



ABAC Adjudication Panel Determination No 156/24

Product: White Claw
Company: Lion – Beer, Spirits & Wine Pty Ltd
Media: Digital – Facebook and Instagram
Date of decision: 1 November 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 10 October 2024. It relates to Facebook and Instagram marketing of White Claw (“the product”) by Lion (“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 10 October 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 video social media post made by the Company, showing a can of White Claw surfing. The music accompanying the post is Waves by r_space. Following is an image of the social media post:



Complaint

11. The complainant objects to the marketing as follows:
 - *The advertisement breaches ABAC Responsible Alcohol Marketing Code Section 3(d) - An Alcohol Marketing Communication must NOT show (visibly, audibly or by direct implication the consumption of alcohol before or during any activity, for safety reasons, required a high degree of alertness of physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.*
 - *The advertisement depicts a White Claw drink on top of a surfboard 'riding the waves.' Water activities such as surfing and swimming require a high degree of alertness and physical coordination. This short clip in the advertisement can be seen as promoting water-based activity, surfing whilst in the presence of alcohol.*

- *While it does not directly state the connection with alcohol consumption and water-based activities it indirectly promotes the message by the two factors White Claw and a surfboard on waves being seen/put together. This sends the message to the general public that these two factors are associated together further promoting the unsafe message of alcohol consumption whilst in and around water-based activities.*
- *Similarly, the @whiteclawsau response to the comment “can it snowboard?” with White Claw replying “You Bet! (shake hands emoji)”. This response from the company in the comment section further promoting the association between snowboarding and alcohol. This further breaches the code as Section 3 (d) states that, ‘alcohol marketing communication must NOT show ... implication the consumption of alcohol before or during any activity, for safety reasons, requires a high degree of alertness of physical coordination...’*
- *Many Australian Snow Sport Centres including two well known snow sporting companies Thredbo and Perisher have strict no alcohol consumption rules. Thredbo states on their website “Do not ski, board, ride a lift or undertake any alpine activity if your ability is impaired by drugs or alcohol (Thredbo, 2024).” As well as Perisher stating, “Stop when you are tired and do not consume alcohol when skiing or boarding (Perisher, 2024).” The comment from White Claw further promotes this unsafe message.*

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:

- (d) show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming

The Company Response

13. The Company responded to the complaint by letter emailed on 21 October 2024. Its primary comments were:

- Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of the complainant. Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously.
- For the reasons set out below, and with respect to the complainant, we submit that there has been no breach of Part 3(d) of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel.

- As social content, the Advertisement was not submitted for approval through the Alcohol Advertising Pre-Vetting Service (AAPS).
- For the following reasons, we do not consider that the Advertisement breaches Part 3(d) of the ABAC Code:
 - the Advertisement is a stylised animation of a White Claw can surfing on a wave with the description “turns out, this White Claw’s got some serious surfing skills”;
 - the reasonable consumer would understand that the Advertisement is comically anthropomorphising a can of White Claw (a play on the triple crest wave meaning behind the White Claw brand), and not showing, either visibility or by direct implication, consumption before or during surfing; and
 - we repeat the above paragraph in relation to the “can it snowboard?” comment and response.
- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure its compliance.

The Panel’s View

14. This determination arises in relation to video social media marketing for White Claw. It shows a can of White Claw surfing. In the comments accompanying the post, a third party questions “Can it snowboard?”, to which Lion replies “You bet [hand emoji]”.
15. The complainant is concerned that the post and the comments accompanying it encourage the consumption of alcohol before or while undertaking the risky activities of surfing and snowboarding.
16. This concern raises Part 3 (d) of the Code which requires that an alcohol marketing communication must not show (visibly, audibly or by direct implication) the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.
17. The policy intent of the Part 3 (d) standard is that alcohol marketing should not model alcohol consumption before or in conjunction with activities that are inherently dangerous such as driving a motor vehicle. This is because alcohol impacts on a person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.

Both surfing and snowboarding are pursuits that require coordination and alertness to be conducted safely.

18. In response to the complaint the Company contended that the reasonable consumer would understand that the advertisement is comically anthropomorphising a can of White Claw (a play on the triple crest wave meaning behind the White Claw brand), and not showing, either visibly or by direct implication, consumption before or during surfing or snowboarding.
19. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians and assesses how this reasonable person would probably understand the marketing communication.
20. The Panel does not believe the post breaches the Part 3 (d) standard. In reaching this conclusion the Panel noted:
 - the standard does not prohibit the association of alcohol with the pursuits of surfing and snowboarding, what is not permitted is the depiction of alcohol consumption before or during the carrying out of both pursuits;
 - the video does not depict alcohol consumption; and
 - a reasonable person would not probably understand that the video is encouraging or suggesting alcohol use before engaging in inherently dangerous activities.
21. The complaint is dismissed.