



## ABAC Adjudication Panel Determination No 103/21

**Product:** Venue/Alcohol  
**Company:** Woolshed on Hindley  
**Media:** Instagram  
**Date of decision:** 20 May 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”) concerns an Instagram post for Woolshed on Hindley (“the Company”). It arises from a complaint received by ABAC on 3 May 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

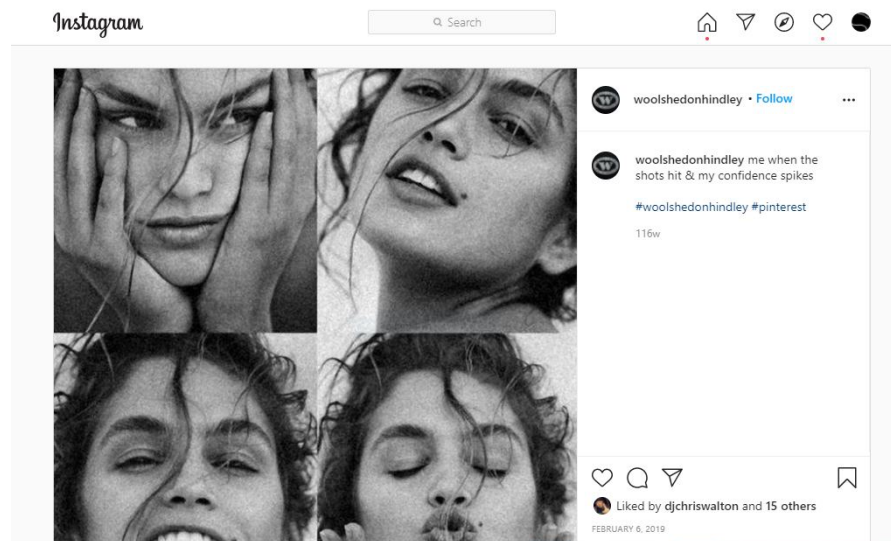
7. The complaint was received by ABAC on 3 May 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The 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 marketing.

## The Marketing

10. This determination relates to the following post on the Company's Instagram page:



## The Complaint

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

*The post implies a significant change of mood when drinking alcohol. This a breach of the code section 3(c)(i).*

## **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.

## **The Company's Response**

13. The Company responded to the complaint by email on 4 May 2021. The principal points made by the Company were:
- We have now deleted the Instagram post from (Feb 2019) but not by reason of the correspondence from the ABAC but because of the age of the post, it is no longer relevant to the business. We will continue to review our advertising and social media activity.
  - The Hotel is not a signatory to the Code as it is not a member of the Brewers Association, Spirits and Cocktails Australia or the Winemakers Federation of Australia nor is it operated by one of the individual companies which are also signatories to the Scheme. As such, the Hotel is not required to comply with the Code.
  - The Hotel will therefore not accept the Panel's decision in relation to the complaint.

## **The Panel's View**

14. This complaint relates to a post on the Hotel's Instagram account. The post includes a series of posed photographs of model, Cindy Crawford, with the caption 'me when the shots hit and my confidence spikes'.
15. The complainant raises a concern that the post implies a significant change in mood when drinking alcohol. Part 3 (c) (i) provides that alcohol marketing must not suggest that alcohol use will cause or contribute to a significant change in mood.
16. The Hotel is not a signatory to the ABAC scheme and is not contractually bound to meet Code standards nor abide with Panel determinations. The Hotel has responded to the complaint advising they have removed the post due to its age, rather than ABAC's communication of the complaint, and stated they will not accept the Panel's decision.
17. The post does breach the Code standards. The photographs would not of themselves be a breach of the Code standard. They do not show or imply alcohol use. However, the caption suggests that consuming shots (which a reasonable person would assume to mean alcoholic shots) significantly improves a person's confidence.

18. It is acknowledged that the Hotel is not bound to comply with the ABAC standards and Panel decisions. However, the Hotel is directly regulated under the Liquor Licensing Act 1997 (South Australia). The regime applying to the Hotel as a holder of a liquor licence imposes obligations to not advertise or permit promotion of their business in a way that tends to encourage the rapid or excessive consumption of liquor or that discourages a responsible attitude to the consumption of liquor. There is a degree of overlap between liquor licensing promotional restrictions and the ABAC standards.
19. The complaint is upheld.