



## ABAC Adjudication Panel Determination No 122/24

**Product:** Hard Fizz – Orange Extra Strength  
**Company:** Fizzy Mates Pty Limited  
**Media:** Digital – Facebook and Instagram  
**Date of decision:** 30 September 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Louisa Jorm  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 21 August 2024 about a competition being conducted by Fizzy Mates Pty Limited (“the Company”), along with a number of social media posts promoting the competition. The winner of the competition was able to choose between a pallet of Hard Fizz (“the product”) or \$5,000 as their prize.
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 21 August 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

## Pre-vetting Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the marketing.

## The Marketing


10. The complaint relates to a competition run by and promoted by the Company on its Instagram and Facebook pages.

### Post 1 – 9 August 2024

[\(5\) hard fizz - search results | Facebook](#)

[HARD FIZZ \(@hard\\_fizz\) • Instagram photos and videos](#)

[Hard Fizz Taproom \(@hardfizzhq\\_taproom\) • Instagram photos and videos](#)



The post shows a man standing on and next to a truck laden with a large amount of Orange Extra Strength Hard Fizz.

The man says:

*Pwoah. G'day guys.*

*Teamed up with the legends here at Hard Fizz and I'm giving away a pallet of this orange fizz or 5 k cash.*

*To be in the draw you've just gotta go to any Dan Murphy's or BWS store and buy a four pack of orange fizz and upload your receipt to the website.*

Link is in the description.

Good luck.

## Post 2 – 20 August 2024

[HARD FIZZ \(@hard\\_fizz\) • Instagram photos and videos](#)

[Hard Fizz Taproom \(@hardfizzhq\\_taproom\) • Instagram photos and videos](#)



The post shows two women, Ellidy and Chloe, lying on and standing next to a pallet of Orange Extra Strength Hard Fizz.

The women, each holding a can of product, say:

**Chloe (C):** *G'day fizz fam. Do you wanna win this pallet of the orange stuff? Unfortunately the model doesn't come with it. Or you can win five grand cash. I'd be taking the cash.*

**Ellidy (E):** *I'd be taking the pallet. Obviously. Duhhh. All you have to do is go to BWS or Dan Murphy's and buy yourself a four pack of the orange extra strength. Upload your receipt to the link in the bio.*

**C:** *And if you wanna be greedy you can upload a photo of your stories and tag myself, Ellidy and Fizz for a bonus entry.*

**E:** *The winner will be drawn on the 6<sup>th</sup> of September.*

C and E clink cans.

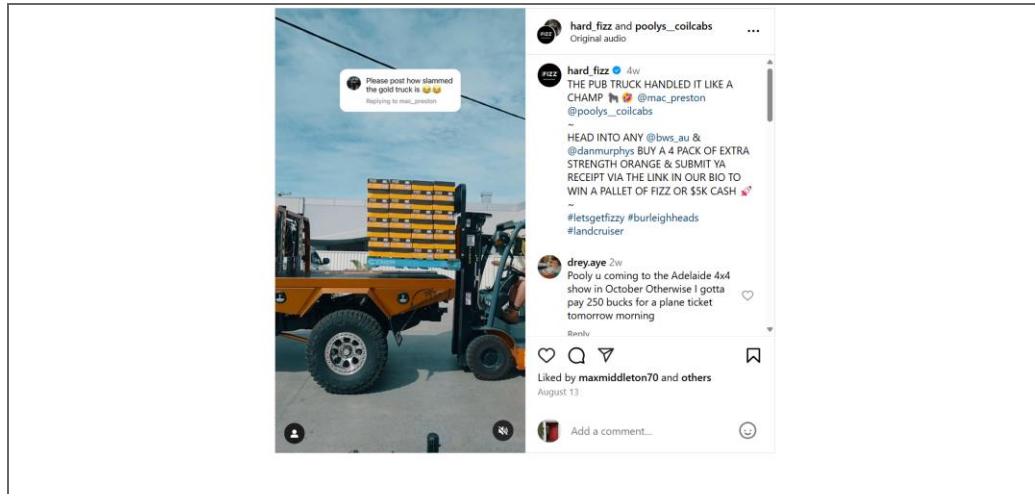
**C:** *Yes, September.*

**E:** *[Makes a tongue rolling noise]. Cheers baby.*

**C:** *Cheers.*

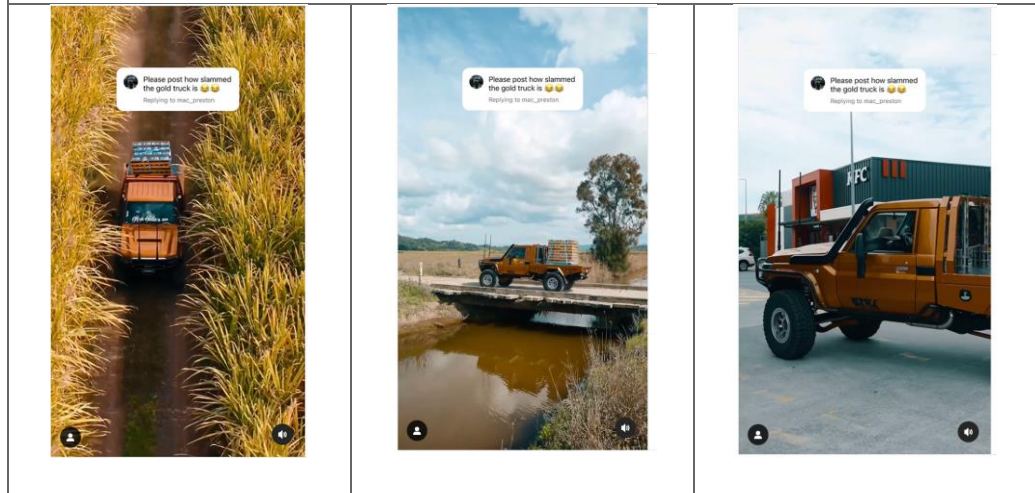
## Post 3 – 14 August 2024

### [HARD FIZZ \(@hard\\_fizz\) • Instagram photos and videos](#)



The post is set to Red Bellied Black Snake by the Beefs.

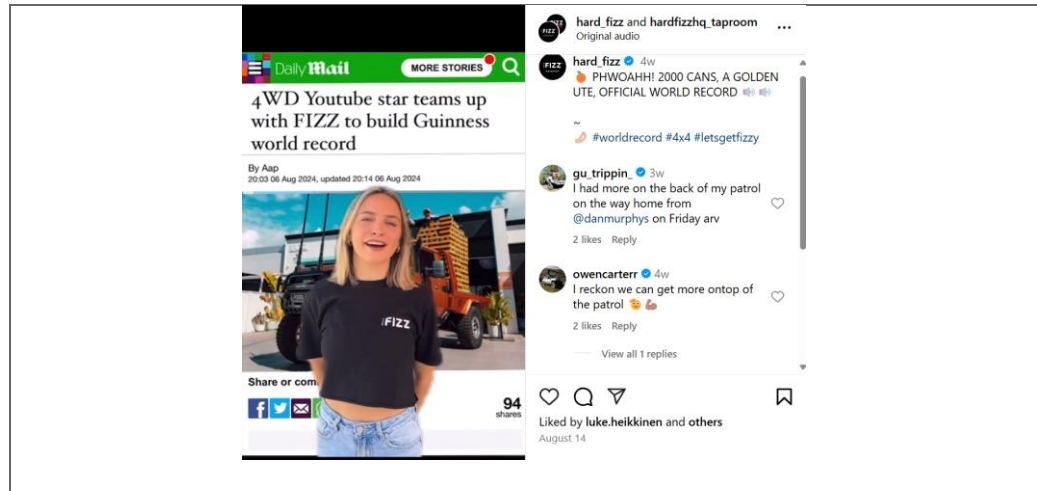
It commences with a ute backing up to a shed, and a forklift being used to load a pallet of Orange Extra Strength Fizz. We then see an overview of the ute being driven through some vegetation. The ute then crosses a bridge and turns into an urban carpark.



## Post 4 – 15 August 2024

[HARD FIZZ \(@hard\\_fizz\) • Instagram photos and videos](#)

[Hard Fizz Taproom \(@hardfizzhq\\_taproom\) • Instagram photos and videos](#)



The post shows a woman standing in front of a Daily Mail image who says:

*4WD and YouTube star Locky Paul teams up with Hard Fizz to build the world's biggest seltzer stack on this golden ute.*

*The 1.8 metre stack of 2,000 cans is an unofficial world record. Rumour has it on the street that Locky Paul loves the fizz because it's light on the rig and low on sugar.*

*Head down to BWS or Dan Murphy's, grab a four pack of Orange Extra Strength, take a photo of that receipt and upload it to the link in bio.*

## Complaint

11. The complainant objects to the marketing as follows:
  - Hard Fizz and their influencers are promoting a competition where the winner can choose between a pallet of Hard Fizz or \$5,000 as their prize.
  - The marketing is encouraging binge drinking and high consumption.

## The ABAC Code

12. Part 3 (a) of the Code provides that An Alcohol Marketing Communication must NOT:
  - (i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:

(A) excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day).

### **The Company Response**

13. The Company responded to the complaint by email on 10 September 2024. Its primary comments were:
  - The Hard Fizz promotion outlined in the complaint was included with Ts and C's to be valid and age gated for 18 years plus and include responsible service of alcohol.
  - The pallet or cash option was considered upon the complaint and the subsequent winner was offered cash as the prize.
  - 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 it public. We will continue to diligently follow this process, taking into account this point of view.

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

14. In August/September 2024, the Company ran a competition to promote the product Hard Fizz Orange Extra Strength. The competition was promoted over social media and offered a prize of either a pallet of cartons of the product or \$5000 cash. Entering the draw for the prize required the purchase of a four pack of the product and uploading a copy of the purchase receipt to a link on the Company website or in the bio link of several Instagram posts from influencers.
15. The complainant believes the competition and the social media posts promoting the competition are irresponsible. It is argued that the promotion encourages binge drinking and high consumption of alcohol.
16. The Company argues that the competition and its promotion meets community standards. It is explained that the competition was open only to people over the age of 18 years and responsible alcohol use messaging was contained in the terms and conditions. Upon reflecting on the complaint, the Company made only the \$5,000 as the prize to the eventual winner.
17. The ABAC standard in Part 3 (a)(i) requires that an alcohol marketing communication must not encourage consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol (Australian Guidelines) such as excessive consumption which is more than 10 standard drinks in a week or more than 4 standard drinks on any one day. A competition and social media posts are marketing communications captured by the Code.

18. The test of the consistency of a marketing communication against Code standards is assessed from the standpoint of the probable understanding of the marketing item by a reasonable person. The reasonable person concept is drawn from the common law system and means the benchmark is the attitudes, opinions, values and life experiences shared commonly in the community.
19. It is not uncommon for an alcohol product to be a prize in a raffle or a competition of some sort. Sometimes the prize might be a very expensive type of alcohol like a bottle of Grange Hermitage or multiple products like a carton of beer. While the circumstances of each competition and how the promotion is framed must always be assessed individually, as a general proposition the award of an alcohol product(s) as a prize does not mean excessive alcohol consumption is being encouraged.
20. By its nature, alcohol has a long shelf life and can be stored and consumed over a period of time. Equally, acquiring multiple products does not mean all of the products will be subsequently consumed by a single person in a binge fashion. Many people might share in the products and consumption might take place over many months, or the case of wine and spirits products, many years.
21. Of course, the messaging with a competition offering alcohol might be understood by a reasonable person as encouraging excessive alcohol use. It does depend on what is portrayed in each case. The offering of the entire pallet of the Hard Fizz product as a prize is an enormous amount of alcohol for a person to win. It could be reasonably assumed that almost universally a potential winner would take the cash prize, and the pallet of the product was more of a novelty to promote the product than a realistic option a typical person would choose.
22. On balance the Panel believes that a reasonable person would understand that the competition prize of a pallet of product does encourage alcohol consumption beyond that recommended by the Australian Guidelines. In reaching this conclusion the Panel noted:
  - the sheer quantity of the alcohol offered as a prize is inconsistent with its subsequent moderate consumption over a realistic period of time even acknowledging the long shelf life of alcohol and that multiple people might consume the product;
  - while a reasonable person would likely take the alcohol prize as a means to promote the product and would choose the cash prize option, the offering of a huge quantity of alcohol implicitly endorses excessive alcohol use as a socially acceptable option;
  - while none of the Instagram posts depict excessive consumption of alcohol nor do the people shown appear affected by alcohol, the promotion of the



pallet of product as a prize means the posts would be understood as endorsing excessive alcohol use;

- taken as a whole, the competition and its promotion via the social media posts showing the pallet and its availability as a prize option would be likely understood as endorsing alcohol consumption beyond that recommended by the Australian Guidelines.

23. It is noted that the Company reflected on the prize of the pallet of alcohol upon receiving the complaint and in the end only offered the cash prize. This is welcomed but does not diminish the promotion of the huge quantity of alcohol as a viable prize in the competition and the accompanying social media promotion.
24. The complaint is upheld.