



## ABAC Adjudication Panel Determination No 206/21

**Product:** Wine  
**Company:** Wine Not the Brand  
**Media:** Facebook Post  
**Date of decision:** 4 October 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 two Facebook posts for Wine Not the Brand (“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.

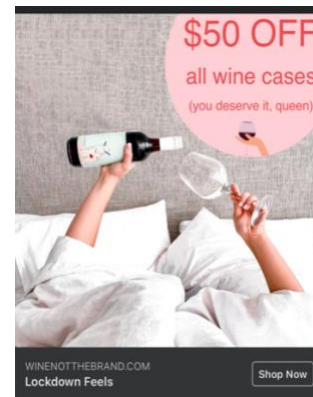
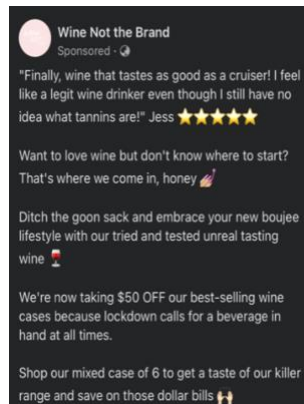
## Pre-vetting Clearance

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.

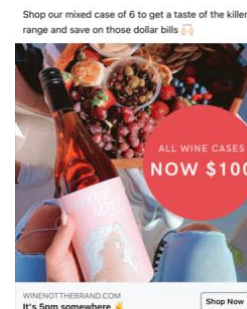
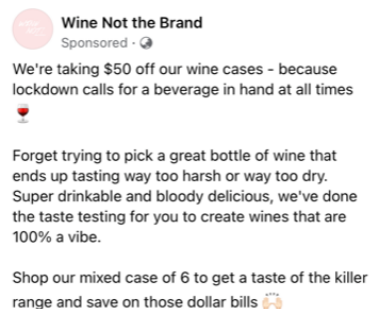
## The Marketing

10. The complaint concerns the following two Facebook posts:

### Facebook Post 1:



### Facebook Post 2:



## The Complaint

11. The complainant objects to the marketing communications as follows:
  - *The phrase used in both advertisements - “because lockdown calls for a beverage in hand at all times” implies that excessive alcohol consumption is a necessary coping mechanism during difficult times. 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 phrase is also encouraging irresponsible drinking that is inconsistent with the NHMRC Australian Guidelines to Reduce Health Risks from Drinking Alcohol.*

## 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)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
  - (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 2 September 2021. Its principal comments were:
  - To summarise our position in response to this complaint, although the dialogue selected was not intended to encourage excessive alcohol consumption, we agree that the advertising material could be interpreted in many different ways. Wine Not the Brand had engaged a marketing company who were responsible for creating all advertising content. Not all of this content was personally vetted by me & the company was provided documentation which clearly outlines our brand guidelines, tone of voice, and target market which we understand they did not reference.

- Moving forward, should we choose to engage a marketing company again, a requirement will be that all marketing content including images, placement, targeting & content will be approved by me.

### **Responsible and moderate portrayal of Alcohol Beverages**

- Wine Not the Brand's tone of voice is tongue in cheek, however we understand that there are limitations to this kind of dialogue. We acknowledge how the specific statement used, ("because lockdown calls for a beverage in hand at all times"), can be interpreted in many different ways. As mentioned above, should we use a marketing company in the future we will require written confirmation that they have read and understood our brand guidelines, demographic guidelines & tone of voice document (which was provided to them as a part of our contract), and also understand liquor licencing advertising guidelines, which all clearly state that no dialogue is to encourage excessive alcohol consumption, rapid consumption or the misuse of alcohol.

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

- In response to ABAC's questions, firstly, do the words "...lockdown calls for a beverage in hand at all times" suggest that lockdown is difficult, but a person's frame of mind or feelings may improve after drinking alcohol and, secondly, do the posts imply that excessive alcohol consumption is a necessary coping mechanism during difficult times, the Company advised as follows:
  - This seems subjective and certainly not conveyed in this ad, however, as above we acknowledge that the conceptualisation of this ad can be interpreted in many different ways, and that moving forward the process of approval will be much stricter. Our brand is all about celebrating, joy & happiness as opposed to commiserating, sadness & exacerbating mental health issues with the use of alcohol - and in moderation. Our entire ethos and our branding is surrounding positive messaging & encouraging communication with others as a coping mechanism, not drinking as a form of self soothing or otherwise as a recommended coping mechanism. Our messaging is about human connection - including the messaging on each label, so the interpretation is definitely not on-brand for us, or how we desire to show up or be seen in the public eye. We are disappointed with the message and imagery that has been paired at this time to create this negative representation of Wine Not the Brand.

## The Panel's View

14. Wine Not The Brand was founded in 2018. The Company is pitched towards female millennials and uses social media channels to promote its product range. This complaint relates to paid advertising on Facebook which references current lockdowns in place in parts of Australia in response to the Covid-19 pandemic
15. The posts promote mixed cases of wines and feature a photograph and accompanying text that provides product information. Within the text of both posts is a phrase- 'because lockdown calls for a beverage in hand at all times'.
16. The complainant believes this message in the posts is irresponsible. It is argued that the posts imply that excessive alcohol consumption is a necessary coping mechanism during difficult times. Further, it is contended the message in the ad is encouraging consumption beyond the levels identified as causing harm in the Australian Alcohol Guidelines.
17. The ABAC provides in Part 3 (a)(i) that alcohol marketing must not encourage excessive consumption or consumption inconsistent with the Alcohol Guidelines. Further, Part 3 (c)(i) and (iv) make it impermissible to suggest that the consumption or presence of alcohol will cause or contribute to a significant change in mood or environment or that alcohol consumption offers any therapeutic benefit or is a necessary aid to relaxation.
18. The Company explained that the posts were designed by its marketing agency and had not been expressly cleared by the Company. While not conceding that there has been a breach of ABAC standards, it is acknowledged that the language in the posts could be interpreted in a variety of ways. The Company states that it had no intention to not meet good marketing standards and it had terminated its relationship with the marketing agency.
19. The assessment of consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. If a marketing message can be understood in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the message.
20. While the Company may have had no intention to convey a message inconsistent with the Code, the operative test is not the Company's intentions but how the message would most likely be understood by a reasonable person. In this respect the Panel believes the post does breach the Part 3 (a)(i), (c)(i) and (c)(iv) standards. The Panel noted:
  - that the inclusion of the phrase, 'because lockdown calls for a beverage in hand at all times' raises a direct implication of excessive alcohol consumption; and

- a reasonable person could well take the meaning to be that alcohol consumption is a coping mechanism for the lockdown and will improve a person's mood.

21. The Complaint is upheld.