



## ABAC Adjudication Panel Determination No. 56/19

**Product:** Cellarbrations Cambridge  
**Company:** Cellarbrations  
**Media:** Television  
**Date of decision:** 9 September 2019  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement by Cellarbrations (“the Company”) and arises from a complaint received 28 August 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 the other codes as well as meeting the standards contained in the ABAC.
  4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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 28 August 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.
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 the marketing communication.

### **The Marketing Communication**

10. The complaint refers to a television advertisement for the Cellarbrations Cambridge store. The advertisement includes the following sequences of footage:

- Fast forward footage of a car pulling into a carpark in front of a Cellarbrations Superstore and a woman walking her dog in front of the store.
- Voiceover “Oh hi there how does it feel when you drive to Cellarbrations Superstore Cambridge Park” accompanied by the following scenes:
  - the footage changes to normal speed as two men get out of the car; and
  - one of the men is shown wheeling a trolley around the store with the other man sitting in the trolley with the text “Drink Responsibly” across the page.
- In the next scene we hear an AFL football siren and we see the two men from the store plus another three men and a woman each holding a can, jumping up and down, holding up a football, spilling drinks, chest bumping and cheering. There is another man separate from the group wearing a onesie and sitting cross legged.
- Voiceover “We’re independently owned and operated and that really puts the cream on the Sherrin, thanks nan” accompanied by the following scenes:
  - the two men from the first scene standing in the middle of the store immobile; and
  - the man in the onesie sitting on a sofa next to an elderly woman with an AFL football on her knee as he holds a can and sprays whipped cream onto the football and they both laugh.
- Voiceover “Our bottleshop should give you days like this, not days like this” accompanied by the following scenes:
  - a man and woman shaking their arms with their drinks spilling;
  - a man holding a can cheering in an exaggerated manner; and
  - a man wearing a hat having a drink poured over his head.
- Voiceover “Shouldn’t it be .. a Cellarbration” accompanied by the following scenes:
  - a picture of the exterior of the store;
  - a man in a football jersey saying “a celebration”; and
  - an image of the exterior of the store from a different angle as a man enters the store.

## **The Complaint**

11. The complainant is concerned that the ad contains a disgusting display of drunken antics, showing disrespect for seniors, pouring drinks over each other’s heads etc.

## **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

## **The Company's Response**

13. The Company responded to the complaint by letter dated 2 September 2019 advising:
  - We have investigated this matter with the personnel involved and have identified that there was a misunderstanding around the process required to ensure the TV advertisement was compliant with the ABAC Code. Whilst the team sought and received CAD approval and was advised that CAD was the only approval they required, we have re-trained the team to ensure everyone is across the correct process for TV and advertising in general and the requirement for all advertising to be compliant with the Code by utilising the ABAC pre-vetting service.
  - Due to the nature of our business with our stores being independently owned and operated, the store in question produced this advertisement and put it in market without our marketing team's approval. We have since communicated with the correct internal process for approvals for any future advertising.
  - We apologise that due process was not completed in this instance and have implemented steps across the business to ensure that this doesn't happen again. All future advertisements scheduled for this store were taken down immediately upon receipt of complaint to ensure the advertisement is not aired again now or in the future.

## **The Panel's View**

14. Metcash is a major Australian wholesale distribution and marketing company supporting businesses in food, hardware and alcohol. Independent Brands Australia (IBA) is the alcohol business within Metcash and Cellarbrations is the brand name of one of the groups of alcohol retailers within the (IBA) stable. One of the branded Cellarbrations stores is located in the Tasmanian town of Cambridge. While part of the Cellarbrations branded group, the Cambridge store is independently owned.
15. It seems that IBA has some level of control over the marketing undertaken by individual Cellarbrations stores and it is IBA centrally which has responded to the complaint about the television advertisement promoting the Cambridge store. The complaint argues that the ad displayed 'drunken antics' and this is irresponsible. While the IBA response explained that there had been a break down in the approval processes for the ad and better processes will be put into place for the future, no substantive argument has been made that the ad was consistent with ABAC standards.

16. The ABAC provides that an alcohol marketing communication such as a TV ad must not show or encourage misuse or abuse of alcohol nor encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol. In assessing if the standards have been complied with the Panel is to adopt the probable understanding of the ad by a reasonable person taking its content as a whole.
17. The ad was broadcast in conjunction with an AFL game and the ad has a football theme with a number of the characters wearing football jumpers and an AFL football featured in one scene. The ad is intended to be light-hearted and shows a number of people consuming alcohol in home settings.
18. It is evident that some scenes do reasonably imply that some characters are affected by alcohol use and a reasonable person could take the ad as encouraging excessive consumption and quite likely drunken behaviour. Clearly an ad wanting to portray a knockabout light-hearted message could have been easily developed without raising concerns about responsible alcohol use. The Cambridge Cellarbrations store would be best advised to use the ABAC pre vetting scheme before undertaking future advertising.
19. The complaint is upheld against Part 3 (a)(i) and (ii) of the Code.