



ABAC Adjudication Panel Determination No 168/23

Products: Hydro Homies Clean Vodka and Gin
Company: Hydro Homies Pty Ltd
Media: Packaging
Date of decision: 1 December 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 a complaint received on 12 October 2023 in relation to the packaging by Hydro Homies Pty Limited (“the Company”) of the following products (“the products”):
 - Clean Australian Dry Gin
 - Clean Contemporary Dry Gin
 - Clean Vodka.
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:
 - (b) 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;
- (c) 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 6 October 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 just beyond the target time frame due to several determinations requiring completion at the same time.

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 Placement

10. The complaint relates to the packaging of the products:



Complaint

11. The complainant objects to the marketing as follows:
- *The Brand is expressing the idea that their Vodka and Gin is a clean product, their headline is "stay hydrated, stay clean";*
 - *As an alcoholic product it shouldn't be advertised as a "Clean product"; and*
 - *Also advertising the product as made in Byron Bay while it is produced in Queensland.*

The ABAC Code

12. Part 3 (c) of the Code provides that a Marketing Communication must NOT:
- (iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

The Company Response

13. The Company responded to the complaint by letter emailed on 19 October 2023. Its primary comments were:
- Almost all brands are using either "Pure" or "Clean" to describe their Vodka or Gin. (for example, 'Kangaroo Island Spirits Pure Vodka', 'Old Young's Pure No. 1', 'Clean & Smooth Vodka', 'Earp Distilling Co. Vodka Pure', 'Alligator Laboratories Pure Vodka' and 'KI Spirits (kis) Vodka Pure'). We chose "Clean" over "Pure" specifically to be less problematic and avoid any possible confusion with "Pure Alcohol".
 - Creating a product with minimal impurities is why we and others invest in being Charcoal Filtered, Triple Distilled, and use very pure water sources. Consumers judge a product based on these qualities. When a brand claims to be using pure Icelandic Glacier Water or organic botanicals, this is a statement of quality. In our case, the adjectives "Pure" or "Clean" are combined with "Vodka" or "Gin" so there is no confusion of what the product actually is.
 - There are a number of long standing brands that have made largely identical claims for many years with no issues. "Lord Byron Distillery" claims: "A mix of rainwater and natural spring water bubbling up from the ground on our family farm." Cape Byron Distillery goes further, claiming: "We craft our new-make spirit (to become Whisky) using malted barley and nutrient-rich spring water from the base of Mount Warning." Tooheys Extra Dry Beer claims "Clean Crisp Lager".

- The only official guidance on the use we found was the USA's "Alcohol and Tobacco Tax and Trade Bureau" (TTB)¹. This states: "We've received inquiries about the meaning of the word "clean" when used in the labelling and advertising of alcohol beverages subject to the Federal Alcohol Administration Act. TTB regulations do not define the word "clean," and we do not have standards for the use of the term on labels or in advertisements. Thus, consumers should not interpret the term as meaning that the beverage is organic or has met other production standards set by TTB. Instead, we review both labels and advertisements in their totality to determine if they create a misleading impression. In some cases, the term "clean" is simply being used as a descriptor of the taste of the beverage, and is considered puffery. For example, "X winery makes a clean, crisp wine." In other cases, the term is used together with other language to create the misleading impression that consumption of the alcohol beverage will have health benefits, or that the health risks otherwise associated with alcohol consumption will be mitigated. For example, "X malt beverage is clean and healthy" or "Y vodka's clean production methods mean no headaches for you."
- It was a surprise that our brand, without a single stockist, was the subject of a complaint over a term that well established brands have used for decades.
- Our label specifically states in large writing "To be a Hydro Homie keep well hydrated with sparkling water or low sugar mixers." This is clearly supporting the mandatory "Drink Responsibly" label requirements. Staying hydrated has been shown to reduce alcohol consumption in a number of studies. For example this 2017 study found: "Oral water intake mediates the effects of volume intake with craving reduction in alcohol use disorders²."
- Part 3(c)(iv) of the code prohibits advertising that would "suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit." Our instructions make it clear there is absolutely no therapeutic benefit to alcohol, and drinking water and drinking less is recommended. Our label is very explicit that people drinking alcohol should stay well hydrated with water. The net result of following the advice on our label will, according to studies, reduce the consumption of alcohol. We believe that urging people to drink water on a label for alcohol was a first, and that this would have been welcomed.

¹ <https://www.ttb.gov/news/use-of-the-word-clean-in-alcohol-beverage-labeling-and-advertising>

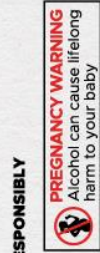
² Anne Koopmann et al. Drinking water to reduce alcohol craving. *Psychoneuroendocrinology*. 2017 Nov;85:56-62.

Almost everyone agrees Gin tastes lovely but has a reputation as a bit of a downer. We are here to change your perception of Gin. Using the purest Byron Bay Spring Water along with a unique blend of native Australian botanicals, we have created what we believe is the world's cleanest Gin. Our Gin is a far cry (see what we did there?) from the Gin that was drunk in foggy, depressing old London.

To be a Hydro Homie keep well hydrated with tonics low in sugar and salts.

When will you thank us for that advice? Tomorrow homie.

Distiller:	<i>Craig</i>	Batch:	
-------------------	--------------	---------------	--



Byron Bay Throat Yoga Pty Ltd
56 Dover Drive, Burleigh Heads QLD, 4220



Hydro Homies
Clean Australian Dry Gin
Back Label

Almost everyone agrees Gin tastes lovely but has a reputation as a bit of a downer. We are here to change your perception of Gin. Using the purest Byron Bay Spring Water along with Juniper Berries that define real Gin, we then distil through a subtle infusion of Australian botanicals to infuse the freshness and vibrancy of the Australian bush. Our Gin is a far cry (see what we did there?) from the Gin that was drunk in foggy, depressing old London.

To be a Hydro Homie keep well hydrated with sparkling water, avoid sugary drinks and artificial flavours and preservatives.

When will you thank us for that advice? Tomorrow homie.

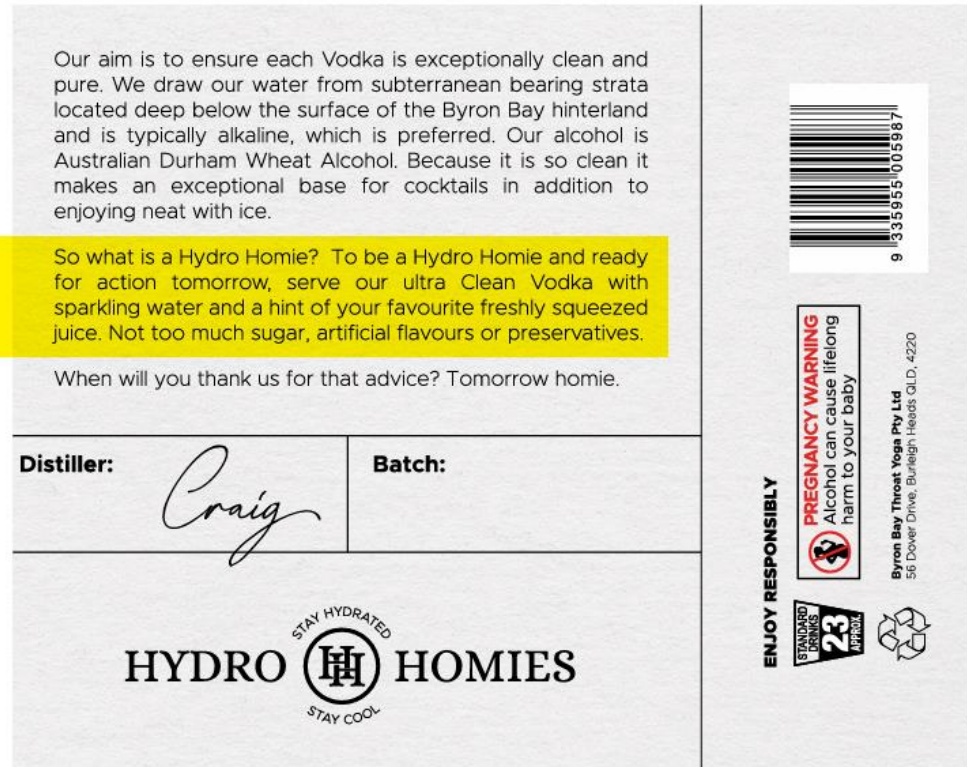
Distiller:	<i>Craig</i>	Batch:	
-------------------	--------------	---------------	--



Byron Bay Throat Yoga Pty Ltd
56 Dover Drive, Burleigh Heads QLD, 4220



Hydro Homies
Clean Contemporary Dry Gin
Back Label



Hydro Homies
Clean Vodka
Back Label

- We did not advertise the product as made in Byron Bay while it is produced in Queensland. We clearly state that we are using water from the Byron Bay Hinterland. We do not say “Made in Byron Bay”. At this stage, we only refer to using water from the Byron Bay Hinterland, and we do not state the product is made in Byron Bay.
- We did not pre-vet although perhaps this is wise in future. However we did consult widely to ensure our label complied with the guidelines. Although the design is a little different, the statements on our label are nothing new or different to many other brands. We go further than the mandatory responsible drinking statement. Urging people to drink water when consuming alcohol was something we never imagined could be a problem. It certainly does not promote an idea that the product is therapeutic, but the contrary, it requires water.

The Panel’s View

14. This determination has arisen from a complaint about the packaging of three products by Hydro Homies, namely Clean Australian Dry Gin, Clean Contemporary Dry Gin and Clean Vodka.
15. Each of the products are sold in 700ml glass bottles, with the front label displaying:
 - the alcohol spirit type ie vodka or gin;

- the descriptor “Clean” positioned above the product type;
 - the Company logo with two intertwined letters ‘H’ enclosed by a circle and positioned between the words “Hydro” and “Homies” above the product type;
 - in small font “Stay Hydrated” and “Stay Cool” are positioned above and beneath the logo;
 - for each product the front label includes an explanation that it has been “Made with pure spring water from the Byron Bay Hinterland” or “Made with pure spring water from Byron Bay”, and in the case of Clean Vodka that it is “Charcoal Filtered for Purity”.
16. On the rear of the bottle is a short narrative about the product which includes an explanation of ‘Hydro Homie’. In each case the explanation advises the drinker to keep well hydrated by drinking water and avoid drinking the product with sugary drinks with artificial flavours or preservatives.
17. The complainant contends that the labelling and branding is misleading. Specifically:
- an alcoholic product shouldn’t be advertised as ‘Clean’;
 - the packaging includes ‘Hydro’ in the name which is a reference to hydration; and
 - the product is made in Queensland not Byron Bay as claimed.
18. These concerns in part raise Part 3 (c)(iv) of the Code which provides that an alcohol marketing communication (which includes product packaging) must not suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.
19. In response to the complaint, the Company advised that:
- the word ‘clean’ is intended to convey that the Company has created a product with minimal impurities, and is a statement of quality;
 - the prominent use of the words ‘Vodka’ and ‘Gin’ on the front of the bottle clearly communicates that the contents are alcoholic;
 - the term ‘clean’ has been used by well-established alcohol brands for decades;
 - our instructions make it clear there is absolutely no therapeutic benefit to alcohol, and drinking water and drinking less is recommended. Our label is

very explicit that people drinking alcohol should stay well hydrated with water. The net result of following the advice on our label will, according to studies, reduce the consumption of alcohol. We believe that urging people to drink water on a label for alcohol was a first, and that this would have been a welcomed; and

- we did not advertise the product as made in Byron Bay while it is produced in Queensland. We clearly state that we are using water from the Byron Bay Hinterland. We do not say 'Made in Byron Bay'.

20. The complainant's concern regarding the origin of the product i.e. Byron Bay v Queensland is not an ABAC issue. All marketing irrespective of the product type is covered by government fair trading and consumer protection requirements dealing with not being misleading or deceptive. That said the label does not state the products are made in Byron Bay but that the spring water within the products is sourced from Byron Bay.
21. A brief internet search indicates that the description 'hydro homie' originated from a subreddit on the social media platform Reddit and describes people devoted to water and staying hydrated by consuming water. A review of the Company's website also confirms the emphasis the Company is placing on the value of alcohol consumers staying hydrated. The website does not suggest the Company is seeking to equate the consumption of its alcohol products as giving the benefit of hydration.
22. While the Company may have the intention to market in a manner that relates the benefits of drinking water and not sugary drinks while consuming spirits, the test for assessing whether its product packaging is consistent with ABAC standards is how a reasonable person would probably understand the marketing material and not what the Company intended as such. A 'reasonable person' is a common law construct and means someone who holds values and attitudes found in a majority of the community.
23. Alcohol marketers are entitled to choose their brand posture and highlight that alcohol beverages are produced or distilled in a particular fashion and contain (or exclude) various elements. What a marketer cannot do under the Part 3 (c)(iv) standard is then suggest that either the way the product is made or its constituent parts, results in the consumption of the product giving a consumer positive health or relaxation benefits or helps overcome adversity.
24. Using the descriptor 'clean' in alcohol marketing does raise a potential for the product to be taken as having a health advantage or at least avoiding a health risk. Marketers must be careful to make sure the probable understanding of the marketing is establishing the descriptor is going to a product attribute such as how it is made and not to the use of the product giving the consumer a health benefit.

25. In this instance a majority of the Panel does not believe the product packaging breaches the ABAC standard. In reaching this conclusion the majority Panel members noted:
- the descriptor 'clean' would most likely be understood as referring to the distilling of the product given the reference of 'pure spring water' on the front of the label;
 - the antecedence of the Company name of 'Hydro Homies' might be recognised by some consumers but probably not by most people but this name does not of itself assert the product offers the benefit of hydration;
 - while less influential than the front of the label, the narrative on the rear of the label provides context about the use of clean spring water and that hydration by drinking water explains the 'stay hydrated' reference;
 - taken as a whole a reasonable person would not believe the packaging is claiming that the product offers a positive health benefit.
26. The Company noted in its response that it may engage in future with the ABAC pre-vetting service for major marketing and branding materials. This would be prudent risk management on the Company's part as its brand posture does raise a prospect of confusion that its products are offering a health benefit.
27. The complaint is dismissed.