



ABAC Adjudication Final Panel Determination No 188/23

Products: Island Mist 'Guilt Free' Hard Seltzer
Company: Island Mist
Media: Packaging and Digital (Social Media & Website)
Date of decision: 24 January 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 30 November 2023 in relation to the packaging of and digital marketing for Island Mist Guilt Free Seltzer products (“the products”), by Island Mist (“the Company”). On 17 January 2024 the Panel made a final determination that digital marketing by the Company was not consistent with the Code, and a provisional determination in relation to the packaging of the following products:
 - Tropical
 - Watermelon
 - Passionfruit
 - Lime.
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 30 November 2023.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline does not apply when making a provisional determination on product packaging. This is because of the two-step process involving the opportunity for a company to make additional submissions in response to the provisional determination.

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

10. The complaint relates to the packaging of and digital marketing for Island Mist Guilt Free Seltzer products:

Packaging



Website



A Seltzer That Tastes Good?!

Born and bred on the South Coast of Australia, we have spent countless hours hand-crafting a legitimate, healthier alcoholic option that doesn't compromise on taste. All natural ingredients, triple distilled spirits and pure Australian sparkling mineral water.

[Shop Now](#)

Triple distilled, smooth, pure neutral grain spirit, fused together with gentle, lightly sparkling water and a burst of natural fruit flavours. An easy drinking, low calorie, sugar free experience with all the flavour and fun and none of the bad stuff!

Social Media Account Names and Handles

Facebook:




Island Mist
Guilt Free • Hard Seltzer

Island Mist 'Guilt Free' Hard Seltzer

44 likes • 61 followers

[Message](#) [Like](#) [Search](#)

Instagram:



guiltfreealc [Follow](#) [Message](#) [+](#) [...](#)

33 posts 925 followers 713 following

Island Mist® 'Guilt Free' Hard Seltzer

Premium Australian Hard Seltzer Co.

- [Shop Online](#)
- [6% Alc/Vol](#)
- [100% Renewable Energy Powered](#)
- [No Sugar, Gluten, Preservatives](#)
- islandmist.co

TikTok:



Complaint

11. The complainant objects to the marketing as follows:
 - *The term 'guilt free' is used prominently in advertisement communications by the brand including on their webpage, their social media posts, social media handles and product packaging.*
 - *The concern lies in the ongoing use of the term 'Guilt Free' as part of the company's marketing communications. We believe the use of the term 'Guilt Free' is inappropriate as part of an alcohol marketing communication.*
 - *The company defines 'Guilt Free' as a 'healthier alcoholic option' that does not compromise on taste (taken from their webpage, see Image 1).*
 - *We believe that the term 'Guilt Free' creates the perception that there are minimal health risks associated with alcohol consumption, both short term and long term. 'Guilt Free' implies that the product has no negative side effects and is differentiated from other alcohol products that impact on health. This kind of communication delivers an inappropriate and misleading message.*
 - *The first example refers to the homepage of the Island Mist webpage: <https://islandmist.co/>. As mentioned previously, the company website defines 'Guilt Free' as a "healthier alcoholic option that does not compromise on taste."*

- *The webpage goes on to describe the Island Mist product as ‘all the flavour and fun and none of the bad stuff!’. We hold that this messaging is along the same theme as ‘guilt free’.*
- *The term guilt free is featured prominently across the package labelling. At first glance, one could easily assume that the brand of the product is called ‘Guilt Free’. The font size is large and black and this stands out from the smaller font depicted on the label. We believe that the product is packaged and branded in a similar way to a carbonated soft drink, hence one may assume that it does not contain alcohol.*
- *The third example relates to the handle/account name used by the Island Mist Social media accounts. It should be noted that this handle is used on the Facebook, Instagram and Tik Tok accounts hosted by the brand. The complaint raised is similar to the previously mentioned points that ‘guilt free’ is inappropriate communication for an alcohol brand.*

The ABAC Code

12. A [new ABAC Responsible Alcohol Marketing Code](#) was launched on 1 August 2023. As the complaint relates to marketing communications first made before this date, it will be considered under the [previous Code](#) in line with the arrangements for the transition to the new Code.
13. Part 3 (c) of the previous Code provides that a marketing communication must Not:
 - ...
 - (iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company Response

14. The Company responded to the complaint by letter emailed on 11 December 2023. The principal comments made by the Company were:
 - We appreciate the opportunity to address the concerns raised and provide clarity on our marketing approach.

Clarification on the Term “Guilt Free”

- The term “Guilt Free” in our marketing communications has been misconstrued. It has always been, and continues to be, a reference to our product’s composition – specifically, its lack of sugar, gluten, and preservatives. This term is not, and has never been, an indication or suggestion of any health or therapeutic benefits.

“Healthier Alcoholic Option”

- Our claim that Island Mist® is a “healthier alcoholic option” is in direct reference to its composition compared to other alcoholic beverages that are high in sugar and contain gluten and preservatives. This statement is factual and is intended to inform consumers of the relative composition of our product in the market.

Clear Alcohol Labelling

- We ensure that all our products are clearly labelled as alcoholic beverages. The term “Hard Seltzer” is prominently displayed, and the alcohol percentage is always stated. There is no ambiguity in our packaging or marketing that could lead to confusion with non-alcoholic soft drinks.

Compliance with Regulations

- Our products and marketing strategies comply with all relevant laws and regulations in Australia. We are committed to responsible marketing and ensure that our communications are in line with the ABAC Code and other regulatory guidelines.

Industry-Wide Usage of Similar Terms

- It is noteworthy that the term “Guilt Free” and similar claims are commonly used across the seltzer industry. These terms are industry standards to denote products free from certain additives like sugar, gluten, and preservatives. Targeting our brand alone on this basis would be inconsistent and overlooks a widespread industry practice.

Conclusion

- In conclusion, the complaint against our use of the term “Guilt Free” and related marketing communications is unfounded and based on a misinterpretation of our messaging. Our marketing has always been clear in its intent – to inform consumers of the composition of our product without implying any health or therapeutic benefits. We trust that this response clarifies our position and demonstrates our commitment to responsible marketing practices.

15. The Company responded to the provisional determination by email on 23 January 2024. The additional comments made by the Company were:

- We at Island Mist are deeply disappointed and strongly disagree with the Panel's determination. As a small company, we feel unfairly targeted by this decision. Our marketing communications, which we have always believed to be clear and compliant with existing regulations, appear to have been

misinterpreted. We stand by our belief that we have not breached any rules.

- We acknowledge the independence and jurisdiction of the ABAC and, as such, we will comply with the Panel's decision. We have initiated the process of removing the term "Guilt Free" from all our marketing communications, including our website, Instagram and TikTok handles, Facebook name, and other promotional materials.
 - We are committed to discontinuing our current packaging and will collaborate with the Panel to develop new packaging that aligns with what is deemed compliant. We understand that this is a significant undertaking and assure you that we will strive for a smooth and timely transition. We will utilise pre-vetting clearance by the ABAC code to ensure future compliance.
 - While we respect the Panel's role in upholding industry standards, we hope our efforts to comply, despite our disagreement, demonstrate our commitment to responsible marketing. We look forward to working with the Panel to ensure our future marketing efforts are in full compliance with the ABAC Code.
16. As the Company has not sought a re-hearing of the provisional determination, under the rules and procedures applying to the Panel the determination now becomes final.

The Panel's View

Introduction

17. This determination arises from a complaint about the packaging of, and digital marketing for, the Island Mist Guilt Free Seltzer products, which come in four different flavours – tropical, watermelon, passion fruit and lime. The complainant is concerned that:
- the marketing creates the perception that there are minimal health risks associated with alcohol consumption, both short term and long term;
 - in particular, the words 'Guilt Free', '...none of the bad stuff' and 'healthier alcoholic option' imply that the products have no negative side effects and are differentiated from other alcohol products that impact on health; and
 - the product is packaged and branded in a similar way to a carbonated soft drink, hence one may assume that it does not contain alcohol.
18. The complainant's concerns raise Part 3 (c)(iv) of the Code which requires that an alcohol marketing communication must not suggest that the consumption of

an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation.

19. 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 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.
20. The complainant's concerns cover the products' packaging, as well as website and social media marketing. The Panel will consider each of these media types in turn below. The Panel's role is to assess the consistency of these alcohol marketing communications with Part 3 (c)(iv) standard. This is done from the standpoint of the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and attitudes found by most people in the community is the benchmark.

The Packaging

21. The products are packaged in a cardboard holder containing four individual bottles. The colour of the cardboard holder reflects the flavour of the product i.e. purple for passionfruit, green for lime, pink for watermelon and orange for tropical. The most prominent messaging on the holder is:
 - Hard Seltzer; and
 - Guilt Free
 - with smaller messaging as to the brand name 'Island Mist' and the product being sugar free, gluten free, preservative free and having less than 1 gram of carbs. The alcohol percentage is also shown.
22. The complaint went specifically to the labelling of each individual product. This labelling contains the same core elements, with different colours used depending on the flavour profile. The following is a description of the labelling template used:
 - each flavour is sold in a 300ml clear bottle (through which the clear liquid can be seen), with a screw top;
 - the label has a white background;
 - for various label features different shades of an appropriate second colour are used, depending on the flavour (ie purple for passionfruit, green for lime, pink for watermelon and orange for tropical);

- at the top of each label, in relatively small black font, are the words 'Island Mist' with a squiggly line beneath in the relevant second colour;
- this is followed by the words 'Guilt Free' in relatively large black font, and 'Seltzer' in smaller black font;
- the following words are then shown, in progressively darker shades of the relevant second colour;
 - Alcohol (in a relatively light shade);
 - Sparkling Water & (in a darker shade); and
 - A twist of fruit flavour (in the darkest shade);
- at the bottom of the label the flavour descriptor is written, in white font against a rectangular block of the relevant second colour (in the darkest shade); and
- on the right side of the label are circular shapes, each with the relevant second background colour, and containing in a darker font information about the product:
 - Gluten Free;
 - Preservative Free;
 - Sugar Free;
 - Less Than 1g Carbs; and
 - 6% ALC/VOL.

23. The complainant argues that:

- the use of the term 'Guilt Free' on the products' packaging implies that the products have no negative side effects and are differentiated from other alcohol products that impact on health; and
- the products are packaged and branded in a similar way to a carbonated soft drink, hence one may assume that it does not contain alcohol.

24. The Company submits the labelling is consistent with the ABAC requirements contending:

- our marketing has always been clear in its intent – to inform consumers of the composition of our product without implying any health or therapeutic benefits;

- the term 'Guilt Free' is a reference to the product's composition – specifically, its lack of sugar, gluten, and preservatives. This term is not, and has never been, an indication or suggestion of any health or therapeutic benefits;
 - 'Guilt Free' and similar claims are commonly used across the seltzer industry. These terms are industry standards to denote products free from certain additives like sugar, gluten, and preservatives; and
 - the products are clearly labelled as alcoholic beverages. The term 'Hard Seltzer' is prominently displayed, and the alcohol percentage is always stated. There is no ambiguity in our packaging or marketing that could lead to confusion with non-alcoholic soft drinks.
25. When assessing a design of a can or bottle, it cannot be expected that a reasonable person will turn the container around the full 360 degrees and study it in fine detail. Rather it is the front of the can/bottle that will be most influential in how the person will probably understand the packaging and impressions will be most strongly shaped by larger font writing and the predominant colours and design features.
26. It is notable that the descriptor 'Guilt Free' is far more prominent on both the cardboard holder and the bottle labelling than the 'Island Mist' brand name. A reasonable person upon viewing the product would most likely believe (without a closer inspection) that the product is named Guilt Free. And it is how the guilt free descriptor would be probably understood which is the decisive point in this case.
27. The expression 'guilt free' is often used to describe something that may be enjoyed without feeling unhappy that you are doing something bad, for example, a guilt-free chocolate cake made without fat. The starting premise is that an item or activity has some inherent disadvantage but, in this instance, it can be used or undertaken without incurring the disadvantage or detriment.
28. The complainant takes guilt free to mean that the marketing is claiming that the product avoids the inherent detriment caused by consuming alcohol and hence would be understood as making a health benefit claim. The Company contends the guilt free descriptor would not be taken as making a claim of health benefit but would be understood by reference to its composition - gluten, sugar and preservative free.
29. The standard is clear that alcohol marketing making a direct claim of a positive health benefit e.g. 'moderate consumption is good for your heart' or 'this product gives you energy'- is not permitted. At the other end of the spectrum, the standard does not exclude marketing claims about a product's attributes such as being gluten or sugar free. A claim about the avoidance of a negative

consequence can be understood as equating to a positive health claim depending on how the marketing communication is constructed.

30. On balance the Panel believes that the Part 3 (c)(iv) standard has been breached. In reaching this conclusion the Panel noted:
- the policy intention of the standard is that marketing communications are not to be understood as making claims as to the positive health benefits of alcohol use;
 - the packaging information hierarchy highlights the descriptor 'guilt free' over all other branding elements and this descriptor would be probably understood as meaning that the product can be consumed without any negative consequences;
 - the subordinate packaging references the product being gluten, sugar and preservative free would not likely alter the overall understanding that the product has no negative consequences; and
 - this goes beyond a comparison of the product's attributes to an 'ordinary' alcohol beverage and would probably be understood as claiming it is relatively beneficial in health terms compared to alternate products.

Website

31. The complainant is concerned that the following wording on the Company's website offends the Part 3 (c)(iv) standard (emphasis added):
- '**...healthier** alcoholic option'; and
 - 'an easy drinking, low calorie, sugar free experience with all the flavour and **none of the bad stuff!**'.
32. In response the Company argued that:
- the claim that Island Mist is a 'healthier alcoholic option' is in direct reference to its composition compared to other alcoholic beverages that are high in sugar and contain gluten and preservatives. This statement is factual and is intended to inform consumers of the relative composition of our product in the market.
33. The Panel believes that the website text breaches Part (c)(iv) after taking into consideration that:
- there is no requirement that alcohol marketing state that alcohol consumption has harmful effects;
 - what cannot be claimed is that alcohol use provides health benefits;

- the marketing copy suggests that the alcohol products offer better health relative to other alcoholic products; and
- a reasonable person would conclude that consumption of the Company's alcoholic beverages offer therapeutic benefits, are relatively beneficial for a person's health or wellbeing and do not have the adverse side effects of alcohol consumption.

Social Media

34. The complainant is concerned that the social media handles and account names used by the Company are in breach of the Part 3 (c)(iv) standard, specifically:

Facebook	<ul style="list-style-type: none"> • Island Mist "Guilt Free" Hard Seltzer
Instagram	<ul style="list-style-type: none"> • guiltfreealc • Island Mist "Guilt Free" Hard Seltzer
TikTok	<ul style="list-style-type: none"> • @guiltfreealc

35. Consistent with the reasons explained in paragraphs 24 to 28 above, the Panel believes that the use of the term 'Guilt Free' in the social media handles and account names, breaches the Part 3 (c)(iv) standard.

Summary

36. The Panel has found the Company's marketing does breach the Part 3 (c)(iv) standard. The Panel notes that the Company does not believe its packaging was in breach of the standard, but it has nonetheless decided to accept the Panel's finding and remove the current packaging from the market. It will also engage with the ABAC pre-vetting service in the creation of replacement packaging.

37. For the Company to disagree with the determination but accept the consequences in any event speaks highly of its corporate responsibility and its understanding of the special obligations expected of alcohol industry participants.

38. The Panel makes a final determination that the packaging for Island Mist 'Guilt Free' Hard Seltzer is in breach of Part 3 (c)(iv) of the ABAC Code.