



## ABAC Adjudication Panel Determination No. 149/20

**Product:** Sainly Hard Seltzer  
**Company:** Sainly Beverage Co Pty Limited  
**Media:** Instagram  
**Date of decision:** 6 November 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Instagram advertising of Sainly Hard Seltzer by Sainly Beverage Co Pty Limited (“the Company”) and arises from a complaint received 16 October 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 on 16 October 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

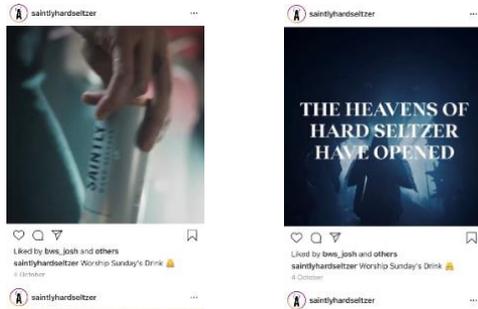
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for different edits of this marketing communication and also copylines used (Approval numbers 18734 and 18571).

## Marketing Communication

10. The marketing communication consists of a video posted on Instagram, a description of which follows.
11. The video is accompanied by a musical soundtrack where the words “hallelujah” and “holy water” are repeatedly sung.
12. The video opens with a scene showing three people from about the waist up, standing apart and still, looking upwards, on what appears to be a sunny day. They are dressed in white clothing, which covers their shoulders, arms and upper bodies, and are not showing any emotion. There is water falling in the background. This is followed by a scene showing an upwards shot of the sky, with water falling, and the words “Saintly Hard Seltzer” superimposed. The words “Get the facts DrinkWise.org.au” are also shown. We then see a zoomed in shot of one of the people from the opening scene, still dressed in white, looking upwards, and again neither moving nor showing any emotion.



13. The video then very briefly shows the hand of someone walking at night, holding a can of Sainly Hard Seltzer, followed by footage of a silhouetted person with angel wings, walking away from a camera towards an area which is more brightly lit, with the words “The Heavens of Hard Seltzer Have Opened” superimposed.



14. Various fast changing scenes are then shown of the same people as in the opening scene, but this time at night, or in a darkened environment, with light flashing and in some instances a red glow. The people are now moving, interacting and showing animated facial expressions, with one scene showing a person dancing and smiling and another showing a person poking out their tongue. Two of the people are obviously now clothed differently with one person wearing a dark coloured singlet top and the other, white pants and no upper body garment. The words “Worship Sunday’s Drink” are at times superimposed on these scenes. This section of the video concludes by showing only the face of an emotionless person, looking upwards, covered in water. The background is dark.



15. The penultimate scene is a head shot of a person at night, with a glowing mouth. The words “God It’s Good” are superimposed. This gives way to the concluding static image of a can of Sainthly Hard Seltzer, in Hail Mango flavour, against a white background with the words “God It’s Good” shown below the can.



## The Complaint

16. The complainant is concerned that the marketing:
- Promotes alcohol by comparing it to “holy water” and suggesting that its consumption will lead to “enlightenment”; and
  - Is troubling as it suggests that the consumer should “worship” alcohol.

## The ABAC Code

17. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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
  - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment
  - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success
  - (c)(iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement.

## The Company's Response

18. The Company responded to the complaint by email dated 27 October 2020. The principal points made by the Company were:

- This is a slightly different edit from the original 30' which was part of: Application 651/19 - Approval 18734 Full 30' approved version. We updated the post copy for this specific advert from the approved "Open your Sunday's to a new kind of refreshment" to "Worship Sunday's Drink". "Worship Sunday's Drink" is copy that was approved within the original 30' film. This version did not refer to or suggest anything different from the previously approved meaning of the statement.
- This specific edit uses a super from an earlier film teasing the launch of Saintly Hard Seltzer "The Heavens of Hard Seltzer Have Opened": Application 651/19 – Approval 18571.
- Throughout the process of producing these films we have worked in close consultation with ABAC's pre-vetting service, amending story boards, film edits and supers throughout the process in order to ensure that we're working within guidelines.
- The complaint includes a very personal interpretation of symbolism. In our film there is nothing that directly or explicitly refers to what they are suggesting as our intentions.
- The scene described is referential to common and iconic visual tropes, or devices used by communities that come together i.e. people gathered and dressed in the same colour clothing. This visual device is our way of suggesting our group of individuals are a reflection of today's modern society, multicultural, diverse and coming together around a zeitgeist. Our zeitgeist is about being accepted for being yourself. The film goes on to show the same group of people together enjoying themselves, as themselves, and dressed as themselves.
- There are no elements within the film that show or imply excessive drinking or irresponsible behaviour.
- There is no consumption of alcohol within the film and the product itself is only visible in the film for less than one second. There is no visual or suggestion that the people who are dancing have consumed alcohol.

- The product is being carried by someone's side in an abstract shot and is not being shown as an open can, or in an excessive or irresponsible way, or includes any copy overlay or reference to consumption.
- Holy Water isn't owned by a specific religion. It has a number of meanings and connotations across different cultures and situations within today's modern society. In this instance, the film and music include word play of common vernacular and expressions within our everyday language. At no point do we compare Sainly Hard Seltzer to Holy Water and nowhere are we stating that Sainly Hard Seltzer is Holy Water.
- Hard Seltzers are new to Australia and are predominantly made from water and alcohol and the description on the packaging, that was approved and added in order to meet the advertising code is "Alcoholic Sparkling Water". The inclusion of water is to communicate and educate consumers.
- Water is also a representation of refreshment, which is the objective of this particular film.
- "The Heavens of Hard Seltzer Have Opened" is a play on words to communicate that Hard Seltzers are new and available now, this phrase was used in an earlier teaser campaign and approved by ABAC's (Application 651/19 – Approval 18571).
- At no point are we stating that Sainly is Holy Water, or that Hard Seltzers will change your mood.
- The person holding the can is not visible and there is no visual evidence or implication that the can of Sainly is open, or that this person is the person with wings. The person with wings is not carrying/holding anything as they walk into a party and she is not shown drinking alcohol, or that the presence or consumption of alcohol has changed her mood.
- Ensuring that we were not communicating anything to do with enlightenment was one of the key focus areas for us when developing the film and supers with the help of ABAC's pre-vetting service.
- There are no references to enlightenment. There are no visuals of anyone consuming Sainly and experiencing enlightenment, or success of any kind through the presence or consumption of alcohol.

- At no point do we reference or show that Sainly is Holy Water, or show people drinking Sainly and then partying. It is not a direct part of a celebration. At no point does the film suggest we are celebrating the availability of Sainly, as above... we are being reflective of current society.
- The phrase “Worship Sunday’s Drink”, was approved by ABACs pre-vetting service.
- The brand launched on a Sunday and all of our announcements, new content etc are published on a Sunday.
- To worship something means to have admiration and you can admire something without excessively consuming it. We have avoided any reference to Sunday as a feeling or mindset. We are communicating that you can enjoy Sainly on a Sunday. The guidance from ABAC’s pre-vetting service was very specific in this context and we have adhered to that guidance.

### **The Panel’s View**

19. In recent times many Alcoholic seltzers have been released onto the Australian alcohol market. A seltzer is a carbonated water i.e. a water with carbon dioxide with an alcoholic seltzer being either based on vodka or a brewing method to add the alcohol component. Alcoholic seltzers as a product range contain less sugar and calories than comparable vodka based Ready to Drink products which provides a differential point often used in the marketing of the seltzers. This determination concerns the marketing approach of a new product range - Sainly Hard Seltzer.
20. The Company has leveraged the Sainly brand name as a thematic for its marketing with allusions to Christian symbolism featuring in a video at the centre of an advertisement delivered over Instagram and accessed by the complainant. The complainant explains that as a Christian, the advertisement is offensive as it is comparing the product to holy water and drinking the product will cause “enlightenment”. Further it is argued that suggestions that alcohol should be “worshiped” is troubling.
21. The underlying concern of the complainant raises issues more directly under the AANA Code of Ethics than the ABAC. The Code of Ethics provides standards which apply to marketing irrespective of the product or service being promoted and is administered by Ad Standards. The AANA Code provides at section 2.1 that advertising shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of religion. The Community Panel of Ad Standards will be considering the complaint against that

section and this determination will not deal with the issue of the offence the complainant contends the ad causes to Christians.

22. The ABAC in contrast is concerned with the responsible portrayal of alcohol as a product. The applicable standards given the nature of the complaint are whether the ad:

- encourages offensive behaviour that is related to the use of alcohol;
- suggests alcohol creates or contributes to a significant change in mood or environment;
- shows alcohol as a cause or contributor to social or other success; and
- shows a celebration and implies alcohol was the cause of the success or achievement being celebrated.

23. The Company argues the ad is consistent with the relevant standards. It is contended:

- the ad is referential to common iconic and visual tropes;
- no alcohol use is shown nor is the behaviour depicted irresponsible;
- the ad uses water to emphasise the nature of the product and “holy water” has a number of meanings across cultures and situations; and
- there are no references to “enlightenment” or to the use of the product causing enlightenment or other change in mood.

24. In assessing the consistency of a marketing communication to ABAC standards, the Panel is to adopt the probable understanding of the marketing material by a reasonable person. The “reasonable person” concept means that the values, opinions, and life experiences common in a majority of the community is to be the benchmark. A person who interprets the marketing in a different way is not “unreasonable” but possibly their take on the material would not be shared by most of the community.

25. The Panel respects the view expressed by the complainant and the evident religious themes used in the ad will no doubt offend some people. This disquiet however is not really related to alcohol use as such and the concern would be still held if the same ad was promoting a non-alcoholic seltzer. In relation to how alcohol use is portrayed, the Panel believes the ad does not breach ABAC standards. In reaching this conclusion the Panel noted:

- the ad is highly stylised with the purpose of using religious symbolism to promote the Sainly brand name;
- the ad uses water as a thematic and while alcohol is referenced, the ad does not depict actual alcohol consumption;
- the scenes used do not show offensive behaviour related to alcohol use e.g., there is no implication that characters shown are drunk or acting irresponsibly because they are affected by alcohol; and
- the product is not depicted as causing a change in mood or its use leading to success.

26. The complaint is dismissed.