



ABAC Adjudication Panel Determination No. 82,86 & 90/14

Product: BWS (Various)
Company: Woolworths Liquor Group
Media: Television
Complainants: Confidential, Susan Columbine & Robert Ford
Date of decision: 23 December 2014
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 advertisements and a website for BWS by Woolworths Liquor Group (“the Company”) and arises from complaints received 18 November, 26 November and 5 December 2014.
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 – 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 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 18 & 26 November and 5 December 2014.
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 complaints have been determined with 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 these marketing communications.

The Marketing Communication

10. The complaints refer to three television advertisements and the company website for BWS promoting different special offers. Each of the television advertisements have excerpts from “Best Day of My Life” by The American Authors as background music throughout the advertisements featuring the lyrics “Its gonna be the best day of my life”. The website (www.bws.com.au) contained a link to the music video clip of the song.

Spirits TVC

11. The advertisement opens with an orange background and the corner of a string of Christmas lights then a voiceover and superimposed text “Today you found a sleigh full of specials”.
12. The screen scrolls to the right following the string of Christmas lights as we see the text “Triple Up and Save” with accompanying voiceover “Triple up and save on these spirits”. The screen includes terms and conditions of the offer in small print at the bottom of the screen.
13. The screen again scrolls to the right following the string of Christmas lights as we see a Christmas present. We then see the present open and a range of 8 spirits products and Christmas baubles are shown. The three specials and their accompanying savings appear on some of the Christmas baubles.
14. The screen then zooms in on the range of spirits before scrolling up to a new screen where we see the letters of the words “200 Specials” hanging among Christmas Baubles above the letters of the words “Today & Every Day” as lights hanging from a string of Christmas lights. As the screen scrolls up the words hanging among the Christmas baubles change to the three letters of the BWS logo and the words on the string of Christmas lights change to “Today’s Special”. The voiceover concludes with “Its just one of 200 specials today and everyday at BWS. Today’s Special”. The “ID25” and “Drinkwise Get the Facts” logos are superimposed on the lower part of the screen.

Hardy’s Chronicles TVC

15. The advertisement opens with an orange background and the corner of a string of Christmas lights then a voiceover and superimposed text “Today you got a gift like you’ve never seen before”.
16. The screen scrolls to the right following the string of Christmas lights as we see the text “New and Exclusive Hardy’s Chronicles” with accompanying voiceover “At BWS get two bottles of Hardy’s Chronicles”. The screen includes terms and conditions of the offer in small print at the bottom of the screen.

17. The screen again scrolls to the right following the string of Christmas lights as we see a Christmas present. We then see the present open and there are 4 bottles from the Hardy's Chronicles range and Christmas baubles. The text "Any 2 for \$24 Save \$11.98" is superimposed as the voiceover continues "for just \$24.00 saving nearly \$12".
18. The screen then scrolls up and we see the letters of the words "200 Specials" hanging among Christmas Baubles above the letters of the words "Today & Every Day" as lights hanging from a string of Christmas lights. As the screen scrolls up the words hanging among the Christmas baubles change to the three letters of the BWS logo and the words on the string of Christmas lights change to "Today's Special". The voiceover concludes with "Its just one of 200 favourites on special today and everyday at BWS. Today's Special". The "ID25" and "Drinkwise Get the Facts" logos are superimposed on the lower part of the screen.

Wine Bundle TVC

19. The advertisement opens with an orange background and the corner of a string of Christmas lights then a voiceover and superimposed text "Today you got a sack full of savings at BWS".
20. The screen scrolls to the right following the string of Christmas lights as we see the text "1/2 Price Wine Bundle" with accompanying voiceover "with our half price wine bundle". The screen includes terms and conditions of the offer in small print at the bottom of the screen.
21. The screen again scrolls to the right following the string of Christmas lights as we see a Christmas present. We then see the present open and 1 bottle of Villa Maria Sauvignon Blanc and a superimposed + sign and then 2 bottles of South Island Sauvignon Blanc are shown with some Christmas baubles. The text "All this for \$27 Save \$28.97" is superimposed on the screen next to the bottles. The voiceover continues "for just \$27. Save nearly \$29. That;s better than half price" The superimposed text changes to "That's better than 1/2 Price".
22. The screen then scrolls up and we see the letters of the words "200 Specials" hanging among Christmas Baubles above the letters of the words "Today & Every Day" as lights hanging from a string of Christmas lights. As the screen scrolls up the words hanging among the Christmas baubles change to the three letters of the BWS logo and the words on the string of Christmas lights change to "Today's Special". The voiceover concludes with "Its just one of 200 specials today and everyday at BWS. Today's Special". The "ID25" and "Drinkwise Get the Facts" logos are superimposed on the lower part of the screen.

The Website

23. The website lists special alcohol product prices, a search engine to locate BWS stores, and other features. Included on the site is the statement, "Check out the video clip for American Author's song Best Day of My Life. We loved it so much we used it in our TV ad". A user of the site could then directly access the video clip by clicking the link to YouTube.

24. The video clip for the song includes the following sequence of scenes:
- (a) a man at a bar on his own consuming a stubby of beer;
 - (b) a person in a monster suit appearing next to the man in the bar and the two tapping stubby's of beer;
 - (c) further scenes where the two people are seen drinking;
 - (d) a scene where the bar person asks the man to leave the bar;
 - (e) several scenes where the two people are seen engaging in ordinary activities during the day (basketball, sitting on a park bench), where it seems they are affected by excess alcohol consumption;
 - (f) the two people in a strip bar consuming alcohol and throwing money at the dancer;
 - (g) the two people having their photo taken in a photo booth;
 - (h) at night the two people sitting on a street kerb consuming a beverage from a brown paper bag, sitting on a slippery dip, taking turns piggy backing one another, practising karate moves, the man getting a tattoo of his 'monster' companion, running along a bridge and dancing at a party all while appearing affected by excess alcohol consumption;
 - (i) the man waking up alone, apparently having fallen asleep on the bar where he is first seen drinking, with three empty stubby bottles around him, putting his glasses on and saying sorry to the barperson, the implication being that he has 'imagined' the 'monster' due to excessive consumption of alcohol.

25. The lyrics for the song are:

I had a dream so big and loud
I jumped so high I touched the clouds
Wo-o-o-o-o-oh [2x]
I stretched my hands out to the sky
We danced with monsters through the night
Wo-o-o-o-o-oh [2x]

I'm never gonna look back
Whoa, I'm never gonna give it up
No, please don't wake me now

Oo-o-o-o-oo
This is gonna be the best day of my life
My life
Oo-o-o-o-oo
This is gonna be the best day of my life
My life

I howled at the moon with friends
And then the sun came crashing in
Wo-o-o-o-o-oh [2x]
But all the possibilities
No limits just epiphanies
Wo-o-o-o-o-oh [2x]

I'm never gonna look back
Whoa, I'm never gonna give it up
No, just don't wake me now

Oo-o-o-o-o
This is gonna be the best day of my life
My life
Oo-o-o-o-o
This is gonna be the best day of my life
My life

I hear it calling outside my window
I feel it in my soul (soul)
The stars were burning so bright
The sun was out 'til midnight
I say we lose control (control)

This is gonna be the best day of my life
My life
Oo-o-o-o-o
This is gonna be the best day of my life
My life
This is gonna be, this is gonna be, this is gonna be
The best day of my life
Everything is looking up, everybody up now
This is gonna be the best day of my life
My life

The Complaint

26. The first complainant is concerned that the advertisements:
- (a) Refer to over 200 offers on alcohol encouraging you to drink lots and advising of low prices;
 - (b) Advertise alcohol on TV during times when children/early teens are viewing and during sporting events, giving alcohol credibility and encouraging children and teens to try it;
 - (c) Link alcohol to sporting events gives it too much prominence and credibility;
 - (d) Sporting teams being sponsored by alcohol companies gives an appearance of endorsement and that drinking is acceptable;
 - (e) Surrounding teenagers with alcohol advertising suggests drinking is normal.
27. The second complainant is concerned that the advertisements:

- (a) Includes a background song with the lyric “This is going to be the best day of my life” subliminally suggesting that the purchase and anticipated consumption of the product will add to this being “the best day of my life”.
 - (b) People with alcohol problems have this reaction when they see alcohol and that is what leads to problem drinking. The song is one that will be easily recalled when purchasing from a store and adds to the suggestion that alcohol will lead to better times in a person’s life.
28. The third complainant is concerned that:
- (a) The television advertisements:
 - include the song “Best Day of My Life” playing in the background, suggesting alcohol is going to give you the best day of your life;
 - encourage the purchase in multiples of discounted spirits and could result in a young person purchasing 3 bottles, being unable to stop and being killed in a car accident.
 - (b) The BWS website includes a link to the video clip for that song and states “Check out the video clip for American Author’s song Best Day of My Life. We loved it so much we used it in our TV ad.” And also “BWS takes the responsible service of alcohol very seriously”.

The ABAC Code

29. 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

30. The Company responded to the complaints on 26 November and 8 December 2014. The principal points made by the company were:
- (a) Woolworths Liquor Group’s (WLG) aim is to be Australia’s most responsible retailer of alcoholic beverages. Last year we formalised our status as a signatory to the Alcohol Beverages Advertising Code

(ABAC) Scheme. Prior to becoming a signatory, WLG demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. WLG maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context.

(b) WLG has also instigated a range of industry-leading initiatives to ensure that children are not served alcohol, including:

- ID25 (ask for ID from anyone who looks under 25)
- Don't Buy It For Them (stopping secondary supply to minors)
- Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses, and implementation of the award winning training program "Safe".

In marketing alcoholic products, WLG has been fully aware of the requirement not to encourage excessive consumption or risky drinking. We have been careful to observe this, including by ensuring that our marketing has been strictly limited to promotion on the price of adult beverages that are available for purchase everyday from BWS stores. Advertising price specials have been regularly used by BWS and nearly every other retailer as a common promotional mechanism.

(c) BWS *200 Specials* advertisements do not at any point make a suggestion for the alcohol being promoted to be consumed in any form. The ABAC Rules and Procedures makes it clear that retailer brand and price advertising do not require to be pre-vetted:

Marketing communications which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

i) the brand name or names of alcohol beverages offered for sale;

ii) the type and/or style of the alcohol beverages offered for sale;

iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;

iv) the location and/or times at which the alcohol beverages are offered for sale; and

v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the ABAC Code and the AANA Code of Ethics but are not required to be pre-vetted.

Nevertheless, BWS did seek pre-vetting of the advertisements which were approved by the pre-vetter. For reference the application number is 573/14 and approval numbers are 13630, 13647, and 13652.

- (d) WLG disputes that advertising price specials on alcoholic beverages with a musical background encourages the excessive or rapid consumption of alcohol or lead to a change in mood. No words in the voiceover, visuals, iconography, designs, motifs, or symbols or imagery is used that could possible lead the viewer into thinking the advertisement is an appeal to rapidly or excessively consume alcohol. The music “Best Day of My Life” is a common reference in all BWS ads since the commencement of a new advertising campaign late last year. “Today's special” works in two ways. One is that we recognise that everyday can be special in small ways and the other relates to specials on the price of alcohol in-store at BWS.
- (e) The ABAC Adjudication Panel has previously considered the use of this song in context to the wider advertising. The complaint was dismissed after the Panel found that there was no suggestion that the alcohol was to be consumed in an excessive or irresponsible way.

Determination 135-13

While the advertisement is suggesting that alcohol might be used in a range of everyday settings, it is not suggested that alcohol is to be consumed in an excessive or irresponsible way in these circumstances

The song is a suitable accompaniment to the advertising of special savings on alcohol. The savings are substantial in nature and reflect a significant discount on what a customer would normally pay. The song complements this as the shopper can make substantial saving on alcoholic beverages that are on “special” pricing.

The music runs throughout the advertisement, so cannot be considered to change the mood or environment which from the beginning is set as an advertisement for price specials on promoted products.

The visuals are in keeping with general Christmas-theme advertising conducted by all retailers and are mature and adult in nature.

Taking the advertisement as a whole, a 'reasonable person' would view the advertisements as simple retail price advertising. There is nothing in the advertisement that a reasonable person would view as likely to encourage a person to consume all the alcohol in a single sitting or carry out an irresponsible activity; and that this unlikely scenario would somehow make it the best day of their life.

The Panel has previously made determinations for simple price promotions and WLG is surprised that this matter was not dealt with under ABAC's 'consistently dismissed provisions'.

In everyday life and even moreso in the lead up to the festive season, there are a myriad of reasons for a shopper to take advantage of a product promotional bundle. This could include the cellaring of a wine, the hosting of a weekend BBQ, or the gathering of family over the holiday period and needing to cater for a variety of drink preferences.

A selection of previous ABAC determinations on simple price promotions stretch back many years:

Determination 26/06

The second issue is whether section (a) of the ABAC is breached by the advertisement. Here the argument is whether promotions which seek to entice the purchase of multiple bottles of alcohol beverage is an encouragement of the excessive consumption of alcohol. The Panel does not believe the promotion can be fairly said to encourage excessive consumption, as it is extremely common for wine to be purchased in bulk, such as in cases of wine, and it does not follow that the wine will be consumed irresponsibly. An advertisement would need to do more than promote the sale of multiple bottles to offend the standard in section (a).

Determination 05/07

The Panel does not believe the advertisement can be fairly said to be encouraging excessive consumption of alcohol within the intent of Section a) of the Code. The Panel takes the prohibition in Section a) to be on advertisements which give positive encouragement to excessive consumption. This might be done by say linking excessive consumption with desirable personal or social qualities. Merely advertising that more than one bottle of a product can be purchased on a single occasion and this results in savings for the purchaser is not in itself a breach of the Code

Determination 80/09

The Panel does not believe that the ad can fairly be said to be encouraging excessive consumption. It is highly questionable whether the giveaways could reasonably be expected to lead to

multiple purchases of the product being promoted. It might reasonably be expected that the giveaway might influence a consumer to choose a particular retailer and a particular brand or product over alternatives, but it does not follow that a person would likely purchase more alcohol than would otherwise be the case, simply to obtain the giveaways. More critically, however, even if it was accepted that the impact of the advertisement was to increase the purchase of the particular products being promoted, it does not follow that a consumer will modify their consumption pattern to consume more alcohol.

It is very common for alcohol to be purchased in multiples e.g. a case of wine or a carton of beer. Simply because a case or carton of a product is purchased does not mean that the product is then consumed on a single occasion or in an excessive manner. In other words, there is an obvious distinction between the purchase of multiple products for “take away” use and the rate of consumption of the product. At its highest, the ad might be encouraging the purchase of more of the promoted products, but it cannot be said that it is encouraging excessive consumption of the products which have then been purchased.

Determination 34/10

“The Panel has on a number of occasions considered ads which promote the sale of multiple bottles or cans of alcohol at a price which is more attractive than the “usual” price if a single bottle or can was purchased.

Alcohol is commonly sold in multiples e.g. a case of wine or carton of beer. The ABAC standard goes to advertising not promoting excessive consumption and consumption in excess of NHMRC guidelines. The Panel believes there is a clear distinction between purchasing multiple bottles or cans of alcohol and the subsequent consumption of the product. It does not follow that, if a person buys, for instance, a case of a dozen bottles of wine, the person will then either endeavour to drink all of the wine alone or in a binge drinking session.

Determination 80/13

The Panel has previously held that simply offering a discount for the multiple purchase of an alcohol product does not amount to the encouragement of subsequent excessive consumption of the purchased products.

Alcohol is often purchased in multiples and then consumed over a period of time or by numerous individuals. By their nature, most alcohol products have a reasonably long shelf life and making alcohol available at a cheaper price during a particular time period might encourage a person to purchase alcohol during that time to secure a better price, but it does not follow that the alcohol will then be consumed in an irresponsible manner such as in binge drinking.

In terms of the content of the advertisement itself, it contains pictures of various alcohol products and their pricing. It does point to the fact that alcohol can be purchased at a cheaper rate than might otherwise be the case if purchased outside of the discount offer. There is, however, nothing in the content which can be fairly said to be encouraging a purchaser of the products to then consume them in an irresponsible or excessive manner

Determination 135/13

The point is, however, that at the present stage alcohol advertising and marketing is permitted. The form of the marketing is subject to a particular set of standards, as contained in the ABAC and related codes, but the standards presume that alcohol can be promoted and that alcohol use does occur throughout the community. Provided that an advertisement does not suggest that alcohol should be consumed in an irresponsible manner, in excessive volumes, in a way that will appeal to children and adolescents, or imply that alcohol is required to be successful in life, etc., then the advertisement is able to be used

- (f) The BWS *200 Specials* advertisements continue this long line of using a price promotion mechanic. Like any other retailer, using a special price or offer is very common promotional tool. BWS has had a long history of offering great specials on wine, beer and spirits. It has extended this consumer offering by guaranteeing that customers have a choice of at least 200 specials or promotional offers. This gives shoppers confidence that they should be able to find something in the entire range that attracts them which will be on a promotional pricing, in addition to the few products featured in the advertisement. There is quite simply no encouragement for a consumer to purchase and then rapidly or excessively consume all items included in the 200 specials guarantee. They are merely being afforded the choice of 200 specials as part of their shopping experience.
- (g) There is no suggestion of consumption within the advertisement so there can be no suggestion of a mood or environment change. A reasonable person would see the advertisement as a simple price promotion on selected items. Accordingly, the complaint should be dismissed, and the Panel should determine that there has been no breach of the Code.
- (h) The link to a YouTube video of the American Authors filmclip on the BWS website has been removed.

The Panel's View

31. BWS is a major Australian retail outlet of alcohol products and a member of the Woolworths group of companies. Woolworths is a signatory to the ABAC scheme.

32. The three complaints go to two forms of marketing communications within the company's "Every Day is Special" campaign theme. The marketing communications are, firstly, three fifteen second television advertisements which have been shown on free to air television, including in conjunction with broadcast of live cricket games. Secondly, one complaint goes to the BWS website and, in particular, the inclusion on the website of a music video clip of the song "Best Day of My Life". This song has been featured in the BWS special campaign for a period over the last twelve or more months.
33. In relation to the television advertisements, the complaints go to several specific concerns, namely:
- (a) The promotion of excessive alcohol consumption;
 - (b) The linkage of alcohol to sporting events;
 - (c) The implication from the lyrics of the song, "Best Day of My Life", that alcohol use will enhance a person's mood and/or success in life.
34. The Panel has previously considered an earlier execution in the "Every Day is Special" campaign from the company (Determination 135/13 dated 19 December 2013), and has also made decisions which go to the Code standards canvassed by the complaints regarding the television advertisements. Since these earlier decisions, the ABAC has been substantially revised, with the current version of the Code commencing on 1 July 2014. For this reason, it is useful to state some general propositions which were established under the previous Code and which are equally applicable to the current Code. These propositions are as follows:
- (a) Advertising a discounted sale price for the purchase of multiples of a product, such as beer or wine, is not of itself an encouragement of excessive consumption, as:
 - There is a clear distinction between the purchase of a product to be taken away from a retail outlet and the subsequent pattern of the product's consumption;
 - Alcohol is commonly purchased in multiples, such as a carton of beer or a case of wine, and this does not mean that the purchased product will be consumed in an excessive manner. For instance, the product might be consumed over a considerable period of time, or by multiple people;
 - (b) The broadcast of alcohol advertising with live sports events, such as cricket, is not of itself a breach of the ABAC, as:
 - The ABAC is concerned about the content of alcohol marketing communications and that content being consistent with the standards of good practice contained in the Code. The Code does not restrict where marketing communications might be broadcast or located;

- Part 2(b)(vi) expressly states that the Code does not apply to the placement of a marketing communication, except to the extent the placement may impact on how the marketing communication is understood;
 - The Commercial Television Industry Code of Practice permits alcohol advertising in conjunction with the broadcast of live sporting events.
35. The first complaint raises a concern that the sponsorship of sports teams by alcohol companies “gives an appearance of an endorsement that drinking is acceptable”. The question of the role that alcohol company sponsorship should or should not play in sports is an entirely valid matter of public policy for sports associations, the alcohol industry, health professionals, government, and ultimately the public to consider. It is, however, outside the remit of the Panel to decide and Part 2(b)(v) expressly states that the ABAC scheme does not apply to sponsorship. Accordingly, the sponsorship of cricket by alcohol companies is not a breach of the ABAC.
36. The second and third complaints raise a specific point which is not expressly dealt with in the earlier decision dealing with the company’s “Every Day is Special” campaign. The argument relates to the lyrics of the song “The Best Day of My Life” which is the background music to the various television advertisements. The complainants argue that the song implies that alcohol will either give you the best day of your life, or will add to the best day of a person’s life.
37. The company replies to this by contending that the song is a suitable accompaniment to the advertising of special savings on alcohol and does not lead to a change in mood, or make a person think that the purchase of the products would actually make it the best day of a person’s life.
38. Part 3(c) of the Code provides that a marketing communication must not suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood, and (c)(ii) goes on to require that the consumption or presence of alcohol cannot be shown as a cause or contributor to the achievement of personal, business, social, sporting, sexual, or other success.
39. In assessing the consistency of a marketing communication to the Code standards, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole. The notion of the ‘reasonable person’ is borrowed from the Australian common law system, and refers to the attitudes, opinions, and beliefs commonly held in a majority of the community.
40. The Panel does not believe the television advertisements breach the Code standards. In reaching this conclusion, the Panel has noted:

- (a) Taken as a whole the advertisements deliver product and price information and cannot be said to suggest alcohol is a cause of success in life;
 - (b) The song lyrics heard use the words “best day of my life”, but these lyrics must be placed within the context of the visual aspects of the advertisement and together the advertisements do not breach Code requirements;
 - (c) The advertisements do not suggest that alcohol will cause social or other success.
41. The third complaint raises the Company’s website and inclusion on the website of the video clip of the song. The video is accessible by link to the video clip sharing platform YouTube and is identified on the website by a statement “Check out the video clip for the American Author’s song Best Day of My Life. We loved it so much, we used it in our TV ad”.
42. The video creates a scenario of a man who spends an apparently eventful day with a friendly monster. Several scenes in the video depict expressly or by implication that the man is consuming considerable quantities of alcohol. These scenes include:
- (a) The numerous scenes where the man is shown consuming alcohol;
 - (b) The man being asked to leave a bar, presumably for poor behaviour relating to alcohol use;
 - (c) The strip club scene where the man’s behaviour implies excessive consumption has occurred;
 - (d) The scene showing the man drinking in a gutter from a bottle in a brown paper bag;
 - (e) The man awakening in the original bar and shown with multiple empty bottles next to him.
43. The Company is responsible for its website, and made the decision to place the clip on the site. By adding the clip it becomes part of the website as a whole, and the Panel is to take the video’s content into account in assessing the website’s consistency with relevant ABAC standards. While the balance of the website does not contain elements of themselves which would be taken to be inconsistent with Code standards regarding excessive consumption, the juxtaposition of the video and its depiction of excessive alcohol use with the advertising of multiple alcohol products, means that the site as a whole is inconsistent with Part (a)(i) and (ii) of the Code.
44. In response to the complaint, the Company immediately removed the video clip. This is welcomed by the Panel, but the Panel is to assess a marketing communication which is the subject of a complaint as it was at the time the complainant viewed the material, and not as it might be subsequently modified. In this circumstance, the Panel finds the complaint to be upheld.

45. Accordingly, the Panel dismisses the complaints in relation to the three television advertisements, but upholds the complaint in relation to the Company's website.