

ABAC Adjudication Panel Determination 101/25

Determination Date	10 August 2025
Brand/Company	Hard Fizz / Fizzy Mates Pty Limited
Media	Digital –Instagram
ABAC Code provision	Part 3 (c)(iv) & (d)
Outcome	Upheld

Part 1 - Determination Overview

Complaint:

The complainant is concerned that a social media post promoting Hard Fizz depicts a person consuming alcohol while sitting with their legs in a swimming pool, and that the product claims to be hydrating.

Key findings:

The Panel upheld the complaint, finding that the collaboration:

- Is captured as an ABAC alcohol marketing communication.
- Would be understood as claiming the product provided the health benefit of hydration.
- Positions the consumption of the product with the use of a swimming pool/hot tub.

Marketing Communications:

The complaint concerns a video posted to Instagram, showing several cowgirls drinking Hard Fizz, one of whom is sitting on the side of a swimming pool. The text accompanying the post reads “[@hard_fizz](#) keeping us coastal cowgirls hydrated at our Let’s Western retreat 🍷🐾”



Part 2 - The Panel's View

1. Cow Girl Surf Club (CGSC) is a clothing brand founded in 2024 by filmmaker and photographer Kristin Donohue. CGSC has created a social media post featuring Hard Fizz products and models wearing CGSC branded clothing. Hard Fizz (the Company) has advised that it had no knowledge of the brand or the post until it received a collaboration request in relation to the post via Instagram. The Company accepted the collaboration request and as such the post was available on the Instagram accounts of both entities.
2. The complainant identifies two elements of the post as a concern. Firstly, the text accompanying the video reads “[@hard fizz](#) keeping us coastal cowgirls hydrated at our Let's Western retreat 🍷🐼”. Secondly, a single scene in the video shows a model in swimwear sitting on the edge of either a swimming pool or a hot tub with her feet in the water. She is wearing a bikini, a cap and sunglasses, and she is shown raising a can of Hard Fizz towards her mouth.
3. From this, the complainant argues that two ABAC standards for responsible alcohol marketing have been breached, namely, alcohol marketing must not:
 - Suggest that the consumption of alcohol offers any therapeutic or health benefit - Part 3 (c)(iv); and
 - Show the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination - Part 3 (d)
4. The first issue is whether the ABAC standards apply to the post. Not all references to alcohol products on social media fall within the remit of the ABAC Scheme. ABAC obligations do not touch the vast majority of private posts mentioning alcohol. To fall within the Scheme, the social media post must be generated by or within the reasonable control of an alcohol producer, distributor or retailer.
5. CGSC is not an alcohol industry participant, and on its face, its social media marketing is not within the ambit of the ABAC Scheme. The Company is an alcohol producer, and ABAC obligations capture its marketing. The Company has advised that there has been no agreement, gifted product or contact with CGSC prior to the post being created, and as such the underlying post by CGSC is not generated by or within the reasonable control of the Company. However, accepting the collaboration request is within the reasonable control of the Company and therefore brings the post within the scope of the ABAC Scheme. Accordingly, the post needs to satisfy the ABAC standards, or the Company needs to reject the collaboration request.
6. Assessment of the consistency of a marketing communication with an ABAC standard is from a reasonable person's probable understanding of the marketing. A 'reasonable person' means that the life experiences, values, and opinions held by most of the community are the benchmark.

Responsible depiction of the effects of Alcohol

7. Under Part 3 (c)(iv) of the Code, an alcohol marketing communication is not permitted to claim that the use of a product provides a positive health benefit. While each marketing communication must always be assessed on its own merits and be understood in context, expressions found in previous Panel determinations to have offended the standard have included claims that the use of a product is hydrating.
8. It is an accepted physiological fact that alcohol acts as a diuretic and causes the body to remove fluids through the passing of urine. The diuretic effects will be influenced by a range of factors related to the individual consuming alcohol (e.g., body weight) as well as the alcohol product itself and whether food and water are consumed in conjunction with the alcohol.
9. The video contains several scenes of Hard Fizz being consumed by the models. The video is accompanied and contextualised by the caption “[@hard_fizz](#) keeping us coastal cowgirls hydrated at our Let’s Western retreat 🍷💕”. A reasonable person would likely understand that the post, as a whole, claims the product provides hydration benefits, which breaches the ABAC standard.

Alcohol and Safety

10. Part 3 (d) of the Code provides that alcohol marketing cannot show or directly imply the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as swimming.
11. The policy intent of the Part 3 (d) standard is that alcohol marketing should not model alcohol consumption before or in conjunction with inherently dangerous activities, such as driving a motor vehicle or swimming. This is because alcohol impacts a person’s physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.
12. It is important to note that the Code standard does not prohibit an alcohol brand from being associated with water-based activities. The point of the standard is that alcohol should not be consumed while undertaking the activities, and marketing should not suggest that it is acceptable to use alcohol in this way. What this means for water-based activities is that an item of marketing can:
 - show an alcohol product at a beach or adjacent to a swimming pool if it is clear that alcohol is not being consumed; or
 - show alcohol consumption, but it is established that the dangerous activity like swimming, surfing, scuba diving, etc has finished and will not be recommenced.
13. The video runs for 22 seconds and contains a series of fast-moving scenes of the ‘cowgirls’ attending the Western Retreat undertaking various activities. If the video is watched slowly and frame by frame, it is clear that there is a scene containing the consumption of the product by a woman in a bikini, sunglasses and a cap sitting on a

deck with her feet in water. The scene is shot in a way that it is not possible to determine if the water is in a swimming pool or a hot tub.

14. Of course, a reasonable viewer will not watch the video frame by frame and examine it closely. Instead, a typical viewer will view the video once and scroll on to the next post. Most likely, the impression taken from the video is that the cowgirls undertook a range of activities at an attractive setting with Hard Fizz being consumed. It is less certain that the viewer will absorb that the product is being consumed with the use of a swimming pool or hot tub.
15. On balance, the Panel believes the post breaches the Part 3 (d) standard. In reaching this conclusion, the Panel noted:
 - The woman is consuming the product and is positioned with her feet in the water, raising a direct implication that the pool/hot tub will be used.
 - The woman is wearing swimwear, which supports the likely use of the pool/hot tub.
 - The video as a whole shows the consumption of the product occurring or directly associated with the performance of various activities, and a reasonable person will likely view the use of the product and the pool/hot tub in this way.
16. The complaint is upheld.

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 Debra Richards.

Applicable ABAC Responsible Marketing Code Standard

Part 3 (c)(iv) of the Code provides that an Alcohol Marketing Communication must NOT:

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.

Part 3 (d) of the Code provides that:

An Alcohol Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

Company Response

The Company was provided with an opportunity to respond to the complaint and advised that:

- it had removed itself from being tagged in the post;
- it had no knowledge of the post prior to receiving a collaboration request via Instagram; and
- has not had any arrangement with the content creator or provided them with any free product.

Marketing Best Practice

The Company was asked how it demonstrates a commitment to best practices for alcohol marketing. It did not respond to this question.

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 posts.