



ABAC Adjudication Panel Determination No. 40/19

Product: Byron Bay Brewery
Company: Lion
Media: Radio
Date of decision: 10 July 2019
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 radio marketing for Byron Bay Brewery by Lion (“the Company”) and arises from a complaint received 7 June 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 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 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 7 June 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.

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 sought for this marketing communication.

The Marketing Communication

10. The complaint refers to a promotion of Byron Bay Brewery on Bay FM Radio Station. The promotion is a voiceover against a popular music song in the background “Byron Bay Brewery’s home to the freshest beer, the best bands and the juiciest burgers in town. Watch the brewhouse in action crafting the beers you’re drinking and enjoy one of our

many live gigs. Coming up this week at the brewery. On Wednesday it's open mic night. On Thursday its our Brazilian party featuring Forro. On Friday we have an all-female fronted line up featuring Ali Barter, The Oogars and Sophie Ozard. On Saturday its Opiuo as part of Street Level's birthday and then on Sunday it's Brews & Blues. Open Wednesday through Sunday from 12 till late with happy hour 4-6 week days. The brewery is the destination to grab a craft beer and catch a live gig with friends. 1 Skinners Shoot Road Byron Bay. Freshly brewed sponsors of Bay FM".

The Complaint

11. The complainant is concerned that the loud and frequent promotion of beer on Bay FM under the guise of promoting music gigs at Byron Bay Brewery targets the sale of alcohol to young people (and backpackers) and promotes Byron Bay as a party town.

The ABAC Code

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

(b)(i) have Strong or Evident Appeal to Minors;

13. Definition in Part 6 of the ABAC provides:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

The Company's Response

14. Community radio station BayFM responded to the complaint on 18 June 2019. The principal points made by the radio station were:
 - (a) I have listened to the announcement and considered it in in light of Part 3(b)(i) of ABAC's code and do not consider it a breach of the Code and assume the ABAC Adjudication Panel will reach a similar conclusion.
 - (b) As discussed on the telephone recently I have never heard of ABAC and consequently was not aware of the Advertising Pre-vetting Service Approval.

- (c) I should also add that Bay FM is not a youth station, the overwhelming majority of our presenters are 35+ and our programs cater for a 35+ audience.
15. The Company responded to the complaint on 27 June 2019. The principal points made by the Company were:
- (a) As a responsible marketer and a signatory to the ABAC Scheme, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance.
- (b) The radio advertisement that is the subject of complaint 40/19 regrettably did not receive Alcohol Advertising Pre-vetting Service Approval. We acknowledge Rule 5.2 of the ABAC Rules and Procedures requires signatories to the ABAC Scheme to pre-vet radio Marketing Communications within our reasonable control. Since this complaint was raised by ABAC with Lion, we have conducted an investigation into the internal procedures regarding the broadcasting of radio advertisements by the Byron Bay Brewery and we have revisited training on AAPS pre-vetting requirements for our hospitality venues.
- (c) Notwithstanding the technical breach of the ABAC Rules and procures, Lion submits that the advertisement in question does not breach the ABAC Code, and in particular Part 3(b)(i) of the Code which prohibits Marketing Communications from having strong or evident appeal to minors. It promotes the fact that Byron Bay Brewery is a live music venue, which serves beer and burgers. The advertisement largely focuses on the bands scheduled to play at the venue over the coming days, and therefore serves to inform the community. Each of the bands promoted in the advertisement are carefully selected by the venue to ensure that they do not have a Strong or Evident appeal to Minors (as defined in the ABAC Code). We never promote events on air with bands that are under the age of 18 as we are an 18+ venue. For completeness, we note that the bands mentioned in the advertisement are as follows:
- Opiuo
 - Forro
 - Ali Barter
 - The Oogars
 - Sophie Ozard
 - Brews & Blues (didn't end up playing but is a blues band in their 40s)
- (d) As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance. As part of Lion's marketing approvals processes, our advertisements are subject to:
- internal legal review and advice from an external legal firm specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation; and
 - review by Lion's internal marketing compliance team to ensure its adherence to all relevant advertising laws and codes.

The Panel's View

16. This determination concerns radio ads for the Byron Bay Brewery broadcast over a community radio station. The ads promote the Brewery as an entertainment venue mentioning the facilities available and a number of bands playing at the venue.
17. The complainant believes the ads are irresponsible in that they encourage younger people to drink and generally promote Byron Bay as a party town. The Company in response concedes the ads were not pre vetted prior to broadcast but maintain the ads are not inconsistent with ABAC standards.
18. The Code provides that an alcohol marketing communication must not have strong or evident appeal to minors (under 18 year olds). This standard might be breached if an ad can be said to be directed at minors or have an appeal to minors beyond its attractiveness to adults more broadly.
19. The Panel does not believe the ads are in breach of the ABAC standard. In reaching this conclusion the Panel noted:
 - the ads would be taken as appealing to a younger rather than older audience given the messaging about bands playing and the general pace and style of the ad;
 - that said, the likely audience for the ads would be younger adults in their early to late 20's;
 - the focus of the ads is on the Brewery as an entertainment venue in which the availability of alcohol is one factor amongst food and music; and
 - taking the content of the ads as a whole it would not be considered that minors are being targeted or that the ads would have more than an incidental appeal to minors as opposed to a strong or evident appeal.
20. It is noted that the Company as a signatory to the ABAC Scheme should have had the ads pre-vetted prior to broadcast. This failure however is not a breach of a Code Standard as such within the jurisdiction of the Panel.
21. Accordingly, the complaint is dismissed.