



ABAC Adjudication Panel Determination No 19/23

Product: Hard Fizz
Company: Fizzy Mates Pty Ltd
Media: Instagram
Date of decision: 28 February 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 24 January 2023 and concerns Instagram marketing for Hard Fizz (“the Product”) by Fizzy Mates Pty Ltd (“the Company”).
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 the 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 meet 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 24 January 2023.
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 an 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 marketing.

The Marketing Communication

10. The complaint relates to a video post made to the Company's Instagram page, an overview of which is provided below:

The video commences with footage of a person holding a can of Hard Fizz and saying:

"Who says this shit doesn't get you drunk??".

These words are superimposed on the screen.

Footage of people dancing and drinking Hard Fizz follows.



The person then says:

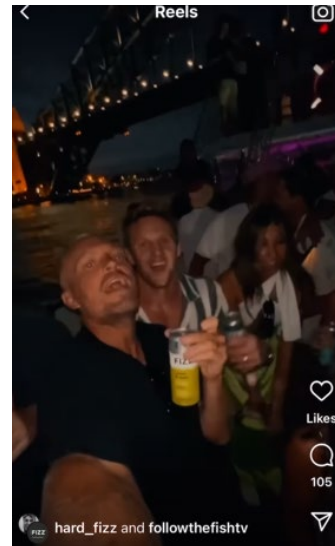
"This is the best shit we have ever done!!"

These words are superimposed on the video.

He then assists another person to drink from a can.



More footage is shown of people partying, dancing and drinking Hard Fizz.



The Complaint

11. The complainant objects to the marketing as follows:
- *The opening line on screen is: “who says this sh*t doesn’t get you drunk ??”*
 - *Participants also seem under the influence throughout which amplifies the underlying implication that “hard fizz gets you drunk”.*
 - *Does not adhere to responsible advertising guidelines and Hard Fizz regularly seems to market irresponsibly.*

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 8 February 2023. The principal comments made by the Company were:
- The content in question was not produced by our internal videographer and editing team rather was a production from the team of one of our ambassadors Paul Fisher. The copy at the commencement of the video was

not put through our usual internal procedures which saw it missed before launched as a collaborative post on Instagram.

- In this video the depiction was of a product launch event which adhered to all responsible service of alcohol on a licenced vessel and was undertaken in a controlled and safe environment, so we refute the suggestion that it showed footage of people that were appearing intoxicated.
- We have an established internal governance structure which we will continue to follow, to review all content and ensure it meets community guidelines prior to making public. We will continue to diligently follow this process, taking into account this point of view. We contest the complaint suggesting that we “regularly seem to market irresponsibly”
- We will continue to build the brand in the marketplace in a responsible manner and will be consulting industry along the way.
- Due to the copy at beginning of the video we have made the decision to remove the post from our channel.

The Panel’s View

14. Hard Fizz is an alcoholic seltzer product. Paul Fisher is a DJ and artist known as FISHER and founder of the Company. The Company uses social media channels such as Instagram to market its products and often its marketing features Mr Fisher. This determination relates to a video posted to the Company's Instagram account depicting a party and Mr Fisher.
15. The video depicts a party scene at a waterside venue which Mr Fisher is attending. The event is high energy, and some party goers are seen with the product. The video commences with a scene that establishes the product can ‘get you drunk’.
16. The complainant is concerned that the marketing does not adhere to responsible advertising guidelines, through a combination of the opening line being ‘Who says this shit doesn’t get you drunk?’ and subsequent footage of people who appear to be intoxicated. This concern raises Part 3 (a)(i) of the ABAC which provides that an alcohol marketing communication must not show or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
17. In response to the complaint, the Company explained that:
 - the copy at the start of the video was not subjected to the Company’s usual internal control procedures, and the video has now been deleted from its Instagram page;

- the video was a depiction of a product launch event which adhered to all responsible service of alcohol requirements on a licenced vessel and was undertaken in a controlled and safe environment;
- it refutes the suggestion that the footage showed people who appeared intoxicated.

18. The Company does not contest the complainant's concern that the opening words 'Who says this shit doesn't get you drunk??' is not a moderate and responsible portrayal of alcohol beverages and has deleted the post from its Instagram page. The Panel believes that the Part 3 (a)(i) standard has been breached, taking into consideration the following:

- the person is shown in a party environment, holding a can of alcohol. There is an implication that they are consuming alcohol at this point in the video, and actual consumption is shown in subsequent scenes;
- a question is commonly framed in a 'Who says...?' manner by a person who has arrived at a contrary conclusion on the subject. The person is therefore confirming their understanding that Hard Fizz can get you drunk;
- the reasonable implication of the verbal exchange combined with the party scenes is that excessive consumption will occur or at least it is socially acceptable to drink to intoxication and this messaging is inconsistent with the ABAC standard.

19. The complaint is upheld.