



ABAC Adjudication Panel Determination No 51/21

Product: Fireball Whisky
Company: Southtrade International
Media: Instagram
Date of decision: 27 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 a complaint concerning an Instagram post (“the Marketing”) by Southtrade International (“the Company”) for Fireball Whisky (“the Product”). It was received on 31 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

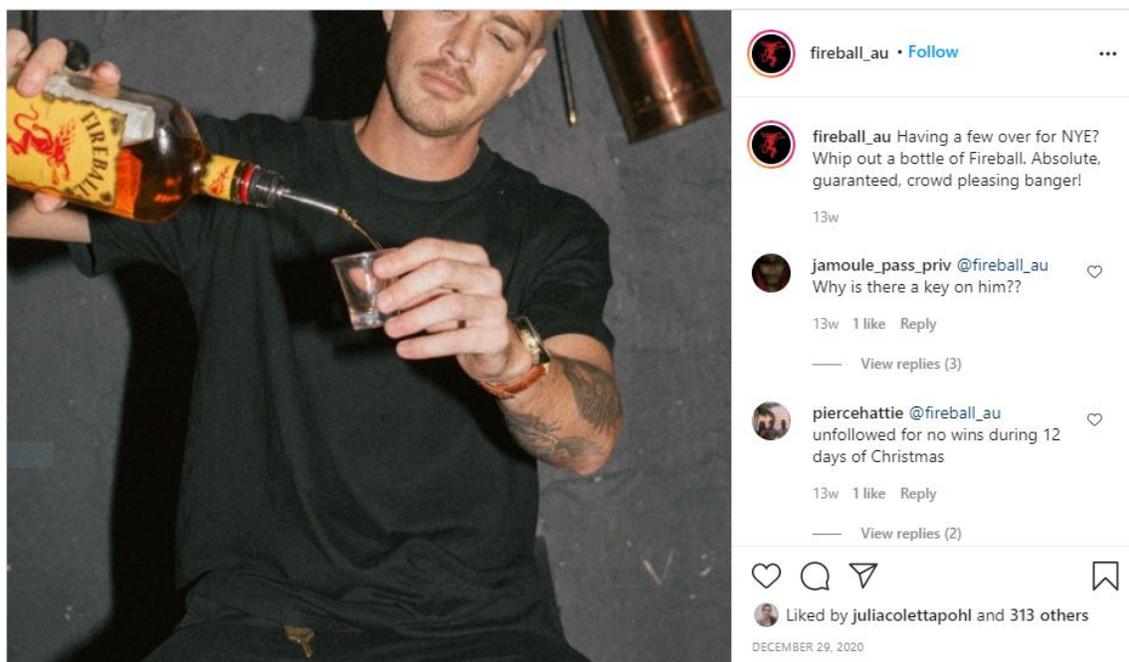
7. The complaint was received on 31 March 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 the following Instagram post:



The Complaint

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

The caption implies achieving social success through drinking and sharing Fireball whiskey. Implying social success through alcohol is a breach of the code.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (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 12 April 2021. The principal points made by the Company were:

Whilst we don't believe there is any issue with the copy we appreciate that it might be considered in breach of the ABAC code and so we have removed it.

SouthTrade International does not encourage irresponsible alcohol consumption and is committed to ensuring our marketing material does not promote or encourage any such behaviour.

The Panel's View

14. On December 29, 2020, the Company posted on its Instagram account a photograph of a man pouring a shot of Fireball Whiskey into a shot glass. The photo is accompanied by text which reads - 'Having a few over for NYE? Whip out a bottle of Fireball. Absolute, guaranteed, crowd pleasing banger!' The complainant argues the post, specifically the caption, implies the drinking and sharing of the product will lead to social success in breach of an ABAC standard.
15. Part 3 (c)(ii) of the Code provides that an alcohol marketing communication must not show the consumption or presence of an alcohol beverage as a cause or contributor to the achievement of personal, social, or other success. Assessing if a marketing communication breaches a standard is based upon the probable understanding of the marketing by a reasonable person taking its content as a whole. This means the most probable understanding of a marketing message is to be preferred over a possible but less likely interpretation.
16. The post could be taken in two ways. Firstly, it might be taken that the product is a popular alcohol choice for a celebration such as a New Year's Eve party. Alternatively, the post might be taken to mean that a New Year's Eve party host will be socially successful if they serve the product. The first interpretation is a permissible message under the ABAC whereas the second is more problematic.
17. The Panel does not believe that a reasonable person would take the post to be contrary to the Part 3 (c) standard. The post was made in the context of New

Year's Eve when is it common to mark the coming year with a celebration. Responsible alcohol use in conjunction with a New Year's celebration is also common. The post would most likely be understood as claiming the product would be a popular (crowd pleasing) choice for such an occasion.

18. The complaint is dismissed.