



## ABAC Adjudication Panel Determination No 22/24

**Product:** Venue  
**Company:** Gilligan’s Hotel & Resort  
**Media:** Digital – Facebook  
**Date of decision:** 4 March 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Louisa Jorm  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 1 February 2024 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 1 February 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 not obtained for the content of the marketing.

## The Marketing

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

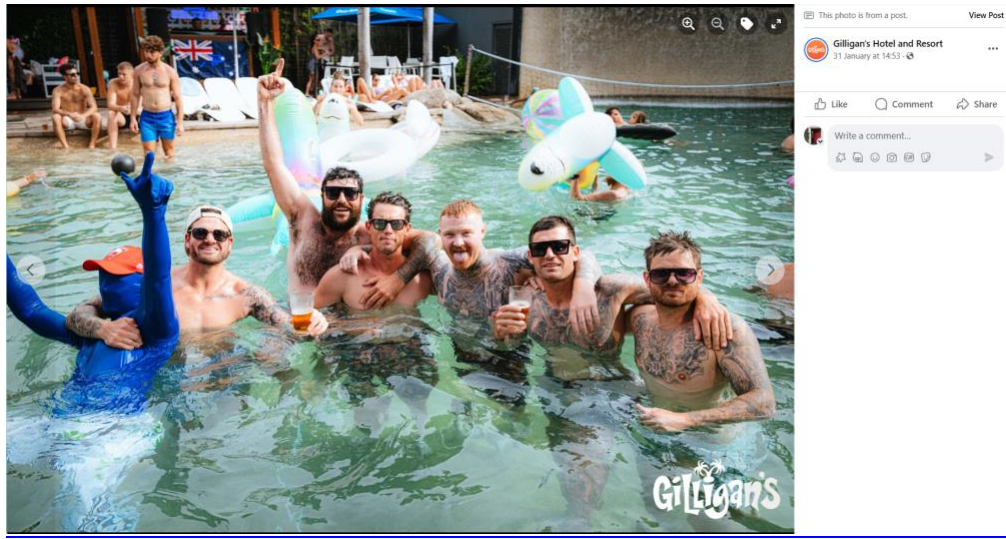
[Link to Image 1](#)



[Link to Image 2](#)



[Link to Image 3](#)



[Link to Image 4](#)



## Complaint

11. The complainant objects to the marketing as follows:

- *Gilligans Backpackers has posted an album called AUSTRALIA DAY POOL PARTY ft BROOKE EVERS! 26.01.24.*
- *Shows people swimming before or during alcohol consumption.*

## **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. 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 images posted to Facebook show or directly imply 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 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; or
  - it is established that a person depicted consuming alcohol would not be understood as likely to be swimming eg a poolside scene where a person consuming alcohol is fully clothed tending to a BBQ while others swimming
20. In the current case the marketing shows patrons in and around the resort's swimming pool, wearing swimwear, in one instance with a towel over their shoulder, and in another with wet hair. One of the images depicts people holding glasses of what would appear to be alcoholic beverages while actually in the pool, and another shows a person sitting on the side of the pool holding a beverage. There are no cues that the patrons have finished swimming for the day. The reasonable person would conclude that the images are depicting alcohol consumption before and during swimming, which is in breach of the Part 3 (d) standard.
21. The complaint is upheld.