



## ABAC Adjudication Panel Determination No. 49/20

**Product:** Wine  
**Company:** Millon Wines  
**Media:** Digital (Instagram)  
**Date of decision:** 28 May 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram marketing communication by Millon Wines (“the Company”) and arises from a complaint received 6 May 2020.
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 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 meeting 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 6 May 2020.
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 Clearance**

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this marketing communication.

## The Marketing Communication

10. The complaint relates to the following marketing communication on Instagram.



## The Complaint

11. The complainant objects to the advertisement as:

- suggesting that someone should drink wine from home when working from home (through suggesting Work From Home is the same as Wine From Home) is not a 'responsible or moderate portrayal of alcohol beverages'; and
- the ad encourages those working from home to purchase bulk wine, with self-isolation as a motivation, which is concerning, as surveys have shown some people are buying more alcohol and drinking more during the COVID-19 pandemic and this increase in alcohol use could have serious health impacts.

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines

- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment

### **The Company's Response**

13. The Company responded to the complaint by email dated 18 May 2020. The principal points made by the Company were:
- a) Firstly, to consider the current unprecedented COVID-19 situation and the relevant drop in sales and revenue of our business, we hope to seek leniency in these harsh and unpredictable times.
  - b) If the advertising has for some reason offended anyone, it was not the intention, but merely an attempt to try to fill the gap left by the drop in on-premise sales, especially in a time when most wine companies are following the same path. This was not a means to exploit the situation. Online advertising of our products is merely to generate some revenue to make ends meet.
  - c) Furthermore, contrary to the complaint, the advertisement does not suggest or encourage drinking wine DURING working hours, or to drink "wine from home" INSTEAD of "working from home". The intended message of the advertisement is to say that even though many offices, bars, and other on-premise establishments are no longer open during these times, you can still continue your normal purchases and have wine at home as we will deliver them to your door – simply giving the message that "we are still open during these tough times". The use of the text "wine from home" was merely a wordplay on the popular hashtag "WFH".
  - d) The concerns raised by the complaint seem to arise from the following statement *"as surveys have shown some people are buying more alcohol and drinking more during the COVID-19 pandemic. This increase in alcohol use could have serious health impacts."* I would strongly argue that these blanket statements that are unsubstantiated and very general, do not reflect the behaviour of our customers, nor the wine industry or our products. The statement also refers to bulk purchases, I would also argue that purchasing a case of wine is not considered "bulk" as it is common for consumers to buy wine in cases for normal consumption. Case purchases are also incentivised by many liquor retailers as it promotes scale and reduces delivery cost.
  - e) In addition, the advertisement was promptly removed to address the complaint.

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

14. Millon Wines is a South Australian wine maker with vineyards in the Barossa, Eden and Clare Valleys and has been operating since 2013. The Company maintains a

number of social media sites and this determination concerns a post accessed by the complainant on Instagram.

15. The post promotes a '#WFH Care Pack' which is a selection of wines which are able to be ordered online and home delivered. The post is made against the backdrop of the COVID-19 pandemic and several references to the pandemic and consequent government restrictions are made in the post. The complainant contends the post fails in a 'responsible or moderate portrayal of alcohol beverages' by:
  - suggesting someone should drink wine from home when working from home; and
  - encouraging those working from home to purchase bulk wine 'with self-isolation as a motivation'.
16. There are several ABAC standards which are potentially raised given the complaint and content of the post. Firstly, the Code provides that alcohol marketing must not encourage excessive or rapid consumption or consumption inconsistent with Australian Alcohol Guidelines (Part 3(a)(i)). Part 3(a)(ii) prohibits the encouragement of irresponsible or offensive behaviour that is related to the consumption or presence of alcohol. Finally, Part 3(c)(i) provides a marketing communication must not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood or environment. The compliance of the post against these three standards will be considered in turn.
17. As can be seen, these standards are directed toward behaviours regarding the use of alcohol (its consumption or presence) and not to its purchase as such. The Code standards generally don't focus on the encouragement of the purchase of alcohol. So even if a package of six wines could be considered 'bulk' as asserted by the complainant, advertisements are permitted to encourage the purchase of a case of wine, or a carton of beer for instance. What is not permitted is the encouragement of irresponsible use of alcohol once purchased.
18. The distinction between the purchase of alcohol and its subsequent consumption relates to the nature of the product. Alcohol has a long shelf life and can be stored for months and in some instances, such as spirits and wine, for years. Accordingly promoting the purchase of alcohol from retailers such as a bottle-shop or online and home delivery, will generally say little about the subsequent pattern of consumption. This can be different for licensed venues like a pub or nightclub where there is an immediate connection between purchase and consumption. Hence State liquor licensing regimes go to the regulation of 'happy hours' and other promotions which could lead to excessive consumption if not properly conducted.
19. The complainant contends that drinking alcohol at home while working from home is not responsible and hence if the Instagram post is fairly to be interpreted as suggesting consumption in this way, then it should be found in breach of the Code.
20. It would be fair to say that the starting point is that an employee would be expected not to drink alcohol while performing duties in the workplace. In the diversity of the Australian economy and in different occupations, however, it would be recognised that there would be some nuance other than an outright prohibition of alcohol in all circumstances. At one end of the spectrum an occupation such as a

bus driver or heavy machine operator would not drink alcohol at all before and during a shift at work including during a lunch break. In another occupation, say an accountant, it would be acceptable to have a glass of wine at a professional lunch and then return to work. In no occupation would it be acceptable to drink to excess.

21. The current COVID-19 pandemic and the associated social distancing requirements has witnessed a wholesale migration of service industry occupations from a formal work office environment into a work from home scenario. Typically, the same expectations as to alcohol would transfer from the formal office to the hours in the home in which paid work was being performed. But again, there would be some measure of nuance. The accountant from paragraph 20 might be undertaking the equivalent of 8 hours paid work at home in a day but over a longer time frame than 9am to 5pm. Such a worker might, in accommodating the requirements of child-care or home schooling, return to work duties some hours after an evening meal. The consumption of one standard drink with the meal before returning to further work would not be perceived by a majority of the Australian community as 'irresponsible behaviour'.
22. Applying this to the Instagram post, the Panel does not accept the complainant's argument that a suggestion that a person might consume alcohol while in social isolation and working from home is encouraging irresponsible behaviour in breach of Part 3(a)(ii). Such a contention would not be consistent with the 'reasonable person' benchmark against which ABAC standards are to be understood.
23. The Panel does not believe on balance the post can be reasonably understood as encouraging excessive consumption. The image of the woman lying on a couch next to an opened bottle of wine is mildly suggestive of a person who has been affected by alcohol. On the other hand the bottle and glass of wine depicted next to the woman show both are full and the text of the post does not suggest excessive consumption or consumption inconsistent with Australian Alcohol Guidelines.
24. Part 3(c)(i) of the Code deals with marketing suggesting that alcohol use may create a significant change in mood or environment. The post promotes the sale of a 'WFH Care Pack'. The accompanying text states in part- 'We wanted to bring you all a little joy by crafting a mix pack that has a variety of sweet to dry, full-body to light body wines.' The issue is whether these statements within the context of the post as a whole would be probably understood by a reasonable person as suggesting alcohol may create a significant change in mood.
25. On balance the Panel believes the post does breach the Part 3(c)(i) standard. In reaching this conclusion the Panel noted:
  - the 'WFH Care Pack' name would be understood as a reference to the background circumstances of the COVID-19 pandemic;
  - the designation of the home delivered wine as a 'Care' pack implies a pre-existing condition or environment of discomfort or injury which needs to be cared for;
  - the image of the woman on the couch in conjunction with a glass implies that alcohol is a contributor to the woman's mood; and

- a reasonable interpretation of all of the elements of the post combined suggests that the alcohol in the 'Care' pack has contributed to a significant change in mood.

26. The complaint is dismissed in relation to Part 3(a)(i) and (ii) and upheld in relation to Part 3(c)(i).