



## ABAC Adjudication Panel Determination No 163/21

**Product:** Online Alcohol Sales  
**Company:** Poetic Justice Beverages  
**Media:** Instagram  
**Date of decision:** 20 July 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 Instagram advertising for online alcohol sales by Poetic Justice Beverages (“the Company”). It arises from a complaint received on 9 June 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:
  - 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;

- 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

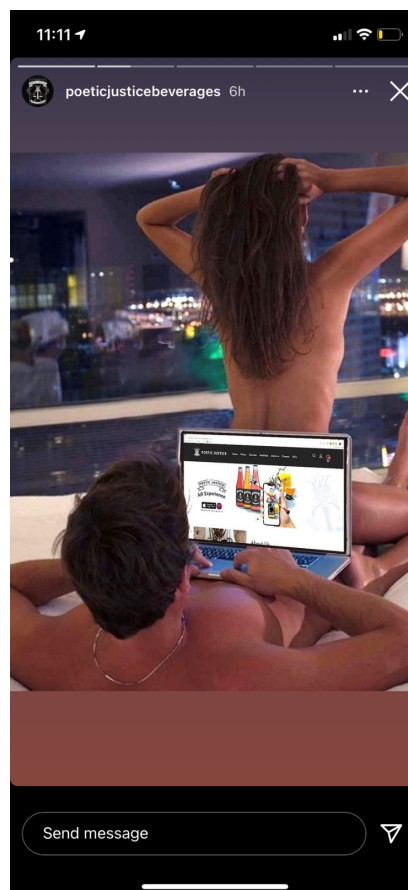
7. The complaint was received on 9 June 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 advertising.

## The Marketing

10. The complaint refers to the following Instagram advertisement:



## **The Complaint**

11. The complainant is concerned about the advertising as it implies that:

*Their product equals sexual success.*

## **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 was advised of the complaint and invited to respond. No response was received.

## **The Panel's View**

14. Poetic Justice Beverages are producers of a range of alcoholic and some non-alcoholic beverages including wine and alcoholic spritzers. The Company has adopted an innovative marketing approach involving 'augmented reality' accessed from the product labels by way of an app. This determination follows a complaint about an Instagram post which in part makes a play on the augmented reality feature.
15. The post shows a couple in bed apparently engaged in sexual activity. The man is resting a laptop on his torso and is viewing the Company's website with images of alcoholic spritzers visible together with a reference to the augmented reality app. The woman is astride the man. Both are naked. The complainant argues that the post is equating the alcohol products with sexual success. Part 3 (c)(ii) of the ABAC provides that an alcohol marketing communication (which includes social media posts) must not show the consumption or presence of alcohol as a cause of or contributing to the achievement of social or sexual success.
16. The Company is not a signatory to the ABAC Scheme and hence has given no prior commitment to market its products consistently with ABAC standards of good marketing practice. While ABAC members and signatories cover the large majority of marketing expenditure by alcohol industry participants in Australia, it is not unusual for smaller producers not to be a direct ABAC signatory. It is however very unusual for a Company, whether an ABAC member or not, to fail to respond to a public complaint about a marketing communication. Almost universally alcohol industry participants accept the social and corporate responsibility that

comes with involvement with alcohol as a product and to co-operate with the public complaint process.

17. It is the practice of the Panel to assess all marketing complaints raising ABAC standards and to make decisions on those complaints. In doing so, the Panel assesses the consistency of the marketing item to the relevant ABAC standard from the standpoint of the probable understanding of a reasonable person. This means that the life experiences, values, and opinions found in most of the community is the benchmark.
18. The Instagram post does breach the part 3 (c) standard. In reaching this view, the Panel noted:
  - a reasonable person would understand the scenario depicted as showing the couple engaged in sexual activity;
  - the man is viewing the Company's website with alcohol products displayed and this places alcohol with the sexual activity; and
  - the reasonable implication is that alcohol is 'a' contributor to the sexual activity.
19. The complaint is upheld.