



ABAC Adjudication Panel Determination No 17/21

Product: Alcohol
Company: Boozeit
Media: Instagram
Date of decision: 15 December 2021
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 Instagram advertising by Boozeit (“the Company”). It arises from a complaint received on 11 February 2021.
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 February 2021.
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 advertising.

The Marketing

10. The complaint refers to the following post on Instagram:



The Complaint

11. The complainant is concerned about the advertising as:

- *Section 3(c)(iv) of the Responsible Alcohol Marketing Code states that marketing communication must not “suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.” This advertisement implies that alcoholic products are an antidote to COVID-19 and its associated stressors. This advertisement capitalises on community fear and anxiety and undermines current efforts to mitigate harms from the global COVID-19 pandemic.*
- *At its most literal interpretation, this advertisement suggests that alcoholic products have therapeutic benefits to COVID-19. The risk to community of this interpretation must be taken seriously. Alcoholic products weaken the immune system, which reduces the ability to cope with infectious diseases, including COVID-19. The promotion of unsubstantiated alternative therapies to COVID-19, including the myth that alcoholic products can prevent or cure COVID-19, have been heavily perpetuated during the pandemic and this misinformation has caused significant harm. For example, 700 deaths were recorded in Iran due to alcohol poisoning in attempt to fight COVID-19 during the first months of the pandemic.*
- *Additionally, this advertisement is airing at a time during the COVID-19 pandemic when vaccinations are being rolled out internationally and are due to be rolled out across the Australian community. In the face of community uncertainty and anxiety about COVID-19 vaccinations, any marketing that may undermine efforts to vaccinate the population should be treated as harmful to the public and in breach of Section 2.6 of the Australian Association of National Advertisers Code of Ethics, which states that “Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.”*
- *A more implicit interpretation of the advertisement suggests that use of alcoholic products is a way to cope with the associated stressors of the COVID-19 pandemic. Australians are experiencing heightened levels of isolation, anxiety, and economic uncertainty during the COVID-19 pandemic. This advertising capitalises on current community vulnerabilities and promotes alcoholic products as a remedy. This is contrary to scientific evidence which shows that alcohol use can contribute to increased stress, anxiety, and depression in the long-term and increased risk of attempted suicide.*

The ABAC Code

12. 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)(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 on 11 February 2021. The principal points made by the Company were:
- The alcohol marketing communication referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval for its content and/or placement. It was merely a “meme” created by an unknown person and shared on our Instagram story – it was not advertised, boosted or promoted at all.
 - We don't think that the shared “meme” promotes Jack Daniels as a vaccination - we didn't realise such a post would be seen in that way as they are shared millions of times on social media.
 - When looked at in a literal way, yes it does come across as that. However, as mentioned above being a shared “meme” we do not believe that to be the case. We did not create the post, we shared it.
 - We have however since removed the post and will reconsider every meme posted in future.

The Panel's View

14. Boozeit is a home delivery alcohol retailer. The Company operates a range of social media accounts to promote its services including an Instagram account. The complaint concerns an Instagram post from the Company which is a meme playing on the vaccination program for the COVID-19 pandemic.
15. The post shows a vaccine vial branded in Jack Daniels whiskey livery. The vial is held by a surgical gloved hand and a syringe is drawing the liquid, presumably whiskey, from the vial. The photograph is topped with the text - Got my vaccine shot today - and underneath is text - Get yours @boozeit.com.au. The complainant argues the post is in breach of Part 3 (c)(iv) of the ABAC as it:

- implies alcohol is an antidote to COVID-19 and its associated stressors;
 - capitalises on community fear and undermines efforts to mitigate harm from the pandemic;
 - if taken literally, it promotes unsubstantiated alternative and dangerous virus therapies;
 - could undermine community confidence in the forthcoming Australian vaccination program; and
 - implicitly suggests that the use of alcohol is a way to cope with the stress of the pandemic when alcohol use is likely to increase stress and harm.
16. The Company acknowledges the literal interpretation contended by the complainant might be taken but contends:
- the image was a meme created by a third party and co-opted by the Company's Instagram post;
 - the post would not be understood as submitted by the complainant; and
 - the post has been removed.
17. The ABAC provides that alcohol marketing communications, including Instagram posts, must not encourage irresponsible behaviour related to alcohol use or suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. In assessing if a marketing communication has breached an ABAC standard, the Panel is to adopt the probable understanding of the marketing item by a reasonable person. A 'reasonable person' is a legal concept and assumes that the life experiences, values, opinions, and sensibilities commonly found in most of the community is the benchmark. If a marketing message can be interpreted in several ways, it is the most likely understanding which is to be preferred over a possible but less likely interpretation.
18. The Panel thinks a reasonable person would take the post to be a light-hearted reference to the pending COVID-19 vaccine program. The complainant is correct that there is misinformation circulating in the community (and often through social media) about the risks of vaccinations and such misinformation can have negative public health impacts. That said, a reasonable person is not likely to interpret the post literally and has a sufficiently worldly and robust sense of humour to understand that the post is trying to be funny. The dire consequences outlined in

the complaint flowing from the post would be regarded by a reasonable person as somewhat overstated.

19. The Panel, however, does believe the post is inconsistent with the ABAC standard in Part 3 (c)(iv). This is not because the post would be taken as seriously advocating that people inject whiskey as a COVID virus treatment but rather because the post's humour assumes that it is a common, if not acceptable, practice to self-medicate with alcohol to deal with stressful situations. It is this implicit reference to the use of alcohol that is inconsistent with the ABAC standard.
20. The complaint is upheld.