



## ABAC Adjudication Panel Determination No 84/21

**Product:** Jimmy Brings  
**Company:** Endeavour Group  
**Media:** Instagram  
**Date of decision:** 25 May 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 an Instagram post for Jimmy Brings (“the Product”) by Endeavour Group (“the Company”). It arises from a complaint received on 14 April 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

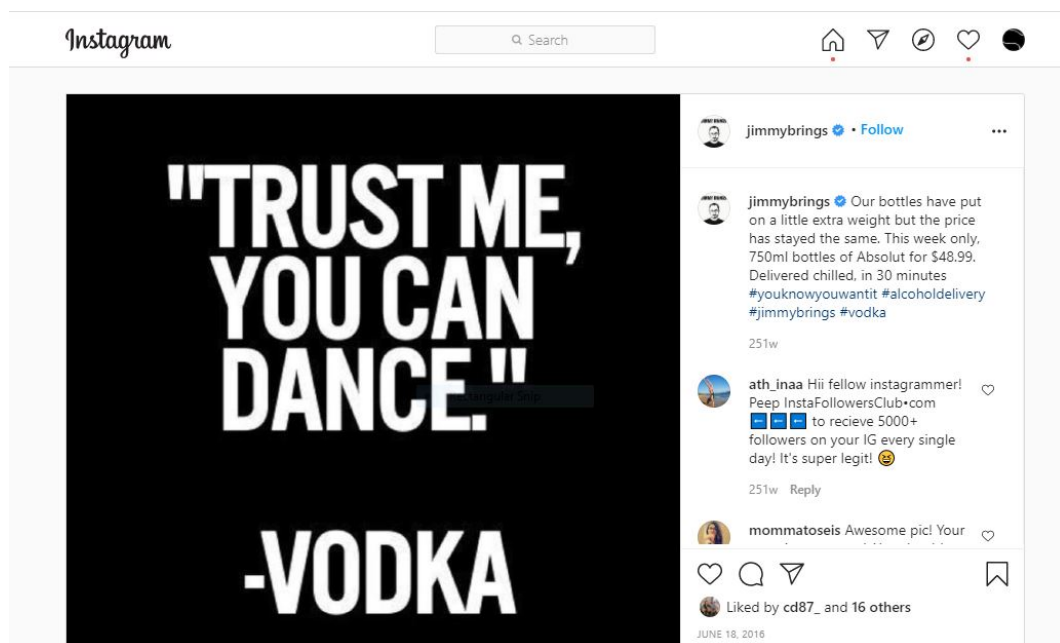
7. The complaint was received on 14 April 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 Instagram post:



## The Complaint

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

*The post suggests that vodka can improve your confidence and ability to dance. It suggests a change of mood from drinking.*

## 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 letter emailed on 22 April 2021. The principal points made by the Company were:
- Jimmy Brings maintains the position that the Advertisement does not breach any Part of the Code for the reasons outlined below and it, therefore, requests that the Panel dismiss the Complaint.

### Jimmy Brings' compliance framework

- Jimmy Brings submits the following:
  - It is Endeavour Group's aim to be Australia's most responsible retailer of alcoholic beverages. This is highlighted by the fact that Endeavour Group formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it strives to prepare all its advertising in accordance with the Code.
  - Endeavour Group maintains strict internal processes in addition to those required by the Code. As part of its community charter 'Our Community, Our Commitment', Endeavour Group has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
    - ID25 (ask for ID from anyone who looks under 25 years of age);
    - Don't Buy It For Them (stopping secondary supply to minors);
    - Intoxication Policy (refusal of service to anyone who may be intoxicated); and
    - staff training that exceeds legal requirements, including 'Don't Guess, Just Ask', team talkers, regular refresher and reminder courses, and implementation of the award-winning training program 'Safe'.
  - Jimmy Brings has adopted industry-leading initiatives including:

- a self exclusion service that allows Jimmy Brings' customers to exclude themselves from the service should they identify they have a problem. When customers attempt to place their next order, this will not go through the ordering system and will be cancelled automatically; and
  - an automated system which reviews customer order data to detect potentially harmful consumption by flagging repeated and/or large alcohol orders. This is a revolutionary step in being the most responsible alcohol retailer in Australia.
- The processes outlined in the paragraphs above provide Jimmy Brings with a compliance framework to ensure that it serves customers in accordance with its obligations under the applicable laws and regulations.

### **Alcohol Advertising Pre-vetting Service Approval**

- It should be noted that the Advertisement was posted on Jimmy Brings' Instagram account over five years ago. Given how precipitous and transient social media can be, Alcohol Advertising Pre-Vetting Service Approval was not sought for the Advertisement.

### **Responsible depiction of the effects of alcohol**

- Jimmy Brings submits the following:
  - The intention of the Advertisement was to promote the 'special' price of an alcohol product. The inclusion of the image, which is a meme that nonsensically attributes a quote to an inanimate object, was intended to draw attention to the promotion.
  - Jimmy Brings does not consider that the Advertisement suggests that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment, given that:
    - the dominant message of the Advertisement is that a bottle of vodka was on 'special', as clearly stated in the caption of the image;
    - the Advertisement does not depict the consumption or presence of alcohol; and
    - a reasonable person would understand an inanimate object such as vodka cannot speak, and that the use of the quotes in the image is intended to generate humour in a nonsensical way.

- For the reasons outlined above, Jimmy Brings believes that the Advertisement does not breach Part 3(c)(i) of the Code and requests that the Panel dismisses the Complaint.
- Jimmy Brings periodically reviews the content on its social media channels. As part of the review, Jimmy Brings has now removed the Advertisement on the basis that it may not fit the stringent standards it upholds itself to.

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

14. This complaint related to an Instagram post by a liquor retailer that promotes a weekly special on vodka accompanied by a meme "Trust me you can dance" – Vodka'.
15. The question for this determination is whether the Company's Instagram post suggests that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment, contrary to Part 3 (c) (i) of the ABAC.
16. The Company responds to the complaint by stating:
  - the dominant message of the Advertisement is that a bottle of vodka was on 'special', as clearly stated in the caption of the image;
  - the Advertisement does not depict the consumption or presence of alcohol; and
  - a reasonable person would understand an inanimate object such as vodka cannot speak, and that the use of the quotes in the image is intended to generate humour in a nonsensical way.
17. The purpose of the Part 3 (c) (i) standard is that alcohol is not portrayed in marketing communications as a significant transformative agent. This means that alcohol is not to be messaged as moving a person's mood or the environment (e.g. a social setting) from one state to another state. As a general guide, a marketing communication might breach the standard if:
  - an initial mood or environment is depicted;
  - alcohol is introduced into the scenario; and
  - the mood/environment alters significantly, in whole or in part, because of the presence or consumption of alcohol.
18. The complainant's argument is that a reasonable person would understand the Instagram post as suggesting:

- a person does not have sufficient confidence to dance (presumably in a social setting); and
  - vodka is introduced and this changes the person's mood (level of confidence) significantly so as they believe they can now dance because of the impact of alcohol.
19. While a marketing communication conveying the message contended by the complainant would breach the standard, the Panel believes it is too long a bow to interpret the post in this way. The post taken as a whole provides pricing information about Absolut vodka and associates vodka with dancing. It does not however establish an initial mood/environment which is significantly transformed by the introduction of alcohol. The complainant's interpretation requires several assumptions which cannot fairly be based on the actual content of the post. The Panel believes the more likely understanding is that vodka is a suitable choice for a social occasion, such as dancing, and the spirit can be ordered for delivery by the Company.
20. The complaint is dismissed.