



## ABAC Adjudication Panel Determination No 82/23

**Product:** Creamy Soda Vodka  
**Company:** Billson's Beechworth  
**Media:** TV – Free to Air  
**Date of decision:** 23 June 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 15 May 2023 and concerns a guest wearing a Billson’s Creamy Soda Vodka shirt when appearing on Channel Seven’s Weekend Sunrise program on 14 May 2023.
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 15 May 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

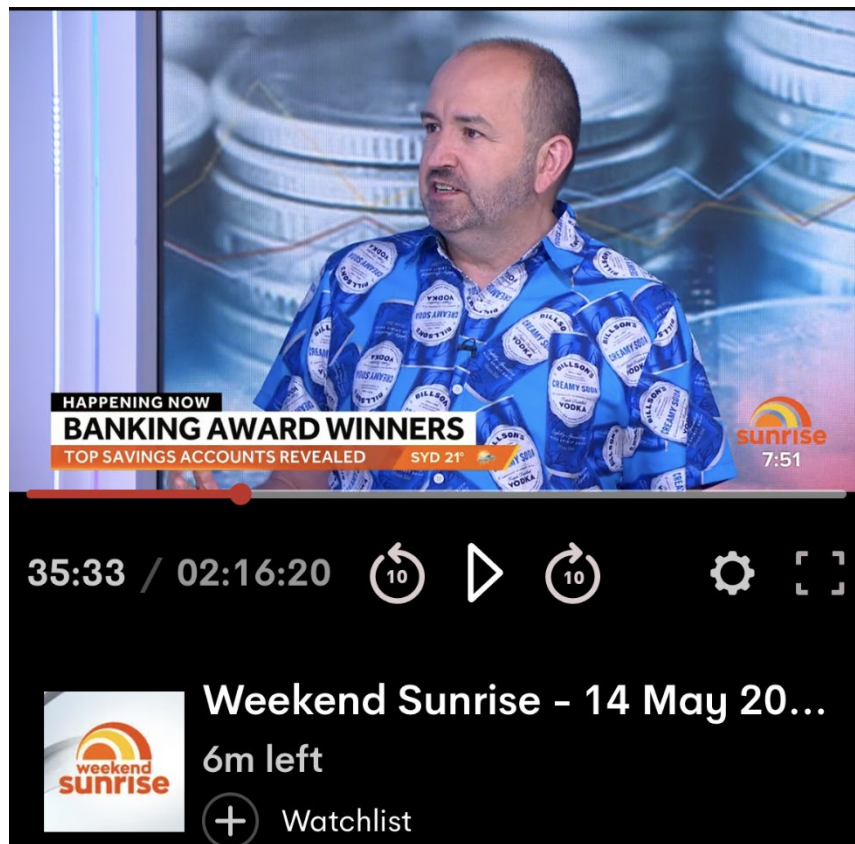
materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

### 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 guest wearing a Billson's Creamy Soda Vodka shirt when appearing on Channel Seven's Weekend Sunrise program on 14 May 2023.



## The Complaint

11. The complainant objects to the marketing as follows:
  - *We found this form of blatant subliminal advertising disrespectful to those suffering alcoholism issues and a complete disregard for advertising laws.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
13. Part 6 of the ABAC Code provides that:

**Marketer** means a producer, distributor or retailer of Alcohol Beverages.

**Marketing Communications** means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

**Placement Rules** means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up-to-date audience composition data, if such data is available). (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.

- (iv) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

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

14. The Company responded to the complaint by email on 16 May 2023. Its primary comments were:
- *We have no affiliation or relationship with Angus Kidman and did not supply him the shirt. We had no prior knowledge.*
  - *We did produce this shirt as a small run for Easter 2022. It was sold exclusively via our cellar door in Beechworth. We don't intend on reproducing this item.*

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

15. On Sunday 14 May 2023 a Mr Angus Kidman appeared on the Weekend Sunrise program broadcast over the 7 Network. Mr Kidman is the Editor at Large at the market comparison site 'Finder'. The interview with Mr Kidman concerned consumer options regarding bank accounts offering the best interest rates for deposits.
16. The complainant was watching the segment and was surprised and concerned, not about what Mr Kidman was saying, but about the shirt he was wearing. The shirt was a bright blue colour emblazoned with images of cans of Billson's Creamy Soda Vodka.
17. The complainant took the shirt to be inappropriate marketing for the Company. Specifically, it was argued the shirt amounted to subliminal messaging that was inconsistent with advertising laws and highly insensitive to viewers dealing with alcohol dependence.
18. The ABAC captures all alcohol marketing communications generated by or within the reasonable control of a producer, distributor or retailer of alcohol beverages. Marketing collateral items such as shirts carrying the alcohol branding or images of alcohol products are a form of alcohol marketing. Equally appearing on a TV program wearing a shirt carrying alcohol branding can certainly fall within the ambit of the ABAC scheme.
19. The threshold question however is the relationship between Mr Kidman and the Company and whether the Company can be said to have 'generated' or had 'reasonable control' over the appearance of Mr Kidman on Sunrise wearing the shirt. If the Company was involved by paying Mr Kidman to wear the shirt or if Mr Kidman had some interest in the Company and was involved in promoting

the Company and its products, then the TV segment can be regarded as a marketing communication for ABAC purposes.

20. If on the other hand the Company had no involvement with Mr Kidman and no prior knowledge that he would be wearing the shirt and the decision to wear the shirt was Mr Kidman's alone, then the segment cannot be fairly regarded as a marketing communication under the ABAC scheme.
21. On the relationship between them, the Company has advised that it:
  - had no affiliation or relationship with Angus Kidman;
  - did not supply him the shirt; and
  - had no prior knowledge that the shirt would be worn on TV.
22. A brief internet search did not reveal any apparent connection between the Company and Mr Kidman. The search did indicate however that Mr Kidman has a panache for wearing highly colourful if not gaudy shirts in his public appearances.
23. Based on the Company's assurances and the limited search of readily available information, it seems that the Company had nothing to do with Mr Kidman appearing on the program wearing the Billion's patterned shirt. Accordingly, it would appear that the TV segment cannot be regarded as a marketing communication for which the Company can be held responsible.
24. On this basis the wearing of the shirt does not fall within the scope of the ABAC standards and the complaint needs to be dismissed.