



## ABAC Adjudication Panel Determination No 126/24

**Product:** Heaps Normal  
**Company:** Heaps Normal  
**Media:** YouTube  
**Date of decision:** 2 October 2024  
**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 30 August 2024 about YouTube marketing by Heaps Normal (“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 places 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, and 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 is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 30 August 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target 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 before 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 marketing item.

## The Marketing

10. The complaint relates to a video posted to YouTube. A link to and a description of the video are provided below.

[Heaps Normal - JUST SAY NO ...to water! \(youtube.com\)](#)

The Video was accompanied by the following blurb:

### Heaps Normal - JUST SAY NO ...to water!



Heaps Normal  
137 subscribers

Subscribe

👍 21



➦ Share

⬇️ Download



733 views Premiered Jun 23, 2023 #HeapsNormal

July is approaching - it's the time of year when many of you take a bit of time off the sauce, which means it's also the time of year when we see a dangerous trend emerge - the consumption of bland, boring, tasteless beverages at pubs, bars, restaurants and bottle shops across the country. And what's more boring than water, a dull, dangerous threat, hiding in plain sight. This has to stop.

This year we've partnered with multi-instrumentalist and anti-water activist Donny Benet to launch 2023's most important public service campaign - Just Say No To Water. Join Donny, some surprise guests and us over the next little while as we do our best to stamp out this plague on our taste buds. Find out more about our campaign at the link in bio.

[#JustSayNoToWater](#) [#HeapsNormal](#)

The video commences with an explanation that it is a public service message from Heaps Normal.



A PUBLIC SERVICE MESSAGE FROM  
HEAPS NORMAL

<p>We see Donny Benet working out in a gym.</p> <p><b>Donny Benet (DB):</b> <i>Phwaa. Hey, I'm Donny Benet.</i></p>	
<p><b>DB:</b> <i>I'm here today to talk to you about the dangers we come into contact with everyday.</i></p>	
<p><b>DB:</b> The plague on pubs, bars, restaurants and bottlos makes up 71% of our body.</p>	
<p><b>DB:</b> <i>And covers most of the planet too.</i></p>	
<p><b>DB:</b> <i>We're talking about water, a dangerous and boring threat, hiding in plain sight.</i></p> <p>DB then gestures towards a water drinking fountain.</p>	

**DB:** *But there's hope. You can say no to water by grabbing a beautiful frothy, tasty, beery Heaps Normal. No matter how much or how little you are drinking.*

DB is passed a can of Heaps Normal.



DB then has a long drink from the can of Heaps Normal and we can hear gulping noises.



**DB:** *Let's keep water where it belongs, in rivers, lakes, oceans and toilets. Just say no to water.*

DB then slings his bag over his shoulders and walks out.



## Complaint

11. The complainant objects to the marketing as follows:
- *The advertisement is for beer. The campaign says just say no to water and encourages people to drink beer instead of water.*
  - *When I went to the website it turns out that this is a zero alcohol beer but the advertisement does not state this at any point and it looks like regular alcoholic beer.*
  - *This advertisement encourages people to drink beer instead of water.*
  - *Not compliant with ... the Code which requires that advertising must not depict content that would encourage or condone unhealthy or unsafe behaviour.*

## The ABAC Code

12. Part 3 (c) of the Code provides that An Alcohol 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.
13. Part 5 of the Code provides the Alcohol Alternative standards to be applied:
- (a) An Alcohol Alternative Marketing Communication must comply with Parts 3 (b) and 4 of the Code.
  - (b) An Alcohol Alternative Marketing Communication must also comply with Parts 3 (a), (c) and (d) of the Code if it:
    - (i) fails to clearly and prominently identify the product as an Alcohol Alternative; or
    - (ii) also promotes an Alcohol product (beyond a common brand name) or Alcohol use.
14. Part 8 of the Code provides the following definition:

**Alcohol Alternative** means a beverage that is at or less than 0.5% alcohol by volume that:

- has an appearance and style commonly associated with Alcohol; and
- uses a brand or descriptors commonly associated with Alcohol, such as, beer, wine, spirit or other; and
- is not a beverage commonly understood as non-alcoholic, such as fruit juice, soft drink, flavoured milk or other which fall outside the Code remit.

**Alcohol Alternative Marketing Communication** means a marketing communication for an Alcohol Alternative, in any media, generated by, for, or within the reasonable control of an Alcohol Alternative producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

## The Company Response

15. The Company responded to the complaint by letter emailed on 16 September 2024. Its primary comments were:
- Heaps Normal has carefully considered the matters raised in the complaint. With respect to the questions outlined in your letter, we answer as follows:
  - The Code applies to the marketing communication. Heaps Normal produces non-alcoholic beers, which, since 1 August 2023, are products regulated by the Code as 'Alcohol Alternatives'.
  - The intention of the marketing communication is to promote consumption of a non-alcoholic beverage and to popularise alternatives to alcohol consumption in social settings. Whilst it was not the intention of the marketing communication, Heaps Normal can see that a reasonable person who is not aware that Heaps Normal's products are non-alcoholic might perceive the marketing communication as promoting alcohol use. In this case Part 3(c) of the Code would apply to the marketing communication.
  - Heaps Normal does not accept that the marketing communication breaches Part 3(c)(iv) of the Code, for the following reasons.
    - While the marketing communication suggests that viewers should consume Heaps Normal beer rather than water, this is clearly satirical. The reasonable person would understand that Heaps Normal is not seriously suggesting that beer offers health benefits; this is clear from the humorous nature of the verbal commentary in the communication, including its precise wording, and the communication's style and appearance.
    - In addition to the above, at no point does the communication tell the viewer that beer is 'healthy' or a 'healthy' alternative to water. In the

communication, water is satirically described as 'dangerous and boring'. In suggesting that viewers 'Just say no' to water and that they grab a 'beautiful, frothy, tasty, beery Heaps Normal', at most the communication is suggesting that beer is not 'dangerous and boring' — as opposed to conveying some kind of health benefit.

- We also wish to note that the marketing communication complained of has not been actively promoted by Heaps Normal for 12 months. It is not being currently distributed or broadcast; rather, it is housed in Heaps Normal's YouTube content archive, meaning anyone viewing the communication would need to actively look for it (for example, by searching the internet for 'Heaps Normal').
- Heaps Normal understands the importance of complying with the Code. Despite our view that Heaps Normal has not breached the Code, as outlined above, Heaps Normal has in good faith amended the description of the marketing communication to clearly identify to a viewer that the beverage depicted is an Alcohol Alternative. The presence of this wording will ensure that the video is not taken to be a promotion of an alcoholic beverage.
- Finally, Heaps Normal intends to comply with the Code in all future marketing communications.
- Please let us know if you have any questions about the above — we are more than happy to assist you in the resolution of this complaint.

### **The Panel's View**

16. Heaps Normal is an independent, Australian owned alcohol free brewer that commenced operations in July 2020. The Company does not produce or market alcohol products but rather each of the beverages within its range has less than 0.5% ABV which is the alcohol to volume threshold for a beverage to be regarded as being alcoholic.
17. The ABAC Scheme has operated since 1998, and the Code has established good standards for the marketing of alcohol beverages. In August 2023 the Code was extended to capture the marketing of 'alcohol alternatives' i.e. beverages which have less than 0.5% ABV but which are styled and have the appearance of common alcohol products such as zero alcohol beers. As noted by the Company, its product range falls within the ambit of an alcohol alternative.
18. The approach adopted by the ABAC to the marketing of alcohol alternative products is to apply the ABAC standards in two ways. Firstly, the standards going to responsibility towards minors (including the Placement Standards) apply to each marketing communication for an alcohol alternative product.



Secondly, the balance of the ABAC standards will apply to alcohol alternative marketing communications depending if the marketing material fails to clearly and prominently identify the product being marketed as an alcohol alternative.

19. The current complaint concerns a video for Heaps Normal as a range (rather than a specific product within the range). The complainant did not initially appreciate the video was for an alcohol alternative and the Company accepts that a consumer unfamiliar with Heaps Normal as brand might have believed the video was about an alcohol beverage.
20. The Panel also believes that the video does not clearly identify the product as being a zero alcohol beer. This means the video will be treated as if it was promoting alcohol and consequently it needs to be consistent with all the ABAC standards.
21. The complainant's concern about the video is that it suggests people drink beer instead of water. It is argued that this message encourages unsafe and unhealthy behaviour. This concern raises the ABAC standard in Part 3 (c) that requires that marketing not suggest alcohol offers a health benefit.
22. Assessment of whether an ABAC standard has been breached is from the probable understanding of the marketing communication by a reasonable person. A 'reasonable person' is someone who holds the values and opinions and shares the life experiences of most people in the community.
23. The Company argues the video would be understood as satire and not seriously advocating that people replace water with beer. Further, it is argued that the video does not claim its products offer any health benefits. Rather the video satirically describes water as 'dangerous' and 'boring'.
24. Clearly all alcohol products are not a substitute in any sense for water. Alcohol is dehydrating and should only ever be consumed at a moderate rate consistently with the recommendations of the Australian Guidelines to Reduce Health Risks from Drinking Alcohol. The Company's products do not contain alcohol, but just like soft drinks such as carbonated sodas, they are obviously not a 'replacement' for water.
25. A reasonable person who recognised that the Company's products do not contain alcohol, would readily understand that the video is a parody and is not seriously advocating the replacement of water with Heaps Normal beer. But the impact of the video depends on the establishing that the product is non-alcoholic. Without this information the video appears to be conveying an underlying message that alcohol is acceptably an alternative to water even accepting the video would be understood as comedic and not serious.
26. The Company points out that the video is over 12 months old and is not being actively promoted. This is a fair point, but it does not excuse marketing material

failing to comply with Code standards. Further, the power of social media is how quickly and easily online materials can be shared without the active promotion of the original creator of the content.

27. Drawing this together, the Panel does believe the video breaches the Code requirements. In reaching this conclusion the Panel noted:
- the video fails to identify the product as being non-alcoholic;
  - a reasonable person could likely think the video was referring to a regular type of alcoholic beer;
  - a reasonable person would probably understand the video was a parody and is not seriously advocating that alcohol is a viable replacement for water;
  - that said, the underlying humour assumes that alcohol could be considered a viable alternative to 'dangerous and boring' water; and
  - this implicit message suggests alcohol provides the same health essentials as water.
28. The Company has acted to amend the framing of the video to clearly establish that the video is marketing an alcohol alternative. If this is done, then the operation of the Code means the ABAC standards in Part 3 (a), (c) and (d) will not apply to the marketing and the question of compliance with these standards will not arise. The Panel however assesses the marketing as it was at the time it was viewed by the complainant and this means the full suite of ABAC standards apply to the marketing.
29. The complaint is upheld.