



ABAC Adjudication Panel Determination No 118/23

Product: Venue
Company: Gilligan’s Hotel & Resort
Media: Digital – Instagram
Date of decision: 26 August 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 27 July 2023 in relation to social media 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 complaint was received on 27 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. 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 content of the marketing.

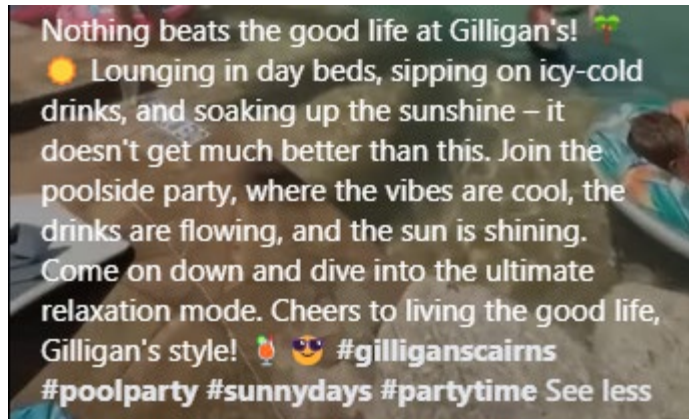
The Marketing

10. The complaint relates to marketing via Facebook, at the following link:

<https://www.facebook.com/reel/7098851876796556>

It consists of a video showing a number of people around a swimming pool and drinking alcohol. The following screenshots have been taken from the video:





Complaint

11. The complainant objects to the marketing as follows:
 - *A video depicting various people with what any reasonable person would assume is alcoholic beverages whilst swimming or what appears prior to swimming. A reasonable person would assume it is beer and combine this with Smirnoff Vodka signage in the video.*
 - *Swimming while under the influence of alcohol can be an extremely hazardous and life-threatening decision. Alcohol impairs judgment, coordination, and reaction times, which are essential skills needed for safe swimming. Intoxicated swimmers may overestimate their abilities, leading them to take risks they would otherwise avoid.*

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 Response

13. The Company declined the opportunity to respond to the complaint.

The Panel's View

14. Gilligan's Hotel & Resort is located in Cairns in North Queensland. Over recent months the venue's marketing has drawn a series of complaints regarding photographs or videos showing patrons using the resort's swimming pool while consuming alcohol. This current determination follows a complaint raising the same issue.
15. In simple terms the complaint argues that a Facebook reel shows or directly implies the consumption of alcohol by patrons 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.
16. For its part, Gilligan's has declined to respond to the complaint. Previously the venue has 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. Given the circumstances, the ABAC Scheme has referred its Determinations and the findings of breach to the Queensland Office of Liquor and Gaming Regulation for action under the Queensland Liquor Act. The same step will be taken with this decision.
18. The ABAC standard in Part 3 (d) does not prohibit the 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.

19. 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 that any consumption would not commence until swimming had concluded.
20. In the current case the marketing video shows patrons in and around the resort's swimming pool. In one instance a woman is shown holding a beer while wading in the pool. This aspect of the marketing communication would probably be understood as depicting alcohol consumption during direct use of the pool and is in breach of the Part 3 (d) standard.
21. The complaint is upheld.