



ABAC Adjudication Panel Determination No 88/21

Product: Monkey Shoulder Whisky
Company: William Grant & Sons
Media: Instagram
Date of decision: 31 May 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post for Monkey Shoulder Whisky (“the Product”) by William Grant & Sons (“the Company”). It arises from a complaint received on 16 April 2021.
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 16 April 2021.
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 sought for a similar concept but not for this advertisement.

The Marketing

10. This determination relates to a video posted to Instagram ([click here](#)), as described below:

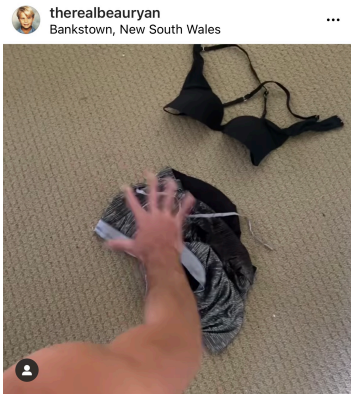


The advertisement opens with footage of Person 1 sleeping.

There is a full, unopened bottle of Monkey Shoulder Whisky on the bedside table.

Person 2 then appears at the bedroom door and says:
"Hey, the bins have gotta go out."

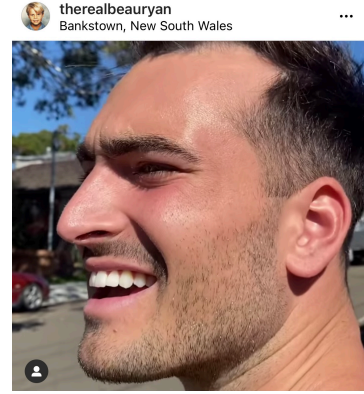
Person 1 makes their way to the front door, to be stopped by Person 2 who says:
"You've got to put something on".



Person 1 then looks around for something to wear before spotting a pair of shorts on the floor and putting them on.



Person 1 takes the bin to the kerbside, where they greet their neighbour, also taking out the bin.



Person 1 (P1): "Hey"
 Neighbour (N): "Hey"
 P1: "You good?"
 N: "Yeah good"
 N (quizzically): "What are you wearing?"
 P1: "What are YOU wearing?"



The video then shows the neighbour wearing shorts.



The video finishes by showing the hand of someone pouring a glass of Monkey Shoulder Whisky, and the words "EARNED IT" are superimposed.

The Complaint

11. The complainant has the following concern about the marketing:

The talent wakes up with a bottle of the product next to his bed which suggests he was drinking in bed and therefore to excess (who drinks in bed???).

The drinking occasion is then suggesting it was straight after putting the weekly bins out first thing in the morning.

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.

The Company's Response

13. The Company responded to the complaint by letter emailed on 22 April 2021. The principal points made by the Company were:

- We do not believe that the post breaches Part 3 (a)(i) of the code.
- The bottle shown in the video is sealed so therefore no excess consumption is implied (see screenshot).
- There were no glasses, or vessels in the post to suggest, or indicate any previous or future consumption would be taking place.
- The actor does not look hungover, jaded or show any indications of intoxication or that he had drunk at all. The only reason for the bottles inclusion in the video post was for brand association.
- The actor was having an afternoon nap when his wife advised the bins needed to go out.
 - Most Australians are advised by their local council to take their bins out the night before.
 - Bankstown's council advises this on their website, which is the location of the Instagram post.
 - Given no other clothing at hand he put his wife's pants on and decided to take bins out.

- He then calmly walked the bins out and sees his neighbour in similar attire.
- The video was shot in the early afternoon not in the morning. The limited shadows show that it was not extremely late.
- The 'whisky you sorta earned' tagline appears but there was no consumption of the product by the actor or his neighbour in the video, to indicate that immediately after completion of this task, or any small task that you should reward yourself with a drink of Monkey Shoulder.



- Following the ABAC approval of the broader campaign and taglines it is our view that the advertising does not imply the misuse or abuse of alcohol.
- Celebrating smaller pockets of achievement within COVID-19 was a key insight of 2020. Even the little wins feel pretty big, when you are in Lockdown and are unable to live your normal life. Hence the campaign is meant to help celebrate those little achievements and bring some humour to what has otherwise been a very turbulent year for most people.
- Whilst the campaign is about celebrating small wins, it is supported by doing it in a 'responsible way,' with the inclusion of "Don't be a drunken monkey. Drink responsible" phrase on all OOH and owned digital/social communication which were pre-vetted and approved through ABAC prior to launch.

The Panel's View

14. This determination concerns a video posted on the Instagram account of former NRL footballer and now media personality Beau Ryan, which depicts a scenario where Mr Ryan does a dash from bed to put the garbage bins out to the curb before they are due to be collected by the local Council. Clearly the video has been made to promote the Company's Monkey Shoulder Whisky. The issue

raised by the complainant is whether the video is encouraging excessive alcohol consumption.

15. The ABAC applies to alcohol marketing communications generated by or within the reasonable control of an Australian producer, distributor, or retailer of alcohol beverages. While the post identified by the complainant was sourced on the Instagram account of Mr Ryan and not the Company, there has been no dispute that the Company either created the video or had control over its production. This means the video is a marketing communication for ABAC purposes.
16. The video shows Beau in bed with an unopened bottle of the product sitting on a bedside table. Beau is awakened by his partner who tells him that the bins have to go out. Beau almost leaves the home apparently naked before his partner tells him he has to put something on. The only clothing close at hand is a pair of his partner's underwear which Beau dons before taking the bin to the curb. While at the curb he meets a male neighbour, who seems to have had the same experience as he is wearing nothing but the bottom of women's pyjamas. The video ends with a glass of the product being poured with the text superimposed of 'Earned It'.
17. The interpretation of the video by the complainant is that it implies that Mr Ryan has been heavily drinking. This arises from placing a bottle of the product next to the bed, and the final scene of pouring a glass of the product which the complainant suggests consumption is occurring in the morning. The Company contends the video does not show or encourage excessive consumption arguing:
 - the bottle next to the bed is unopened and is placed there purely for branding purposes;
 - Mr Ryan does not appear affected by alcohol;
 - the scenario is set in the afternoon not the morning; and
 - the video is humorous.
18. Assessment of the consistency of a marketing communication with an ABAC standard is from the standpoint of the probable understanding of the marketing by a reasonable person. This means the life experiences, values and opinions held in most of the community is the benchmark. If the message in a marketing communication can be interpreted in several ways, it is the most likely interpretation which is to be preferred over a possible but less likely meaning.
19. Despite the Company's argument that the scenario is set in the afternoon prior to Council bin collection day, the humour in the video only makes sense if the scenario is unfolding in the morning shortly before the 'garbo' could be expected

to be collecting the bins. Most Australians in suburban areas would relate to the last-minute morning dash to get the bins out before they are collected. This makes sense of Beau putting on the nearest piece of clothing. If it was the afternoon of the day before, then the urgency which underpins the amusing clothing decision is not present.

20. That said, on balance the Panel does not believe a reasonable person would likely take the video as encouraging excessive alcohol consumption. While the interpretation of the video taken by the complainant is possible, the Panel does not believe the video would be understood this way by most people. In reaching its conclusion the Panel noted:
- beyond the unopened bottle seen in the first scene of the video, there are no cues that excessive alcohol has been consumed e.g., there are no opened bottles nor empty glasses and neither Mr Ryan nor his partner seem affected by alcohol;
 - the video is humorous, and while humour does not excuse a clear breach of the Code, it is a factor in how a reasonable person understands a marketing message;
 - the humour is centred on the urgency of getting the bins to the curb and the resultant clothing choice and is not based on implicit excessive alcohol use;
 - alcohol use is implied in the final scene when the product is poured and although this occurs in the morning, this of itself does not establish excessive alcohol use; and
 - taken as a whole the video is most likely understood as creating a mildly amusing relatable home experience to which the product is being placed, rather than suggesting excessive alcohol consumption is a driver of the scenario created.
21. The complaint is dismissed.