



## ABAC Adjudication Panel Determination No. 92/20

**Product:** Bar & Restaurant  
**Company:** Village Bicycle Noosa  
**Media:** Digital (Instagram)  
**Date of decision:** 27 July 2020  
**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 an Instagram post by Village Bicycle Noosa (“the Company”) and arises from a complaint received 1 July 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 1 July 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 an Instagram post on 1 July 2020 by Village Bicycle Noosa.



## The Complaint

11. The complainant objects to the marketing as it encourages excessive alcohol consumption and makes a mockery of the Responsible Service of Alcohol rules.

## 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;

## The Company's Response

13. The Company responded to the complaint by email dated 14 July 2020. The principal points made by the Company were:
- In response to the mentioned complaint we understand how it may have been mis-interpreted by the general public.
  - In no way was it meant to encourage alcohol consumption/sales. In these unprecedented times it was meant to encourage people to visit businesses in the hospitality sector.
  - We did not make the sign board we screen shot it from another site. We then removed the post as soon as we were made aware that it might be inappropriate.

## The Panel's View

14. Village Bicycle Noosa is the name of a bar and restaurant located at Noosa Heads on Queensland's Sunshine Coast. The venue is the initiative of Trevor Aylward and Luke Czajkowskyj and commenced operations in 2014. The venue has proven popular with a move to new premises in 2017 which permitted an expanded capacity. The venture like many businesses in the hospitality sector has been heavily impacted by the restrictions imposed to deal with the COVID-19 pandemic. Obviously, the collapse in international tourism and the severe restrictions on intra-state tourism would be felt in a destination such as Noosa.
15. The Company promotes its venue via the usual social media channels such as Facebook and Instagram. On 1 July 2020 the Company made a post on Instagram which references the reopening of the venue consistent with social distancing requirements. The post showed a picture of a blackboard with a message reading - 'Warning. Bars need your help. We can only open at 1/3 of our capacity! Those who cannot drink for 3 are kindly asked to leave their place to the Professionals'.
16. The complainant believes the message is irresponsible as it encourages excessive alcohol consumption. Part 3(a)(i) of the ABAC provides that an alcohol marketing communication (which includes Instagram posts) must not encourage excessive or rapid consumption of alcohol or consumption inconsistent with Australian Alcohol Guidelines. Assessing the consistency of a marketing communication with this standard is from the probable understanding of a reasonable person who has life experiences and values found commonly in a majority of the community.
17. The Company explains that it had no intention to encourage irresponsible alcohol consumption, but it was endeavouring to encourage people to visit their venue. The post was removed upon receiving the complaint.
18. It can be readily accepted that the post was intended to be light-hearted and that a reasonable person would likely understand it in that way. It can also be accepted that the Company will have been facing considerable challenges in the pandemic affected business conditions. A reasonable person would not likely take the post as a serious call to action to consume alcohol excessively. That said, the humour relies on an assumed shared understanding that excessive alcohol consumption might be justified in some circumstances, and it is this underlying portrayal of the role of alcohol which is inconsistent with the ABAC standard.
19. The complaint is upheld.