



## ABAC Adjudication Panel Determination No. 98/19

**Product:** Woolshed on Hindley Drinks Voucher  
**Company:** Woolshed on Hindley  
**Media:** Digital (Facebook)  
**Date of decision:** 6 November 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 digital marketing for the Woolshed on Hindley (“the Company”) and arises from a complaint that was received on 4 November 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 4 November 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 refers to the following Facebook Post by @WoolshedAdelaide.



## The Complaint

11. The complainant objects to the marketing as:

- the batman meme is using comics that appeal to minors; and
- the meme also encourages drinking excessively until drunk.

## 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
- (b)(i) have Strong or Evident Appeal to Minors

13. Part 6 of the ABAC Code provides:

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

**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.

### **The Company's Response**

14. The Company responded to the complaint by letter dated 5 November 2019 advising that:

- The ABAC only applies to signatories of the Code and the Hotel is not a signatory. As such the Hotel is not required to comply with the Code. The Hotel will therefore not accept the Panel's decision in relation to the complaint.
- We have in any event deleted the post and will continue to review our advertising and social media activity.

### **The Panel's View**

15. Woolshed on Hindley is a well-known hotel in the Adelaide CBD. This determination concerns the promotion of a drinks voucher and free entry giveaway for the venue via a post on its Facebook page.

16. The regulation of the use and marketing of alcohol in Australia falls within a shared regulatory space with primary responsibility for the regulation of licensed premises such as nightclubs resting with State or Territory liquor licensing authorities. In South Australia, the licensing regime is founded in the Liquor Licensing Act 1997, supporting regulations and Codes of Practice issued under the authority of the Act.

17. The ABAC Scheme operates independently to but cooperatively with the liquor licensing regimes. The Scheme is quasi regulatory in nature in that compliance with the standards for good marketing practice contained within the ABAC are voluntarily

assumed by alcohol industry participants. Contractual commitment to the standards arises from either membership of the peak industry associations which sponsor and fund the Scheme or by a company becoming a direct signatory to the Scheme. The Company is not a signatory to the ABAC Scheme and has stated in its response to the complaint that it will not accept the Panel's decision.

18. It should be noted that there are significant commonalities between the standards contained in the ABAC and the requirements contained in South Australia's liquor licensing regime. For instance, the General Code of Practice provides in clauses 8 & 9 that:
  - a licensee must not conduct, promote, advertise or permit the conduct, promotion or advertisement of their business in a way that tends to encourage minors to consume liquor; and
  - a licensee must not conduct, promote, advertise or permit the conduct, promotion or advertisement of their business in a way that tends to encourage the rapid or excessive consumption of liquor or that discourages a responsible attitude to the consumption of liquor.
19. The ABAC in Part 3 (a) and (b)(i) provides for similar constraints on alcohol marketers with a requirement that a marketing communication must not show or encourage excessive consumption or misuse of an alcohol beverage, offensive or irresponsible behaviour related to the consumption or presence of alcohol. Further, alcohol marketing must not have strong or evident appeal to minors. A marketing communication includes the promotion of an alcohol retailer such as a hotel through the use of digital platforms such as social media i.e. Facebook, Instagram and other like platforms.
20. The focus of the liquor licensing regime is the conduct of licensees in operating licensed premises, while the ABAC is not so much concerned with activities within licensed premises e.g. compliance with responsible service of alcohol requirements, but with how the licensee portrays alcohol use in its marketing. In short and in general terms, liquor licensing is about what happens within premises and the ABAC is about the licensee's projection of alcohol use to the outside community.
21. Overwhelmingly non-ABAC signatories will nonetheless cooperate with the Panel when a complaint is received and abide with Panel decisions. Largely this is because the ABAC standards reflect community expectations as to how a responsible alcohol marketer will behave and this will be accepted by a marketer even without ABAC membership. In the rare case where a marketer seeks to ignore a Panel decision, the matter is referred to the relevant liquor licensing authority for consideration and enforcement. For instance, Determination 33/18 where the Panel made a decision which was not initially acted upon by the marketer and subsequent enforcement action on the same marketing material was taken by the Victorian Commission for Gambling and Liquor Regulation.

22. In this case, the Company has cooperated with the complaint process, removed the post complained about and said it would review its advertising and social media activity.

Does the Facebook post meet the ABAC standard?

23. The complaint concerns a post made by the Company on its Facebook page that depicts a scene from a Batman comic with altered speech balloons where Robin asks Batman “What are you going to be for Halloween” and Batman is shown slapping Robin while saying “Drunk”. It is argued that the post encourages excessive consumption until drunk and the Batman comic imagery would have strong or evident appeal to minors.
24. In assessing whether a standard has been breached, the Panel is to adopt the standpoint of the probable understanding of the marketing communication by a reasonable person. The notion of a 'reasonable person' is drawn from the common law system and means that the life experiences, values and opinions shared by a majority of the community is to be the benchmark.
25. The Panel notes that the post is intended to be humorous and a reasonable person shares the Australian robust sense of humour. That said, the 'shared' experience which the humour in the posts draws upon is that of engaging in excessive alcohol consumption and irresponsible behaviour associated with alcohol use. It is this assumption that it is common and as a result implicitly acceptable to consume to excess that makes the post breach the Part 3(a)(i) and (ii) standard.
26. The post adopts a pop art style depiction of a Batman comic. Pop art’s emergence can be traced from the late 1940’s and reached a mass audience in the 1960’s through the work of artists such as Warhol, Lichtenstein and Oldenburg. The Panel does not believe the image would particularly resonate with under 18 year olds and would be far more recognisable to an older audience.
27. The Company stated it has removed the post and will review its social media activity. This is a prudent measure as a post of the type considered in this determination is arguably inconsistent with the Company’s obligations under the South Australian liquor licensing regime as well as the ABAC.
28. The complaint is upheld.