



## ABAC Adjudication Panel Determination No 54 & 55/22

**Product:** Alcohol Delivery  
**Company:** MILKRUN AU Pty Ltd  
**Media:** Instagram  
**Date of decision:** 23 August 2022  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post for alcohol delivery (“the Product”) by MILKRUN AU Pty Ltd (“the Company”). It arises from two complaints received on 1 August 2022.
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 the 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 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.

- The complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

## The Complaint Timeline

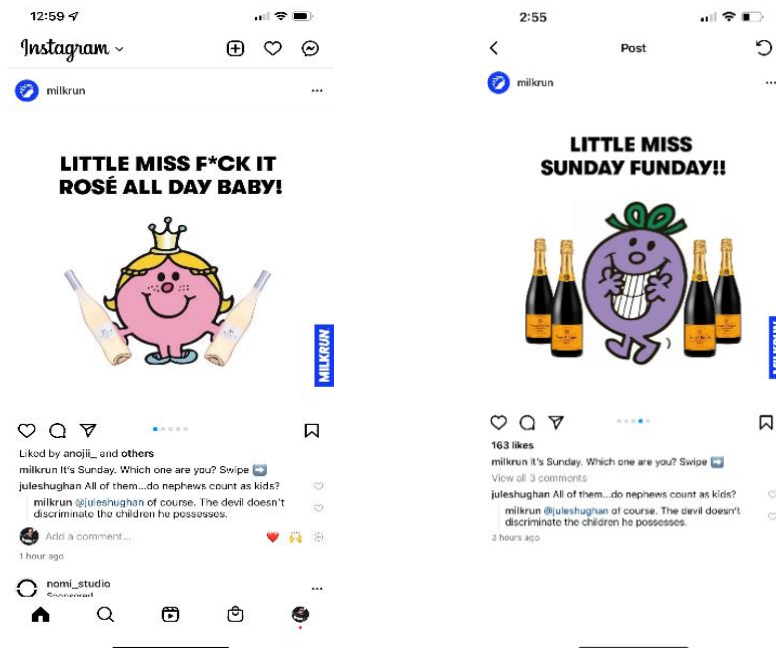
- The complaints were received on 1 August 2022.
- The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 Communication

- The complaint relates to an Instagram Post by the Company as shown below:



## The Complaint

11. The complainant objects to the marketing as follows:
- *Excessive consumption of alcohol - by stating rosé all day. Also, the use of a children's book series is appealing to kids.*
  - *The Instagram post/meme in question is using pictures from a children's book to promote the offer of alcohol by the brand. This appeals highly to minors.*

## 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.

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 Minors 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 confectionery 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 by letter emailed on 8 August 2022. The principal comments made by the Company were:

- Thank you for informing us (MILKRUN AU Pty Ltd (MILKRUN)) that two complaints were received in relation to an advertisement posted by MILKRUN on the MILKRUN Instagram account on 31 July 2022 (the Instagram Advertisement).
- At MILKRUN we are conscious of our responsibility to ensure that we promote the safe and responsible consumption of alcohol. We acknowledge that the Instagram Advertisement posted on 31 July 2022 did not align with the ABAC Responsible Alcohol Marketing Code (the Code).
- MILKRUN internally reviewed the Instagram Advertisement on 1 August and realised it was not compliant with the Code or MILKRUN's own standards for the responsible content of alcohol marketing. MILKRUN removed the Instagram Advertisement from the MILKRUN Instagram account on 1 August 2022. This was prior to receiving the complaint from ABAC Responsible Alcohol Marketing Code and Complaints Management System (ABAC) on 2 August 2022. The Instagram Advertisement was live on the MILKRUN Instagram account for less than 24 hours.
- MILKRUN did not intend for the Instagram Advertisement to appeal to minors or encourage excessive consumption of alcohol, however we concede that it can be viewed as breaching the Code.

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

- The Instagram Advertisement did not receive Alcohol Advertising Pre-vetting Service Approval by the ABAC.

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

- While it was not the intention of MILKRUN in creating the Instagram Advertisement to encourage the excessive consumption of an alcoholic beverage, we concede that it could be viewed as being in breach of Part 3 (a)(i) of the Code. MILKRUN had intended for the Instagram Advertisement to be humorous and not read literally.

## **Responsibility toward Minors**

- In creating the Instagram Advertisement MILKRUN did not intend for it to appeal to minors, however we concede that it can be viewed as breaching the Code. The reason for the choice to include cartoon characters was to join in on the current internet trend of using these cartoon characters in humorous situations that appeal to adults who remember these cartoon characters from when they were younger.
- MILKRUN acknowledges that a small number of viewers of the Instagram Advertisement might associate these cartoon characters as appealing to minors. The Instagram Advertisement was deleted within 24 hours of it being posted to the MILKRUN Instagram account.

## **Concluding comment**

- Thank you for providing your feedback about this topic. We confirm that MILKRUN will take more care in ensuring that all future advertising of products containing alcohol will be in accordance with the Code.

## **The Panel's View**

### **Introduction**

15. MILKRUN is a grocery and alcohol delivery business that launched in Sydney's CBD in September 2021 and currently operates in select suburbs in Melbourne and Sydney. Its business model promises rapid delivery (within minutes) by riders on electric bikes. Originally focussing on groceries, the Company is expanding its alcohol offerings, and it is an Instagram post for the sale and delivery of alcohol products that has attracted the complaints.
16. The Instagram post, made on 31 July 2022, contains two pictures showing characters from the "Little Miss" series of children's books. First published in 1971 with the "Mr. Men" series, the "Little Miss" series has been a popular staple in many Australian households since 1981. The series has sold over 100 million copies worldwide and the characters have been adapted into a children's TV series.
17. The first Instagram picture shows the "Little Miss Princess" character holding a bottle of rosé in each hand, with the caption "LITTLE MISS F\*CKIT ALL DAY ROSÉ BABY!", while the second shows "Little Miss Naughty" standing amongst

four bottles of champagne and is captioned "LITTLE MISS SUNDAY FUNDAY!!".

18. Together, the complainants raise two concerns about the advertising, being that it appeals to minors, and also encourages excessive alcohol consumption. Each of these concerns are considered in turn below.

### **Responsibility toward minors**

19. The complainants are concerned that the Instagram post will attract minors to alcohol. This concern raises Part 3 (b) of the ABAC that provides that alcohol marketing communication must not appeal strongly to minors. The standard might be breached if the marketing:
  - specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and
  - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
20. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community are to be the benchmark.
21. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
  - the use of bright, playful, and contrasting colours;
  - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
  - the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
  - creation of a relatable environment by use of images and surroundings commonly frequented by minors;

- depiction of activities or products typically undertaken or used by minors;
  - language and methods of expression used more by minors than adults;
  - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
  - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
  - use of a music genre and artists featuring in youth culture.
22. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
23. The complainants contend that the reference to the “Little Miss” children’s books in the advertising appeals to children. In response, the Company advised that it did not intend for it to appeal to minors, however conceded that it can be viewed as breaching the Code.
24. The Company advised it used the “Little Miss” characters as a nostalgic appeal to adults who remember the cartoon characters from when they were younger. While many adults may have fond memories of the series, there is little doubt that the “Little Miss” books remain very popular with minors today and the use of the characters in alcohol marketing carries a very strong inherent risk of strong appeal to minors.
25. The Panel believes that the Instagram post does breach the Part 3 (b) standard by referencing the “Little Miss” children’s books.

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

26. One of the complaints went to the encouragement of excessive alcohol consumption. This concern raises Part 3 (a) of the Code which provides that alcohol marketing must not show or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.



27. The picture of a character holding two bottles of wine and the caption "ALL DAY ROSÉ BABY!", reasonably implies excessive alcohol consumption and is in breach of the Part (a) standard.
28. The complaints are upheld.