



ABAC Adjudication Panel Determination No 207/21

Product: Alcohol
Company: Cocktail Porter
Media: Facebook Post
Date of decision: 24 September 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 a Facebook post for Cocktail Porter (“the Company”). It arises from a complaint received on 26 August 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

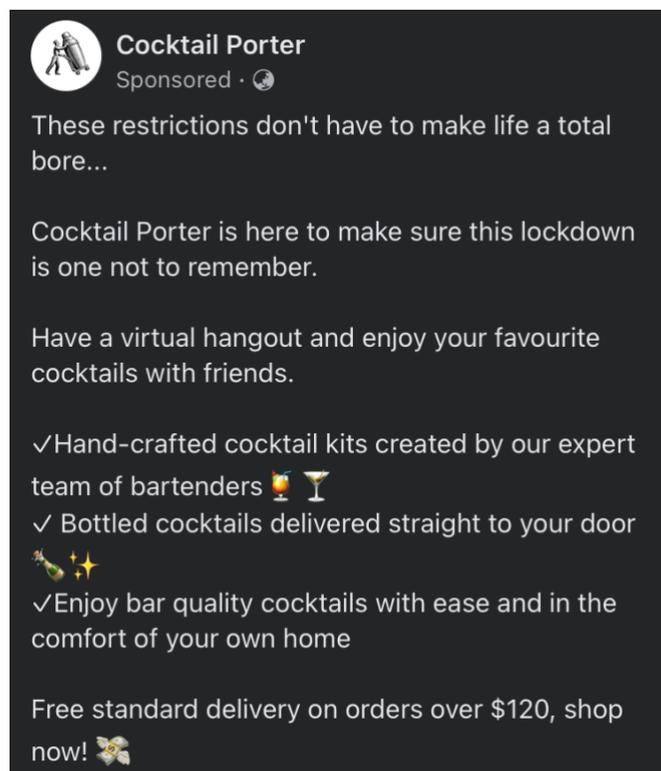
7. The complaint was received on 26 August 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

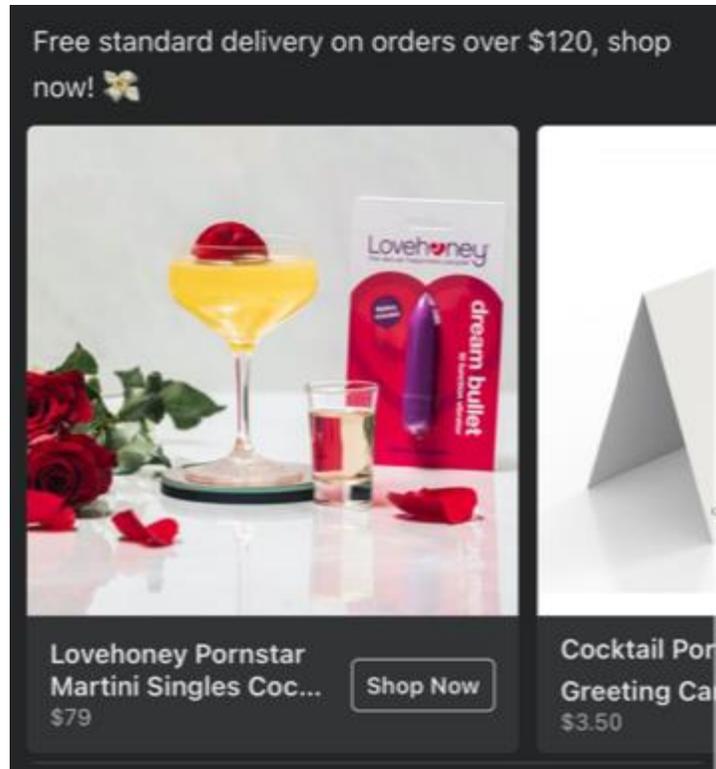
Pre-vetting Clearance

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 Facebook post.

The Marketing

10. The complaint concerns the following Facebook post:





The Complaint

11. The complainant objects to the marketing communication as follows:
 - The phrase "Cocktail Porter is here to make sure this lockdown is one not to remember" is clearly encouraging individual to drink irresponsibly, at levels that result in memory loss and increase risk of harm. This message is inconsistent with the NHMRC Australian Guidelines to Reduce Health Risks from Drinking Alcohol.
 - The phrase "Cocktail Porter is here to make sure this lockdown is one not to remember" implies that alcohol can be used to aid relaxation, or numb negative emotions associated with the current lockdown restrictions. This implication is misleading and potentially harmful given the body of evidence suggesting that excessive alcohol consumption is more likely to cause or exacerbate mental health problems.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company's Response

13. The Company responded to the complaint by email on 30 August 2021. Its principal comments were:
- A little embarrassed our side to say the least, the phrase should have read "Cocktail Porter is here to make sure this lockdown is one to remember".
 - We're promoting learning how to make cocktails, learning new skills with friends. Our packs cost approx. \$100 with shipping for 6 drinks so we're in no way trying to promote excessive drinking, rather responsibly drinking less but better.
 - An honest mistake that has stemmed from us verbally discussing the copy with our social media agency and they have published, then we didn't proof read. It has all been updated online now.
 - I hope this resolves any confusion and we'll take steps our end to ensure we proof read moving forward.

The Panel's View

14. Cocktail Porter was founded in 2018 and provides a home delivery service for customised kits for the making of various alcoholic cocktails. The service operates by an online model for ordering and the Company maintains the usual social media accounts to promote its cocktails and service. This determination arises from a complaint about sponsored posts delivered over Facebook.
15. The post references 'These restrictions' and 'this lockdown' which positions the post against the Covid pandemic government restrictions in place in NSW, Victoria and the ACT as at the date of the post in August 2021. The post in part reads - 'These restrictions don't have to make life a total bore... Cocktail Porter is here to make sure this lockdown is one not to remember.' The balance of the post

suggests that a reader have a virtual hang out and enjoy a favourite cocktail with friends. Details of the service are provided.

16. The complainant believes the post's use of the phrase 'make sure this lockdown is one not to remember' implies excessive alcohol consumption to the extent of memory loss. Further, the phrase implies alcohol can be used to numb negative emotions associated with the current lockdown.
17. The Company explains the phrase 'this lockdown is one not to remember' is actually a mistake and it was supposed to read - 'Cocktail Porter is here to make sure this lockdown is one to remember'. It is contended the idea was to promote the cocktail making service as an opportunity to learn a new skill with friends during the lockdown.
18. The additional 'not' in the critical sentence is important in this case. The post as a whole refers to the service, having a virtual get together with friends and using the home delivered cocktail kits. There is nothing in the post which otherwise encourages excessive alcohol consumption or particularly implies alcohol is a coping mechanism for the stress of living through a lockdown. Certainly, the inclusion of the 'not' in the sentence does open up the interpretation taken by the complainant.
19. The Panel believes the complaint should be upheld against the standard in Part 3 (a)(i). The statement - 'make sure this lockdown is one not to remember' does raise a reasonable implication of alcohol consumption to the extent of causing a loss of memory. While this may have been a mistake and not intended, the Company is responsible for the accuracy of its own marketing copy. The Panel, however, believes it's a bit of a stretch to also read into the post an implication that alcohol is a necessary aid to relaxation or is being suggested as a response to negative emotions. This requires a level of supposition which a fair reading of the post, as a whole, does not support.
20. The complaint is upheld in relation to Part 3 (a)(i) and dismissed in relation to Part 3 (c)(iv).