



ABAC Adjudication Panel Determination No 100/21

Product: Pants Off Gin
Company: Pants Off Distillery Pty Limited
Media: Packaging
Date of decision: 7 June 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 the packaging of Pants Off Gin (“the Product”) by Pants Off Distillery Pty Limited (“the Company”). It arises from a complaint received 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 on 3 May 2021.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

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 product names and packaging.

The Marketing

10. This determination relates to the naming and packaging of Pants Off Gin, as follows:





The Complaint

11. The complainant has the following concerns about the marketing:
 - *Possible advertising of sexual success in relation to alcohol.*

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 16 May 2021. The principal points made by the Company were:

- The name and packaging of Pants Off Gin did not receive Alcohol Advertising Pre-vetting Service Approval. We were not aware of this service but did seek legal and other professional advice.
- The Products with their current name and packaging were first offered for retail sale in Australia on 4 December 2020.
- The naming and packaging of Pants Off Gin does not imply sexual success nor any link to any other activity such as swimming, sunbathing, etc. Further, it is clear from imagery used with the name and packaging that there is not even the hint of wanting to imply a link to sexual activity whatsoever. Below are examples of imagery associated with the packaging that has been used by the company for the website (<https://pants-off-distillery.myshopify.com>) and social media posts. In these it is clear that the imagery is pointed towards relaxing, and a 'by the water' afternoon chill. The consistent feedback since our launch has been about how stylishly we have been presenting that imagery and how the naming and the stylish packaging ties in with that.



The Panel's View

14. This determination concerns the branding of 'Pants Off' gin. The complainant submits that the branding of the product raises a potential link between the product and sexual success. Part 3 (c)(ii) of the ABAC provides that an alcohol marketing communication (which includes a product brand name and labelling) must not show the consumption or presence of alcohol as a cause of or contributor to the achievement of personal, sexual, or social success.
15. In responding to the complaint, the Company contends the naming and packaging of the product does not imply sexual success. It is argued the product branding is directed to a relaxed 'by the water' afternoon feeling. In deciding if a marketing item is consistent with an ABAC standard, the Panel is to adopt the probable understanding of the marketing material by a reasonable person.
16. The expression 'pants off' is used in various contexts and generally to give emphasis to an action e.g. 'charm the pants off', 'scare the pants off', 'bore the pants off'. A review of the term's usage does not reveal a sexual connotation as such. The term can be contrasted with the expression - 'get into your pants' which does have sexual overtones.
17. The Panel does not believe the brand name nor its use on the product labelling is a breach of the Part 3 (c) (ii) standard. It is conceivable that the product could be placed in a marketing scenario with other messaging and imagery where the brand name and the image of the pants used on the packaging might give rise to sexual implications. Accordingly, the Company should be mindful of this possibility and utilise the pre-vetting service if planning major marketing campaigns.
18. The complaint is dismissed.