



ABAC Adjudication Panel Determination No 75/22

Product: MSC Boxtails (250ml)
Company: Basic Brands & Co (Mandatory Spirit Co)
Media: Social Media
Date of decision: 28 September 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”) arises from a complaint received on 8 September 2022 and concerns social media marketing for MSC Boxtails (“the Product”) by Basic Brands & Co (“the Company”).
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.
 6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

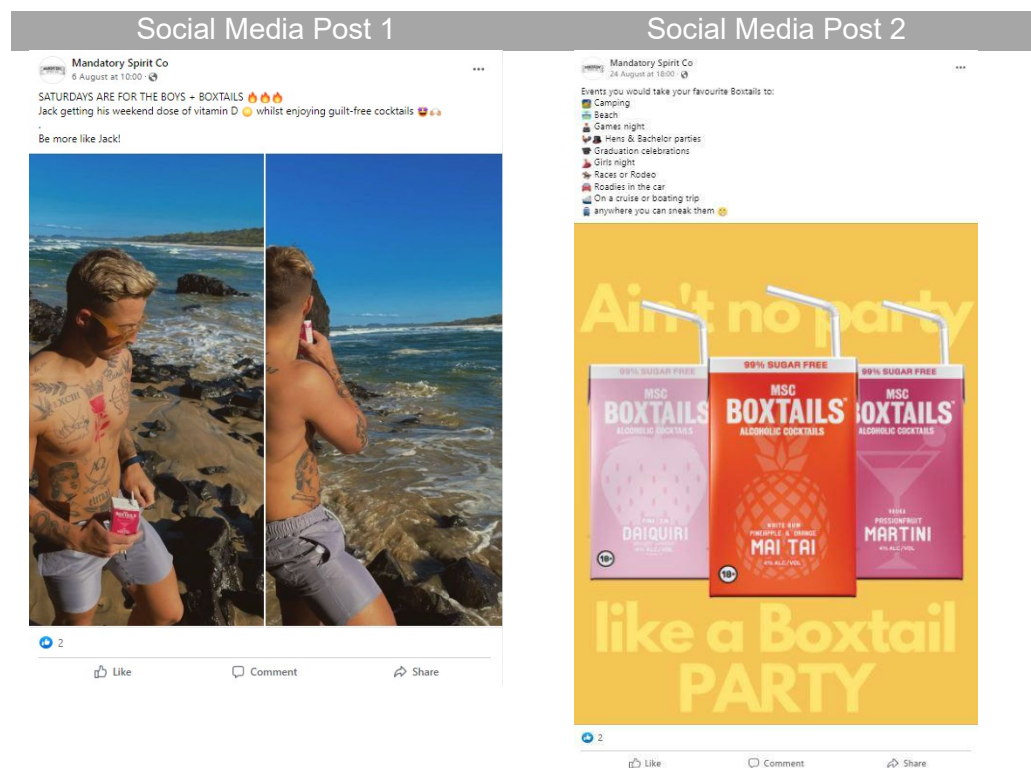
7. The complaint was received on 8 September 2022.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 sought for the Products.

The Marketing Communication

10. The complaint relates to the following posts made to Instagram and Facebook:



The Complaint

11. The complainant objects to the marketing as follows:
- *The advertisement in Social Media Post 1 creates a scene that reasonably implies the man is consuming alcohol and then swimming in the ocean. This is supported by:*
 - *his swimwear attire;*
 - *his proximity to the water's edge;*
 - *the open nature of the alcohol in question;*
 - *visible consumption of the alcohol in question; and*
 - *the scene setting at a time of day suited to swimming.*
 - *The advertisement in Social Media Post 2 encourages individuals to consume the product in a number of inappropriate locations and ways:*
 - *at the beach, a location whereby swimming is implied;*
 - *while in the car, with no clear exclusion of driving;*
 - *while on a boat, with no clear exclusion of driving; and*
 - *“anywhere you can sneak them” which implies consumption in either socially inappropriate or illegal locations or methods.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
 - (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 co-ordination, such as the control of a motor vehicle boat or machinery or swimming.

The Company's Response

13. The Company responded to the complaint by email on 11 September 2022. The principal comments made by the Company were:
- Thanks for sending this through. I have passed this request to who looks after our social media. They will delete the beach post and change the text on the Boxtail party post to remove the text questioned.
 - The following text has been removed from the second post:
 - 🏖️ Beach
 - 🚗 Roadies in the car
 - 🚢 On a cruise or boating trip
 - 🚗 anywhere you can sneak them 🙄

The Panel's View

14. In its Determination 40/22 dated 22 July 2022 the Panel decided that the packaging of 250ml Boxtails Alcoholic Cocktails was in breach of Part 3 (b)(i) of the ABAC by having a strong or evident appeal to minors. In response to the Determination, the Company advised as follows:
- We commit to not producing any more packaging in its current design.
 - We will not supply any more stock to distributors or wholesalers that supply to retail stores.
15. The ABAC Scheme rules and procedures relating to adverse Panel decisions regarding product packaging recognise that an alcohol company will need a transition period to remove from market non-compliant packaging. For this reason, a period of three months is allowed from the notification of the Panel's final determination breaching the packaging to the removal of the packaging from sale. This means this determination relates to marketing of the 250ml cocktail packaging that has taken place during the transition period for the removal of the current packaging.
16. The complaint goes to two social media posts for the 250 ml Boxtails. The first post features two photographs of a man standing on rocks near the ocean, wearing board shorts and holding a 250ml Boxtail. In one photo the man is drinking the product. The accompanying text reads:

SATURDAYS ARE FOR THE BOYS + BOXTAILS 🔥🔥🔥

Jack getting his weekend dose of vitamin D ☀️ whilst enjoying guilt-free cocktails 🍹🍹

Be more like Jack!

17. The second post shows three boxes of Boxtails, each with a straw ready for drinking, with the words 'Aint no party like a Boxtail PARTY'. The text accompanying the post reads:

Events you would take your favourite Boxtails to:

- 🏕️ Camping
- 🏖️ Beach
- 🎮 Games night
- 🍷 Hens & Bachelor parties
- 🎓 Graduation celebrations
- 👗 Girls night
- 🐎 Races or Rodeo
- 🚗 Roadies in the car
- 🚢 On a cruise or boating trip
- 🚗 anywhere you can sneak them 🤫

Social Media Post 1

18. The complaint raises a concern that the post promotes drinking and swimming activities. This brings into play Part 3 (d) of the Code, which requires that a marketing communication must not show (including by direct implication) the consumption of an alcohol beverage before or while swimming (or for that matter, undertaking any other activity that, for safety reasons, requires a high degree of alertness or physical coordination).
19. While not expressly conceding the post breaches the standard, the Company advised the post has been deleted. The Panel believes that Post 1 breaches the Part 3 (d) standard, noting that:
- consumption of an alcohol beverage is occurring. In the first photo in the post, the 250ml Boxtail package is shown with the straw in, ready to drink, while in the second photo, the man is holding the beverage up to their mouth;
 - the man is wearing board shorts and no shirt and is standing next to the ocean; and
 - the scene is set at a time of day that swimming is likely to occur.

Social Media Post 2

20. The complainant argues that Post 2 encourages individuals to consume the product in a number of inappropriate locations:
- at the beach, a location whereby swimming is implied;
 - while in the car, with no clear exclusion of driving;
 - while on a boat, with no clear exclusion of driving; and
 - 'anywhere you can sneak them' which implies consumption in either socially inappropriate or illegal locations.
21. The complainant's concerns raise both Part 3 (d) and Part 3 (a)(ii) of the Code. Part 3 (a)(ii) requires that a marketing communication must not show or encourage irresponsible or offensive behaviour in relation to the consumption of an alcohol beverage.
22. In relation to the activities of going to the beach, on a road trip, cruise or boating, the Panel does not believe that Post 2 can be fairly said to breach the Part 3 (a)(ii) and (d) standards noting that:
- consumption of an alcohol beverage is not shown;
 - there are no words or images establishing swimming or being in control of a car or boat in conjunction with alcohol use;
 - simply mentioning the word 'beach' does not raise a reasonable implication that swimming is to occur and it is not inconsistent with the ABAC standard to associate alcohol products with outdoor settings such as a beach or park;
 - equally, mentioning a road trip or cruise or boating trip does not establish or reasonably imply that a person is being encouraged to drink alcohol and be in control of the car/vessel.
23. However, the Panel does believe that the words and emojis '🚗 anywhere you can sneak them 🍷' breaches Part 3 (a)(ii) of the Code by suggesting the consumption of alcohol in places where it may be illegal or inappropriate.
24. Accordingly the complaint is upheld in relation to both posts as explained above.