



## ABAC Adjudication Panel Determination No. 83/20

**Product:** Fireball Whisky  
**Company:** Southtrade International  
**Media:** Digital (Facebook)  
**Date of decision:** 1 July 2020  
**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 a Facebook post for Fireball Whisky by Southtrade International (“the Company”) and arises from a complaint received 16 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**

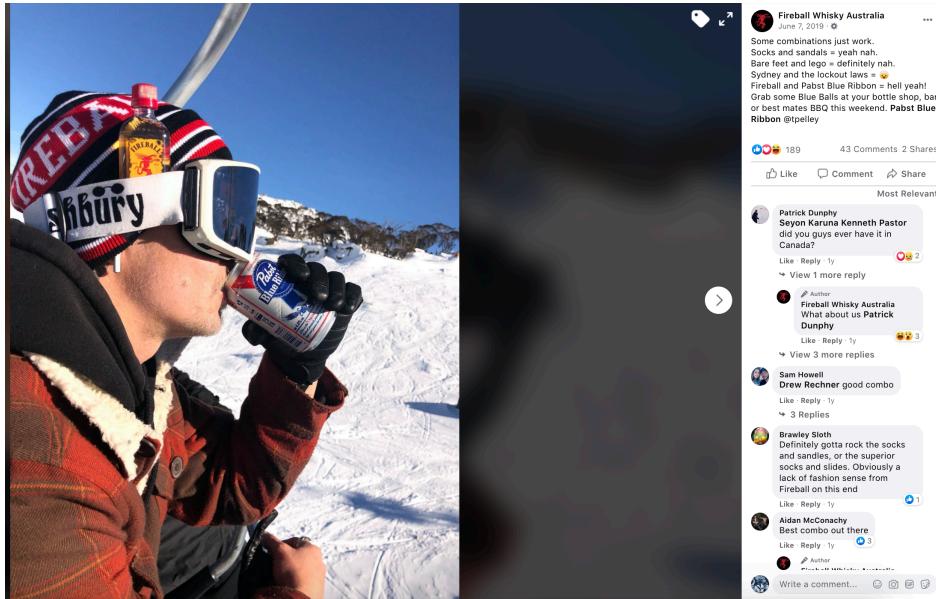
7. The complaint was received on 16 June 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 Communications

10. The complaint identifies the following Facebook Post on the @fireballwhiskyaustralia Facebook account.



## The Complaint

11. The complainant objects to the marketing as it encourages drinking while participating in a high risk activity.

## The ABAC Code

12. Part 3 of the ABAC Code provides that:

- (d) A Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

## The Company's Response

13. The Company responded to the complaint by email dated 29 June 2020. The principal points made by the Company were:

- a) It appears Fireball is being targeted with complaints about posts dating back over 12 months ago which would have to come from someone trolling through old content. While we do not pre-vet through ABAC I do ask the team and agencies (who are across the codes) to make sure we are not actively breaking any codes while also being true to their brands DNA. This can be a fine line for brands like Fireball where one of these posts was part of an insta-live sponsorship program where we cannot always control where the conversation goes.

- b) For the post in question we have an ongoing mutual partnership with Pabst where we cross promote. I have asked the team to do a complete review of historic posts and remove any that could be perceived the wrong way including the one raised in this complaint and the Brown Cardigan sponsorship which has been done.
- c) It is never our intention to promote irresponsible consumption of our brands.

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

14. The Company is the Australian distributor of Fireball Whiskey. One avenue the Company uses to promote its product is via a cross promotion arrangement with Pabst beer. This determination concerns a post on the Company's Facebook Page dated 7 June 2019, which is an example of the cross-promotion arrangement with Pabst.
15. The complainant argues the post encourages alcohol use while participating in a high-risk activity. The post depicts a man on a snowfield wearing ski or snowboarding gear consuming a can of Pabst beer, while a small bottle of unopened Fireball is secured by the man's snow goggles. The Company in its response does not dispute the image in the post implies the consumption of alcohol before or during the performance of a snow sport.
16. As noted by the Company, the post was made 12 months ago and would now not readily be seen by a viewer of the Facebook Page unless the person was scrolling through quite old material. Social media channels are by their nature quite dynamic with it being possible to add numerous posts per day. Equally a site can be quite dormant, and in this case, old material remains close to the landing page and can be readily found. As it stands the ABAC provisions are not time limited and hence older material can be the subject of a complaint as has occurred here.
17. It is evident that the post is inconsistent with the standard in Part 3(d) and hence the complaint is upheld. It is noted that the Company has removed the post and is reviewing its older social media posts to check compliance with Code standards.
18. The complaint is upheld.