



ABAC Adjudication Panel Determination 150/25

Determination Date	17 November 2025
Brand/Company	Tito's Handmade Vodka/Fifth Generation Inc/ICONIC Beverages
Media	Digital – Facebook and Instagram
ABAC Code provisions	Part 3 (a)(i), (a)(ii)
Outcome	Dismissed

Part 1 - Determination Overview

Complaint:

The complainant is concerned that a post on social media accounts promoting Tito's Handmade Vodka presents an irresponsible and offensive approach to alcohol use.


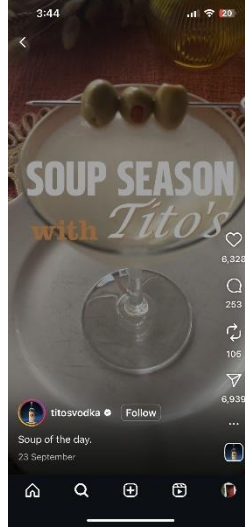
Key findings:

The Panel dismissed the complaint, finding that the social media post was not within the jurisdiction of the ABAC Scheme, noting:

- The social media accounts are not controlled by an Australian alcohol marketer and the specific post was not created by an Australian entity nor was the Australian distributor aware of the making of the post.
- The content of the social media accounts demonstrate that they are intended for the USA and there is no indication that Australian consumers are actively engaging with the accounts e.g. there does not appear to be user generated comments from Australian consumers.
- The Australian distributor of the product, ICONIC Beverages, maintains a website and social media accounts that promote the products they distribute including Tito's Handmade Vodka and the marketing for the product carried on these platforms is within the scope of the ABAC Scheme.
- While ICONIC was able to raise a concern about the post with Fifth Generation, the balance of the factors support the conclusion that the social media sites and the specific post is beyond the remit of the ABAC Scheme and is within the jurisdiction of American alcohol marketing regulators.

Marketing Communication:

The marketing communication is a video posted to social media, as described below:

<p>An alcoholic drink is shown at a table place setting. A spoonful of the drink is taken, and we hear a loud slurping noise.</p> <p>The words "Soup season with Tito's" are then superimposed over the image.</p> <p>The words "Soup of the day." accompany the social media post.</p>		
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Part 2 - The Panel's View

1. ICONIC Beverages is an independent national spirits distributor that sources international alcohol products for sale in Australia. One of the brands distributed by ICONIC is Tito's Handmade Vodka (the product) which is distilled by a company called Fifth Generation based in Austin Texas in the United States. This determination arises from a complaint about a social media post promoting the product.
2. Upon being contacted about the complaint, ICONIC advised it was unaware of the post which was made to the Instagram and Facebook accounts controlled by Fifth Generation. Fifth Generation does not operate in Australia and advised its social media accounts are intended to promote its products to the USA. It stated the post complained about was 'inadvertently made accessible to audiences in Australia'.
3. Given this background, the threshold question is whether the social media post is within the jurisdiction of the ABAC Scheme. Alcohol is a global product, and internet-transmitted media such as Instagram and Facebook are also generally accessible throughout the world. In contrast, the ABAC Scheme is limited in its reach to marketing linked to Australia.
4. This means the Scheme and the remit of the Panel do not extend to every alcohol marketing item that can be accessed in Australia over a global digital platform. To fall within the ambit of the Scheme, the marketing item must have a discernible and direct link to Australia, such as:

- The social media accounts are under the control of an Australian alcohol marketer; or
 - If the accounts are under the control of an international entity, there is a discernible and direct link to Australia, so there is an Australian entity to which the ABAC obligations can attach, i.e., an Australian entity with reasonable control over the marketing communications.
2. Reviewing the Fifth Generation social media accounts establishes that they contain references and materials intended for an audience who predominantly reside in the USA. While some material is 'nationality neutral' such as posts depicting different drink styles made with the product, other posts show interactions in Texas or reference events and the seasons in the USA. There are no obvious references to Australia or Australian consumers.
3. The Panel outlined the factors to consider in whether alcohol marketing posted on a social media account created outside of Australia but accessible in Australia will be within the remit of the ABAC Scheme in Determination 15/25. While each complaint and the surrounding factual circumstances must always be assessed on their own merits, the following indicators are suggestive that a marketing communication accessed in Australia is within the scope of the ABAC Scheme:
- The marketed product is freely available for retail sale in Australia, in contrast to having to be ordered and sent specifically to Australia.
 - The marketing communication for the product is easily accessed in Australia by Australian consumers, e.g. there is no geo-blocking constraint ostensibly stopping the marketing from being seen in Australia.
 - The marketing communication and/or the medium by which it is transmitted (eg social media account) can be reasonably considered as promoting the product to Australian consumers with factors such as:
 - There is content that references Australia; or
 - There is interaction with the marketing from Australian consumers, such as the social media account having Australian-based followers or user-generated comments from Australia; or
 - The marketing and/or the account it is placed in appears to have a global rather than a country-specific focus, i.e., the marketing is directed towards consumers in various countries, including but not limited to Australia.
4. As mentioned, there must be an Australian entity with a discernible connection to the marketing for the ABAC obligations to attach as indicated by:

- The Australian entity is part of a wider corporate group that created and controls the marketing communication; or
- The Australian entity has a commercial relationship with the creator or controller of the marketing communication; or
- The Australian entity has a measure of control over the marketing communication as indicated by the Australian entity:
 - Having been involved in the creation of the marketing communication; or
 - Being aware of the marketing communication or the medium over which the marketing is carried can readily be accessed by Australian consumers; or
 - The ability to request that the entity with control over the marketing communication remove it from being viewed in Australia.

5. Conversely, the following indicators are suggestive that the marketing communication is outside the jurisdiction of the ABAC Scheme:

- The product being marketed is not readily available in Australia.
- The marketing communication is not readily accessible in Australia, for instance, because it requires a VPN to bypass geo-blocks.
- The marketing content does not include any or few Australian references, and the medium by which the marketing communication is transmitted has no or few Australian-located followers.
- There is a separate communications medium for the product that promotes it to Australian consumers, e.g., an Australian Website, Instagram, or Facebook account.
- The Australian entity with rights over the product had:
 - No involvement in the creation or approval of the marketing; and
 - Was unaware that the marketing communication would be disseminated; and
 - No or limited ability to request or secure the removal of the marketing communication.

6. It should be stressed that the overall assessment of these indicators and the factual circumstances of the case determine whether the marketing communication is within the jurisdiction of the ABAC Scheme. In other words, it is not simply a checklist approach of adding the number of indicators in place.

7. While the product is available in Australia and the Fifth Generation social media accounts can be accessed in Australia, the Panel believes accounts and the specific post is not within the jurisdiction of the ABAC Scheme. In reaching this conclusion, the following was noted:
- The social media accounts are not controlled by an Australian alcohol marketer and the specific post was not created by an Australian entity nor was the Australian distributor aware of the making of the post.
 - The content of the social media accounts demonstrate that they are intended for the USA and there is no indication that Australian consumers are actively engaging with the accounts e.g. there does not appear to be user generated comments from Australian consumers.
 - ICONIC Beverages maintains a website and social media accounts that promote the products they distribute including Tito's Handmade Vodka and the marketing for the product carried on these platforms is within the scope of the ABAC Scheme.
 - While ICONIC was able to raise a concern about the post with Fifth Generation, the balance of the factors support the conclusion that the social media sites and the specific post is beyond the remit of the ABAC Scheme and is within the jurisdiction of American alcohol marketing regulators.
8. Accordingly the Panel does not have the jurisdiction to decide on the substantive concern raised in the complaint. That said, it is noted that Fifth Generation removed the post upon being contacted.
9. The complaint is dismissed on jurisdictional grounds.

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 in accordance with the [ABAC Rules & Procedures](#) and has regard to 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 of the Code requires that an Alcohol Marketing Communication must NOT:

<i>(a)(i)</i>	<i>show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:</i> <i>(A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day); or</i> <i>(B) Alcohol consumption while pregnant or breastfeeding;</i>
<i>(a)(ii)</i>	<i>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;</i>

Part 8 of the Code contains the following definition:

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

Company Response:

Tito's Handmade Vodka is manufactured by Fifth Generation in Texas, USA and distributed by ICONIC Beverages in Australia. Both companies were provided with an opportunity to respond to the complaint.

Fifth Generation's principal comments were:

- Tito's is manufactured by FGI in Austin, Texas. Iconic is the Australian distributor for Tito's.
- The social media post was inadvertently made accessible to audiences in Australia. It was intended exclusively for FGI's US audience. On a purely without admissions basis, the social media post has been removed.

ICONIC Beverages' principal comments were:

- At Iconic Beverages we take the utmost care to ensure our compliance with regulatory and licencing conditions. RSA being a top priority.
- The Instagram video provided in your letter was not managed or posted by Iconic or (to our knowledge) any affiliate of ours located in Australia. Rather, this post was made in the USA by a US company.

- We understand the importance of responsible advertising and posting of content in our industry.

Marketing Best Practice.

The companies were asked how they demonstrate a commitment to alcohol marketing best practices but did not provide a response. It is noted that ICONIC Beverages is not a signatory to the ABAC Scheme.