



ABAC Adjudication Panel Determination No. 80/20

Product: Impression Gin
Company: Impression Gin
Media: Digital (Instagram, Website & PR)
Date of decision: 27 June 2020
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 posts on the website and Instagram account of Impression Gin (“the Company”) and public relations promotion of the product and arises from a complaint received 11 June 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 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 11 June 2020.
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 posts on the Impression Gin website, Instagram account and public relations promotional material.

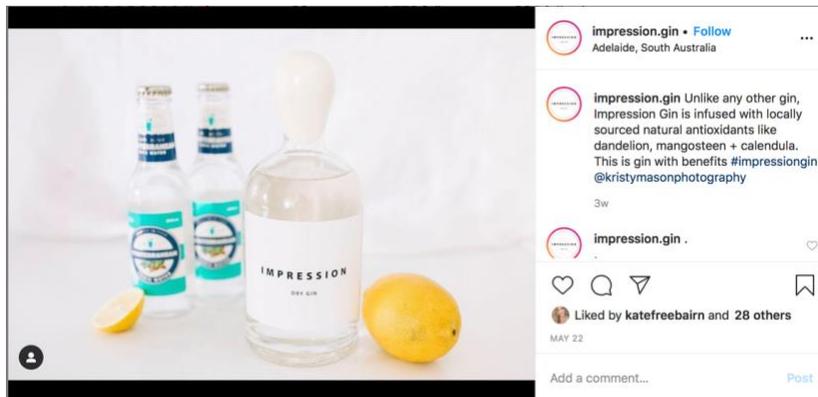
Company Website Extract

**FOR THE DREAMER.
FOR THE GOOD TIMES.**

UNLIKE ANY OTHER GIN, IMPRESSION GIN IS INFUSED WITH LOCALLY SOURCED NATURAL ANTIOXIDANTS LIKE DANDELION, MANGOSTEEN AND CALENDULA HIGH IN COLLAGEN AND KAKADU PLUM PACKED WITH VITAMIN C.
THIS IS GIN WITH BENEFITS. BECAUSE LIFE IS ALL ABOUT MAKING THE BEST IMPRESSION.

Instagram Posts

22 May 2020



28 April 2020



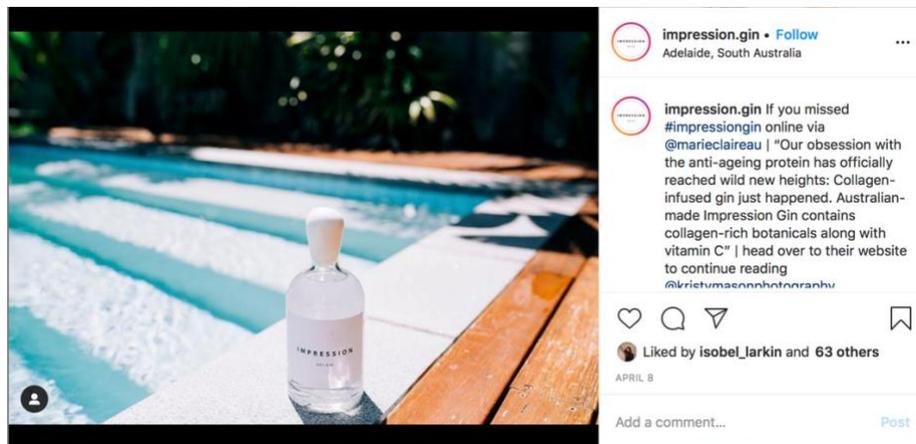
21 April 2020



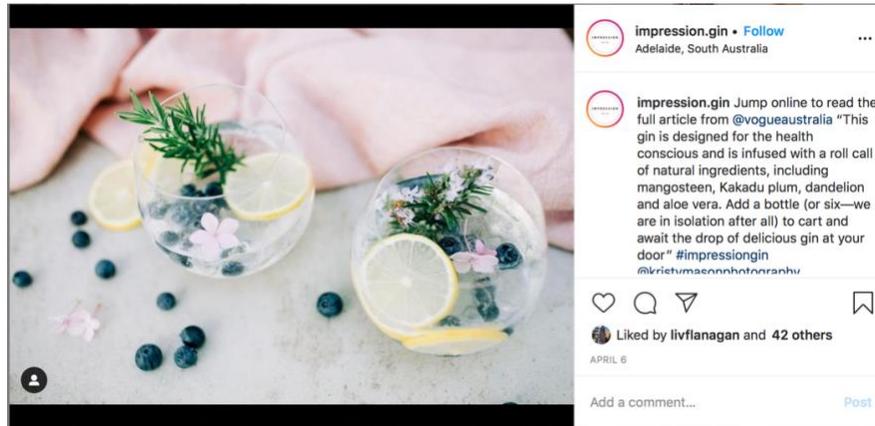
14 April 2020



8 April 2020



6 April 2020



Press Release

IMPRESSION

DRY GIN

Introducing: Impression Gin

March XX, 2020: COMMSHOUSE Introduces Impression Gin: Australia's first boutique gin made with vitamin c and collagen rich botanicals. It's gin with benefits. Founded by health and fitness professional Cherida Forde and Director of Signature Wines Dan Khousam, Impression Gin has been developed by a team of experts to include a mix of the richest sources of antioxidants. Each bottle of Impression's premium gin is infused with a powerhouse of natural products designed to make you glow from the inside out.

We wanted to do gin differently, something for the health conscious - people who like to keep fit and eat well, yet are still up for good time with friends. After all life is all about balance" Cherida Forde, Co-Founder.

Each bottle of Impression Gin is made and bottled in South Australia.

Now available online at impressiongin.com.au and restaurants, restaurants, restaurants, restaurants, restaurants, restaurants.

"This is gin with benefits. Make your own Impression"

For opportunities, assets, imagery and more information:

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The Complaint

11. The Complainant believes the website, Instagram posts and Press Release all contain claims that the product has 'benefits' which would be understood to mean that the gin offers health benefits. It is argued that the Company has failed to make changes necessary to make its marketing compliant with the ABAC standard following an earlier Panel determination.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation

The Company's Response

13. The Company responded to the complaint by email dated 16 June 2020. The principal points made by the Company were:

- a) Since the original complaint, we made all the correct changes the board had asked of us including changes to our website, instagram posts and any material that went out from our end. As per the original complaint, we were not aware that we were in breach of the code so appreciated all of the guidance from the board to navigate the correct changes and feel a bit disheartened that this has been brought up again.
- b) As for what I was quoted saying, I am a bit confused as to how this is in breach but by all means I am more than willing to change what I say moving forward if needed.
- c) In regard to the Press Release that went out, this was all handled by our PR company in Sydney, who were well aware of making sure all their correspondence that went along with this stressed that in no way would the gin give you any therapeutic benefits. Again, we have no control as to what goes to print but as we have done since the original complaint, we have made sure that what we do share from the articles does not suggest any therapeutic benefits. Since the original complaint we have not sent out any further Media Releases.
- d) We have no issues in making additional changes if needed and again more than willing to work with ABAC.

The Panel's View

14. On 27 April 2020 the Panel made Determination 36/20 concerning a number of Instagram posts on the Company's account and some statements on the Company Website. The Determination found most of the posts and the Website statement complained about were in breach of the standard contained in Part 3(c)(iv) of the Code. This standard provides that alcohol communications must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit. This determination follows on from the earlier one and also involves Instagram posts, the Company's Website and a Press Release issued by Company.
15. The Company is positioning its gin product to appeal to health-conscious consumers who wish to choose an alcohol beverage consistent with keeping fit. The gin is said to be made with, amongst other things, 'vitamin C and collagen rich botanicals'. The ABAC scheme doesn't have a mandate to generally assess if claims about the physical attributes of beverages or how a product is distilled are

factually accurate. It is the Australian Competition and Consumer Commission as well as State Fair Trading which has responsibility to regulate consumer protections about advertising being accurate and not making false or misleading claims. Rather, the ABAC scheme is focussed on alcohol marketing not suggesting particular things about the consequences of consuming alcohol, one of which is that alcohol use offers a therapeutic benefit.

16. In its 27 April decision, the Panel identified direct statements and inferences included in Instagram posts and on the Company Website which a reasonable person would probably understand as suggesting that the consumption of the product would result in positive health benefits. The Company removed or modified these marketing communications. The complainant has now highlighted further posts and statements. A number of the Instagram posts contain a short quote from third party sources such as the publications Mens Health, Man of Many, Vogue Australia and Marie Claire, and a link to an article.
17. It is useful to state some propositions in relation to third party material which have arisen in previous Panel determinations. These include:
 - The remit of the ABAC scheme is the marketing communications of alcohol producers, distributors and retailers. The scheme does not bind third parties such as media outlets;
 - A publication or post of a third party can, however, fall within the scope of the ABAC if it is generated by or within the reasonable control of an alcohol entity;
 - 'Reasonable control' might arise if the alcohol company caused the third party to produce the marketing item, or the alcohol entity has control over how its brand is portrayed through say, a post publication moderation of the third party marketing communication or the ability to have an item on a third party site removed;
 - Generally reporting or editorials by independent media organisations will not be in the control of an alcohol entity, even if the of actions of an alcohol entity was the trigger for the media reporting;
 - Comments from third parties which are made on an online site within the control of an alcohol entity will become the responsibility of the alcohol entity even if the comments have been made independently of the alcohol entity e.g. comments by Facebook or Instagram followers on a post made by the alcohol entity.
18. In the current case, the Company undertook PR activities when it launched its product onto the market. This resulted in various articles. These articles are from independent publications and although the Company sought to have its brand portrayed in a favourable manner, it would not have control over the content of the articles nor would it be expected that the Company could have the articles withdrawn if it did not like the way its product was represented. In contrast to social media influencers, who operate to gain patronage from advertisers, this means that the articles in the publications such as Vogue and Mens Health will not be marketing communications to which the ABAC standards apply.
19. The Company has then used short quotes from the articles in its Instagram posts. These posts are marketing communications for ABAC purposes as they are

generated directly by the Company. The fact that the words in the post came from a third party is not material. Once the Company adopts the third-party sourced language it becomes the Company's language and the post as a whole need to be consistent with the ABAC standards. The posts also link to the general Instagram site of the third-party publications but not to the actual article from which the quote was taken. While there may be occasions where third party material is directly accessible from a marketing communication so that it can be fairly said the third-party material forms part of the alcohol marketing communication, this is not the case in this instance.

20. In relation to alcohol marketing communications, it is permitted to promote a product by referring to claimed product attributes such as the product 'contains vitamin c and collagen rich botanicals'. What cannot be suggested is that these product attributes offer positive health benefits. For instance, it would be inconsistent with the Code standard to assert - 'because the product contains vitamin c, you'll be ready to fight off the flu' or 'with collagen botanicals, your skin will improve with every sip'.
21. The Panel has reviewed each marketing communication and finds (in brief) as follows:
 - Website - not in breach. The extract from the Website does not suggest a positive health benefit from the ingredients of the product. A simple claim of 'benefits' is not of itself a breach;
 - Post of 22 May - not in breach as similar wording to the Website extract;
 - Post of 28 April - breach as suggests that alcohol will assist with a person coping with the stress on the pandemic restrictions;
 - Post of April 21 - not in breach as post details product ingredients but does not suggest a positive health benefit;
 - Post of 14 April - not in breach as post details product ingredients but does not suggest a positive health benefit;
 - Post of 8 April- breach as the quote in the post read as a whole suggests the collagen within the gin is anti-ageing which is a claim of a positive health benefit and goes beyond simply stating the product contains collagen;
 - Post of 6 April- not in breach as a list of ingredients of itself is not a claim of positive health benefits;
 - Press Release- breach in that while the statements on the whole do not assert health benefits, in one part it is suggested that the product 'makes you glow from the inside out' which would be probably understood as the product offering a positive health benefit.
22. The complaint is upheld in relation to the marketing communications identified in paragraph 21 and dismissed otherwise.