



ABAC Adjudication Panel Determination Nos 87, 98, 99, 101, 105 & 109/23

Product: Venue
Company: Gilligan’s Hotel & Resort
Media: Instagram
Date of decision: 17 July 2023
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 six complaints received on 26 May, 13, 16 and 26 June and 3 July 2023 in relation to social media and website marketing for Gilligan’s Hotel & Resort (“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 complaints were received on 26 May, 13, 16 and 26 June and 3 July 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. While the first complaint was outside the target timeframe, it was logical to join all the complaints into the single determination as they all raised similar issues.



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 social media and website marketing by the Company:

Complaint 87/23

<p>87-23 – Social Media Post 1 https://www.instagram.com/p/CrZr6GYJ6Vz/</p>	<p>87-23 – Social Media Post 2 https://www.instagram.com/p/CqMOU-lvfxt/</p>
 <p>The screenshot shows an Instagram post from the account 'gilliganscaims'. The post features a vibrant photograph of a pool party with people swimming and a large inflatable beer can. The caption reads: 'Check out what we have going on this week at Gilligan's! TONIGHT: Minute to WIN IT! TUESDAY: ANZAC DAY 'On The Back Deck' WEDNESDAY: Ultimate Jelly Wrestling Championship! THURSDAY: GIRLS NIGHT + Topless Walkers from 8pm - 11pm FRIDAY: HOOLIGAN HEFS (LIVE) + Special Guest! SATURDAY: Time to party SUNDAY: Wet Club Pool Party Sundays'. The post has 42 likes and is liked by 'loccodesignaustralia and others'.</p>	 <p>The screenshot shows an Instagram post from the account 'gilliganscaims'. The post features a photograph of two women in bikinis smiling and holding drinks. The caption reads: 'Join us by the pool this weekend for drinks, good times and EVEN BETTER memories! Gilligan's pool is open 7 days a week to EVERYONE. (Sun to sundown)'. The post includes several hashtags: '#gilliganscaims #gilligans #cnpstaystay #clubbing #metzplay #mensparty #gilliganscaims #birthday'. The post has 10 likes and is liked by 'matanowingsmaintenance and others'.</p>

87-23 – Social Media Post 3
<https://www.instagram.com/p/Cpt3HhpJKb4/>



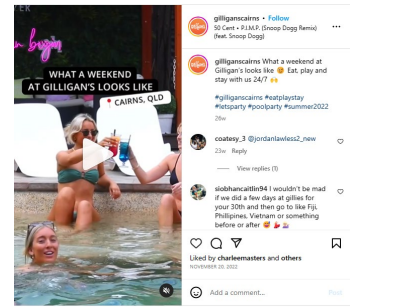
87-23 – Social Media Post 4
https://www.instagram.com/p/CpJfY_crnl4/



87-23 Social Media Post 5
<https://www.instagram.com/p/CoG3ZPqOihi/>



87-23 Social Media Post 6
<https://www.instagram.com/p/CIKIO5hNh2/>



87-23 Social Media Post 7
<https://www.instagram.com/p/Cqf-KYqPAG7/>



87-23 Social Media Post 8
<https://www.instagram.com/p/ChyERQasqPC/>



Complaint 98/23

Social Media Post 9 – Instagram Story



Complaint 99/23

99/23 Social Media Post 10

Social Media Post 10 started running on 2 June 2023 and includes a 15 second video, accompanied by P.I.M.P by 50 Cent, as well as the following accompanying text:

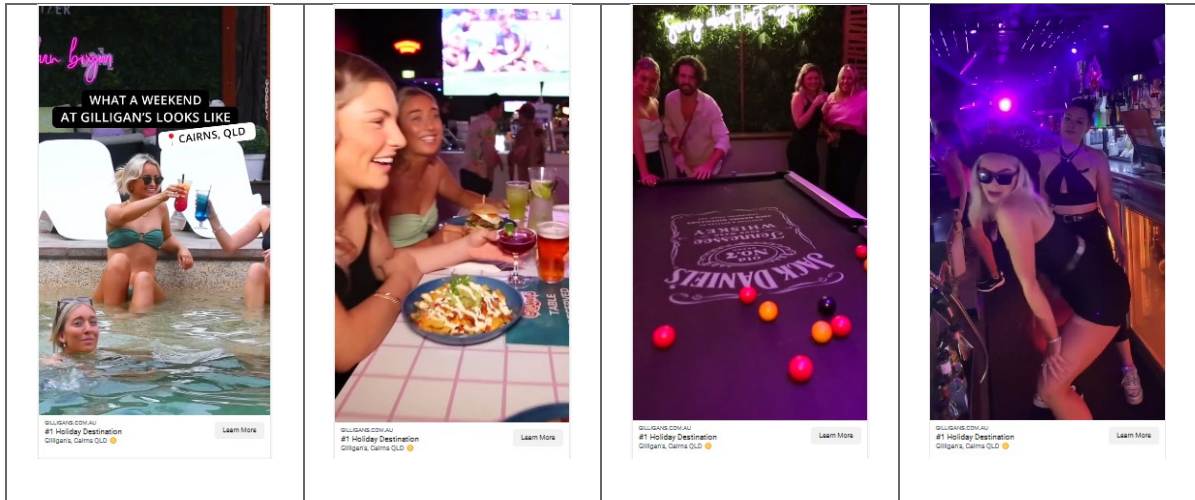
Gilligan's Hotel and Resort is your #1 holiday destination! Grab your mates and GET TO GILLIGAN'S in tropical sunny Cairns 🌴

Live music, 2 night clubs, DJ's, pool parties, sporting screens, gaming room, large bar area, back deck overlooking the pool, accommodation onsite, delicious food and more!

- ✅ Deluxe Hotel Rooms
- ✅ Ensuite Dorm Share Rooms
- ✅ Entertainment 7 days a week
- ✅ Day club and large pool
- ✅ Back deck bar
- ✅ Book VIP Booths & Huts
- ✅ 2 x Nightclubs and lounge Bar
- ✅ World-renowned DJs
- ✅ Delicious pub style food
- ✅ Gaming Room

It's time to get to Gilligan's - The place that has it all! 🍷

The following screenshots were taken from the video:



Complaint 99/23

99/23 Social Media Post 11

Social Media Post 11, which started running on 22 April 2023, shows three still shots as well as a 20 second video and is accompanied by the following text:

Grab your mates and GET TO GILLIGAN'S in tropical Cairns! 🌴🌴 Stay at the place that has it all. PLUS you can save up to 15% when you book 60 days or more in advance.

- ✅ En-suite 8 dorm share accommodation
- ✅ Nightly entertainment
- ✅ Restaurant right downstairs
- ✅ Nightclub and lounge bar
- ✅ Local and Resident DJ's
- ✅ Massive pool and weekend day cub

Live music, 2 night clubs, DJ's, pool parties, sporting screens, gaming room, large bar area, back deck overlooking the pool, accommodation onsite, delicious food and more!

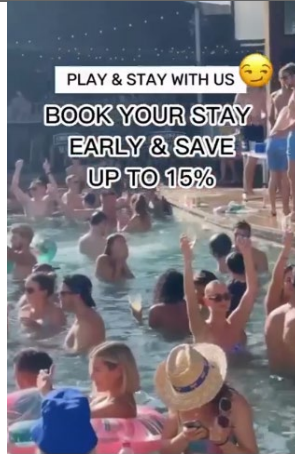
24hr cancellation policy available, so you can book with peace of mind.

It's time to get to Gilligan's! 🍷

Book now!

A brief overview of the video is provided below. The video is accompanied by the song "Drink" by Lil Jon, and the words "Play and stay with us [emoji]. Book your stay early and save up to 15%" are superimposed throughout.

There is various video footage of people in and around a pool area.



Engaging in a tug of war and doing push-ups



People are shown next to a set-up beer pong table.





Complaint 99/23

99/23 Social Media Post 12

Social Media Post 12, which started running on 1 March 2023, includes an eight second video and is accompanied by the following text:

Looking for the PERFECT location for your Hens or Bucks Party? Look no further than Gilligan's Hotel and Resort in tropical Cairns 🌴 🌞

- ✓ Hens & Bucks Packages Available
- ✓ Resort style pool with back deck bar
- ✓ Deluxe Hotel Rooms
- ✓ Plus ensuite dorm share available
- ✓ 2 Night Clubs with Accommodation onsite

Live music, 2 night clubs, DJ's, pool parties, sporting screens, gaming room, large bar area, back deck overlooking the pool, delicious food and more!

Book your Hens and Bucks weekend with Gilligan's!

A brief summary of the video is provided below. The words “Bucks & Hens Packages”, “The #1 Bucks or Hens Party Destination” and “Gilligan’s” are superimposed throughout.

The video commences with footage of people in a pool holding drinks.

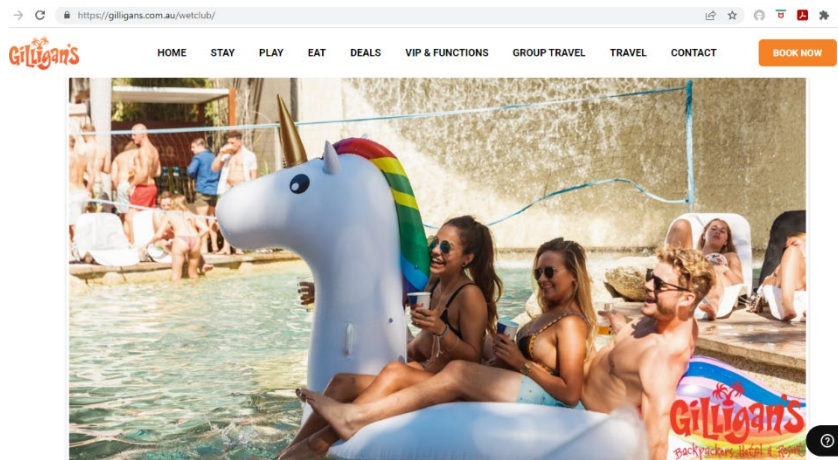


We then see people eating pizza, playing snooker and dancing.

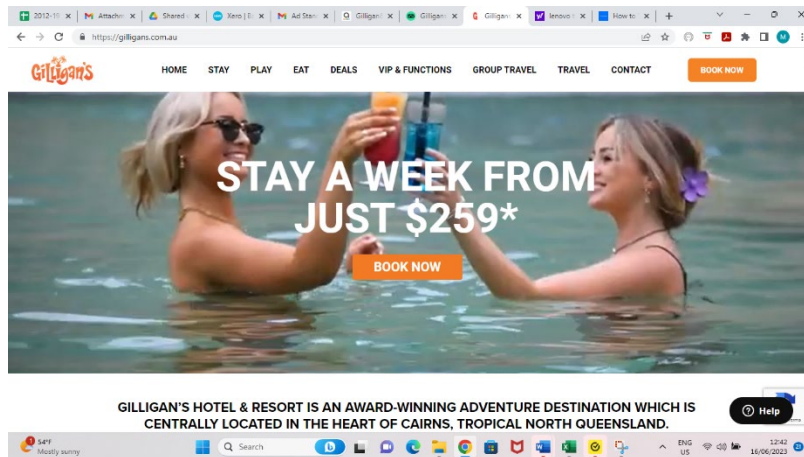


Complaint 101/23

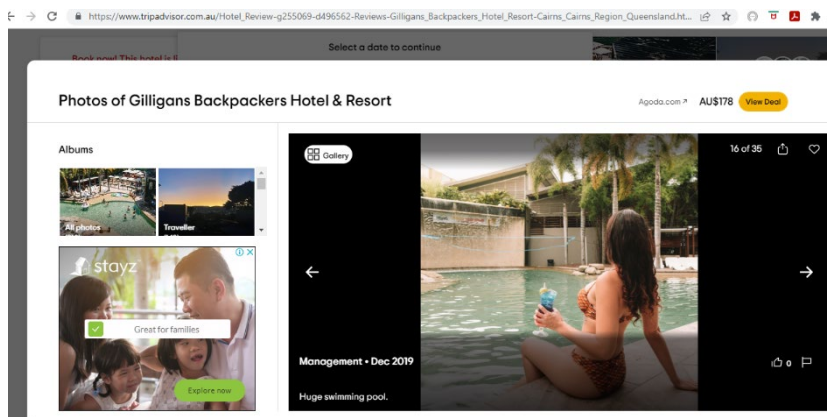
101/23 Gilligan's Website Image 1



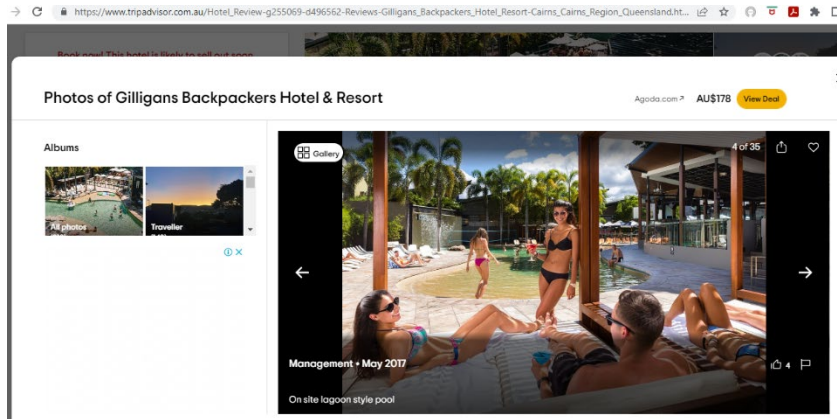
101/23 Gilligan's Website Image 2



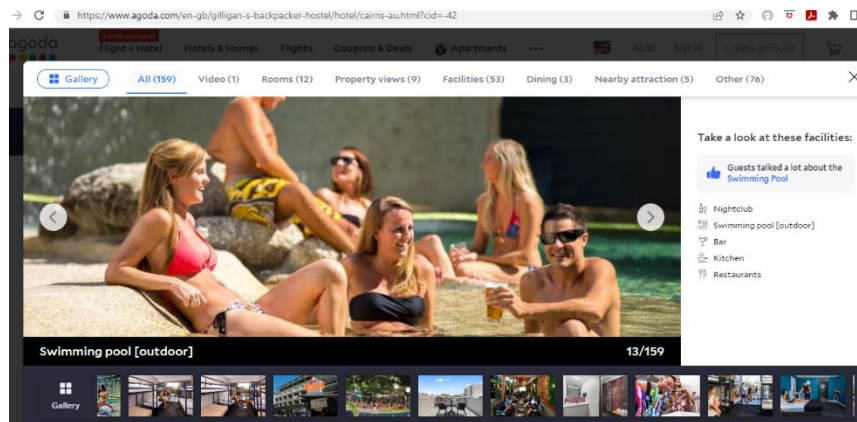
101/23 Tripadvisor Image 1



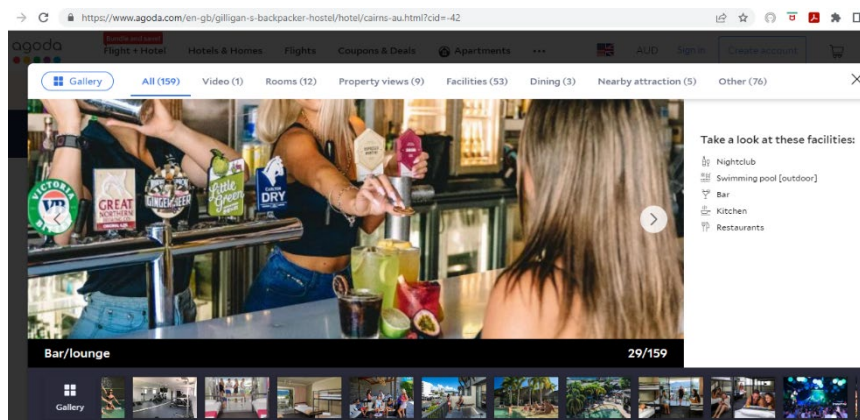
101/23 Tripadvisor Image 2



101/23 Agoda Image 1

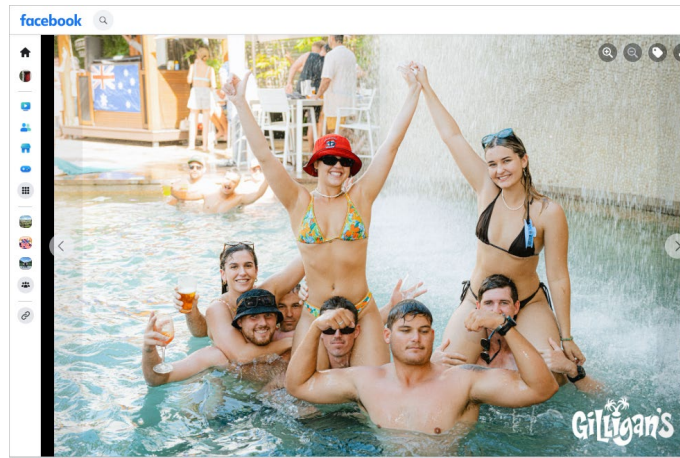


101/23 Agoda Image 2



Complaint 105/23

Social Media Post 13



Complaint 109/23

Social Media Post 14

Social Media Post 14, which started running on 2 June 2023, includes three still shots, as well as a 20 second video showing many of the same scenes as in Social Media Post 11. It is also accompanied by “Drink” by Lil Jon. The text accompanying the post reads as follows:

Grab your mates and GET TO GILLIGAN'S in tropical Cairns! 🌴🍹 Stay at the place that has it all for 7 Nights from just \$259 per person!

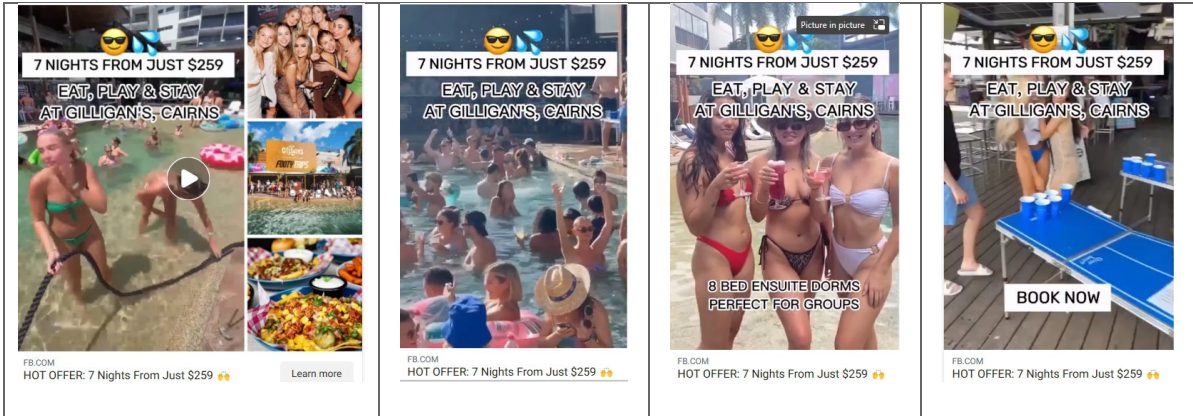
- ✔ En-suite 8 dorm share accommodation
- ✔ Nightly entertainment
- ✔ Restaurant right downstairs
- ✔ Nightclub and lounge bar
- ✔ Local and Resident DJ's
- ✔ Massive pool and weekend day cub

Live music, 2 night clubs, DJ's, pool parties, sporting screens, gaming room, large bar area, back deck overlooking the pool, accommodation onsite, delicious food and more!

Get your mates together - It's time to get to Gilligan's! 🍹

Limited time offer. Book your stay now!

The following screenshots have been taken from the post and video:



Complaints

11. The complainants object to the marketing as follows:

Complaint Number	Complaint
87/23	<ul style="list-style-type: none"> ...the advertisement suggests that the consumption of alcohol while swimming is acceptable or even encouraged. According to the ABAC guidelines, alcohol marketing communication must not show or imply the consumption of alcohol before or during any activity that requires a high degree of alertness or physical coordination due to safety reasons. However, the Instagram post in question showcases drinks, including a typical cocktail, from a licensed premise. ... swimming is an activity that, for safety reasons, should not be done in conjunction with alcohol consumption. The consumption of alcohol significantly increases the risks associated with swimming, as it impairs judgment, coordination, and can lead to dehydration. Some of the dangers of alcohol while swimming, as highlighted by the National Alcohol Strategy (www.aihw.gov.au) in January 2003, include increased risks of accidents, drowning, and serious injuries arising from recreational aquatic activity.
98/23	<ul style="list-style-type: none"> I am writing to file a formal complaint against Gilligan's Hotel regarding their recent Instagram story promotion featuring a shirtless man holding a cocktail in front of the pool, overlaid with logos of Tahoe Blue Vodka. This promotional content raises serious concerns about the dangers of promoting swimming after consuming alcohol. Alcohol consumption and swimming pose a significant risk when combined, and it is irresponsible for Gilligan's Hotel to endorse such behaviour. By promoting alcohol consumption in a swimming pool setting, Gilligan's Hotel not only disregards the potential dangers but also fails to fulfill its ethical responsibility to protect its customers and promote safe practices.

Complaint Number	Complaint
	<p><i>The hotel's Instagram story sends a misleading message that trivialises the risks associated with combining alcohol and swimming.</i></p>
99/23	<ul style="list-style-type: none"> ● <i>I am writing to lodge a formal complaint against Gilligan's Resort in regards to their Facebook advertising campaign that promotes the consumption of alcohol while swimming. I find it highly inappropriate and potentially dangerous for a business to encourage such behaviour.</i> ● <i>To further support my complaint, I would like to direct your attention to the specific videos in question. These can be accessed via the following link: https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=ALL&view_all_pa</i> ● <i>Such advertisements can easily be misconstrued by viewers, potentially encouraging irresponsible drinking behaviour and accidents, particularly among younger individuals who may be influenced by these ads.</i>
101/23	<ul style="list-style-type: none"> ● <i>I am writing to file a formal complaint against Gilligan's for their misleading advertising practices regarding alcohol consumption prior to or during swimming activities at their establishment. As a responsible consumer and concerned individual, I believe it is crucial to address this issue to ensure the safety and well-being of visitors, particularly international tourists who may not be aware of the potential dangers associated with combining alcohol and swimming.</i> ● <i>Gilligan's, which identifies itself as a backpacker hostel, extensively promotes its services through various online booking platforms like Agoda. Upon reviewing multiple listings of Gilligan's on these platforms, such as the attached screenshots, it becomes evident that the establishment advertises and glorifies the consumption of alcohol in close proximity to swimming facilities. There is also a magnitude of videos and photos on their website advertising what appears to be alcohol prior or during swimming. Please see all attached screenshots.</i>
105/23	<ul style="list-style-type: none"> ● <i>I am writing to file a formal complaint regarding an advertisement that promotes the dangerous combination of swimming prior to or during drinking alcohol.</i> ● <i>Considering Gilligan's position as a backpackers establishment, it is imperative that foreign tourists are made aware of the risks associated with swimming and alcohol. Foreign tourists, in particular, face a higher risk of swimming accidents in Australia.</i>
109/23	<ul style="list-style-type: none"> ● <i>Gilligan's has been promoting and endorsing what a reasonable person would assume appears to be their patrons consuming alcoholic cocktails while swimming in the pool or, prior to swimming. I believe this advertising</i>

Complaint Number	Complaint
	<i>strategy is not only highly misleading but also poses significant dangers to the public safety.</i>

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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.

The Company's Response

13. The Company declined to respond to the complaints.

The Panel's View

Introduction

14. This determination arises from six complaints about multiple social media posts and website marketing for Gilligan's Hotel & Resort, located in Cairns in North Queensland. In each case the issue raised is how the marketing communications portray the use of alcohol in conjunction with a large swimming pool at the venue. Given the commonality of the issue raised, the Panel has grouped the complaints into this single determination.
15. In simple terms the complaints argued that the marketing of the venue showed or directly implied the consumption of alcohol by patrons of the venue before or during the use of the swimming pool. It is contended that this sends an irresponsible and potentially dangerous message to the community given the heightened risk of harm from swimming and using a pool if affected by alcohol. It is pointed out that as many of the patrons of the venue will be overseas 'backpackers', there may be a greater chance of the visitors not appreciating the risks.
16. For its part, the venue declined to respond to the complaints. It should be noted that this is the second Panel determination in relation to the venue's marketing which goes to the alcohol and swimming concern. In Determination 55/23 dated 2 May 2023 the venue did respond to complaints and argued:

- that it is regulated under the Queensland Liquor Act and that it meets its liquor licence requirements;
 - the swimming pool adheres to an approved risk management plan to mitigate risk to patrons using the pool;
 - it should not be assumed the drinks shown in the social media posts are alcoholic; and
 - its marketing is no different to other hotels and resorts that use images of people drinking in or around swimming pools.
17. Before turning to the consistency of the marketing raised in the complaints with the ABAC standard, it is useful to briefly canvass the following points:
- the application of the ABAC requirements to the venue's marketing; and
 - general observations regarding alcohol marketing and swimming

The applicability of the ABAC standards to the Venue

18. At its core, the ABAC Scheme is an industry lead initiative to create good practice in relation to alcohol marketing in Australia. The Scheme is sponsored by three alcohol producer peak associations namely the Brewers Association of Australia, Spirits and Cocktails Australia and Australian Grape and Wine. The obligations in the ABAC have been contractually accepted by the members of each of the industry associations and also by direct signatories to the Code including major retailers such as BWS and Liquorland.
19. The standards in the ABAC apply to the marketing communications generated by or under the reasonable control of an alcohol producer, distributor or retailer. Gilligan's Hotel and Resort is a mixed business that offers accommodation, food, entertainment and is licensed to sell alcohol. This makes Gilligan an alcohol retailer and its marketing to the extent it portrays alcohol as a product (as opposed to say its accommodation) notionally falls within the intended scope of the ABAC standards.
20. That said, the venue is not a member of one of the sponsoring industry associations nor is it a direct signatory to the Scheme. This means it has not given a prior commitment to market consistently with the ABAC standards.
21. It is not unusual for individual hotels or other smaller retailers not to be direct signatories to the ABAC Scheme. What is very unusual is for an alcohol marketer not to engage fully in the public complaints process and to accept a Panel determination. This commitment arises, not because of strict legal obligation but because industry participants accept there is a social and

corporate responsibility that comes with dealing with alcohol and this includes the responsibility for marketing to model moderate and sensible alcohol use.

22. As mentioned in paragraph 2, the regulation of alcohol and alcohol marketing is shared between direct government requirements and industry codes of practice. In Queensland the direct regulation of alcohol marketing is contained in the Liquor Act and amplified in Guideline 60: 'Unacceptable liquor practices and promotions in licensed venues' issued by the Commissioner of Liquor and Gaming. The government directly recognises the co-regulatory nature of alcohol marketing and the role played by the ABAC Scheme - see business.qld.gov.au - 'Alcohol advertising and promotions'.
23. In the event that an alcohol marketer does not comply with a Panel determination, the marketing is referred to the relevant State or Territory Liquor Authority for action under the government regime. This has occurred in relation to Determination 55/23.

Alcohol marketing and Swimming

24. Over time the Panel has considered numerous marketing communications that position alcohol products or alcohol use in or near bodies of water- eg the ocean, rivers and lakes and swimming pools. Often the point in question is whether the depiction of alcohol has been consistent with the standard in Part 3 (d) of the Code that provides that the marketing must not show the consumption of alcohol 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.
25. The starting point is that there is no prohibition on associating or positioning an alcohol product with areas near water or with water pursuits such as sailing, water skiing or swimming. What the standard does not permit is the showing (including by direct implication) of:
 - the consumption of alcohol
 - before or during
 - an activity that for safety reasons
 - requires a high degree of alertness or physical coordination.
26. This means it is permitted for a marketing item to position alcohol use near to water, say on a beach or adjacent to a swimming pool provided:
 - there is no consumption of the product; or
 - the scene depicted establishes any consumption would not commence until swimming had concluded.

27. Each individual marketing communication must always be assessed on its own merits, however some indicators of marketing showing alcohol use near or on the water that would likely be consistent with the Part 3 (d) standard might include:
- showing alcohol consumption by a person who would not be understood as going into the water because they are fully clothed, or engaged in activity such as tending a poolside BBQ or minding children;
 - showing a time of day that suggests swimming is unlikely such a late afternoon; and
 - not showing other persons swimming at the time.
28. The test is always how a reasonable person would probably understand the scene and message depicted in the marketing communication. If the commonsense interpretation of the marketing is that it is acceptable to drink alcohol while swimming, then the marketing will likely breach the ABAC standard. On the other hand, if the probable understanding is that while it is ok to have alcohol at the beach or alongside the pool, but it is not ok to drink and swim, then the marketing would likely be consistent with the standard.

Does the venue's marketing breach the Part 3 (d) standard

Tripadvisor and Agoda

29. The complainant is concerned about images and videos posted to the Company's social media pages and website. In addition, complaint 101/23 went to photos shown on third party websites, namely Tripadvisor and Agoda.
30. The ABAC applies to all alcohol marketing communications in Australia generated by or within the reasonable control of an alcohol marketer. It is clear that the Company's own social media pages and website are within the Code's ambit. But what is the status of the images on the Tripadvisor and Agoda websites?
31. Tripadvisor describes itself as a 'travel guidance platform'. Travel related businesses, including restaurants/cafes and transport, accommodation and tourist experience providers can list their offerings on Tripadvisor, and travellers can contribute reviews of the services they have used, including providing 'scores' which are used for ranking purposes. Photographs can be added to a listing in one of three ways – by the business itself, by Tripadvisor or by a traveller reviewing the business.
32. If a business has concerns about a review or photograph added, it can request that it be reviewed by Tripadvisor against its published guidelines, however, the

owner of the listing cannot alter or delete reviews (including photos). In relation to Tripadvisor, the images submitted by the complainant are identified on the website as 'management', meaning that they were added to the listing by the Company.

33. Agoda.com is an online travel agency catering primarily to consumers in the Asia-Pacific region. It facilitates reservations for accommodation, flights, transportation and activities. Similar to Tripadvisor, travel related businesses can list on Agoda and provide their own description and photos. Travellers can review services accessed, but do not appear to be able to add their own photos.
34. Neither Tripadvisor or Agoda are alcohol industry participants and for any material on their respective internet sites to fall within the scope of the ABAC standards, the material must be within the reasonable control of an alcohol producer, distributor or retailer. This may occur if the alcohol industry participant posted the material on the third-party site or has the entitlement to have material removed even if not created by it.
35. A review of the Tripadvisor and Agoda sites in relation to Gilligan's shows that mostly the images posted by the venue focus on the rooms and other facilities at the resort and are not alcohol marketing communications. However, there are some images which relate to the venue being an alcohol retailer and depict alcohol use. These specific posts fall within the intended scope of the ABAC Scheme.
36. Tripadvisor Image 1 shows a woman in swimwear holding a drink sitting at the edge of the swimming pool with her feet in the water. The photograph is captioned as 'Huge swimming pool'. There are no other people shown. The Panel does not believe the image breaches the Part 3 (d) standard given:
 - the image is included with a large group of photographs of the venue's accommodation and general facilities and taken as a whole the images position the venue as offering accommodation and not as being an alcohol retailer as such;
 - the scene does not unambiguously establish the drink being held is alcoholic;
 - a reasonable person would most probably interpret the staged photograph within the context of a travel accommodation site and the other photographs of the venue as showcasing the swimming pool and not providing a message about acceptable alcohol use.
37. Tripadvisor Image 2 shows four people in swimwear at a shelter shade adjacent to the lagoon style swimming pool. Three of the group are lying down and the fourth is standing facing the others with her back to the pool. Two of

the group are holding drinks. The Panel does not believe the image breaches the Part 3 (d) standard given:

- the image is included with a large group of photographs of the venue's accommodation and general facilities and taken as a whole the images position the venue as offering accommodation and not as being an alcohol retailer as such;
- it is not unambiguously clear the drinks being held are alcoholic, although the drinks are in a cocktail glass and it is not unreasonable to assume they contain an alcoholic beverage;
- even assuming the drinks held are alcoholic, the scene does not establish the group as a whole or any individual is immediately likely to use the swimming pool; and
- a reasonable person would most probably interpret the staged photograph within the context of a travel accommodation site and the other photographs of the venue as showcasing the swimming pool and not providing a message about acceptable alcohol use.

38. The Agoda Image 1 shows a group of people sitting quietly in the lagoon pool. In the foreground a man is holding a glass of what is self-evidently a beer. While the image is one of a large number on the site showcasing the venue's rooms and other facilities, it is clear that alcohol use is being modelled with the use of the swimming pool. The Panel believes the image to be a breach of the Part 3 (d) standard as it shows alcohol consumption with use of the pool and suggests drinking and swimming is acceptable.

39. Agoda Image 2 shows a bar scene. A woman is apparently purchasing three drinks from the bar and given the style of the drinks, it is reasonable to assume that they are alcoholic beverages. That said, the image does not place the bar near the pool nor imply the woman or anyone else will consume the drinks and then swim. The image is not a breach of the ABAC standard.

Gilligan's social media posts and website

40. The venue makes very extensive use of social media and commonly multiple posts are made every day. The complaints go to posts and images which are set out in paragraph 10. For the sake of brevity, the posts will not be individually further described.

41. The Panel believes that the marketing listed below is inconsistent with the Part 3 (d) standard. The posts show alcohol use while actual swimming or raise the reasonable implication that swimming will occur after alcohol consumption. Swimming is an activity that, for safety reasons, should not be done in conjunction with alcohol consumption:

- social media posts 1 to 8 and 10 to 14
 - Gilligan's website images 1 and 2.
42. The Panel does not believe social media post 9 breaches the standard. This post shows a man on a seat in swimwear, a hat and sunglasses drinking near the pool. While it can be reasonably assumed he is consuming an alcoholic beverage, the scene does not establish he is likely to immediately use the pool after consumption.

Conclusion

43. In reaching the conclusion that a range of the venue's marketing is in breach of the Part 3 (d) standard, the Panel is not making any finding as to the venue's obligations in relation to the on-premise responsible service of alcohol. This is a matter for Queensland Liquor and Gaming and the venue has previously stated it meets its licence obligations and has a safety plan for the use of the pool.
44. The Panel decision goes to how the outward facing marketing of the venue would be most probably understood by a reasonable person in relation to whether alcohol can be safely consumed while swimming and using a swimming pool.
45. The complaints in regard to individual marketing communications are upheld and dismissed as explained above.