



## ABAC Adjudication Panel Determination No 51/23

**Product:** Wet Pussy Shot and Sour Puss  
**Company:** 80Proof  
**Media:** Instagram and Facebook  
**Date of decision:** 27 April 2023  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 15 March 2023 and concerns social media marketing for Wet Pussy Shot and Sour Puss (“the Products”) by 80Proof (“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 15 March 2023.

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.

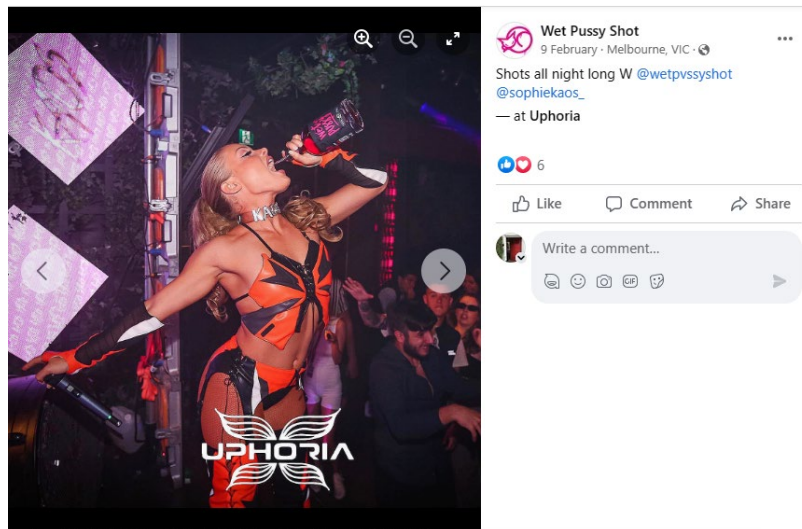
### The Marketing Communication

10. The complaint relates to two Instagram and Facebook posts, as described below.

#### Post 1

<https://www.instagram.com/p/Cob7Y0DvuvH/>

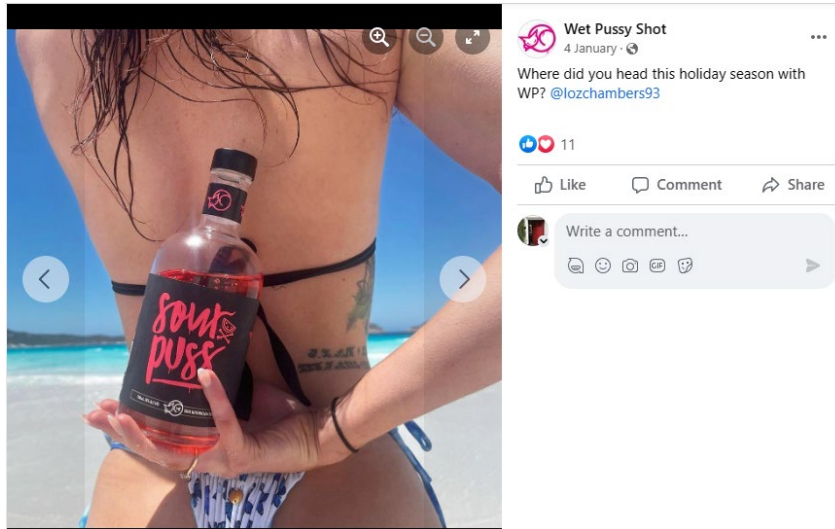
<https://www.facebook.com/WPshooters/photos/720615119496740>



## Post 2

<https://www.instagram.com/p/Cm-WHQBPaQ/>

<https://www.facebook.com/WPshooters/photos/692803922277860>



## The Complaint

11. The complainant objects to the marketing as follows:
  - *The first complaint regards a photograph from a promotional event from the Wet Pussy Shot Company. The photograph shows one of the paid promoters long pouring a drink directly from the bottle.*
  - *The first post is in breach of ABAC Code 3 (a) whereby a company must not 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.*
  - *We submit that:*
    - *The advertisement encourages people to consume the product in an inappropriate and excessive manner. This is evidenced by the depiction of a model/influencer drinking the beverage directly from a bottle.*
    - *The product shown in the photos (WPS Sour Puss 700mL) is 18% ABV (Alcohol by Volume).*
  - *The second complaint regards a photograph of a model holding a partly consumed bottle of the Wet Pussy Shot product in swimming attire, with wet hair standing close to the edge of a body of water.*

- *The second post is in breach of ABAC Code 3 (d) whereby a company must not 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 advertisement in Image 2 creates a scene that reasonably implies the person is consuming alcohol and then swimming in the ocean. This is supported by:*
  - *The model's swimwear attire*
  - *The model's proximity to the water's edge*
  - *The model's possession of the alcohol product in question*
  - *The image of a bottle with alcohol contents partially missing, implying that alcohol has been consumed.*
  - *The scene setting a time of day suited to swimming.*

## **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;
  
  - (d) A Marketing Communication must NOT 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 was advised of the complaint on 17 March 2023 but did not respond. It is noted that the posts have since been removed from Instagram but remain on Facebook.

## The Panel's View

14. This determination arises from a complaint about two social media posts promoting Wet Pussy Shot and Sour Puss.
15. The Panel will consider the complainant's concerns about each of the posts in turn below. The assessment of whether a marketing communication is consistent with a Code standard is from the probable understanding of the marketing by a reasonable person taking the content of the marketing as a whole. This means the benchmark is the values, opinions and life experiences shared by most members of the community. If a marketing communication can be interpreted in several ways, the most probable understanding is to be preferred over a possible but less likely interpretation.

### Post 1

16. Post 1 shows a woman in what appears to be a club environment. From her dress and that she is holding a microphone, it seems the woman is a performer. She is holding a bottle of Wet Pussy Shot up to her mouth as if she is drinking from it. The post is accompanied by text - 'Shots all night long...'
17. The complainant is concerned that the depiction of a person drinking an 18% ABV product directly from a bottle encourages the consumption of alcohol in an inappropriate and excessive manner.
18. The ABAC Code requires that a marketing communication 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 (Part 3 (a)(i)).
19. The Panel believes that Post 1 breaches the Part 3 (a)(i) standard. In reaching this conclusion the Panel noted:
  - the consumption of alcohol from a bottle directly into the mouth raises an implication of less controlled or measured consumption compared to drinking from a glass;
  - the accompanying text 'Shots all night long...' implies continuing alcohol consumption; and
  - taken as a whole a reasonable person would probably understand that combined the various elements of the post encourages excessive and/or rapid alcohol consumption.

## **Post 2**

20. Post 2 depicts a woman holding a partially consumed bottle of Sour Puss behind her back. She is standing near the ocean, wearing swimwear and her hair is wet.
21. The complainant contends that the post reasonably implies the consumption of alcohol prior to swimming.
22. The ABAC Code requires that a marketing communication must not 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 swimming (Part 3(d)).
23. The Panel believes that Post 2 breaches the Part 3 (d) standard. In reaching this conclusion the Panel noted that:
  - alcohol has been consumed, as evidenced by the bottle being partially emptied;
  - the woman has been swimming, as evidenced by her being at the beach, wearing swimwear and her hair being wet;
  - there are no cues that swimming or alcohol consumption has concluded for the day and the time of day and the woman's proximity to the water suggest swimming could likely continue; and
  - a reasonable person would likely conclude that the day will continue in the same way – with alcohol being consumed and swimming occurring.
24. The complaint is upheld.