



## ABAC Adjudication Panel Determination No. 58/19

**Product:** Divas Gems  
**Company:** Royal Hotel Bottleshop Drouin  
**Media:** Facebook  
**Date of decision:** 10 September 2019  
**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 digital marketing promoting Divas Gems by the Royal Hotel Bottleshop Drouin (“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 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 and Policies – which place 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 the 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 28 August 2019.
8. The Panel endeavours 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 completed in 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 complaint relates to the following Facebook post.



## The Complaint

11. The complainant objects to the marketing as the post uses the alcoholic content of the product as a selling point.

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol

## The Company's Response

13. The Company responded to the complaint by email dated 3 September 2019 advising that:
  - the post has been taken down;
  - it wasn't their intention to encourage binge drinking or excessive drinking; and
  - with all the information received any further Facebook posts will have a lot more thought put into them moving forward.

## The Panel's View

14. Part 3 (a)(iv) of the ABAC provides that a marketing communication for an alcohol beverage must not encourage the choice of a particular beverage by emphasising its alcohol strength (unless the emphasis is on the beverage's low strength relative to a typical strength similar beverage). This provision is grouped with a number of other standards which aim to have alcohol marketing conducted with the policy goal of responsible and moderate use of liquor.
15. The Royal Hotel in Drouin is located in the West Gippsland district of Victoria. One way the Hotel markets itself is by promoting activities and specials available at the Hotel via a Facebook Page. It is a Facebook post for the Hotel bottleshop which has attracted a complaint raising Part 3(a)(iv) of the Code.
16. The post refers to a product 'Diva Gems' which appears to be a premix drink similar to a vodka cruiser. The post advises that Diva Gems are now in stock for the first time in the Drouin area and that 'they are 8% which is double the standard drink of cruisers'. A picture of a display of several cartons of the product is shown with the post.
17. The complainant contends that the post uses the alcoholic content of the product as a selling point. In response the Hotel advises it had no intent to encourage excessive drinking and the post has been removed. It is stated that information supplied by the ABAC Executive Officer will be taken into account in the future. No argument is advanced that the post is consistent with the ABAC standard, nor is it expressly conceded the post is in breach of the Code, although the action to remove the post implies acceptance of inconsistency.
18. It is not a breach of the ABAC to factually state the alcohol content of a product and indeed it is important that alcohol products are appropriately identified as such and that confusion with a soft drink for instance is avoided. What the applicable Code standard does not permit is encouragement of the selection of one alcohol product over another on the basis of a stronger alcohol to volume content.
19. The question therefore is whether the phrase 'double the standard drink of cruisers' within the context of the post as a whole would be taken by a reasonable person as encouraging the choice of Diva Gems over say another less alcoholic type of premixed drink. On balance, the Panel believes the post would be taken as

meaning that the higher than typical strength of the product is an attribute in favour of choosing the product over other products.

20. It can be accepted that the Hotel had no intent to market the product inappropriately and a quick review of its Facebook Page shows its activities to be supportive of the local community and that it is a location to get a good meal and some entertainment. The ABAC pre-vetting service might be of use to the Hotel if it embarks on major marketing campaigns and materials on the ABAC website can assist in framing marketing materials in a manner which meets good community practice on alcohol promotion.
21. The complaint is upheld.