



## ABAC Adjudication Panel Determination No. 77/19

**Product:** Curatif Cocktails  
**Company:** Curatif  
**Media:** Product Name & Digital  
**Date of decision:** 25 October 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 brand name and Facebook page by Curatif (“the Company”) and arises from a complaint received 8 October 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 8 October 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

- 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 these marketing communications.

## The Marketing Communications

- The complaint relates to the brand name, Curatif and its Facebook page. Following are images of the product and relevant Facebook posts.



**About** Suggest Edits

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**CONTACT INFO**

- m.me/curatifcocktails
- curatif@curatif.com
- http://curatif.com

**MORE INFO**

- About**  
Created and perfected with the finest ingredients from around the world. Curatif cocktails are the drinks of the world's best bars.
- Founding Date**  
2019
- Products**  
The world's best cocktails, in cans.
- Wine/Spirits**

**STORY**



**Who is Curatif?**

"(from the French for curative medicine or agent) – a curatif is to improve your now, to right the wrong or to make the good better. A curatif is an elegant explanation for that moment when the worries slip away and enjoyment begins. It is one step closer to happiness."

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**TEAM MEMBERS**

- Sam Lane

Two screenshots of Facebook posts from the Curatif page. The left screenshot shows a post with a black background and white text: "YOU CAN'T BUY HAPPINESS, BUT YOU CAN PREPARE A COCKTAIL... AND THAT'S KIND OF THE SAME THING." The right screenshot shows a post with a photo of a bar setup featuring a can of Curatif Espresso Martini, a glass of the drink, and other barware. Both screenshots show the post's header with the Curatif profile picture and name, and the interaction options (Like, Comment, Share).

## **The Complaint**

11. The complainant refers to the product's brand name and Facebook page and is concerned that the brand name suggests the product is a cure and medicinal agent and this goes against responsible and acceptable alcohol advertising.

## **The ABAC Code**

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (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 Companies' Responses**

13. The Company responded to the complaint by email dated 16 October 2019:
  - Curatif is an independent start up Australian beverage manufacturer who commenced operations in 2018, at which time the brand name Curatif was trademarked with IP Australia. The name 'Curatif' is a portmanteau of "curated" and "aperitif", the purpose of which is to describe the primary activity of the business which is to carefully curate liqueur, spirit, aperitif, and fresh produce components to create high quality ready-to-serve cocktails. The brand name coincidentally resembles a French word that is not in common usage in countries where French is the primary language and is categorically not a word in common usage in Australia. Curatif makes no claim to be a manufacturer of medicinal or therapeutic goods.
  - In consideration of the complaint received by ABAC, and the subsequent questions received by Curatif from ABAC, we have made the self-determination to remove the posts identified to prevent the opportunity for there to be a misinterpretation of the nature of Curatif's products or of how the products are represented in marketing communications.

## **The Panel's View**

14. This determination concerns the brand name and some associated Facebook marketing for a range of ready to drink cocktails produced by the Company. The cocktails are branded as 'Curatif' which the complainant has taken as meaning that the product is claiming to be a cure and a medicinal agent.
15. The ABAC provides in Part 3 (c)(i) and (iv) that alcohol marketing communications must not suggest that the consumption of an alcohol beverage

may create or contribute to a significant change in mood or that the beverage offers any therapeutic benefit.

16. The basis of the complainant's concern is readily seen in the Company's Facebook post which answers the question 'who is Curatif' by saying 'a curative is to improve your now, to right the wrong or make the good better' and 'that moment when the worries slip away and enjoyment begins. It is one step closer to happiness'.
17. The Company in response to the complaint removed the Facebook post. It was correct to do so as the post would reasonably be understood as making claims about the benefit of consuming alcohol as including a better mood and environment and being the cause of happiness. This post is inconsistent with the Part 3 (c) (i) standard. Equally the post stating that 'you can't buy happiness, but you can prepare a cocktail ..and that's kind of the same thing' is also in breach of the standard.
18. The more balanced judgement is whether the brand and hence product name 'Curatif' is of itself and separated from associated marketing puffery a breach of the ABAC standards. Here the Company explains that the name is a portmanteau of the words 'curated' and 'aperitif' and its 'resemblance' to the French word for cure is a coincidence. Whether this is the case or not is not really decisive as the Panel is to assess consistency of marketing against ABAC standards on how the marketing would probably be understood by a reasonable consumer and not by the intention of the marketer in crafting their message.
19. On balance the Panel does not believe the name alone is a breach of the Part 3 (c) standard. In reaching this conclusion the Panel noted:
  - the name is either a construct or drawn from the French, and would not be automatically understood to be making assertions as to the product having therapeutic benefits; and
  - the presentation of the brand name on the can packaging as a whole does not raise any claims about the health benefits of consuming the product.
20. While not finding the branding in breach, the Company would be well advised to access ABAC pre-vetting advice in designing its marketing campaigns to test compliance against Code standards.
21. The complaint is upheld in relation to the Facebook posts and dismissed in relation to the brand name.