



## **ABAC Adjudication Panel Determination Nos 48/21 and 49/21**

**Product:** Venue  
**Company:** The Little Guy Bar  
**Media:** Instagram  
**Date of decision:** 16 April 2021  
**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”) arises from two complaints received on 31 March 2021. The complaints concern Instagram posts (“the Marketing”) by The Little Guy Bar (“the Company”).
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

## The Complaint Timeline

7. The complaints were received on 31 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 Instagram posts.

## The Marketing

10. This determination relates to two Instagram posts.

Instagram Post 1 is a video. It shows a sad person not holding a beer, then pans to a blackboard showing a neutral face under the words 'Before Beer' followed by a happy face under the words 'After Beer', before panning back to the original person who is now holding a beer and smiling.

The following screenshots are provided to assist with visualising the video:



Instagram Post 2 is shown below:



## The Complaint

11. The complainant has the following concerns about the marketing:

In relation to Instagram Post 1:

*Alcohol advertising should not show a change in mood. It's a clear breach of the code.*

In relation to Instagram Post 2:

*This post suggests that drinking a cocktail could improve your chances of sexual success. This is a breach of the code.*

## The ABAC Code

12. 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)(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.

## **The Company's Response**

13. The Company responded to the complaint by email on 1 April 2021, as follows:

*Thank you for bringing this to our attention. We have since removed the posts in question.*

*We will in future screen our content more vigorously to comply with the ABAC Responsible Alcohol Marketing Code.*

## **The Panel's View**

14. Part 3 (c) of the Code goes to the portrayal of the impact of alcohol consumption and provides that alcohol must not be depicted as causing a significant change in mood. Further alcohol use cannot be suggested as a cause or contributor to the achievement of social or their success.
15. The complainant has identified two Instagram posts from the Company which are argued to offend this standard. The Company in response does not dispute the posts fall short of the ABAC requirements and undertakes to improve its practices going forward.
16. The Panel believes the posts are inconsistent with the Part 3 (c) standard. The first post shows the introduction of alcohol as the cause of a significant change in mood. The second post does suggest through a combination of the images and accompanying text that social success will be enhanced by alcohol.
17. The complaint is upheld.