



## ABAC Adjudication Panel Determination No 13/24

**Products:** The Glenlivet Scotch Whisky  
**Company:** Pernod Ricard Winemakers  
**Media:** Outdoor  
**Date of decision:** 12 February 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Louisa Jorm  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 15 January 2024 in relation to outdoor advertising for The Glenlivet Scotch Whisky (“the product”), by Pernod Ricard Winemakers (“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 January 2024.
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 Advice**

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was obtained for the content of the marketing (Approval Number 2350).

### **The Marketing**

10. The complaint relates to outdoor advertising for The Glenlivet:



## Complaint

11. The complainant objects to the marketing as follows:
- *sexual wording 'between the legs';*
  - *marketing alcohol to women explicitly;*
  - *ambiguity (suggests women don't care who or what they sleep with under the influence);*
  - *racially discriminatory as this would never be directed at non-whites without being considered offensive;*
  - *ambiguity and open immorality in slogan 'obey the rules - miss out on the fun' - not about responsible drinking; and*
  - *overall just looks wrong, insidious and offensive.*

## The ABAC Code

12. Part 3 (a) of the Code provides that a marketing communication must not:

...

- (ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;

...

## The Company Response

13. The Company responded to the complaint by letter emailed on 23 January 2024. The principal comments made by the Company were:
- Pernod Ricard Winemakers Pty Ltd (Pernod Ricard Winemakers) is a signatory to the Alcohol Beverages Advertising Code Scheme (ABAC) and takes compliance with the ABAC Responsible Alcohol Marketing Code (Code) very seriously. We are committed to the responsible marketing of our products and always endeavour to abide by the Code as well as other applicable advertising codes and laws. As a member of the global Pernod Ricard Group, we are also committed to the responsible marketing and

consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.

- The complaint relates to a bus shelter advertisement for The Glenlivet Scotch Whisky, located in Bedford, WA 6052 (Advertisement).
- The Advertisement was submitted to AAPS on 19 May 2022 (Application No. 62-2022) and received AAPS approval on 20 May 2022 (Approval No. 2350).
- Whisky is synonymous with heritage, tradition, and ritual. The objective of the Glenlivet “Obey the Rules. Miss the Fun” campaign is to broaden representation of whisky and whisky drinkers by challenging outdated stereotypes and unwritten rules about traditional whisky consumption.
- Two key stereotypes addressed in this Advertisement are a) most prominently, that whisky is a man’s drink and b) to a lesser extent, that whisky should be enjoyed on its own (that is, “neat” or “on the rocks”). The Advertisement seeks to defy these unwritten whisky rules as follows:
  - The Advertisement features a female actor, Anna Paquin.
  - The headline asks the question “A man’s drink?” then responds with “Whisky doesn’t care what’s between your legs”. This illustrates that whisky is not just for men, and that gender and sex are irrelevant considerations to one’s choice of beverage.
  - The drink held by the actor is a cocktail featuring a pineapple as garnish. This demonstrates whisky can be enjoyed in a range of different formats and not just in traditional neat format.
- “Obey the Rules. Miss the Fun” appears in the context of, and as a footnote to, the above mentioned elements. Viewing the Advertisement as a whole, “Obey the Rules. Miss the Fun ” would most commonly be interpreted as encouragement to break the traditional stereotypes and unwritten rules about how and by whom whisky should be consumed. The ‘rule’ that should be disobeyed is that whisky is a man’s drink. The majority of the community would not take the view that encouragement to break whisky traditions naturally extends to encouragement of rapid consumption, misuse or abuse of alcohol, or offensive or immoral behaviour.
- The Advertisement portrays a woman partaking in responsible consumption of alcohol. She is sitting fully clothed in a demure fashion. There is nothing sexual or provocative about the nature of the actor’s portrayal and there is nothing to indicate that the actor has been drinking irresponsibly. Nothing is said or even inferred about the actor’s sexual activity or history, or that drinking alcohol will cause her not to care about who she sleeps with.

- “Whisky doesn’t care what’s between your legs” is challenging language, but is not inherently distasteful or sexual. The message is simply that whisky is not just for men and that whether you are a man or a woman or woman does not matter.
- We submit that the Advertisement taken as a whole does not breach Part 3(a)(ii) of the Code, as it does not show (visibly, audibly or by direct implication), encourage or treating as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol.
- We wish to reiterate that Pernod Ricard Winemakers is committed to the responsible marketing of its products and upholding compliance with the Code. Pernod Ricard Winemakers maintains strict internal and external processes to help ensure compliance. We value responsible enjoyment of our products and aim to foster a positive and respectful community around our brand.

### **The Panel’s View**

14. This determination has arisen from a complaint about outdoor advertising for The Glenlivet Scotch Whisky positioned on a phone box. The ad shows actor Anna Paquin in a light turquoise dress, holding a glass of what is presumably a cocktail containing the product. The ad contains the taglines ‘A man’s drink? Whisky doesn’t care what’s between your legs’ and, in smaller letters, ‘Obey the rules. Miss the fun’. A picture of a full-size bottle of the product is shown in the bottom left corner.
15. This specific advertisement is part of a larger campaign which has been running since mid 2022. This campaign has attracted a number of complaints on decency and sexism grounds which are within the ambit of the AANA Code of Ethics, administered by Ad Standards and not the ABAC. There has, however, been one previous complaint where ABAC issues were raised and which was referred to the Panel for adjudication - see Determination 36/23 ([36-23-FINAL-Determination-9-April-2023-1.pdf \(abac.org.au\)](#)).
16. While a part of the same campaign, the marketing communication considered in the earlier Panel decision had a different major strapline (being ‘Who gives a dram about the rules?’) and showed a different photo of Ms Paquin (although she was wearing the same dress and also holding a beverage glass). Both ads include the minor strapline ‘Obey the rules. Miss the fun.’, which, in the context of the earlier ad was not found to offend the ABAC standards. Each ad, however, needs to be assessed on its own merits and the differences between the ads require a new Panel assessment.
17. The complainant contends the ad is irresponsible and offensive. Essentially the concerns raised fall more directly under the Code of Ethics and do not relate to

alcohol as a product as such. In other words, it can be reasonably assumed that the complainant would find equally distasteful an ad marketing chocolate milk if it adopted the same messaging like 'between the legs'. Further the contention that the ad is racially discriminatory is also an issue under Code of Ethics.

18. Ad Standards has made a decision about the marketing campaign in July 2022. Because Ad Standards adopts a different approach to public complaints as compared to the ABAC Scheme, all potential issues about the consistency of the campaign and the provisions of the Code of Ethics were considered in this decision. Accordingly, it is unlikely the current complaint will result in a fresh decision by Ad Standards.
19. The jurisdiction of the ABAC Scheme is triggered because the complainant raises some issues about the use and the effects of alcohol. Specifically, the alcohol related concerns are:
  - the ad markets alcohol to women explicitly;
  - ambiguity suggesting that women don't care who or what they sleep with under the influence;
  - there is ambiguity and open immorality in the slogan 'obey the rules - miss out on the fun'. The ad is not about responsible drinking.
20. As a starting point there is no ABAC standard that alcohol marketing cannot be explicitly directed towards female consumers. It is impermissible for an alcohol marketing communication to encourage alcohol consumption during pregnancy or while a woman is breastfeeding (see Part 3 (a)(i)(B) of the Code) but marketing can be and is directed at women generally.
21. The other alcohol related concerns raised by the complainant bring into play the ABAC standard contained in Part 3 (a)(ii). This standard requires that an alcohol marketing communication must not show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid alcohol consumption, misuse or abuse of alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of alcohol.
22. The Company submits the billboard does not breach the ABAC standards. It is argued that the ad challenges the stereotype that whisky is a 'man's drink' by using the actor Anna Paquin and proposing that whisky doesn't care about the gender of who drinks it. The Company contends the ad shows Ms Paquin drinking quietly and responsibly. She is sitting fully clothed in a demure fashion. There is nothing sexual or provocative about the nature of her portrayal and there is nothing said or inferred about her sexual activity or history.

23. The assessment of whether a marketing communication is inconsistent with an ABAC standard is the 'reasonable person' test. This test is sourced from the Australian common law system and means the marketing communication is assessed from the standpoint of the probable understanding by a reasonable person. This means that the benchmark is the values, opinions and life experience shared by most members in the community.
24. If a marketing communication can be interpreted in several ways, the reasonable person benchmark requires that the most probable understanding be adopted over a possible but less likely interpretation.
25. The Panel does not believe the marketing communication breaches the ABAC standards. It is accepted that taken in isolation, the tagline 'Whisky doesn't care what's between your legs' could be understood as meaning that alcohol use leads to indifference as to who you sleep with - if 'between your legs' is taken as a reference to sex. However this interpretation discounts the framing question - 'A man's drink?' which means most people would likely understand as being answered by the 'Whisky doesn't care what's between your legs' tagline.
26. Combined and read as a whole, the ad would be understood by most people as suggesting that any assumption that whisky is only consumed by men is incorrect. Further the sexualised interpretation suggested by the complainant is not supported by the image of Ms Paquin who is pictured sitting quietly with the product. Her appearance, pose and demeanour does not imply sexual connotations. Other cues to how the ad would most likely be understood are:
- the 'don't follow the rules' tagline, which within the context of the ad is more likely to be understood as referencing the usual choice of drink by women than an encouragement of anti-social behaviour or excessive alcohol use; and
  - Ms Paquin does not appear affected by alcohol.
27. Accordingly the Panel believes that taken as a whole, a reasonable person would not consider the ad is promoting alcohol related offensive behaviour or the misuse or abuse of alcohol.
28. The complaint is dismissed.