



ABAC Adjudication Panel Determination 97/25

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| Determination Date | 4 August 2025 |
| Brand/Company | Alcohol/Kelly's on King |
| Media | Digital - Instagram |
| ABAC Code provision | Part 3 (a)(ii) |
| Outcome | Dismissed |

Part 1 - Determination Overview

Complaint:

The complainant contends an Instagram post irresponsibly depicts a bar worker surreptitiously drinking alcohol while working. Drinking would compromise the worker's ability to perform their duties and make decisions. It also reduces their capacity to manage the business properly, for example, the ability to judge intoxication.

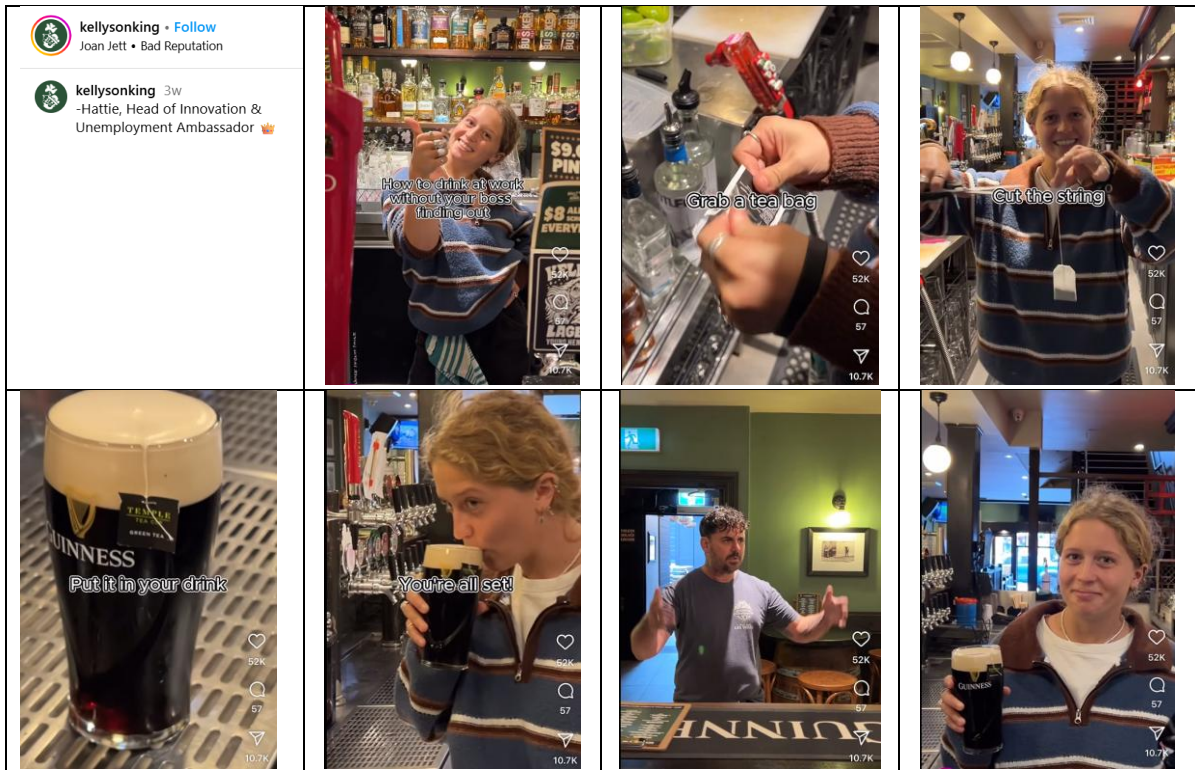
Key findings:

The Panel dismissed the complaint, finding that:

- The regulation of responsible service of alcohol within licensed premises falls in the domain of Liquor and Gaming NSW, and this aspect of the complaint is not an ABAC issue as such.
- In the broader messaging of the post, a reasonable person would understand that the depicted scenario is fanciful, is not to be taken seriously and is not suggesting how alcohol would or should be consumed within a workplace.
- To the extent it was taken more seriously, the scenario depicted indicates the employee was dismissed for drinking at work, and this reinforces that alcohol should not be consumed at work.

Marketing Communications:

The complaint concerns a video posted to Instagram depicting a bar staff member surreptitiously drinking alcohol while working. Their boss then enters the scene, sees what they are doing and gesticulates as though asking them to leave. The song 'Bad Reputation' by Joan Jett plays throughout, and the accompanying text reads "-Hattie, Head of Innovation & Unemployment Ambassador".



Part 2 - The Panel's View

1. The complaint concerns an Instagram post promoting Kelly's on Kings (the Company), an Irish pub in Newtown, Sydney. The video is set in the bar and is framed by superimposed text – 'How to drink at work without your boss finding out'. The scenario is a bar worker who uses a tea bag tag to disguise that she is drinking a glass of Guinness. A person, presumably the boss, enters the scene, sees what is happening and gestures to the bar worker as though asking them to leave.
2. The complainant believes the post is irresponsible. It is argued that if a person serving alcohol has been drinking, they compromise their ability to perform their duties and make decisions. It also reduces their capacity to manage the business properly, for example, the ability to judge intoxication (which bar servers are legally obliged to do). A publication from the Alcohol and Drug Foundation on drinking alcohol while on bar duty was provided by the complainant.
3. On its face the complaint is raising an issue about the responsible service of alcohol (RSA) obligations of licensed premises, specifically that bar staff should not consume alcohol while working given the impact this might have on the staff member's ability to perform their duties. This issue is one for Liquor and Gaming NSW, and the ABAC Scheme does not regulate the compliance of pubs with RSA obligations.
4. The ABAC dimension of the complaint is whether the social media post is conveying a more general message about alcohol use in the workplace. Here, the question might be framed as follows: would a reasonable person understand that the marketing is

suggesting that it is acceptable to surreptitiously drink while at work and if so, does this breach Part 3 (a)(ii) of the Code?

5. Part 3 (a)(ii) provides that a marketing communication must not show, encourage, or treat as amusing, misuse or abuse of alcohol or other irresponsible or offensive behaviour that is related to the use of alcohol.
6. In response to the complaint, the Company advised that:
 - The video was created in a spirit of satire, using exaggerated visual humour, with the view that an ordinary viewer would not interpret the scenario literally.
 - It was never intended to suggest that it is acceptable for a person engaged in the responsible service of alcohol to consume alcohol.
7. The consistency of a marketing communication with an ABAC standard is assessed from a reasonable person's probable understanding of the marketing. A 'reasonable person' refers to the life experiences, values, and opinions held by most members of the community, serving as the benchmark.
8. The video is self-evidently fanciful and not to be taken seriously in terms of the scenario depicted. If someone were trying to hide alcohol consumption, it would involve hiding the alcohol in what appeared to the casual observer to be a cup of tea. In the video scenario, the obvious glass of Guinness is disguised by the tag of the teabag i.e. no disguise at all.
9. A reasonable person has a sense of humour and would interpret the post as mildly amusing. Sometimes humour in alcohol marketing relies on an underlying assumption about alcohol use that is inconsistent with ABAC standards. For instance, if the humour is based on an assumed shared understanding that it is socially acceptable to drink to excess. In such a case the humour is reinforcing the irresponsible use of alcohol, even though the scenario in the marketing is fanciful.
10. In this case, the Panel believes a reasonable person would not take the video as modelling how alcohol would or should be consumed. Firstly the scenario occurs in an empty bar and not an active work setting. Secondly, it is entirely obvious that the tea bag tag is not disguising the woman as drinking alcohol. Thirdly, when the boss finds the staff member drinking, she is apparently dismissed from work. In this sense, the video reinforces that drinking at work is unacceptable.
11. The complaint is dismissed.

Part 3 - Supporting Information

Panel Process

This complaint was received from Ad Standards (the common entry point for all marketing complaints by members of the Australian community). The Chief Adjudicator referred it to

the ABAC Adjudication Panel for consideration against the ABAC Responsible Alcohol Marketing Code. The complaint process is explained [here](#).

The Panel operates under the ABAC Rules and Procedures, taking into account the principles of procedural fairness.

The Panel comprised Chief Adjudicator Professor the Hon Michael Lavarch AO, Health Sector Panellist Professor Richard Mattick AM and Panellist Cristiano Lima.

Applicable ABAC Responsible Marketing Code Standard

Part 3 (a) of the Code provides that an Alcohol 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.*

Company Response

The Company was provided with an opportunity to respond to the complaint, and its principal comments were:

- The video in question shows a bartender pretending that a pint of stout beer could be disguised as a cup of tea by attaching a tea bag string to it. The bartender is subsequently asked to leave the premises as a result of having consumed the beverage.
- The video was created in a spirit of satire, using exaggerated visual humour, with the view that an ordinary viewer would not interpret the scenario literally. It was never intended to suggest that it is acceptable for a person engaged in the responsible service of alcohol to consume alcohol.

Marketing Best Practice

The Company was asked how it demonstrates a commitment to best practices for alcohol marketing and advised that:

- We appreciate ABAC's feedback and guidance. In the spirit of co-operation and respect for this process and community standards, the video has been removed.
- While there was no intent to promote the misuse of alcohol with the video, we fully accept the judgment of the Panel in this matter.
- To ensure a shared understanding of the ABAC Code, we have arranged for all relevant staff to undertake the ABAC online training. We are committed to using the insights gained through this process to guide our future content and ensure compliance with industry standards.

The Panel notes that the Company:

- Is not a signatory to the ABAC Scheme.
- Did not utilise the ABAC pre-vetting service to develop the social media post.