



ABAC Adjudication Panel Determination No 176/21

Product: Wine
Company: Gooné
Media: Instagram
Date of decision: 9 August 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Instagram advertising for Gooné (“the Company”). It arises from a complaint received on 8 July 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:
 - 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;

- 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 8 July 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 not obtained for the advertising.

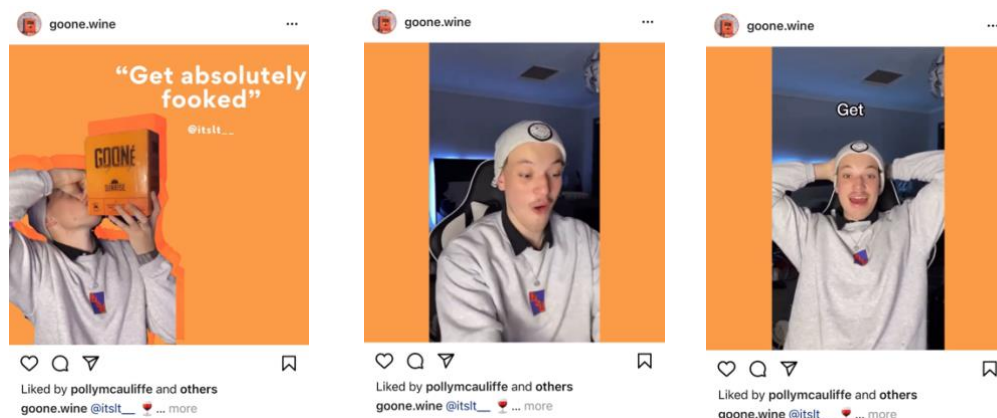
The Marketing

10. The complaint refers to the Gooné Instagram page as a whole. For efficiency, ABAC has selected six representative posts illustrating the concerns of the complainant which will be referred to the ABAC Panel for adjudication:

Post 1 – “Get Absolutely Fooked”

Post 1 is a video. Footage is shown of the person drinking from a cask of the Product, following which they put the cask down, laugh, and say “get absolutely fucked”. The words “get absolutely fucked” are superimposed. The person then leans forward and says “that is unreal”. These words are superimposed on the screen.

The following screenshots are provided to assist with visualisation of the video:



Post 2– “Stepping Out to Day Drink”

Post 2 is a video set to a soundtrack of “Jerk It Out” by Caesars. The words “Stepping out to day drink after 30 minutes of sleep” are shown above the video. It commences with footage of a person walking awkwardly, who then looks into the sun, screams and hastily retreats indoors.

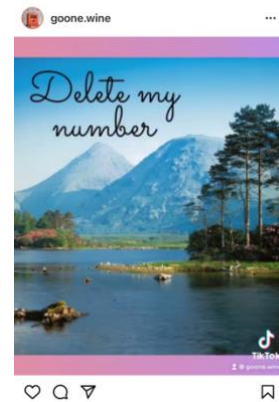
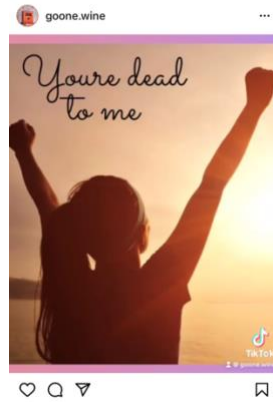
The following screenshots are provided to assist with visualisation of the video:



Post 3 – “Motivational Quotes”

Post 3 is a video set to a soundtrack of “A Thousand Miles” by Vanessa Carlton. It commences with footage of a person looking into the camera and what sounds like a synthesized voice says “messages from the group chat when I say I’m not drinking turned into motivational quotes.” These words are also superimposed on the screen. The following quotes are then shown along with a number of scenic images:

- You’re dead to me
- F*ck You!
- Delete my number
- I thought we were friends
- Please leave this chat
- Never talk to me again



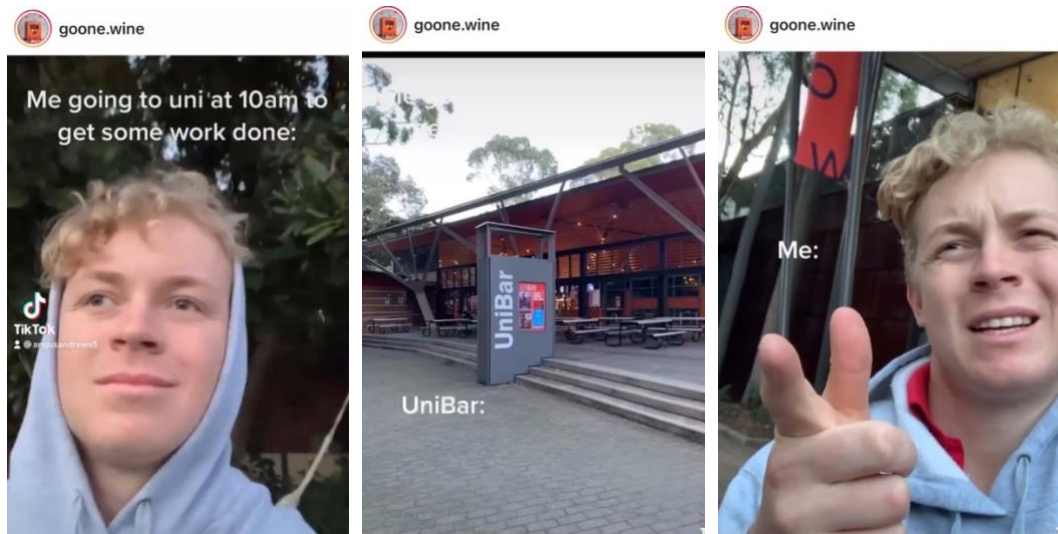
Post 4 – “Three People on Lawn”

Post 4 is a static photo of three people with accompanying text, as follows:



Post 5 – “UniBar”

Post 5 is a video set to a soundtrack of Levitating by Dua Lipa (featuring DaBaby). It shows a person walking, with the words “Me going to uni at 10am to get some work done” superimposed. Their head then swivels to look at the UniBar. The person is then shown pointing and mouthing the words “I want you baby” in unison with the song.



Post 6 – “Get Through the Week”

Post 6 is two static photos, one of a cask and the other of a hand holding a glass of the Product, with accompanying text, as follows:



The Complaint

11. The complainant is concerned about the advertising as:

The Instagram account for Gooné wine is full of what appears to be underage (<25) in the marketing and encourages drinking in an irresponsible manner.

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.
- (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Company's Response

14. The Company responded to the complaint by letter emailed on 18 July 2021. Its principal comments were:

- Thank you for inviting us to provide comments for the Panel's consideration in determining this complaint. Gooné is a start-up company. We wish to support the ABAC Responsible Alcohol Marketing Code (ABAC), whilst continuously building the brand.

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communications referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.
- At the time of the complaint Gooné did not have the correct age restrictions in place. The Instagram account for Gooné is now restricted to 18+.

Post 1 – UGC Review

- This video was a snippet from a customer reviewing the product that we received which was unpaid. He is simply referring to the taste of the product with his review comments and not the intoxicating effects.
- We don't think that taking a sip out of the cask as shown in this video is any different from taking a sip out of any other container that alcohol is sold in. As casks do not typically come with cups or wine glasses when purchased at the bottle shop, sometimes drinking from the cask is the only option if you wish to consume the beverage. We don't think it is responsible to assume that taking a sip from a cask directly implies excessive or rapid consumption on its own. If someone takes a sip of beer out of the bottle (say at 750mL longneck) do you assume that they consume it in an excessive or rapid manner?
- Post has been removed to save any confusion.

Post 2 – Day Drinking

- The video referenced in the post in conjunction with the copy, has zero context to anything that happened prior to the video taking place. We don't see how so many conclusions (ie that the person is hungover after drinking all night) can be drawn with no evidence outlined in the video.
- Regardless, the post has been removed to save any confusion.

Post 3 – Quotes

- This post contains a 28-year-old male. The intent of this post was to depict how a typical friend group reacts when you inform them that you will not be

partaking in any of the group activities. We acknowledge that better use of copy could have been used to portray this message.

- Post has been removed.

Post 4 – Three People

- The post contains three girls dressed in formal attire. The complaint is in regard to two girls forcing the remaining girl to drink excessively. From our perspective it is simply a girl having a sip of alcohol whilst another girl holds her hair.
- Regardless, the post has been removed to save any confusion.

Post 5 – Uni Bar

- This is a UGC post that was sent to us (unpaid). We don't know the age of the male however a responsible person would assume that he is clearly over 18.
- Gooné is now age restricted for 18+. Regardless, the post has been removed to save any confusion.

Post 6 – Getting through the week

- The copy in the post has no reference to the intoxicating effects of alcohol and the intent was to market the great taste of the product.
- Regardless, the post has been removed to save any confusion.

Concluding comments

- Gooné is committed to ensuring that our brand does not encourage irresponsible consumption of alcohol.
- We wish for our consumers to enjoy our products responsibly and safely.

The Panel's View

15. This complaint relates to six posts on the Company's Instagram account. The complainant raises a concern that posts on the account show under 25 year olds and encourage drinking in an irresponsible manner. The Company is not a signatory to the ABAC scheme and is not contractually bound to meet Code standards nor abide with Panel determinations but has indicated their support for the ABAC Code.
16. The Panel will consider each of the posts and the relevant Code standards in turn.

Post 1 – Get absolutely fooked

17. In this post a young man is shown taking a sip directly from a cask and then saying 'Get absolutely fucked that is ..' with the words 'Get absolutely fooked' and 'That is unreal' superimposed on the image.

18. Part 3 (a) (i) provides that an alcohol marketing communication should not show, directly imply, or encourage rapid or excessive alcohol consumption or misuse or abuse of alcohol.
19. The Company submits that:
- the post is unpaid user generated content of a customer reviewing the product;
 - the man is commenting on the taste of the product, not its intoxicating effect; and
 - it is not reasonable to assume that sipping from a cask equates to excessive or rapid consumption.
20. While a borderline decision given the colloquial meaning of the phrase 'Get absolutely fooked' can often mean 'getting drunk', the additional comment of 'that is unreal' most likely centres the man's reaction as being to the taste of the product rather than being a call to action to drink to excess. Accordingly, the Panel does not believe the post breaches the Part 3 (a) standard.
21. The Company has not supplied the age of the man in the video and so in the absence of his actual age, the Panel needs to assess his age based on his appearance. The Panel believes, based on the users private account and his appearance that the man in the video is likely to be under 25 years of age in breach of Part 3 (b)(iii) of the Code.

Post 2 – Stepping out to Day Drink

22. This post shows a man stepping awkwardly out of his house and screaming at the sun with the captions 'Stepping out to day drink after 30 minutes of sleep' and 'The best things in life don't come without sacrifice'. The Company submits that the video has no implications of excessive drinking.
23. The video clip is a scene showing an agoraphobic character from the movie, The Benchwarmers screaming at the sun and running back inside. The video and the caption, when taken as a whole, has an implication of irresponsible drinking patterns, in particular day drinking which can have connotations of addiction, and the use of humour to exaggerate the reaction one might have to the sun when hungover. The Panel believes the post is in breach of the Part (a) standard.

Post 3 – Motivational Quotes

24. In this post a male with a synthesised voice and superimposed text states 'messages from the group chat when I say I'm not drinking turned into

motivational quotes' followed by derogatory remarks, such as 'Never talk to me again' and 'You're dead to me' set to inspiring scenes.

25. Part 3 (c) (ii) of the ABAC states that alcohol marketing must not show or directly imply the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of social success.
26. The Company advised that the male depicted is 28 years old and the intent of the post was to depict how a typical friend group reacts when you inform them that you will not be partaking in any of the group activities, acknowledging that better use of copy could have been used to portray the message.
27. This post suggests that your friends will want nothing to do with you if you decide not to drink alcohol, this is a clear breach of the Part 3 (c) standard.

Post 4 – Three People on Lawn

28. This post shows three young females in formal clothing on a lawn, where one female is holding a cask of the product, another is on her knees drinking from the cask and supporting the base of the cask with one hand, while the other female holds her head. The Company argues that the post simply shows a female taking a sip of alcohol from the cask while another holds her hair.
29. The Panel believes that the post breaches the Part 3 (a) standard. A woman is shown drinking from a cask without her hand on the tap, which implies that the tap is open and the woman is consuming the product rapidly. Further, the fact that others appear to be controlling the product and her consumption of it, by the product and the drinkers head being held by a third party, implies an irresponsible approach to alcohol consumption.
30. The Company has not supplied the age of the three females in the post and so in the absence of this information, the Panel must assess their age based on their appearance. The Panel believes that the three females in the post look as if they are under 25 years of age in breach of Part 3 (b) (iii) of the Code.

Post 5 - UniBar

31. This post shows a male going to uni at 10am to get some work done, but wishing they were going to the uni bar. The Company has advised they used unpaid user generated content in this post and are not aware of the age of the male in the post, but assume they are over 18 as they are at uni. The Company also advised that they have now age restricted the account.
32. The Panel believes that based on his appearance and that the male is a university student he would be taken to be between 18 and 24 years of age in breach of Part 3 (b) (iii) of the Code. The Panel notes that while the account is

now age restricted, as it wasn't age restricted at the time the complaint was made, the ABAC standard has been breached.

Post 6 – Get Through the Week

33. This post includes the caption, 'Happy Hump Day!! Couldn't think of a better way to get you through the last half of the week than a cold cuppa #Gooné'.
34. Part 3 (c) (i) of the Code provides that alcohol marketing must not suggest that alcohol use will cause or contribute to a significant change in mood. The Company submits that the copy in the post has no reference to the intoxicating effects of alcohol and the intent was to market the great taste of the product.
35. The Panel believes that the standard has been breached as the caption implies that weekday life is difficult, and the product will help a person get through their week, namely make life easier. The fact the post does not specifically reference the intoxicating effects of the product as the reason for the change in mood is not relevant, the product itself cannot be promoted as a contributor to a change in mood.

Conclusion

36. The Panel upholds the complaint in relation to each of the sample posts detailed above. More generally, the Panel encourages the Company to reflect upon the style of marketing that it has employed. There are infinite ways in which marketing can be directed at different demographic groups to convey a casual brand position which are consistent with modelling responsible alcohol use. The ABAC pre-vetting service together with the resource materials on the ABAC website can assist the Company.