



## ABAC Adjudication Panel Determination No 32/21

**Product:** Triple Botanical Spirit  
**Company:** Brightside Distilling Pty Limited  
**Media:** Digital - Facebook  
**Date of decision:** 30 March 2021  
**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 advertising for Triple Botanical Spirit (“the Product”) by Brightside Distilling Pty Limited (“the Company”). It arises from a complaint received on 11 March 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 March 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 Facebook post:



## The Complaint

11. The complainant is concerned about the advertising as follows:

- *Claiming any alcoholic beverage is 'healthy' is inaccurate. Alcohol in any amount can cause health issues. This false message could lead to greater consumption based on the misconception of health benefits.*

## The ABAC Code

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

- (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 March 2021. The principal points made by the Company were:

- Brightside Distilling requested that the ad be amended and that the word "healthy" be removed from the post. This was actioned by Adelady on 11 March at 10am (the same day that the complaint was received).
- Brightside Distilling did not refer the marketing content to the Alcohol Advertising Pre-Vetting Service Approval as the content was created by a third party (Adelady).
- Brightside Distilling did have some control over the content on the Adelady Facebook page so long as it was in-line with Adelady branding.
- We contacted Adelady and requested placement on their social platform. Adelady scheduled the day and time of the post placement and we were informed this was scheduled to appear on Tuesday 10 March at 7pm.
- Adelady sent us a draft of the post and provided Brightside Distilling with the opportunity to edit the copy prior to the post appearing on the platform.
- The use of the word "healthy" was an oversight on the part of Brightside Distilling and was in no way intentional. We are aware that alcoholic beverages are not intended to be promoted as a "healthy" product. Our product is a lower alcohol product and the words "healthier alternative" as a comparison to a full-strength gin was the intended message. Unfortunately, Brightside Distilling did not amend "healthy" to "healthier" when given the opportunity and this was an error on our part.

- By producing a lower alcohol product we are intending to support the consumption of less alcohol. Brightside is new to the market and this is an emerging category, but we are fully aware of the code requirements in relation to promoting alcoholic beverages. This has been a learning experience for us to ensure that every marketing message be checked thoroughly prior to publishing.

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

14. Adelady is an Adelaide focussed media business which promotes South Australian businesses via a range of media platforms including TV, digital platforms such as Facebook and a print magazine. Brightside Distilling is a small batch spirit producer which according to the Company's website produces gin with 'less alcohol, more botanicals, no added sugar or nasty ingredients' compared to other types of gin. This determination concerns a Facebook post from Adelady which promotes the Company's product.
15. The post shows a photograph of four casually dressed women each holding a cocktail with two of the women holding a bottle of the Company's product. The accompanying text describes the product and in part states the product is 'a new HEALTHY alternative'. It is this reference which has drawn the concern, with the complainant arguing that any claim of an alcohol beverage being healthy is inaccurate. It is contended that alcohol in any amount can cause health issues and claims of a product being healthy might lead to greater consumption based on the misconception of health benefits.
16. The ABAC Scheme covers the marketing of alcohol industry participants and not media businesses such as Adelady. To fall within the remit of the ABAC standards, the Facebook post must be either generated by or be within the reasonable control of an alcohol marketer. In this regard, the Company has advised that it did have a direct relationship with Adelady and it did have a reasonable measure of control over the content of the post including the entitlement to check and have modified the text in the post. Accordingly, the post is a marketing communication to which the ABAC standards apply.
17. Part 3 (c)(iv) of the Code provides that a marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit. The Company accepts that the reference in the post to the product being 'healthy' is inconsistent with the ABAC standard. It is explained the reference occurred by error and this was identified and rectified even before the complaint was received.
18. The Company is entitled to draw attention in its marketing to the attributes of its products and to make comparisons with other alcohol products in relation to alcohol content, the nature of its distilling method and its ingredients. It is clear the Company intends to market itself in a responsible manner. It needs to be mindful

however that any claims about the comparative 'health benefits' of its product could breach ABAC standards. The ABAC pre-vetting service can assist the Company in checking its marketing prior to use and as a new alcohol market participant it may be advisable for the Company to access the service before embarking on key branding and marketing investments.

19. The complaint is upheld.