



## ABAC Adjudication Panel Determination No 103/22

**Product:** Prosecco  
**Company:** Premier Estates Wines  
**Media:** Facebook  
**Date of decision:** 17 December 2022  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 14 November 2022 about Facebook marketing for Prosecco (“the Product”) by Premier Estates Wine (“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:
  - 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;
  - 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

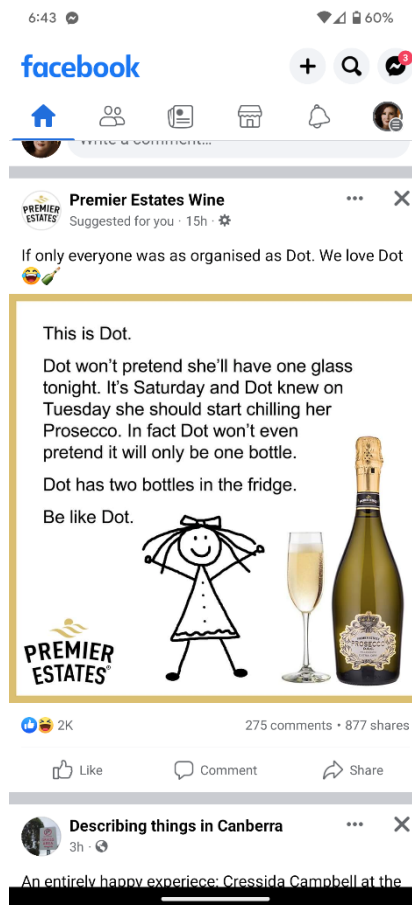
7. The complaint was received on 14 November 2022.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 marketing.

## The Marketing Communication

10. The complaint relates to the following Facebook post:



## The Complaint

11. The complainant objects to the marketing as follows:

- *I believe this is a breach as it encourages binge drinking.*

## The ABAC Code

12. Part 2 of the ABAC Code provides that:

- (a) The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

...

- digital communications (including in mobile and social media and user generated content)

...

13. 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.

## The Company's Response

14. The Company responded to the complaint by email on 23 November 2022. The principal comments made by the Company were:

- *We are a UK based company and this social media post was for our UK followers.*
- *We have never sold this product in Australia and do not advertise in Australia.*
- *If our social media presence crosses borders, you'll need to take it up with Facebook.*

## The Panel's View

15. This determination relates to a complaint received about a post made to the Facebook account of Premier Estate Wines. According to the Company's website, Premier Estates Wines is an independent online alcohol retailer located in Birmingham in the United Kingdom. The Company stocks Premier Estate branded wines sourced from a range of countries including an Australian chardonnay and shiraz.
16. Alcohol is a global product and social media platforms such as Facebook are equally global in their reach. In contrast, The ABAC Scheme is limited in its reach to marketing which is linked to Australia. This is reflected in the Code which describes its application to 'marketing communications in Australia generated by or within the reasonable control of a marketer' i.e., an Australian producer, distributor, or retailer of alcohol beverages.
17. This means the Scheme and the remit of the Panel do not extend to every alcohol marketing item which can be accessed in Australia over a global digital platform. To fall within the ambit of the Scheme the marketing item must have a discernible and direct link to Australia such as:
  - the Facebook account is under the control of an Australian alcohol marketer; or
  - the product being marketed is available for sale in Australia from an Australian retailer; or
  - the Facebook account is under the control of an international entity however there is a discernible and direct link to Australia so there is an Australian entity to which the ABAC obligations can attach.
18. The Company has advised that the post was intended for its UK followers, and that it has never sold products in Australia. Internet searches by ABAC support that the Company does not have a discernible link to Australia. For instance:
  - it has a UK domain name;
  - a UK phone number is displayed on its website and Facebook page;
  - its product prices are shown in GBP;
  - it ships only to locations in the UK; and
  - the product does not appear to be stocked in Australian alcohol retailers.

19. Accordingly, although the Facebook account might be accessible to someone in Australia given the global and ubiquitous nature of the internet, the regulatory regime applying to the marketing contained on the account is properly that of the United Kingdom. It is the UK to which the marketing is directed and where the product is being sold.
20. As a matter of interest, in 2015 a television ad from the Company was the subject of an adverse ruling by the UK's Advertising Standards Authority (ASA). If action was to be taken against the Facebook post identified by the complainant, then it would be the ASA as the appropriate national alcohol market regulator and not the ABAC.
21. While the complainant is raising a legitimate point about the marketing message in the post, the Company and its marketing does not fall within the ambit of the ABAC Scheme. Accordingly, the complaint is dismissed on jurisdiction grounds.