement in question is one of a series of six outdoor advertisements that have appeared throughout the Perth metropolitan area over the past 3 months. This series of advertisements features 3 characters, or "Barons" (The General, the Amber Baron and the Baroness). This particular execution features the Baroness. The 3 Baron characters also featured heavily in a series of radio advertisements focusing on differentiation, information and education. Additionally, all advertisements in the campaign feature the tag line "Close to Home, Far from Ordinary". All six advertisements received AAPS approval - approval number 15648 prior to production and consequent placement.
- c) Liquor Barons does not consider that the advertisements breach any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code.
- d) Liquor Barons does not agree the woman has an alarmed expression. In this instance, we don't agree that the use of the phrase "*you need more wine*" is a breach of section 3(a)(i) of the Code, in that on no reasonable assessment could it be considered to encourage irresponsible or excessive consumption of alcohol. There can be no reasonable or logical conclusion drawn that the use of the phrase encourages anything more than a consumer to purchase their existing requirements from the liquor retailer (Liquor Barons) highlighted prominently in the advertisement.
- e) There can be no reasonable or logical conclusion drawn that the "Baroness" character stating humorously from an exceptionally high billboard "*I can see your house from here - you need more wine*" suggests anything more than prompting a consumer to purchase their existing requirements from the liquor retailer (Liquor Barons) highlighted prominently in the advertisement. We further note, in no way does the advertisement imply *The Baroness* is purchasing alcohol. Rather it refers to a fictional 3rd person and makes no suggestion around the change of mood or environment of that individual.
- f) Further, it is a long bow to draw to suggest this advertisement makes any reference (implied or otherwise) to a therapeutic benefit or any aid to relaxation.

The Panel's View

14. Liquor Barons are a Western Australia alcohol retail network of stores. Currently, the Company is conducting a marketing campaign across various media including outdoor advertising on billboards. The theme of the campaign is 'Close to Home, Far from Ordinary' and features three characters, one of which is dubbed the Baroness.
15. One execution in this campaign is a billboard located on a freeway near Mandagoorup. It features a picture of the 'Baroness' holding a glass of champagne with a shocked or amazed expression on her face. Next to the picture are the words 'I can see your house from here. You need more wine.'
16. The complainant has taken an interpretation from the billboard which might be summarised as meaning that the Baroness is saying – 'Look at you, to cope, you need to drink more wine.' Such a message is argued to be irresponsible given the harms associated with alcohol misuse.
17. The Company counters that the advertising would not be interpreted in the way taken by the complainant. The Company asserts that the advertisement simply encourages a consumer to purchase their liquor requirements from their stores.
18. The ABAC creates a series of requirements which alcohol marketing is not to breach. These standards go to not encouraging excessive consumption and not suggesting that alcohol offers any therapeutic benefit. In assessing if a standard has been breached, the applicable test is the probable understanding of the marketing communication by a reasonable person.
19. The 'reasonable person' test is drawn from the Australian Common Law system. It recognises that two people may see the same advertisement and take quite different interpretations of the message in the advertisement. The choice the Panel is to take is the interpretation which it thinks a majority of the community would accept, recognising the opinions, values and attitudes common in the Australian community. This does not mean a person holding a different interpretation of the advertisement is 'unreasonable', but it does mean that possibly their interpretation would not be shared by a majority of the community.
20. The Panel does not believe that the advertisement is in breach of the ABAC standards. In reaching this conclusion, the Panel has noted:
 - The character of the Baroness is clearly fictional, exaggerated and would be seen by most people in that light;

- The reference to seeing a person's home reflects the high profile of the billboard and the elevated position occupied by the Baroness and is intended to be humorous;
- The reference to needing more wine would be taken to mean that a person was out of the item and 'needed' to purchase some wine, preferably at the Company's outlet;
- Nothing in the advertisement goes to the encouragement of a rapid rate or excessive level of consumption of any alcohol that might be purchased from the store;
- It is a long bow to suggest that the message would be interpreted that wine was required to obtain a therapeutic or health benefit; and
- Taken as a whole, the advertisement would likely be interpreted as meaning that 'the Baroness can see that you are out of wine and you can purchase wine at our stores'. Such a message is not inconsistent with the ABAC standards.

21. Accordingly the complaint is dismissed.