



ABAC Adjudication Panel Determination No 284/21

Product: Alcohol
Company: Hello Drinks
Media: Social Media – Facebook and Instagram
Date of decision: 14 January 2021
Panellists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns social media marketing by Hello Drinks (“the Company”). It arises from a complaint received on 15 December 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

7. The complaint was received on 15 December 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.

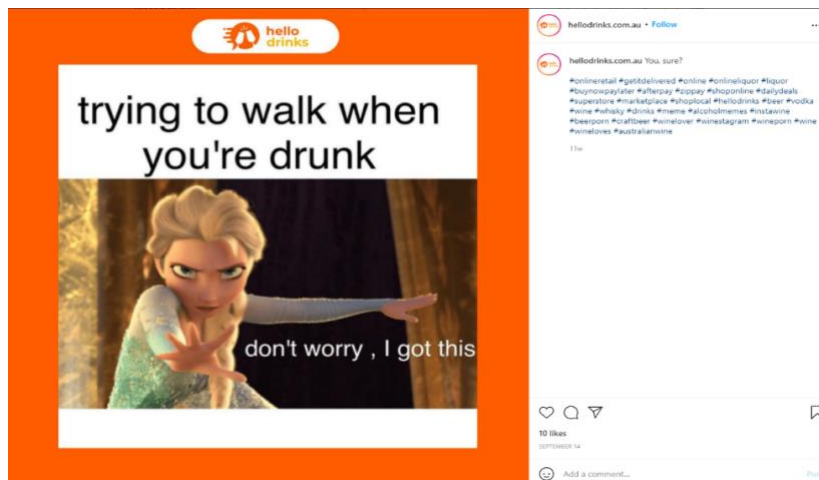
Pre-vetting Clearance

- 9. The quasi-regulatory system for alcohol beverage marketing features 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.

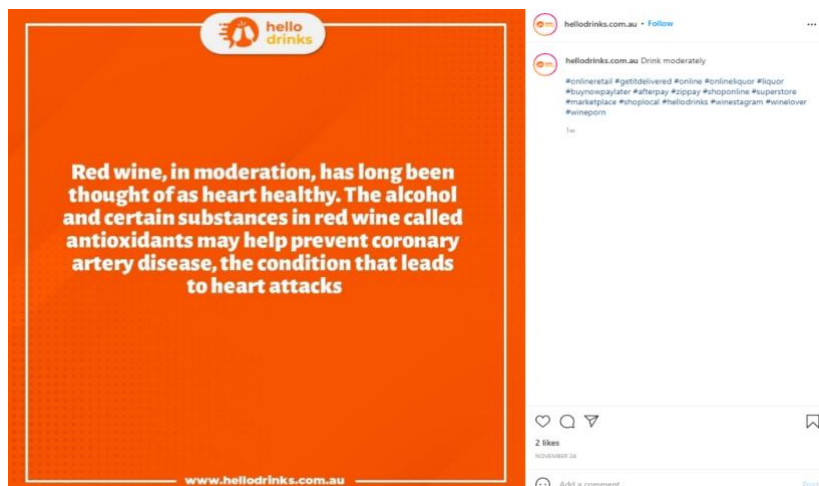
The Marketing

- 10. The complaint concerns nine posts made to the Company's Facebook and Instagram pages, as follows:

Social Media Post 1 – “Trying to Walk When You’re Drunk” (24 June 2021 and 14 September 2021)



Social Media Post 2 – “Red wine is heart healthy” (24 November 2021)



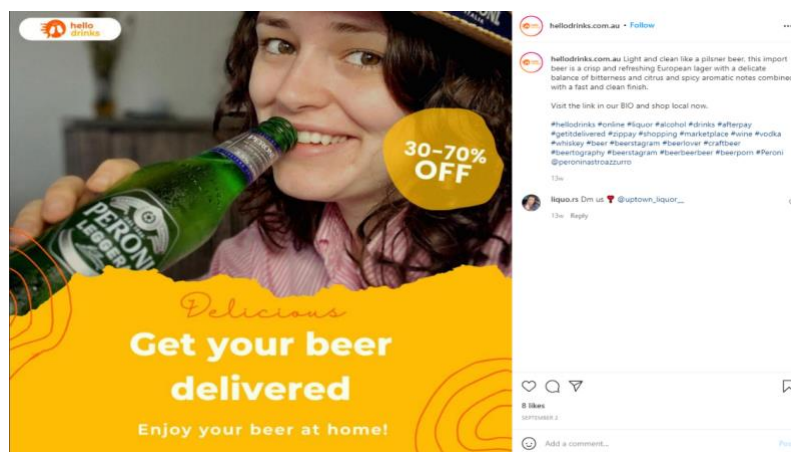
Social Media Post 3 – “Reduce risk of heart disease” (30 November 2021)



Social Media Post 4 – “Most funny thing you did” (26 June 2021)



Social Media Post 5 – “Age of person” (2 September 2021)



Social Media Post 6 – “Your Uber is arriving in 3 minutes” (26 January 2020)



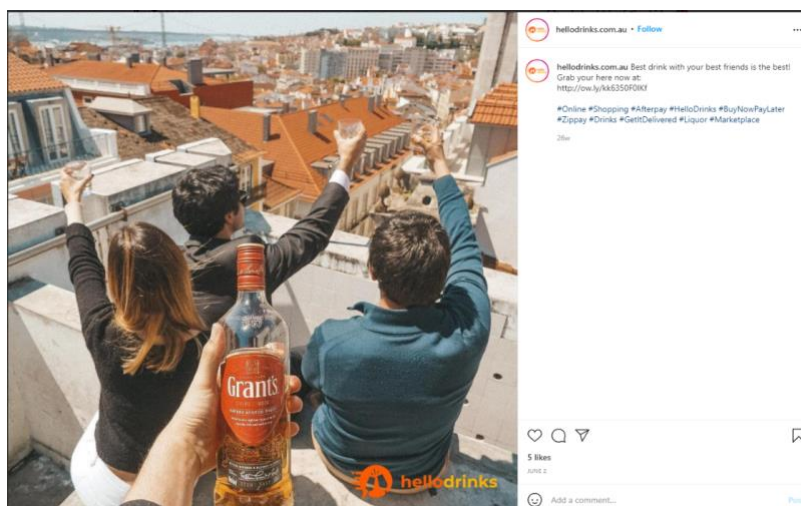
Social Media Post 7 – “Starting my fruit juice diet” (9 June 2021)



Social Media Post 8 – “Pool party” (31 December 2019)



Social Media Post 9 – “Rooftop” (2 June 2021)



The Complaint

11. The complainant objects to the marketing communication as follows:
 - *The Hello Drinks Instagram and Facebook accounts viewed on 3 December 2021 had almost identical posts, published between February 2017 and 3 December 2021. Among these posts were 48 posts consisting of a combination of images of alcohol beverage products and/or brands, memes, and captions about alcohol products and alcohol use, which all appear to breach one or more sections of the ABAC Responsible Alcohol Marketing Code (the Code). Since many of these 48 posts had repeated or very similar imagery and messages, this complaint details only the most recent posts in each breach category (summarised in the table attached, 'Most recent examples of non-compliant posts'), even though there are many more examples dating back to 2017.*
 - *Each post uses a combination of images and words to depict alcohol and/or alcohol use in a way that we believe breaches one or more provisions of the Code. The combination of images and words in each post, viewed as a discrete marketing communication, creates a dominant message to viewers that alcohol can and should be consumed:*
 - *rapidly, frequently and/or in excessive quantities;*
 - *in a manner that goes against the National Health and Medical Research Council (NHMRC) guidelines to reduce health risks from drinking alcohol;*
 - *to become intoxicated;*

- *to provide some kind of therapeutic benefit, such as for relaxation, stress relief or necessity, with some posts directly promoting the substitution of alcohol for water;*
 - *before or during activities that require a high degree of care and skill, including sitting atop a roof, whilst in a swimming pool, or in a large, open body of water;*
 - *by minors, through the use of popular animated or cartoon characters that have strong and evident appeal to children, including Elsa from Disney's Frozen.*
 - *by minors, through the prominent use of a model who looks under 25 years of age.*
- *We have included two posts, made on 24 and 30 November 2021, which both refer to alcohol being protective against heart disease. These posts both appear to breach section 3(c)(iv) of the Code and are problematic and concerning because they are not consistent with the sum of the evidence regarding well-established health risks of alcohol use or the state of the evidence on the possible small and uncertain protective effect of low-level alcohol use among some populations segments. The NHMRC Australian Guidelines to Reduce Health Risks from Drinking Alcohol (2020) summarise the evidence as (p.19): "The effect of alcohol on the cardiovascular system is complex. In the past, research has suggested that, at low levels, alcohol may confer some protection against heart problems. However, recent evidence has brought these effects into question — suggesting, for example, that they may not be present or that, if they are present, their magnitude may be smaller than previously thought (see the Rationale for Guideline 1). Additionally, alcohol has been linked to heart rhythm problems and heart failure, and to some types of stroke". The statements made in both posts, that alcohol has some therapeutic and/or health benefit, are misleading and irresponsible.*
 - *The relevant posts have all been screen captured, saved by date of the post, and are attached to this complaint for cross-reference with the corresponding, attached table, 'Most recent examples of non-compliant posts'.*

Most recent examples of non-compliant posts

Code Provision	Breach	Date of Post, keyword description
Section 3(b)(j)	Has strong or evident appeal to minors	14 Sept 2021 <i>Elsa</i> (can walk fine when drunk)
Section 3(a)	Does not portray responsible and moderate use of Alcohol Beverages	26 Jan 2020 <i>Uber in 3 minutes</i> (rapid and excessive consumption) 9 Jun 2021 <i>Fruit juice diet</i> (huge wine glass, excessive consumption)
Section 3(c)(iv)	Suggests that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation	24 Nov 2021 <i>Drink moderately</i> (promoting wine as 'heart healthy' and having therapeutic benefit for coronary heart disease) 30 Nov 2021 <i>Moderate alcohol consumption can reduce your risk of developing and dying of heart disease</i> (promoting alcohol as having some therapeutic benefit)
Section 3(d)	Shows that consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness of physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.	31 Dec 2019 <i>Pool Party</i> (drinking alcohol while swimming) 2 June 2021 <i>Rooftop drinking</i> (unsafe)
Sections 3(c)(j)-(iii)	Suggests alcohol consumption or presence causes or contributes to a change in mood or environment, or causes or contributes to <u>some kind of success</u> or achievement	26 June 2021 <i>Funny while drunk</i> (implies being drunk makes you funny)
Section 3(b)(iii)	Prominent depiction of a model who looks under 25 years of age	2 Sept 2021 Young model

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.
- (b)(i) have Strong or Evident Appeal to Minors.
- (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.
- (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)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

- (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.
- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

13. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Response

14. The Company responded to the complaint on 25 December 2021. Its principal comments were:

Social Media Post 1 – “Trying to Walk When You're Drunk” (24 June 2021 and 14 September 2021)

- This is not a reference to Elsa, but a representation of the effects of alcohol.
- This post I believe was referring to the fact alcohol does have an effect upon consumption, something which is fact, and a key message through RSA. This is not encouraging patrons to go get drunk either through the post or the image. It is a rule of Hello Drinks not to use cartoon characters in any form of posting, and I can say this slipped through our checks as our marketing manager was on leave at the time. New procedures were introduced earlier in the year, where all posts are now checked individually, and only posted once approved by our marketing manager.

- This post has now been removed. Similar posts are not consistent throughout our social platforms or via campaigns showing this was a once off.

Social Media Post 2 – “Red wine is heart healthy” (24 November 2021)

- Please see supporting evidence via external sites. Please note it is not our intention, nor is the post advising people to drink to stay healthy. It is posted with the intention to create a topic of discussion. As we are not experts in this field, we are not advising people that it is fact.
- The Post can be quoted as “In moderation, has long been thought of, as heart healthy” and also “may help prevent”, again highlighting that this is not factual, but may help. The post is supported with the commentary to Drink moderately which is a common message in a lot of our social posts.
- Our message is consistent, and intent is clear for people to drink in moderation if they are drinking, moving forward this message will begin moving to trying alternative non-alcoholic drinks.

<https://www.mayoclinic.org/diseases-conditions/heart-disease/in-depth/red-wine/art-20048281>

<https://www.healthline.com/nutrition/red-wine-good-or-bad>

<https://www.bbc.com/future/article/20191021-is-wine-good-for-you>

<https://www.health.harvard.edu/blog/is-red-wine-good-actually-for-your-heart-2018021913285>

- There is no encouragement within the post to go and drink red wine or any alcoholic drink to reap any benefits. This post was published with the intention of creating a topic of discussion.

Social Media Post 3 – “Reduce risk of heart disease” (30 November 2021)

- See supporting article which was taken from a health website – Our messaging is not advising readers of the post to go and drink to get healthy. The intention is around drinking responsibility, and moderately, a common message across our social platforms, which may have health benefits.

<https://www.hopkinsmedicine.org/health/wellness-and-prevention/alcohol-and-heart-health-separating-fact-from-fiction>

Social Media Post 4 – “Most funny thing you did” (26 June 2021)

- Across all our social posts, the messaging does not lean towards drink to become funny, become more likeable or desirable to be around, which may lead to social success. People meeting in a social setting like a bar, or a backyard BBQ have stories to tell, and is asking the question after the fact.
- The message accompanying the post does not lead to the assumption made in the complaint, “I was so drunk I came home and introduced my dad to my mom and said they should start dating”. The context here is alluding to a story/experience from a member of staff, and does not encourage any benefits to getting drunk.

Social Media Post 5 – “Age of person” (2 September 2021)

- This is a stock photo that was acquired with rights free of charge. The person posting the image made the judgement that the person in the image looked of legal age, and above the age of 25. Is there supporting evidence from the complainant that the person in the image is underage or may be under 25. This was not a paid advertisement or a post by an influencer. No funds were provided for the use of the photo.
- All accounts/pages are age restricted.

Social Media Post 6 – “Your Uber is arriving in 3 minutes” (26 January 2020)

- There may be confusion in the posting of this message, the message is alluding to the fact people are not ready when calling for transport and leave to rush for their Uber which may be waiting outside. The message is indirectly advising customers to use Uber/Taxis when leaving events/parties, and not to drive under the influence of alcohol.
- To add, our team is currently exploring opportunities to include more do not drink & drive messaging across our social platforms.

Social Media Post 7 – “Starting my fruit juice diet” (9 June 2021)

- The glass shown in the image is unrealistic, it is oversized and not readily available for customers to go out and buy or shop online to get. It is a meme post, showing a celebrity enjoying a drink. There is no encouragement from Hello Drinks for customers to get larger glasses, to consume alcohol excessively or rapidly. There is no indication to show that this is wine, and as the message indicates it is fruit juice, or could very easily be non-alcoholic wine. The non-alcoholic category is one we are expanding more into, to provide more options for non-drinkers, or those that want to drink more moderately.

- Similar to posts on social platforms on Boozebud, Drinks Network, Dan Murphys etc who show full bottles of spirits, large cocktails which may hold more than four standard drinks. We are not advising anyone to over consume, or drink large drinks.

Social Media Post 8 – “Pool party” (31 December 2019)

- We do not encourage anyone to drink whilst swimming due to risks involved, the photo itself is a meme which was reposted, showing a capped bottle, and not someone actually drinking in the shot.
- This has been shared with our team by our marketing manager, as it was a historic post to show how it might be implied even outside of the intention. The photo has been removed to avoid any confusion.
- The post was posted in 2019, as a precaution our marketing manager is auditing all posts across our social media platforms and will remove any that may have a confusing message.

Social Media Post 9 – “Rooftop” (2 June 2021)

- This is a stock photo, which has no evidence to suggest that the people in the photo are consuming alcohol, nor does the photo show any evidence if there are no safety barriers, or balconies in place below where they are seated.
- There is no evidence to suggest there are no safety features, or flooring beneath where they are seated. The photo is more focused on the view in the distance, and not encouraging people to drink in dangerous places.
- The image is not encouraging people to go to dangerous places such as a rooftop, or to drink in risky settings. This is not in line with our values to encourage safe environments when consuming alcohol.

The Panel’s View

15. Hello Drinks is an alcohol retailer that commenced operations in 2016 from a modest warehouse in Sydney offering 12 products. By November 2021 the Company had grown to offer 4000 products and now claims to be ‘the largest cloud based on-line liquor superstore’ in Australia. The Company employs social media platforms to market its services and product range and this determination concerns a number of posts on the Company’s Instagram and Facebook accounts.
16. The complainant has reviewed the Company’s social media accounts and contends that over a period of time numerous posts have been made that contain

messaging inconsistent with several ABAC standards. To demonstrate the argument, nine more recent posts have been identified and it is these posts that the Panel has assessed against the relevant ABAC standards.

17. It should be noted that the Company is not a signatory to the ABAC Scheme and has not used the ABAC pre-vetting service in developing its core branding and marketing messaging. The Company however states it supports responsible alcohol marketing and it has cooperated with the complaint process.
18. The ABAC standards raised by the complaint and the nature of the social media posts are that alcohol marketing communications (which includes social media posts) must not:
 - encourage excessive or rapid alcohol consumption- Part 3 (a) (i)
 - have strong or evident appeal to minors- Part 3 (b)
 - depict an adult who is under 25 years old unless they are not a paid model and are shown within an Age Restricted Environment - Part 3 (b) (iii)
 - suggest that alcohol contributes to a significant change in mood or is a cause of the achievement of social success - Part (c) (i) and (ii)
 - suggest alcohol consumption offers any therapeutic benefit- Part 3 (c) (iv)
 - show alcohol consumption before or during an activity that for safety reasons requires a high degree of alertness- Part 3 (d)
19. In assessing the consistency of a marketing communication against an ABAC standard, the Panel adopts the standpoint of a 'reasonable person'. This means the test is how the marketing communication would probably be understood by a member of the community who has the values, opinions and life experience shared commonly in Australian society. If the message in the marketing communication can be understood in several ways, the most probable understanding is to be preferred over a possible but less likely understanding.

Post 1

20. This post is a meme featuring an image of Elsa of Arendelle, a character from the Disney movie Frozen (2013) and reprised in Frozen 2 (2019). The image is accompanied with the text 'trying to walk when you're drunk' and 'don't worry, I got this'. The complainant submits the Elsa character will have strong appeal to minors. It may also be argued the post is encouraging, or making light, of excessive alcohol consumption.
21. The Company doesn't concede the post is in breach of ABAC standards, but does explain that 'as a rule' it doesn't use cartoon characters in its posting and this example 'slipped through the cracks' while a marketing manager was on leave. The post has been removed.

22. Animated characters from popular family oriented movies can reasonably be expected to be known to many minors and the inclusion of images of such characters in alcohol marketing will have the potential to be relatable and appealing to minors. While the context of the use of the image is always critical and each case has to be assessed on its own merits, the Panel does believe the prominence of the Elsa character gives the post strong appeal to minors.
23. The reference in the meme to 'trying to walk when you're drunk' together with the Elsa picture, is alluding to the use of a 'super power' to deal with the effect of excessive alcohol consumption. While the post would be understood as being humorous rather than a serious endorsement of getting drunk, the humour assumes that excessive consumption is a common and acceptable experience. This underlying sentiment is inconsistent with the ABAC standard.

Posts 2 and 3

24. Both Posts 2 and 3 make statements about the moderate consumption of alcohol, such as red wine, providing health benefits. Post 2 states antioxidants in red wine 'may help prevent coronary artery disease'. Post 3 states moderate alcohol consumption can reduce the risk of developing and dying of heart disease.
25. The complainant contends these posts are not consistent with 'the sum of the evidence regarding well established health risks of alcohol use'. The Company in response supplied several articles on the health effects on the heart of moderate consumption. It was argued the intention was not to advise people to drink to stay healthy but to create a topic of discussion.
26. The Panel is not a research body and its role is not to weigh up the current state of medical opinion on alcohol use and heart health. The Panel is to apply the terms of the ABAC and Part 3 (c) (iv) provides that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit. The two posts would be reasonably understood as suggesting that alcohol consumption offers a positive health benefit and hence are in breach of the Code.

Post 4

27. The post poses a question-'What's the most funny thing you did while being drunk?'. The Company also made a comment to the post answering the question - 'I was so drunk I came home and introduced my dad to my mum and said they should start dating'. The complainant argues the post encourages excessive consumption and implies that alcohol causes success by making a person funny.
28. For the Company, the question is of a kind that might be asked in a social setting and reflects light-hearted banter. It is submitted the post, including the comment

made by a Company staff member, would not be taken as encouraging getting drunk or seeing being drunk as an achievement.

29. The Panel believes the post would be understood as encouraging excessive consumption. The underlying assumption is that getting drunk is socially acceptable and that everyone will have a funny story to tell about the experience. Responsible alcohol marketing should not rely on such an assumption, and to do so does endorse getting drunk and is in breach of ABAC standards.
30. It's a more marginal decision as to whether the post suggests becoming drunk is an achievement of success in breach of Part 3 (c) (ii). The Panel believes the takeaway from the post is not that alcohol consumption causes a person to change to become 'funny', but that in an intoxicated state a person might do or say something they would not do when sober and this behaviour might be regarded as 'funny'. While the interpretation placed on the post by the complainant is possible, the Panel does not believe this is the more likely understanding of the post and the Part 3 (c) (i) and (ii) standards are not breached.

Post 5

31. Post 5 shows a photograph of a woman drinking a bottle of Peroni beer accompanied by price and delivery information. The complainant's concern is not with the messaging of the post but that the woman appears to be aged under 25. The ABAC (subject to a limited exception regarding images shown in an age restricted environment) requires that adults appearing in alcohol marketing be aged at least 25.
32. The Company advised that the image was a 'stock photo' acquired free of charge. As a result, the Company is not aware of who the woman is or her actual age. It is contended the woman appears to be aged 25 or above and that the Company's social media accounts are age restricted. Finally, it was suggested that the complainant should provide support for the contention that the woman is aged under 25.
33. There are several aspects here. Firstly, the photograph does not fall within the age restricted environment exception. While the Company may not have paid the model in the photograph as it was a 'stock photo', it can be safely assumed that the photograph was created for the purposes of marketing copy and that model was paid. The age restricted environment exception has the policy intent that examples like a crowd shot in a bar shown on an age restricted site can be used. It is not intended to cover the use of a staged professionally taken photograph of an actor or model.
34. Secondly, a complainant does not carry the onus of proving that a person seen in a marketing communication is aged under 25. It is the alcohol marketer's

responsibility to operate in a manner which meets the ABAC standards including satisfying itself that models used in marketing meet the age requirements.

35. As the Company cannot advise the age of the woman shown in the post, the Panel is required to make an assessment of the apparent age of the woman. Assessing age is no easy task, however the woman is clearly an adult and her manner of dress is casual but mature. On balance, the Panel believes the woman is most likely aged at least 25 and the Part (b) (ii) standard has not been breached.

Posts 6 and 7

36. These two posts are memes featuring oversized wine glasses. Post 6 shows a woman pouring wine over her face in an exaggerated drinking motion with the accompanying text- 'Your Uber is arriving in 3 minutes'. Post 7 shows an older woman with a delighted expression holding the oversized wine glass with accompanying text -'Starting my fruit juice diet' and 'Bottoms up!'.
37. The complainant believes the posts are encouraging an irresponsible approach to alcohol consumption and model excessive and rapid consumption. The Company counters by arguing that post 6 is 'indirectly advising customers to use Uber/taxis when leaving events/parties and not to drive under the influence of alcohol'. Both posts are contended to be humorous memes that would not be taken seriously.
38. A reasonable person would understand the memes are endeavouring to be humorous and that the prop oversized wine glasses do not represent a depiction of realistic behaviours. That said, both posts are in breach of the Part 3 (a) standard. To the extent the posts are humorous, it is a humour which assumes that it is an acceptable and common practice to drink excessively or rapidly. This is not a sentiment or a modelling of behaviour regarding alcohol use that is consistent with good marketing practice.

Post 8

39. This post is a meme showing two women using a pool noodle (floatation device) as a straw to consume a liquid from a large bottle. Both women are using a swimming pool. The accompanying text reads- 'The noodle is actually more than a flotation device'. In the comments component of the post, the Company has added various hashtags including #Booze and #LiquorDelivery.
40. The complainant suggests the post shows alcohol consumption during swimming which is an activity that requires a high degree of alertness and physical coordination to be conducted safely. The Company doesn't expressly concede the post is in breach of the ABAC standard but it has removed the post in case it could be misunderstood. It is pointed out that the bottle appears to be capped and no one is actually drinking in the photograph.

41. Like a number of the other posts, the meme is showing a fanciful scenario which a reasonable person would not understand as seriously advocating the depicted behaviour being adopted. It would be understood as being humorous. And from the photo itself, the product in the bottle is not clearly established to be an alcohol beverage, although the context including the hashtags in the comments section would lead a reasonable person to imply the product is alcoholic.
42. That said, the post breaches the Part 3 (d) standard. A reasonable person would probably take the post as showing alcohol consumption occurring while the women are using a swimming pool. It might not be taken as a serious call to action, but it does assume that it is acceptable to drink alcohol and swim and this offends the ABAC standard.

Post 9

43. Post 9 shows a group of four people sitting and consuming alcohol while overlooking a city scene. The group are either on a balcony or possibly a flat rooftop area. The complainant submits that it shows alcohol consumption in a dangerous situation contrary to the Part 3 (d) standard.
44. The Company's argument is that the post does not show a dangerous scenario nor does it encourage risky behaviour. It is contended the photograph is focussed on the view and it is not even clear that the people are consuming alcohol.
45. The Panel believes the post does not breach the Part 3 (d) standard. It is noted:
 - the group are shown holding glasses and it can be reasonably assumed alcohol consumption is occurring;
 - however the scene does not appear inherently dangerous as each person is placed away from the edge of the balcony/roof area and do not appear affected by alcohol;
 - the group are sitting quietly and there are no cues to suggest anyone will move to say hang over the edge of the balcony/roof area or otherwise act in a dangerous manner; and
 - take as a whole, a reasonable person would not understand the scene as depicting alcohol use in an inherently dangerous situation.

Overview and concluding observations

46. The Panel has found that 7 of the 9 posts examined are in breach of ABAC standards. Specifically, the complaint in relation to Posts 5 and 9 have been dismissed. Further the Panel does not consider that Post 4 breaches Part 3 (c) (i) or (ii) as submitted by the complainant.

- Post 1- breaches Part 3 (a) (i) and (b)
- Post 2- breaches Part 3 (c) (iv)
- Post 3 - breaches Part 3 (c) (iv)
- Post 4- breaches Part 3 (a) (i)
- Post 6 - breaches Part 3 (a) (i)
- Post 7- breaches Part 3 (a) (i)
- Post 8 - breaches Part 3 (d)

47. More generally and as argued by the complainant, a review of the Company's social media accounts does suggest there are older posts which would also be inconsistent with ABAC standards. The Company is strongly advised to have its relevant staff undertake the ABAC training modules available on the ABAC Website and to utilise the pre-vetting service to gain independent prior assessment of its branding and marketing strategy.