



## ABAC Adjudication Panel Determination No 229/21

**Product:** Ready-to-Drink Cocktails  
**Company:** Sophisticated Cocktail Co  
**Media:** Facebook & Website  
**Date of decision:** 2 November 2021  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Facebook and website marketing for ready-to-drink cocktails (“the Product”) by Sophisticated Cocktail Co (“the Company”). It arises from a complaint received on 27 September 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 27 September 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 complaints were completed in this timeframe.

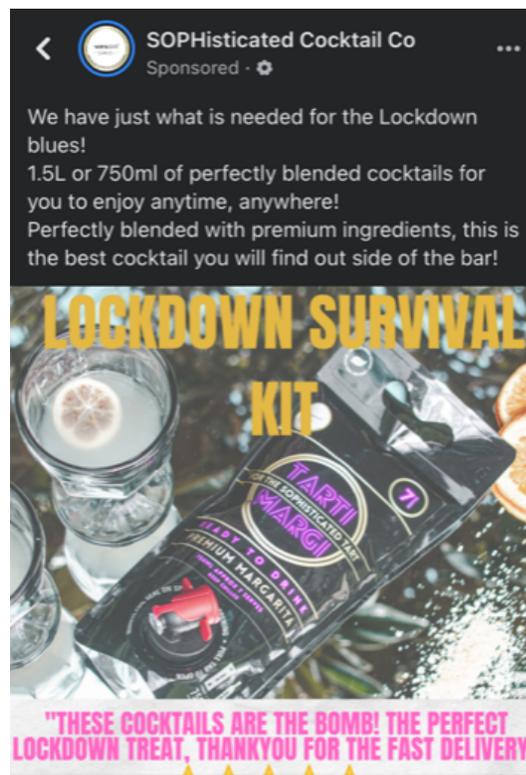
## Pre-vetting Clearance

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 communications.

## The Marketing Communication

10. The complaint relates to Facebook and website marketing communications, screenshots of which are shown below:

### Facebook Post



## Website

SOPHISTICATED  
Cocktails Co.

OUR STORY GIFT BOXES SHOP COCKTAILS ACCESSORIES CONTACT

Isolation Hydration - we have you covered with our Lockdown essentials

Choose from 3 x 750ml bags or 2 x 1.5L bags coupled with two lace tumblers and a bottle of Mary Valley dried orange or limes. This will keep you well stocked up through the last few weeks of lockdown!

BUY NOW

\$12 Express shipping Nationwide

SOPHISTICATED  
Cocktails Co.

OUR STORY GIFT BOXES SHOP COCKTAILS ACCESSORIES CONTACT

Home > All > Lockdown essentials pack

Lockdown essentials pack

\$195.00

Title

750ML 1.5L

1 Add to cart

We have created the perfect stay home Cocktail pack to keep you upbeat and hydrated while you Netflix and chill for the next two weeks!

Our Essentials pack includes:

Your choice of either:

2 x 1.5L packs of your choice

or

3 x 750ml packs of your choice (Vintage Vinny is not included in this promo)

2 x vintage lace tumblers

1 x Marley valley 50g pack of dried limes

## The Complaint

11. The complainant objects to the marketing as follows:
  - The labelling of both the 'Lockdown Essentials Pack' & 'Lockdown Survival Kit' implies that alcohol consumption is a necessary coping mechanism during difficult times.
  - The phrasing implies that alcohol can be used to aid relaxation and numb negative emotions associated with the current lockdown restrictions. This implication is potentially harmful given the body of evidence suggesting that

*excessive alcohol consumption is more likely to cause or exacerbate mental health problems.*

- *Additionally, the phrase “Isolation Hydration – we have you covered with our lockdown essentials” falsely suggests that their product can aid with hydration. This message is inconsistent with 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:

- (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 5 October 2021. The principal points made by the Company were:

- Thank you for sending this through, very disappointing for us obviously to be reported for this, as we have never intended any harm in our advertising or promotion of our product. We have since removed the wording and also taken down the advertising whilst we await your feedback. We try to be a little fun and cheeky with our advertising, hence the verbiage we used but by no means did we even intend what the complainant understood.

### **Alcohol Advertising Pre-vetting Service Approval**

- This is the first I have heard of the Alcohol Advertising Pre-vetting Service, so unfortunately, we had not pre-vetted this communication but we will take advantage of it in future.

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

- The use of this verbiage was about having all the equipment needed at home to still enjoy what would be a quality experience in a bar, by providing ready to drink alcohol, plus beautiful glassware, cocktail accessories etc. the lockdown survival kit being all the paraphernalia needed to create the experience at home. This was in no reference to how we could enhance or change your mood using alcohol. It was purely meant to convey that since you can’t go out and enjoy yourself in a bar, we can help you recreate that experience at home.

I note how this has been seen by the complainant and have removed the verbiage whilst we await your feedback.

- We were not suggesting that alcohol is an aid, more we have the tools to recreate a special experience from a bar at home.
- The use of this was more to suggest we can help create a bar-worthy experience at home with glassware, accessories and a ready to drink cocktail.
- Not in any way were we claiming health benefits, again this has been removed.
- Thank you for bringing this complaint to our attention and giving me the opportunity to respond. We have taken down the wording in question whilst you consider the above. We will endeavour to use the pre-vetting service in future and will be extra mindful of the wording in future messaging.

### **The Panel's View**

14. Sophisticated Cocktail Co is a company that has created a range of cocktails using premium and local ingredients with no added sugar or preservatives that are packaged in eco-friendly pouches. The bags are locally crafted and small-batch distilled on Sydney's Northern Beaches. This complaint relates to paid advertising on Facebook and an entry on the Company's website promoting the product during the recent pandemic lockdowns.
15. The Complainant is concerned that references to 'Lockdown Essentials Pack' & 'Lockdown Survival Kit' implies that alcohol consumption is a necessary coping mechanism during difficult times and the phrase "Isolation Hydration – we have you covered with our lockdown essentials" falsely suggests that their product can aid with hydration, which is inconsistent with NHMRC Australian Guidelines to Reduce Health Risks from Drinking Alcohol.
16. The ABAC provides in Part 3 (c)(i) and (iv) that alcohol marketing must not 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.
17. The Company explained that the wording used in the marketing was to suggest that as it's not possible to go out and enjoy yourself at a bar the product helps create a bar-worthy experience at home by providing a ready to drink cocktail, plus beautiful glassware and cocktail accessories, and was not a reference to enhancing or changing mood using alcohol or suggesting alcohol as an aid or having health benefits.
18. The assessment of the 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.

19. 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 and website entry does breach the Part 3 (c)(i) and (c)(iv) standards. The Panel believes that a combination of the following phrases within marketing for an alcohol product would suggest to a reasonable person that the product may enhance a person's mood or be used as a coping mechanism during lockdown:
  - 'we have just what is needed for the lockdown blues' and 'Lockdown survival kit' in the Facebook post; and
  - 'We have created the perfect stay home Cocktail pack to keep you upbeat and hydrated while you Netflix and chill for the next two weeks!' on the Company website.
20. It is accepted that the advertising does contain puffery or verbiage to use the Company's expression, and a reasonable consumer has sufficient life experience of advertising to not place much weight on statements regarding alcohol being hydrating etc. Alcohol however is not just another product and significant individual and community harm can be caused by its misuse. Alcohol marketers have a commensurate responsibility to be careful with messaging as to the use and impact of alcohol.
21. The Complaint is upheld.