



## ABAC Adjudication Panel Determination No 232/21

**Product:** Alcohol  
**Company:** Gin Society  
**Media:** Instagram Post  
**Date of decision:** 8 November 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 an Instagram post for Gin Society (“the Company”). It arises from a complaint received on 29 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:
  - 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 29 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 complaint was completed in this timeframe.

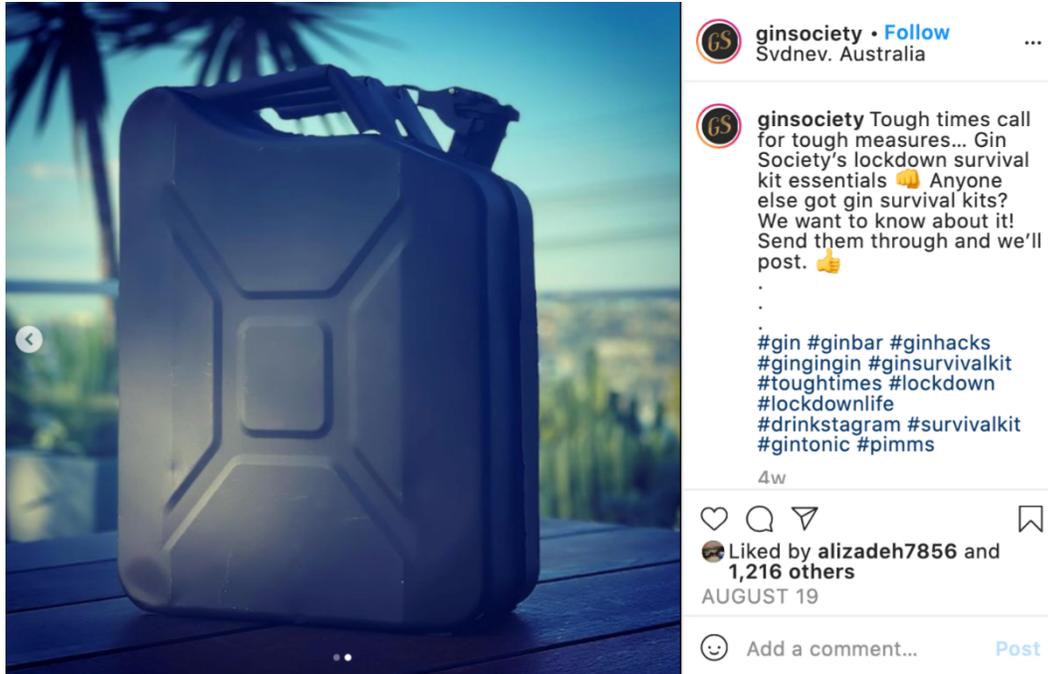
## Pre-vetting Clearance

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 Instagram post.

## The Marketing

10. The complaint concerns the following Instagram post (two images were included):





## The Complaint

11. The complainant objects to the marketing communication as follows:
  - *I came across Gin Society's product 'lockdown survival kit' (<https://www.instagram.com/p/CSvulaWF3q-/>) via Instagram using the hashtag #lockdownlife expecting to see what people are posting in regards to this lockdown. Hashtags used to promote their product such as #survivalkit and #toughtimes explicitly shows their intended message of the product to serve as a “survival lockdown kit” during a lockdown in response to a global pandemic.*
  - *The packaging of the gin cocktail kit in a jerry can is a deliberate attempt to demonstrate ‘survival’.*
  - *The title itself suggests that you need this alcohol kit to survive lockdown. As marketed, “tough times call for tough measures. Gin Society's lockdown survival jerry cans have been designed to satisfy our member's needs in these uncertain times”, this implies that alcohol consumption is a necessary coping mechanism during difficult times. I don't think it's promoting any positive health behaviours, especially since lockdown is a really tough time we should be focusing on helping people carry out positive health behaviour changes.*

- *Drinking is not a good coping mechanism for 'tough times' like lockdown and marketing strategies should consider the health outcomes of the population, rather than exacerbate mental health problems.*
- *With reference to the ABAC Responsible Alcohol Marketing Code, I believe this ad is in breach of Part 3 of the ABAC Code whereby a marketing communication and product 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 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 letter emailed on 28 October 2021. Its principal comments were:
- The Gin Society is a premium craft gin subscription club in which our members pay \$95 every 2 months to receive a bimonthly bottle of premium gin plus the accompanying Gin Journal magazine. I recognise our responsibilities around all marketing communications.
  - Please find my response below in relation to official complaint 232/12 arising from an @GinSociety Instagram post featuring an image of a customised jerry can that contained glass ware, tonic cans, and unopened bottle of gin support with the copy "tough times call for tough measures... Gin Society's lockdown survival kit essential. Anyone else git gin survival kits? We want to know about it! Send them through and we'll post"
  - The social media post did not include any reference the consumption of alcohol neither the sale of alcohol.

- The alcohol marketing communication referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.
- We apologise for any literal inference that alcohol is a survival requirement. The post was not created to indicate that alcohol may contribute to a change in mood or environment, nor that a person's frame of mind or feelings may improve after drinking alcohol. The use of the word tough (times and measures) was intended to connect it to the toughness of the jerry can rather than the contents within.
- We do not believe that the post has any insinuation of therapeutic benefit for a necessary aid to relaxation, nor that the post implies alcohol consumption is a necessary coping mechanism during difficult times. We acknowledge the sensitivity of the use of term survival kit in the post and the use of the hashtags #toughtimes #lockdown #lockdownlife #survivalkit #ginsurvivalkit.
- We have edited the post to remove any reference to survival and the aforementioned hashtags. Please find image of updated post:



## The Panel's View

14. Gin Society was founded in 2018. In return for a bi-monthly subscription, a member receives a bottle of gin every two months and a guide to each gin, its botanicals, tasting notes, details on its place of origin and some cocktail recipes. Different gins are also available for purchase at any time on the Company's website. The service operates by an online model for subscriptions and product ordering and the Company maintains the usual social media accounts to promote its products and service. This determination arises from a complaint about a post on the Company's Instagram page.
15. The post shows a picture of a portable bar housed within a jerry-can inspired container. The accompanying text reads - "Tough times call for tough measures... Gin Society's lockdown survival kit essentials 🍷. Anyone else got gin survival kits? We want to know about it! Send them through and we'll post 🍷". The post uses the hashtags "#lockdown", "#lockdownlife", "#toughtimes", "#survivalkit" and "#ginsurvivalkit".
16. The complainant believes:
  - hashtags used, such as #survivalkit and #toughtimes, message that the product serves as a "lockdown survival kit" during the COVID-19 lockdown;
  - the packaging of the gin cocktail kit in a jerry-can is used to demonstrate survival; and
  - the post implies that alcohol consumption is a necessary coping mechanism during difficult times.
17. The concerns raised in the complaint bring into play Parts 3 (c)(i) and (iv) of the Code, which 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 explains that:
  - The social media post did not include any reference to the consumption of alcohol nor the sale of alcohol;
  - The post was not created to indicate that alcohol may contribute to a change in mood or environment, nor that a person's frame of mind or feelings may improve after drinking alcohol;
  - The use of the word tough (times and measures) was intended to connect it to the toughness of the jerry-can rather than the contents within; and

- It does not believe that the post has any insinuation of therapeutic benefit or a necessary aid to relaxation, nor that the post implies alcohol consumption is a necessary coping mechanism during difficult times.
19. While not conceding that there has been a breach of ABAC standards, the Company has acknowledged that the term “lockdown survival kit”, along with the use of various hashtags, could be interpreted differently to the way intended, and has edited the post accordingly.
20. 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.
21. In this respect the Panel believes the post does breach the Part 3 (c)(i) and (c)(iv) standards. The Panel noted:
- the posts were made during the covid lockdowns impacting on NSW, ACT and Victoria during late June to mid October 2021;
  - it is permitted to reference the lockdowns in alcohol marketing but this must be done consistently with the standards of responsible marketing contained in the ABAC;
  - the wording of the post and hashtags used suggest that lockdown is difficult, but a person’s frame of mind may improve after drinking alcohol; 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.
22. The complaint is upheld.