

ABAC Adjudication Panel Determination Nos 164, 165 & 166/21

Product: Bloody Shiraz Gin
Company: Four Pillars Gin
Media: Outdoor Billboards
Date of decision: 21 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”) arises from three complaints. The first complaint was received on 9 June 2021 and relates to the content of an outdoor billboard. The other two complaints were received from a different complainant on 11 June 2021 and relate to the billboard’s placement near schools. The billboards were marketing Bloody Shiraz Gin (“the Product”) by Four Pillars (“the Company”).
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 9 and 11 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 marketing.

The Marketing and Placement

10. This determination relates to the following billboard, which was placed at 265 Cleveland St, Surry Hills and on the side of the building at Alan Buki Hair, 412 Oxford St, Paddington.





On the side of the building at Alan Buki Hair,
412 Oxford St, Paddington.



265 Cleveland St, Surry Hills.

The Complaint

11. The complainants have the following concerns about the marketing:

Complaint 1 – Content

The billboard I saw features an image of a woman seated next to a low table, on which a bottle of the gin is resting. In her hand is a cocktail. Her eyes are closed, and over her face and head is an explosion of this 'bloody' gin. It looks as though she's been shot in the head.

One woman dies every week in Australia at the hands of a man. Per the ABS's latest Personal Safety Survey (PSS), estimates show that since the age of 15 years, and at least at one time in their lives:

- *1.5 million women have experienced violence by male cohabiting partners and almost a million (981,300) women have experienced violence by boyfriends or dates*
- *0.9 million women have experienced violence by male perpetrators unknown to them*

Violence against women is a major news touchpoint in this country in 2021 and this imagery is an unfathomably bizarre and inexcusable choice on behalf of the advertiser. As both a marketing professional and a survivor of

family violence I am appalled and disappointed that this was able to make it through every stage of approvals.

Complaints 2 & 3 – Placement

265 Cleveland St Surry Hills - *it is directly across the road from Inner Sydney High School, advertising alcohol to children.*

Side of Building at Alan Buki Hair, 412 Oxford St, Paddington - *When picking my nephew up from school he has seen this advertisement and asked about it. His parents and other parents of the school also mentioned it to me, as to why there is alcohol advertised directly across the road from a primary school.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
 - (b)(iv) be directed at Minors through any breach of the Placement Rules.
13. Part 6 of the ABAC Code provides that:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.

The Company's Response

14. The Company responded within 30 minutes of being advised on 11 June 2021 of the initial informal complaints about placement of the billboards (which later translated to formal complaints). The principal comments made were:
- I've been in contact with our provider and we'll be taking immediate action to remove posters from both locations in question in the next hour or so.
 - After reviewing the placement policy in detail: "ensure advertising that is captured by this policy is not placed on fixed signs located within a 150

metre sightline of an Australian primary or secondary school." I concede that the Paddington placement should never have gone up. A mistake we'll be sure to avoid in the future.

- On Cleveland St, I can see that the posters are in fact 100m from the school but not in any line of sight from the school. However, we take these regulations very seriously and would prefer to remove the posters rather than operate close to a school, based on a technicality.
- I've also reached out to our other providers flagging this issue to ensure we're adhering to all appropriate regulations.

15. The Company further responded to all three complaints by email on 16 June 2021. The principal points by the Company were:

- Thank you for your email of 10 June 2021 and for the opportunity to respond to the complaint you received on 9 June about the content of our poster advertising. Thank you also for your email of 12 June 2021, regarding complaints made about the placement of two of our posters. I apologise again for you and your team having to deal with these complaints and very much appreciate the clarity and professionalism of your process in dealing with them.
- First of all, I want to put on the record how seriously we at Four Pillars Gin take our obligation to promote our gin responsibly, respectfully and moderately. We have built our brand based on a commitment to helping people drink better, not more. And we have placed people and community at the heart of our brand since the first days of our crowd-funding campaign in 2013. We are, we believe, scrupulous in reviewing everything we do, from language to imagery to partnerships to media placements. But of course mistakes still happen and we're pleased ABAC is there to ensure we maintain the high standards we have always set ourselves. As the three co-founders of Four Pillars Gin with a total of seven kids between us, Cam, Stu and I are hugely grateful to ABAC for the work you do to ensure that alcohol is promoted appropriately in our community.

Alcohol advertising pre-vetting service

- We did not seek or receive pre-vetting for the content or placement of this billboard.

Responsibility toward Minors

- Four Pillars works directly with a range of media providers (as a small craft business we do not currently employ the services of a media planning or buying agency, although that is likely to change moving forward) and to date we have relied on these partners to work within the guidelines on media

placements suitable for alcohol brands. We are always very clear with our partners that our expectations are that all placements are within both the letter and spirit of the law. For example, we ask that no posters are placed within 150m of childcare centres as well as schools.

- In this case, we can confirm that the posters in question were placed at both the locations identified in your email.
- Both of these poster placements were made by a new supplier to Four Pillars. On receiving your initial notification of this issue (and before we had even received the official complaint) we had taken the following steps:
 - We requested that both placements in question be removed by the supplier, specifically at 412 Oxford Street and 265 Cleveland Street
 - We requested that the supplier review all their other placements to ensure none were within 150m of a school or childcare centre
 - We requested that the supplier refamiliarize themselves with ABAC guidelines and with the guidance from the outdoor media association regarding the placement of advertising for alcohol brands.
- I can confirm that both placements were removed on Friday the 11th of June, prior to receiving notice of the official complaint against the placements.
- I am hugely embarrassed by these two lapses. They are unacceptable. In both cases the placements should never have been made, and the partner in question will not be used again by Four Pillars until they can demonstrate they have addressed these basic breaches and reviewed and corrected the policies and operating procedures that allowed them to occur. Likewise, we will be reviewing our own approach to media selection and buying, including (as noted above) the likelihood that we will seek to engage a third-party media buying agency for outdoor media in the future.

Responsible and moderate portrayal of Alcohol Beverages

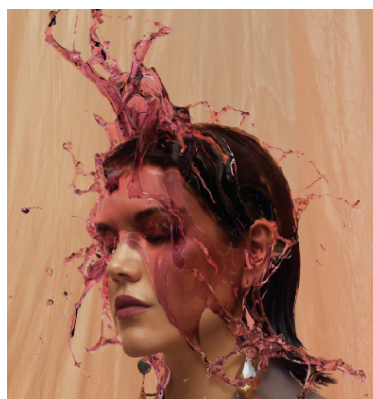
- We do not believe the creative shows or encourages irresponsible or offensive behaviour related to the consumption or presence of alcohol. The campaign creative celebrates the experience of tasting Four Pillars Bloody Shiraz Gin for the first time. An Australian original, Bloody Shiraz Gin truly is a sensational drink and a revelation the first time you taste it. The campaign therefore looks to visualise that sense of revelation for people who haven't tried it before in a magical, creative way (it's hard to put the flavour of the gin into words). We deliberately avoided depicting excessive quantities of alcohol around the mouth, and we avoided expressions on our models' faces that might imply excessive joy, elation or mood change. Instead we sought to

imply sensation and revelation. The full campaign creative films (the posters utilise stills from the films) can be viewed on YouTube:

<https://www.youtube.com/watch?v=Z9jk5XpPFiw>

<https://www.youtube.com/watch?v=pOdPYgYHM2w>

- We hope the Panel agrees that the creative work is gentle, artistic and figurative in nature.
- In response to your specific question about the use of the word “bloody”, we do not believe it carries any connotation of violence. The use of the word in the creative derives primarily from the name of the product, ‘Bloody Shiraz Gin’. That name in turn is a reference to the process of ‘bleeding’ colour from wine grapes, literally known as ‘saignée’ by French winemakers. As a brand we also enjoy playing on the warm, colloquial Australian use of the word bloody, as in “the gin is a bloody revelation...it’s the best bloody gin in the world”.
- In response to your specific questions about the alleged appearance of a woman having a drink thrown at her or being shot in the head, this is an interpretation of our creative that was certainly not intended, and which we do not believe is in any way depicted. If you review the printed poster creative (below) you will see that the liquid envelops the minds of the models in an abstract and deliberately unrealistic way. There is no sense of realism that could imply actual blood. And in fact the liquid is clearly a translucent purple, again in no way resembling blood. Likewise, if you view the films you will see the liquid moves upwards and sideways, clearly defying gravity and moving in a way that implies a metaphorical sensation, not the literal movement of liquid or blood. The whole scene, both when moving and when depicted in a still image, is abstract and magical and in no way literal or violent. The campaign also includes one male and one female model, with equal weighting in our media buy behind both versions.



- We would also note that no liquid was used in the filming of this content. All effects were created in 3D animation, inspired by digital artworks like the one by Refik Anadol at Melbourne's NGV. See example here: <https://www.abc.net.au/news/2020-10-08/ngv-triennial-melbourne-exhibition-national-gallery-of-victoria/12741588>. Again, we believe this choice contributes to the lack of realism. We would contend that the work is clearly figurative and abstract in nature.
- Lastly we would like to highlight the important context created by the tagline for these executions. In all cases, they are accompanied by the line 'BLOODY REVELATION'. The implication is simple and clear: that the taste of Bloody Shiraz Gin is a revelatory sensation. Something unlike anything you have tasted before. We believe this to be both clear and a true reflection of the response of thousands of Bloody Shiraz Gin customers and fans since its launch in 2015. Just as there is no violence in the imagery, there is no violence (or implied violence) in the accompanying language.
- The following showcases our print ad creative in detail as well as widespread coverage of our Bloody Shiraz Gin that uses similar language to our campaign.

Poster 1

Zsa Zsa's Bloody Revelation

The film can be viewed [here](#)



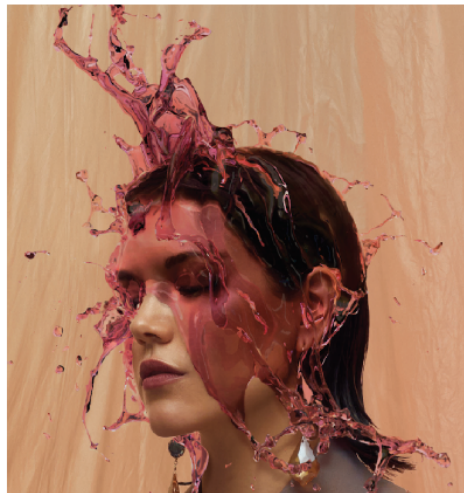
Poster 2

Jack's Bloody Revelation

The film can be viewed [here](#)



Close-Ups



FOUR PILLARS

THE UNIQUENESS OF THE GIN. IT'S HARD TO PUT INTO WORDS!



THE PLAYFUL & INFORMAL USE OF THE WORD 'BLOODY'. IT'S NOT JUST US!



"Four Pillars' unique purple drop – made with Yarra Valley shiraz grapes."

"Three years after the mad scientists at Four Pillars dreamed up a gin infused with the flavours of shiraz, it's fair to say the ruby-coloured elixir has developed a cult following."

Gourmet Traveller, 2018

"As unique a "gin" as you'll ever encounter"
drinkhacker.com

"The Australian answer to sloe gin"
diffordsguide.com

"Our love for this product knows no bounds."
ginfoundry.com

"Gin meets wine in the best possible way"
broadsheet.com.au

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"Four Pillars is dropping its Bloody Shiraz Gin this week and it's about bloody time."
Delicious, 2020

"Bloody brilliant: Four Pillars is bringing back its Bloody Shiraz Gin for 2021."
Delicious, 2021

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FOUR PILLARS

Concluding comments

- Thank you for the opportunity to respond to these complaints. And please know that as a small and (we believe) highly responsible craft Australian brand we are very open to feedback on how we can do more in the future to avoid concerns and complaints like this. I would be keen to work with ABAC to learn more about pre-vetting and find out how its processes can fit the needs, timelines and budgets of small, local businesses like Four Pillars. Four Pillars already requires all members of our marketing team and partner community to be familiar with ABAC guidelines, but we will now be

undertaking a review of our internal policies to ensure even more vigilance in the future.

16. The Company provided an additional update by email on 21 June 2021, as follows:
- We have decided to remove all the poster creative featuring these liquid revelation executions. We have instructed our media partners to replace all the posters featuring the liquid effects (both the male and female versions) with simple bottle images. We think this is the simplest and best way to respond to the feedback we've received. We hope that all the street media will be replaced by the end of this week (and potentially much sooner).
 - We have also decided to withdraw the female version of our film from circulation. While we remain of the view that the content is gentle in nature, we would hate for anyone to feel we are referencing violence against women (an issue that's deeply important to us), and so have decided to only run the male version of the film content.

The Panel's View

17. Four Pillars Gin was founded in 2013 in Melbourne's Yarra Valley and has proven to be a highly successful leader in the renaissance of gin distilling in Australia witnessed in the last 15 years. Since 2015 the Company has produced a Bloody Shiraz Gin which combines dry gin with shiraz grapes. The Company explains the use of the term 'bloody' relates to the bleeding of the colour of the shiraz grapes as well as a play on the colloquial use of the mild swear word in Australian conversation.
18. To find a creative means to capture the taste impact of the product, the Company explains how it developed the marketing campaign for the gin. This has seen marketing executions created featuring 'a metaphorical sensation' of red coloured liquid representing the gin enveloping 'the minds of the (male and female) models in an abstract and deliberately unrealistic way'. This determination arises from a clash between the Company's creative intent for its marketing with the way in which an outdoor installation of the marketing has been understood by a public complainant.
19. Billboards for the marketing campaign were created with two billboard advertisements placed at locations in Sydney. The billboard shows a well-dressed woman sitting and holding a drink made with the product and with red liquid covering part of her head. A bottle of the product is shown together with the product name and the strapline-'Shiraz Gin- Revelation'. These outdoor installations have attracted three complaints. Two of the complaints go to the location of the advertisements rather than the ad's content, with the concern being

the proximity of the billboards to schools. The other complaint goes to the content of the advertisement with the concern being about violence against women.

20. The complaints about the proximity of the billboards to schools raise the ABAC Placement Rules. The rules have the policy aim that alcohol marketing should be directed towards adults and away from minors. For outdoor installations, the relevant rule incorporates the provisions of the Outdoor Media Association Placement Policy which in effect prohibits placing alcohol advertisements on billboards or buildings within 150 metres line of sight of a school. The Company accepts both locations identified in the two complaints are within 150 metres of a school, although in the case of the Surry Hills site, it is contended the advertisement is not within the sightline of the school.
21. Upon receiving the complaints, the Company acted quickly to have the advertisements removed. It was explained that its instructions to its media partner responsible for sourcing the locations of outdoor sites, was that the 150 metres requirement was to be met, and as result, the placements were a mistake. The Panel welcomes the quick action of the Company to resolve the issue, but the Placement Rule requirement has been breached in the case of the Paddington location. The Surry Hills site is arguably consistent with the Placement Rule requirement given the ad was on a side of a building apparently not directly visible from the fence line of the school. The Company nonetheless had the ad removed.
22. The content concern about the advertisement and the issue of violence against women is slightly more nuanced. The concern likely falls more directly within the AANA Code of Ethics than it does within the ABAC. The Code of Ethics applies to marketing irrespective of the product being promoted and provides in part that advertising shall not:
 - present or portray violence unless it is justifiable in the context of the product or service advertised; and
 - depict material contrary to prevailing community standards on health and safety.
23. It can be presumed that, while the ad being for an alcohol product heightened the concern, the complainant would have also been troubled by the image of the woman appearing as having been shot, if the product being advertised was non-alcoholic e.g. cranberry juice or red cordial. Complaints under the Code of Ethics are considered by processes administered by Ad Standards and not the ABAC Adjudication Panel. Ad Standards do not decide on a complaint however, if the advertisement is voluntarily withdrawn as has occurred in this case. So, there will be no ruling as to whether the ad was consistent with the Code of Ethics.
24. The most applicable ABAC standard given the nature of the complaint is Part 3 (a) (ii) which provides an alcohol marketing communication must not show or

encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage. If a fair interpretation of a marketing item is that alcohol has influenced or contributed to violence, then the marketing communication would be in breach of this standard. Assessment of the consistency of a marketing communication with an ABAC standard is from the standpoint of the probable understanding of the marketing by a reasonable person. A 'reasonable person' means that the life experiences, values, and opinions held by most of the community is the benchmark. A person who interprets a marketing item in another way is not 'unreasonable' but possibly their understanding would not be shared by most people.

25. The Company contends that the billboard advertisement, consistent with the intent behind the campaign as a whole, was about devising a way to show the distinctive taste of the product. It can be accepted, upon reviewing the material about the campaign supplied by the Company, that there was no intent to depict or make light of the critical issue of violence against women. In fact, the Company was evidently taken aback that its advertisement could be viewed in the way contended by the complainant. While not conceding the advertisement was in breach of the ABAC standard, the Company on reflection has removed all posters showing the 'liquid effects' and withdrawn the female version of the film execution of the campaign.
26. This does appear to be a case where the creative intent of a marketer has not translated into a fully effective execution of the intent. The test for the ABAC standards is not what the marketer intended but how a reasonable person would understand the marketing. Further, it might be surmised that an image which is not troubling on a computer screen or in a mock-up looks different when seen installed.
27. Billboard advertising will generally be seen by a person reasonably fleetingly from a moving car. Depending on its location, some installations will be seen more slowly by a pedestrian walking by. In both cases, the impression created will be influenced by the major features of the advertisement- its principal images and large font messaging. Smaller print messaging and more subtle points contained within images are of less importance as a consumer cannot be expected to stand still and examine the ad in close detail.
28. While this is a difficult assessment, the Panel on balance believes the advertisement does breach the Part 3 (a) (ii) standard. The Panel noted:
 - the principal take-outs for a reasonable person from the billboard is the woman, the 'liquid' covering her head and the product image and name;
 - it is by no means instantly apparent from a static installation that the liquid covering the woman's head is the 'revelation' caused by the taste of the product;

- the liquid could easily be taken as blood from its appearance, and this interpretation is supported to some extent by the use of the word 'Bloody';
- even if the liquid is assumed to be shiraz gin and not blood, the image could easily be taken as the product having been thrown onto the woman; and
- throwing liquid at a woman or showing blood covering the woman's head does reasonably connote an act of aggression against a passively depicted woman.

29. In upholding the complaint, the Panel does acknowledge the Company did not intend to invoke concerns about violence against women and that the Company has acted in a responsive manner in reflecting upon the complaints. The Panel finds:

- the first complaint is upheld in relation to Part 3 (a) (ii); and
- the second and third complaints in relation to Part 3 (b) (iv) are upheld in relation to the Paddington location and dismissed in relation to the Surry Hills location.