



ABAC Adjudication Panel Determination No 257/21

Product: Johnnie Walker
Company: Hello Drinks
Media: Electronic Direct Mail
Date of decision: 11 December 2021
Panellists: 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 email marketing by Hello Drinks (“the Company”). It arises from a complaint received on 5 November 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 meet 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

- The complaint was received on 5 November 2021.
- 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

- The quasi-regulatory system for alcohol beverage marketing features an 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

- The complaint concerns a promotion for Johnnie Walker emailed on 29 April 2021, as follows:

From: HelloDrinks <sales@helloworldrinks.com.au>
Sent: Thursday, 29 April 2021 1:40 PM
To: [REDACTED]
Subject: Whisky Of The Week: Johnnie Walker, Delivered Free To Your Door



SHOP NOW NEW ARRIVALS TOP WHISKYS



Johnnie Walker & Sons Celebratory Blend Whisky - 51% ABV
Aromatic. Smooth. Flavourful.
Delivered Free when you buy 2+ products
Ends in

00 00 00
HOURS MINUTES SECONDS

GRAB THE DEAL!

Hi, [REDACTED]
How's your week so far?
It's time to spice things up with this Johnnie Walker & Sons Celebratory Blend! Purchase an aromatic whisky that you can enjoy together with your best drinking buddy, [REDACTED].
Celebrate good times and experience real enjoyment! Have fun drinking this sweet fruit and mild spice whisky with **51% alcohol content!**
✓ Shop Now, **Pay Later** with **Afterpay / Zippay**.
✓ Buy 2 Get **Free Metro Delivery**
✓ Buy any 3+ products & get an additional **5% off + Free Metro Delivery**

Johnnie Walker & Sons Celebratory Blend 700ml
Free Metro Delivery when you buy 2 or more
Buy Now

Free Delivery Offer
Ends in

00 00 00
HOURS MINUTES SECONDS

GRAB THE DEAL!

HURRY UP AND AFTERPAY IT!

We've extended our reach across Australia by partnering with Australia Post & StarTrack to make it easier for you, get it delivered to PO boxes, collect it from the Post Office, and Yes Tasmania we have heard you, too. It is on!

The Complaint

11. The complainant objects to the marketing communication as follows:
 - *This email contained material that may breach Part 3 (a)(iv) of the ABAC code, which states that a marketing communication must not ‘encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength...’.*
 - *As mentioned, the email focused on a promotion for Johnnie Walker Whisky. The description of the whisky reads as follows with only the alcohol content emphasised in bold text: ‘It’s time to spice things up with this Johnnie Walker & Sons Celebratory Blend! Purchase an aromatic whisky that you can enjoy together with your best drinking buddy...! Celebrate good times and experience real enjoyment! Have fun drinking this sweet fruit and mild spice whisky with 51% alcohol content!’*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage’s low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.

The Company’s Response

13. The Company responded to the complaint on 16 November 2021. Its principal comments were:
 - Alcohol Advertising is very important to us here at Hello Drinks, and something we want to be market leaders in is delivering the correct message in line with responsible service of alcohol.
 - With regards to this particular campaign, the advert in question was for a limited celebratory release by Diageo, and not one of their standard core lines, so the alcohol content being higher than the core range was highlighted to inform potential customers that the alcohol was of a higher percentage so as to eliminate any surprises. It was not used for any purposes to encourage the purchase of the item.
 - It is not something we include around core lines, just limited release items.

- With regards to the statement “Have fun drinking this sweet fruit and mild spice whisky with 51 % alcohol content!” This was an oversight that slipped through our Quality controls, and shortly after that email went out we have added more controls to all our social/marketing communications that are pre-approved by our Marketing Management team before they get submitted for posting.
- We fully understand it is not ok to encourage our customers, or the public that the benefits of drinking alcohol is fun, or can make them feel happy after consumption.
- I have raised this with our marketing team again as a refresher on the importance of our controls, and the reason around why they are in place.

The Panel’s View

14. Hello Drinks was founded in 2016, and is an independent online liquor retailer, delivering to customers throughout Australia. It markets itself digitally, using a number of social media channels, and also sends emails directly to its subscribers. It is an email promoting a Johnnie Walker Celebratory Blend that has drawn this complaint.
15. The email showed a picture of six bottles of Johnnie Walker in a row, and was accompanied by text including the following:

‘It’s time to spice things up with this Johnnie Walker & Sons Celebratory Blend! Purchase an aromatic whisky that you can enjoy together with your best drinking buddy...! Celebrate good times and experience real enjoyment! Have fun drinking this sweet fruit and mild spice whisky with **51% alcohol content!**’
16. The complaint raises the concern that the marketing breaches Part 3 (a)(iv) of the Code which prohibits encouraging the choice of a particular Alcohol Beverage by emphasising its alcohol strength or intoxicating effect.
17. The Company has explained that:
 - the higher alcohol content was highlighted to inform potential customers that it was higher compared to the normal range; and
 - it was not used for any purposes to encourage the purchase of the item.
18. While not conceding that it has breached the Code, the Company has reflected on the use of the words ‘Have fun drinking this sweet fruit and mild spice whisky with 51 % alcohol content!’, and has advised that it has improved its quality control procedures to prevent the use of similar language in the future.

19. The purpose of the ABAC standard in Part 3 (a)(iv) is that the alcoholic strength of a product is not to be emphasised as a selling point for the product. This does not mean that the alcohol to volume content should not be mentioned, as this is important information for consumers to make an informed purchase. The issue, therefore, is whether a marketing communication is simply providing information about the strength of a product or is going beyond this to use the strength of the product as a selling point.
20. While each case must be assessed on its own merits, some considerations include if the marketing communication is:
- highlighting the product strength by enlarged font so as to give prominence to the product's strength beyond providing factual information;
 - using bold colours relative to other words or features to emphasise the strength;
 - overly prominent positioning of the strength of the product in proportion to other messaging;
 - repetition in messaging of the strength; or
 - the use of straplines, slogans, imagery or other creative techniques which promote the strength of the product as a key distinguishing feature of the product vis a vis other products of a similar kind.
21. On balance, the Panel believes that the Part 3 (a)(iv) standard has been breached. The sentence - 'Have fun drinking this sweet fruit and mild spice whisky with **51% alcohol content!**' - would be likely understood as going beyond the provision of factual information about the product. The bold lettering and the exclamation mark would be understood as promoting the high alcohol content of the product as a selling point. Equally, the message could be easily interpreted as the high alcohol content contributing to a 'fun' drinking experience.
22. The complaint is upheld.