



## ABAC Adjudication Panel Determination No. 6/20

**Product:** 4 Pines  
**Company:** Carlton & United Breweries  
**Media:** Digital (Facebook)  
**Date of decision:** 28 January 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a Facebook post by Welcome to Brunswick and 4 Pines Brewing, owned by Carlton & United Breweries (“the Company”) and arises from a complaint received 8 January 2020.
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 8 January 2020. The Panel endeavours to make a decision within 30 business days of the receipt of a complaint and this complaint has been determined within that timeframe.
8. 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 Facebook post.

## The Marketing Communications

9. The complaint refers to the following Facebook Post by @welcometobrunswick.



### The Complaint

10. The complainant is concerned that the ad:

- Promotes excessive and irresponsible consumption of alcohol which is not acceptable at any time, regardless of the time of year or religious holiday; and
- Including a smiley face emoji that is upside down represents the idea that the face is drunk and that people can only be happy in this venue whilst intoxicated.

### The ABAC Code

11. 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;
- (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

12. The Company responded to the complaint by letter dated 20 January 2020 advising that:

- Welcome to Brunswick is a new food and beverage venue, created as the result of a partnership between 4 Pines Brewing Co. and the Welcome to Group. The portrayal of 4 Pines products is within the reasonable control of 4 Pines Brewing Co. and CUB. The Facebook post is a marketing communication within the scope of ABAC.
- We conclusively reject the interpretation that the advertisement as described suggests either irresponsible consumption or that patrons need to be drinking to enjoy the venue. Neither the words ‘a few extra’ nor the ‘upside-down smiley face emoji’ can be seen to implicitly or explicitly refer to excessive consumption of alcohol; we feel the complainant is misinterpreting the intent of the post, which is to suggest to potential patrons of Welcome to Brunswick that they can find a beverage commensurate with the festive nature of the time year at this establishment.
- The current NHMRC guidelines suggest that for healthy adult men and women “no more than two standard drinks on any day reduces the lifetime risk of harm from alcohol-related disease or injury” and that “drinking no more than four standard drinks on a single occasion reduces the risk of alcohol-related injury arising from that occasion.” We note that the NHMRC is in the process of reviewing the guidelines. The draft guidelines state that “to reduce the risk of harm from alcohol-related disease or injury for healthy men and women, drink no more than 10 standard drinks per week and no more than four standard drinks on any one day”.
- The post text “Feelin' fancy? Try one of our famed beer cocktails tonight in the garden. It's basically Christmas so you can definitely have a few extra” is in no way inconsistent with either the current or the proposed NHMRC guidelines. There is no suggestion in the post that consumers should drink more than four or even two standard drinks. ‘A few extra’ cannot be said to imply irresponsible consumption. ‘A few extra’ implies one or two additional beer cocktails could be consumed, which hardly fits either the NHMRC definition or social attitude towards excessive consumption. The post as described, with two bartenders pouring cocktails from a jug into glasses suggests a round of drinks is being prepared and does not imply that the entire jug would be consumed by one or even two people.
- Christmas, and more generally the last few weeks of the year as referenced in the post, is an occasion when many Australians take the opportunity to catch up with family and friends. The addition of the Christmas context, as per “*It's basically Christmas so you can definitely have a few extra*”, signals that it is the end of the year, many other obligations such as work or study have concluded, and there is an opportunity to spend more time at venues such as Welcome to Brunswick.
- With respect to the emoji, the upside-down smiley face emoji (🙄) is not commonly used as a visual representation of drunkenness. Emojipedia suggests that the emoji is best interpreted as a shrug: “*Commonly used to convey irony, sarcasm, joking, or a sense of goofiness or silliness. Its intent can be similar to the bemused Oh well! of 🙄 Person Shrugging or the shruggie emoticon, ㄟ( ͜ʔ)ㄟ.*” None of these adjectives are synonymous with drunken

behaviour. 'Woozy face emoji' (🍷) is more commonly used to indicate drunkenness, as per emojipedia: *"Meaning widely varies, but commonly conveys intoxication or infatuation."* At worst, the upside-down smiley face emoji could be read as a signal that although the year is not technically concluded, it is as good as done in terms of the urgency of any obligations facing potential Welcome to Brunswick patrons.

- There is no suggestion in the post that a beer cocktail will contribute to a significant change in mood or environment. The overall impression of the post is to posit a situation where people are already at the venue and debating whether to stay longer by having an additional beer cocktail. There is no suggestion that patrons will be happier for doing so, rather that it is congruent with the time of year to make a decision to remain for 'a few extra' (beers, cocktails, soft drinks or indeed hours) with friends. There is certainly no suggestion that people can only be happy at Welcome to Brunswick if they are drinking. Welcome to Brunswick has a variety of food trucks and space for social gatherings, as well as non-alcoholic beverages. However, if patrons are already 'feelin' fancy', which is to say, potentially looking for a cocktail option at a festive time of year when they might otherwise prefer a beer, Welcome to Brunswick has a suitable beverage.
- CUB is committed to ensuring our promotional and marketing material, and that of our associated entities such as 4 Pines as well as the venues we supply, does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation. We believe this post is entirely within both the spirit and letter of ABAC insofar as it encourages responsible consumption of beer cocktails with friends at the end of the year, at a new venue with many different food and beverage offerings available.

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

13. Welcome to Brunswick is a food and beverage venue in the iconic Melbourne suburb. The Company is a partner in the venture and this determination concerns a Facebook post promoting the venue by reference to the availability of a beer cocktail. The Company accepts the post is a marketing communication to which ABAC standards apply.
14. The complainant contends that the post is encouraging excessive and irresponsible consumption of alcohol. Further, it is argued that the post implies that 'people can only be happy in this venue whilst intoxicated'. The Company rejects the interpretation taken by the complainant and believes the post is consistent with ABAC standards.
15. The relevant ABAC standard provides that an alcohol marketing communication must not encourage the excessive consumption of alcohol or consumption inconsistent with Australian Alcohol Guidelines. Further, alcohol marketing must not suggest the use of alcohol may create or contribute to a significant change in mood. In assessing if these standards have been breached the Panel is to take the probable understanding of the communication by a reasonable person i.e. someone with values, opinions and life experiences common in a majority of the community.

16. The post shows a photograph of a barman pouring a beer cocktail from a jug into multiple individual glasses. The caption with the photograph reads- 'Feelin' fancy? Try one of our famed beer cocktails tonight in the garden. It's basically Christmas so you can definitely have a few extra 🍷' The critical issue is how the phrase 'you can definitely have a few extra' would probably be understood in relation to the reference to Christmas and the emoji.
17. Clearly the complainant takes this means - ' it's Christmas time so feel free to drink to excess'. The Company argues it would be understood to mean - 'it's the end of the work year and you can spend more time socialising' - but not that you should drink to excess. It is pointed out that the 🍷 emoji is taken to signify 'joking or a sense of goofiness or silliness' not intoxication. Apparently, there are more specific emojis to signify intoxication.
18. A reasonable person will not view the post as an exercise in the finer points of deciphering emojis but rather will observe the picture and the text and form an almost instant impression as to the message. While the interpretation taken by the complainant is not fanciful, on balance the Panel does not believe the post would be taken as encouragement to drink excessively or irresponsibly beyond recommended guidelines. Rather it would be probably understood as promoting the venue as a place to have a few (but not excessive) drinks during the Christmas period. It is not likely the post would be seen as saying that alcohol is needed to be happy.
19. Accordingly, the complaint is dismissed.