



## ABAC Adjudication Panel Determination No. 177/20

**Product:** Wine  
**Company:** BAIE Wines  
**Media:** Digital - Facebook  
**Date of decision:** 2 December 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 Facebook marketing for BAIE Wines (“the Company”) and arises from a complaint received on 23 November 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 23 November 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 the marketing communication.

### The Marketing Communication

10. The marketing communication is a video posted on BAIE Wine’s Facebook page.
11. The majority of the video cuts between a number of people either sitting in front of a vineyard or next to a wine barrel, on which one or two wine bottles have been placed, answering the question “What has made 2020 easier?”. The following is a transcript of the video:

Person 1	What has made 2020 easier?
Person 2	I can’t even remember
Person 1	Bleugh
Person 2	Uh wine? Can you say that? (Laughter)
Person 3	I did actually write a script for this but I can’t remember it anymore. Okay.
Person 4 (three different cuts)	Oh god. Oh god. Oh god.
Person 1	I’ve loved being in these four walls. Some of the time. Not all of the time.
Person 5	Isabella, who is my oldest daughter, moved home.
Producer	About Izzy, what does she bring to the family?
Person 5	Erm. What does Izzy bring to the family? Oh. Um. Oh. Can we do that one again?
Person 1	Can you do that one again?
Person 4	Start again?
Person 6 (behind the steering wheel of a stationary car)	Have you turned your video on mum?
Person 7 (mum)	Hah! Oh.
Dog	Whines
Person 3	And finally. I can’t remember.

12. The following screen shots are provided to assist with visualisation of the video:



## The Complaint

13. The complainant objects to the marketing as follows:

- *A question posed to a number of "consumers" asking how they managed to get through lockdown with the clear inference that only wine made it bearable.*
- *The advertiser is stating clearly that when you are facing a difficult or stressful period in your life that alcohol consumption is the solution. I struggle to see how this communication sits comfortably within RSA guidelines.*

## The ABAC Code

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

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

## The Company's Response

15. The Company responded to the complaint by emailed letter dated 24 November 2020. The principal points made by the Company were:

- With thanks for the opportunity to respond to the afore mentioned complaint. We were highly distressed and saddened to hear of the complaint and explain why below. Thank you for your consideration of our points.

- BAIE Wines is a small independent family run business owned by Simon and Nadine Kuc and we are not a member of ABAC. However, we fully agree with the overarching principles in the Code and take its obligations with respect to responsible marketing very seriously. We would not intentionally breach the Code and because the business is not a member, it did not submit the advertisement for Pre-Vetting.
- The blooper video was intended to be light hearted fun outlining the mistakes, pauses, nonsensical statements each of the participants in the video made when filming for our upcoming Christmas marketing campaign (which allows people to send a heartfelt message of love via AR Technology and a QR code), which is why in this blooper video we were asking about the challenges of 2020.
- The statement which is the subject of the complaint is a question posed to myself Owner – Nadine Kuc, Local Businesswoman Fran Rowlands and my sister in law Lauren “what has made 2020 easier?”. Given the nature of a blooper video both myself and Fran Rowlands pause at the question and my sister in law answers ‘uh... wine, are we allowed to say that’ as an obvious joke – especially given the context that this was a bloopers video not a promotional video.
- Her response ‘wine’ was to be in the context of a bloopers video – and it was not said to make any assertions that the consumption or presence of an Alcohol Beverage:
  - “may create or contribute to a significant change in mood or environment” [section 3(c)(i)]; and
  - “offers any therapeutic benefit or is a necessary aid to relaxation” [section 3(c)(iv)].
- BAIE Wines is small batch winery producing high quality handcrafted wines. Accordingly, the “average person” who purchases from BAIE Wines is more educated / has a deeper understanding about the contents and health effects of wine.
- The answer ‘wine’ was a pun in a blooper video is not intended to mean that alcohol provides a health benefit or is essential to make 2020 ‘easier’
- A reasonable person, watching the blooper video as a whole would not believe any “therapeutic benefit” was being attributed to the comment ‘wine’.

- The answer 'wine' by my sister in law was clearly said as a pun and humour (she laughed and said 'can we say that') and there was certainly no call to action urging potential consumers to choose wine as a way of improving their life to make 2020 any better. We would not expect any consumers to seriously consider wine as a way to make their life 'easier' as it is well known that alcohol over-consumption can cause serious health and social issues.
- BAIE Wines is committed to distributing promotional and marketing material that doesn't promote or encourage the irresponsible consumption of alcohol. Our aim is for consumers to enjoy our products responsibly and in moderation. Please see case in point via an Instagram Post we made on August 6th 2020 stating the following -

*We are excited to watch the discussions between our good friend [@stylebydeni](#) and his guests Sam from [@sobermates](#) and Mel from [@mels soberlife](#) tonight talking all things sobriety. Weird for a wine business to encourage discussion about sobriety you say - we think not. You see we live and breathe wine, so we have a very clear idea for ourselves around the options of choosing, questioning and exploring when or if to drink, learning about our motivations for drinking and reflecting on whether these are serving us well, being conscious of how much we drink, and most of all to ensure the choice to drink ...or not, is done with compassion for yourself and others. We would encourage everyone in our BAIE Wines community to do the same - we want everyone to enjoy having a wine (or not) in a way that is right for them. Hit me with a DM if you want to talk more! Nadine*

- For the reasons outlined above, we kindly request that the Complaint be dismissed.

## **The Panel's View**

16. BAIE Wines is a small batch winery located on Victoria's Bellarine Peninsula established by the Kuc family in 2000. The company's first production under its own label was in 2006 and the Company now markets small quantities of Sauvignon Blanc, Rose, Pinot Gris and Shiraz. Sales are via local wine stores and restaurants and from online orders. Like most small businesses in Victoria, 2020 has been a very challenging year for the Company given the prolonged period of lockdown to deal with the Covid-19 pandemic.

17. The challenge of 2020 is the backdrop of the video posted on the Company's Facebook Page which has drawn the complaint. The video is a 'bloopers reel' of Kuc family members and supporters drawn from material being filmed for a forthcoming Christmas marketing campaign. Each person shown on the video is answering a question 'what has made 2020 easier' and each person stumbles over the answer. In one segment a woman answers the question – “I can't remember” and shortly afterwards the shot returns to same woman who says “Uh wine? Can you say that?” as the woman laughs. The complainant contends the video as a whole and presumably this segment in particular means the message is that alcohol is the solution to a stressful period of your life.
18. The ABAC provides that an alcohol marketing communication (which includes posts on Facebook) must not suggest that alcohol contributes to a significant change in mood or offers any therapeutic benefit or is a necessary aid to relaxation. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of the marketing item by a reasonable person, taking the content of the marketing as a whole. A “reasonable person” is a construct of the legal system and signifies that the benchmark is the life experiences, values, and opinions which would be commonly held in a majority of the community.
19. The Company explains the background to the video and contends the post is not in breach of the ABAC standards. It is argued:
  - the Company, while not an ABAC signatory, does support responsible marketing and alcohol use and has even promoted discussions about when or if drinking alcohol is a responsible choice for individuals; and
  - the video is clearly humorous and the answer about wine use in response to the question would not be understood as a call to action nor as claiming alcohol offers any health benefit.
20. It can be readily accepted that the Company had no intention to claim that alcohol causes a significant change in mood or seriously contend that wine was an answer to the challenges of 2020 and the associated impacts of the pandemic. Further a reasonable person is sufficiently worldly to understand the video is a bloopers reel and all the answers given are in fact participants stumbling over their answers. The post would not be taken as a serious claim about using wine to manage stress.
21. There is however an underlying message in why the bloopers answer of – “Uh wine? Can you say that?” - is considered funny and relatable to the intended audience of the post. And this is the assumed shared experience within the wider community that on occasions alcohol is used and is accepted as a means to cope with stress and get through a difficult situation. It is the reliance on this assumed

role that alcohol is used as a coping mechanism and as an aid to relaxation which brings that element of the post into conflict with the ABAC standard in Part 3(c)(iv) of the Code.

22. The complaint is upheld.