



## ABAC Adjudication Panel Determination No 99/24

**Product:** Alcohol  
**Company:** Liquor Legends  
**Media:** Telephone Text  
**Date of decision:** 12 August 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 3 July 2024 in relation to text marketing for alcohol (“the product”) by Liquor Legends (“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 3 July 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 approval was not obtained for the marketing.

## The Placement

10. The complaint relates to text marketing from Liquor Legends.

## Complaint

11. The complainant objects to the marketing as follows:
  - *I have texted 'stop' twice to Liquor Legends text message ads and still receive them - I am a sober person of 18 months as is my husband so we have not even shopped there recently.*

## The ABAC Code

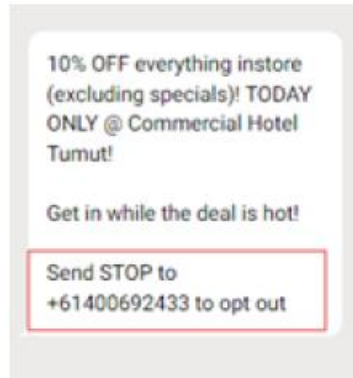
13. Part 4 (e) of the Code provides that an Alcohol Marketing Communication must not be delivered directly to:
  - (iii) any person that has sought removal from the marketer's mailing list.

## The Company Response

14. The Company responded to the complaint by letter emailed on 25 July 2024. Its primary comments were:
  - Liquor Legends marketing and advertising banner, represents over (250) Independent Retailers nationally, with an industry leading Rewards and Loyalty program (REWARDS), containing over 975,000 registered members. Liquor Legends markets to consented recipients via digital communication of up to 400,000 messages per week. As a prominent liquor retail business, we understand the importance of responsible liquor retailing along with the effects and restrictions of liquor advertising and marketing, particularly explicit consent for direct marketing.
  - I appreciate ABAC bringing this complaint to our attention and would like to declare, we do take this information seriously for immediate attention. I also appreciate the opportunity to respond to questions

outlined in your advice to us, for the Panels consideration and assessment of our business protocol.

- All contact information held by Liquor Legends is collated by customers signing up to the Rewards program and consenting to receive marketing communications at the time of doing so. This can occur at one of three locations:
  - Online at <https://liquorlegends.com.au/> by creating an account to check out.
  - Instore at a Liquor Legends, Urban Cellars, Clubslink or VLG bottle shop by filling out a manual form or speaking directly with an attendant to complete this for the shopper.
  - On premise at one of our venues (including signing up at POS to receive members discounts on food & drink) by completing a manual form, speaking directly with an attendant to complete this for the customer or via an on premise ordering app (such as Chewzie).
- This is outlined in our Privacy Policy available here:
  - <https://liquorlegends.com.au/privacy-policy>
- Contact information is stored within our CRM platform under our Single View of Customer (SVOC) Subscribed master list which refreshes automatically as information is captured. This list is then filtered to customers based on their buying preferences to determine what promotions they will receive. If the customer has not made enough purchases to assign them a category, they receive 'beer' as the default (due to it being our largest category purchased from). In this case, the customer received the offer in question because they either:
  - Had purchased beer on their last visit OR
  - Had not made enough qualifying purchases to determine an algorithm.
- Each communication sent to the Liquor Legends database includes a clear one step 'opt out' process. Text messages advise consumers to text 'STOP' to the provided number as below example:



- Similarly, an 'Unsubscribe' button is included in email footer, as per following example:



- If a customer chooses to unsubscribe from either of these communications, by default they are unsubscribed to all of our communications (both text & email). When a customer chooses to unsubscribe, this is automatically processed.
- Liquor Legends also provides Support Office contact information & an online form for customers available here:
  - <https://liquorlegends.com.au/contact-us>
- If a customer contacts the Support Office directly to opt out of communication, we firstly check our CRM platform to determine if the consumer has opted out correctly (typed only 'STOP' directly to the provided opt out number). The CRM platform keeps a log of all incoming communications from customers, so we can see if this process has not been completed correctly (if a customer makes a typo within the opt out message, or has not sent a message to the opt out number at all).
- The customer is then manually opted out from communications by the Liquor Legends Support team. Within our CRM platform, this then removes the customer from the SVOC Subscribed master list. As this

master list is the starting point for all of our audience segmentation, they can no longer be filtered down for future communications. After we confirm their contact has been removed from our SVOC subscribed master list, we then delete their contact information from the CRM platform entirely.

- Pending the reason for unsubscribing from marketing communications, the customer can also be advised of the Liquor Legends self-exclusion form available here:
  - <https://liquorlegends.com.au/self-exclusion>
- The Liquor Legends Support team can also manually complete this for the customer.
- Liquor Legends CRM platform automatically refreshes all customer data as information is captured. All audiences created from the SVOC master list are also refreshed before use to ensure it only contains relevant audience members. Our CRM platform contains a log of all instances of customers opting out we can refer to. Liquor Legends regularly validates these procedures are correctly running with a direct line to our CRM support team.
- We have tracked the registration and communication of the complainants phone number provided and confirm only one 'STOP' request was received 15/06/2204 and was actioned immediately as per our process protocol.

The screenshot shows a CRM interface. The top section is titled 'Activity' and contains a table of messages. The bottom section shows a customer profile with various fields.

Message	Address	Status	Send Date
? STOP STOP	[REDACTED]	Delivered	15/06/2024 12:12 PM
? STOP You have opted out of receiving SMS messages from Liquor Legends. Please contact us...	[REDACTED]	Delivered	15/06/2024 12:12 PM
BEER_TacticalWeek3_P25-26 Legendary savings! Carlton Dry 24pk \$51.99. Prices vary by store. Ends 18/6. Shop now	[REDACTED]	Delivered	15/06/2024 12:03 PM

Outlet Description	Reward Card ID	First Name	Last Name	Mobile	Email	Opt in	Join date
Hervey Bay Hotel	530300145	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	NO	08/27/2022

- I am confident our procedures and constant data diligence is considered effective.
- Again, I appreciate ABAC making us aware of this complaint and would be happy to provide any further information should you require.

## The Panel's View

### Introduction

15. The ABAC Code consists of content standards and placement standards with which alcohol marketers must comply when marketing alcohol beverages. The content standards go to the messaging which a reasonable person would probably take from a marketing communication whereas the placement standards go to where a marketing communication can be located and the audience the marketing is directed at.
16. The placement standards are contained in Part 4 of the Code. In large part, these placement standards have a policy objective that alcohol marketing should be directed towards adults and to the extent possible away from minors. Part 4 (e) goes to the delivery of marketing information to a specific individual (as opposed to a wider group via broadcast or narrowcast media) and consists of three requirements. The first requirement prohibits physically handing a minor a flyer or other printed material about alcohol. The second prohibits sending electronic direct mail about alcohol to a minor.
17. The third requirement contained in Part 4 (e)(iii) was added to the Code in August 2023 and provides that an alcohol marketing communication must not be delivered directly to any person that has sought removal from the marketer's mailing list. This requirement is wider than protecting minors and applies to 'any person'. It places an obligation on marketers to respect the wishes of a person who has 'sought removal from the marketer's mailing list'. A mailing list incorporates customer databases used for all marketing contacts, not simply physical post.
18. Accordingly the Part 4 (e)(iii) standard will be breached if:
  - an alcohol marketer employs direct communication techniques to contact individual consumers or potential consumers;
  - the marketer has access to a list or database that contains names and contact details of persons (of any age not simply minors);
  - a person takes an action to seek the removal of their name or contact details from the list used by the marketer;
  - the marketer fails to act on the person's request not to be contacted and continues to forward the person marketing communications.

### The Current Case

19. The Company explains that Liquor Legends represents over 250 independent alcohol retailers and its customer loyalty program 'REWARDS' contains the contact information of over 975,000 registered members. According to the

Company its members join its loyalty program either online or instore and in doing so consent to receive digital marketing communications.

20. The Company goes on to give details of how a member can opt out from receiving marketing communication such as text messages or electronic mail. Upon a member opting out, the Company says a process is followed to have the member's name removed from the marketing database.
21. The complainant contends that two attempts were made to stop text marketing messages being received. On each occasion the complainant sent 'STOP' in response to text messages, but further marketing was received. This then led to the complaint being made to the ABAC Scheme.
22. To assist in the investigation of the complaint, the complainant allowed their mobile number to be supplied to the Company. The Company says its investigation indicated that only a single 'STOP' request was received from the complainant's number on 15 June 2024 and the request was actioned immediately.
23. It is difficult for the Panel to know what has precisely happened. There is no reason to believe that the complaint isn't completely genuine as there is no apparent reason why the complainant would go to the trouble of making the complaint if they had not twice endeavoured to opt out from marketing communications.
24. On the other hand, the Company has supplied extracts from its CRM database that indicate only the single 'STOP' message was received and it was then acted upon. It is noted that the Company's process does seem to involve a manual step in instances of a customer making a typo within the opt out message.
25. With any process where people either have to take a step such as using the 'opt out' option and spell a word or there is a potential human intervention required to action a opt out request, then human error can occur and not be realised.
26. In the circumstances, the Panel believes the fairest outcome is to uphold the complaint but make a 'no fault' finding on behalf of the Company. This accepts that the complainant did honestly take the steps to seek to opt out as provided by the Company and this occurred twice as submitted. At the same time, the Company evidently has a developed system to both enable customers to opt out from receiving marketing communications and to action these requests.
27. If something went awry at the Company's end, it was not intentional and outside the Company's reasonable control. Equally, if the complainant's understanding of the sequence is not perfectly accurate, then this is a genuine



misapprehension by the complainant. The important thing is that the complainant's request to not receive further marketing is now in place.

28. Finally, the complainant's attention is drawn to the Do Not Call Register. This Register is maintained by the Australian Communications and Media Authority (ACMA) and enables a consumer to limit the number of calls and SMS messages from marketers. Once a telephone number is added to the Register, a marketer has an obligation to 'wash' their contact lists against the numbers on the Register and ensure the number is not contacted for marketing purposes. It is a breach of the law for a marketer (all products not just alcohol) to contact a number on the Register.
29. The complaint is upheld and a no fault ruling made.