



ABAC Adjudication Panel Determination Nos 172/24

Product: Silky Wines
Company: Australian Vintage Limited
Media: Social Media (TikTok) and Website
Date of decision: 2 December 2024
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”) arises from a complaint about the marketing of Silky Wines (“the product”) by Australian Vintage Limited (“the Company”). The complaint was received on 29 October 2024 and is about TikTok and website marketing.
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 the 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 places 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, and 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. Occasionally, 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 29 October 2024.
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. 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 before 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 items.

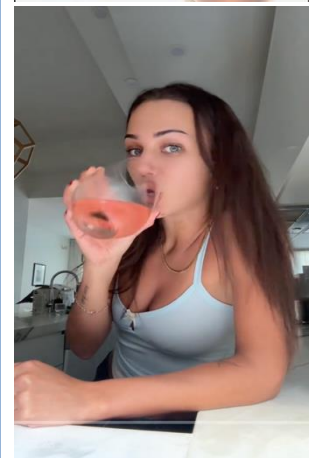
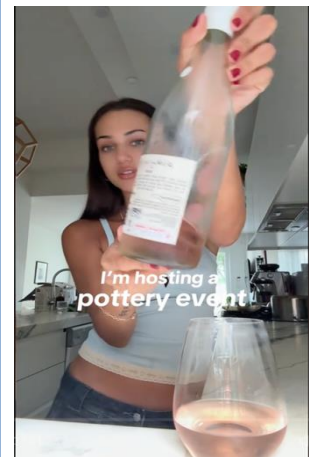
The Marketing Communication

10. The complaint relates to the following TikTok video and website pages.

TikTok video

Silk Cartwright: Hey everyone I have a little announcement, especially if you're in Sydney, listen up. I'm hosting a pottery event, a pottery, ceramics event to celebrate the launch of Silky Wines. Never been done before by me. This is going to be a three-hour ceramics, and pottery event, with all wine included in your ticket price. It's going to be at Crooked Studios in Manly, in Sydney. Sorry Melbourne people, we will just have the Sydney one for now. This is open to the public, it's a ticketed event, but I will be there, like hosting it, so we're going to like drink wine, listen to music, how it would work, there will be three different stations within the studio, one of them will be a wheel throwing station so you get to go on the pottery wheel, there'll also be a teacher at each station, like not just me. There'll be a slab, like a hand-building station which is how I make most of my pieces and then there'll be a pinch pot station, so hand-building, but everything is going to be wine-themed. It's going to be really really fun. If you want to get tickets like tell your friends, bring some friends come by yourself, there's a few people who have messaged me saying they are coming by themselves so like we'll hang out make friends and like drink wine.

It's really easy to make friends when you are a bit tipsy. The link to get tickets is in my Instagram bio so go check it out. And I can't wait to see you there.



Website 1



SILKY WINES PINOT GRIGIO

\$20.00
GST included.

Quantity − 1 +

ADD TO CART

-  Free shipping on orders over \$120
-  Recyclable packaging
-  Safe, fast and secure checkout
-  Delicious wines

Picture this - A sunny day, seafood and friends. Or maybe just a slow weekday? No worries, this Pinot Grigio's got you. With it's clean pear aroma and a hint of citrus and spice, it's your anytime uplift. Your day just got a whole lot better. You're so glad you bought this wine.

Our grapes come from premium parcels in Murray Darling, New South Wales.

ABV 11%

Website 2



SILKY WINES PROSECCO

\$22.00
GST included.

Quantity − 1 +

ADD TO CART

-  Free shipping on orders over \$120
-  Recyclable packaging
-  Safe, fast and secure checkout
-  Delicious wines

Picture this - You're celebrating. Promotion? Dumped your boyfriend? Or, simply made it through a dull Tuesday? Dive into this bubbly Prosecco with a zesty twist of passionfruit and a crisp apple finish. Fresh, fruity and oh-so-sparkling. You're so glad you bought this wine.

Our Prosecco grapes come from premium parcels in the Adelaide Hills.

ABV 12.50%

Website 3



The Complaint

11. The complainant objects to the marketing as follows:
 - *Silk Cartwright, the owner of the brand and a social media influencer, is selling tickets to a pottery event she is hosting, where her wine will be provided. She states, "We'll drink wine, and it's really easy to make friends when you're a bit tipsy."*
 - *The online and social media advertising suggests that consuming their wine improves your day and that it helps you get "tipsy," thereby facilitating socialising. In both instances, these claims violate the ABAC code.*
 - *The descriptions of the wines on the website also violate the ABAC code by suggesting that the wines can help you cope with or enhance social situations and personal issues, such as breakups.*

The ABAC Code

12. Part 3 of the ABAC Code provides that an Alcohol Marketing Communication must NOT:
 - (c)(i) Suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment;

- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of Alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
- (c)(iii) Suggest that the success of a social occasion depends on the presence or consumption of Alcohol; or
- (c)(iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity;

13. Part 8 of the ABAC Code includes the following definition:

Alcohol Marketing Communication means a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

The Company's Response

14. The Company responded to the complaint with a letter dated 5 November and a supplementary response on 6 November 2024. The principal comments made by the Company were:

- The Complaint relates to:
 - a video published on the TikTok platform by Silk Cartwright on or about 25 October 2024 promoting a pottery-focused event to be held in Manly, NSW on 14 November 2024 (Cartwright Video); and
 - certain statements published on the Silky Wines website (silkywines.com.au) associated with the description of various 'Silky Wines' branded wines offered for sale on the website (Website Statements).
- Relevantly, we note that:
 - Silk Cartwright is a Melbourne-based artist and influencer.
 - AVL is the owner of the Silky Wines website, and the producer of the Silky Wines branded wines offered for sale through the website.

- AVL is supportive of the ABAC Scheme, is committed to upholding the principles set out in the ABAC Responsible Alcohol Marketing Code (Code) and takes its obligations to responsibly promote its products seriously.
- To the knowledge of AVL, the Website Statements were not submitted for review through the Alcohol Advertising Pre-Vetting Service. The Cartwright Video was created and published without input or prior approval by AVL. AVL is not aware if the Cartwright Video was submitted for review through the Alcohol Advertising Pre-Vetting Service
- In relation to the Cartwright Video, AVL submits that:
 - the Cartwright Video was filmed/produced without AVL's knowledge or participation;
 - AVL did not write, review or approve the Cartwright Video or the associated content;
 - AVL was not aware that the Cartwright Video would be published on TikTok or through any other distribution channel;
 - the generation of the Cartwright Video was not within the reasonable control of AVL; and
 - AVL was not aware of the Cartwright Video until after the ABAC complaint was received.
- In these circumstances, AVL respectfully submits that the Cartwright Video does not constitute an 'Alcohol Marketing Communication' for the purposes of the Code and hence the Panel does not have jurisdiction to make a determination in relation to the Cartwright Video.
- Further, and in the alternative, AVL submits that the statement '*It's really easy to make friends when you are a bit tipsy*' does not imply that the consumption of alcohol may be a cause of social success. With respect, a reasonable person or viewer of the Cartwright Video would not consider the ease with which a person 'makes friends' to be an indicator of social success. For this reason, AVL is of the view that there has been no breach of Part 3(c)(ii) of the Code.
- *Website* - On its proper interpretation, AVL submits that the reference to "*it's your anytime uplift. Your day just got a whole lot better*" in connection with the Silky Wines Pinot Grigio product needs to be taken in the context of the immediately preceding wording, being "*clean pear aroma and a hint of citrus and spice*" and is not a reference to alcohol in the wine. The aroma and/or taste of fruit, citrus and spice are commonly associated with a feeling or

sense of freshness and zest, which in turn generally makes people feel uplifted.

- The subject statement does not suggest any improved mood by reason of the alcohol, only that the aromas and the spice and citrus notes in the product may enhance a consumer's experience with the product. This is reinforced by the imagery on the product and is consistent with the application of the reasonable person benchmark which requires that the most probable understanding be adopted. AVL therefore submits that there has been no breach of Part 3(c)(i) of the Code.
- *Prosecco*: AVL submits the statement "*You're celebrating. Promotion? Dumped your boyfriend? Or simply made it through a dull Tuesday? Dive into this bubbly prosecco with a zesty twist of passionfruit and a crisp apple finish. Zesty, fruity, and oh-so sparkling. You're so glad you bought this wine*" does not suggest that the wine gives rise to a cause for celebration or that the success of a social occasion depends on the presence or consumption of alcohol.
- The statement, when considered as a whole, is framed in past tense such that the 'occasion' being a celebration, promotion, end of relationship or a dull workday has already occurred or transpired. The wine is not the cause of the occasion, and it is not suggested or implied that the success of any of those occasions is dependent on the presence or consumption of the wine. Further, applying the 'reasonable person' test, a promotion, the end of a relationship or a dull workday are not ordinarily considered to be a social occasion. The presence or consumption of the wine is not causative of the success of those occasions. As for "*you're celebrating*", the celebration is framed as having already commenced, and the wine is not the catalyst for the success or otherwise of the occasion. For these reasons, AVL submits that there has been no breach of Part 3(c)(iii) of the Code.
- *Rose*: AVL is of the view that the statement "*Picture this. You're with friends and it's debrief time. Work drama? Tiff with your partner? This Rose, with its blush of rose petals and burst of berries, is your go-to drink. You sip, share and savour the stories. You're so glad you bought this wine.*" does not suggest that the consumption of the wine helps overcome problems or adversity.
- To "*sip, share and savour the stories*" is an entirely different proposition to consuming alcohol as an aid to overcoming 'problems or adversity'. A reasonable person would not associate the sharing of stories and reminiscing on past memories as equivalent to the overcoming of problems or adversity. Further, the statement does not suggest, directly or by implication, that the consumption of the Rose wine helps or is a catalyst for the sharing and savouring of stories. To draw such a causative association

would, with respect, be a tenuous and unreasonable conclusion. AVL therefore submits that there has been no breach of Part 3(c)(iv) of the Code.

Further Remark

- As has been recognised by the ABAC Panel in its previous decisions, the assessment of whether a marketing communication is consistent with an ABAC standard is through the application of the 'reasonable person' test. This test means the marketing communication is assessed from the standpoint of the probable understanding by a reasonable person, taking into account the values, opinions and life experiences shared by most members of the community.
- The ABAC Panel has also previously found that if a marketing communication can be interpreted in several ways, the reasonable person benchmark requires that the most probable understanding be adopted over a possible but less likely interpretation.
- Applying these same principles enunciated by the ABAC Panel, AVL respectfully submits that from the viewpoint of a reasonable person, the most probable interpretation and understanding of the Website Statements does not constitute a contravention of Part 3(c)(i), 3(c)(iii) or 3(c)(iv) of the Code respectively.

Voluntary Actions

- Notwithstanding that AVL holds the view that the Website Statements the subject of the Complaint do not breach the ABAC Code, AVL is willing (on an without-admission basis), to voluntarily take steps to review and amend the Website Statements in order to mitigate against the risk of the Website Statements possibly being interpreted in an unintentional, albeit less likely, manner.

Concluding Remarks

- For the reasons outlined in this response, AVL submits that there has been no breach of Part 3 of the ABAC Code by AVL and the Complaint should be dismissed by the ABAC Panel.
- Notwithstanding this, AVL does not seek to diminish the concerns of the complainant and would like to reiterate that we take our responsibility to uphold community standards when it comes to the placement and content of advertising incredibly seriously.
- AVL also has its own responsible marketing guidelines which sets out its expectations for all marketing materials and activity. AVL is committed to the highest standards of responsible marketing practices across product,

consumer marketing, and communications through its responsible marketing guidelines, in addition to advertising regulations and the ABAC Code.

- AVL will accept the ABAC Panel's decision in relation to the Complaint.

The relationship between the Company and Silk Cartwright

- Silk Cartwright and AVL, in consultation, developed the concept and vision for Silky Wines. Silk Cartwright has also been responsible for the creative design of the product labels and branding which incorporates the Silk Cartwright name and referencing. The 'Silky Wines' brand is owned by AVL, and AVL is the producer of the Silky Wines products.
- AVL has a Licence Agreement in place with Silk Cartwright and The Gifted Group Pty Ltd (Silk Cartwright's talent management agency) which relevantly provides that:
 - Silk Cartwright has granted AVL a licence to use the 'Silk Cartwright' name in Australia for the production, branding, marketing and sale of various wines made by AVL that are labelled with the 'Silk Cartwright' name, and to use Silk Cartwright's likeness and photography in marketing and promotional material;
 - AVL holds all right, title and interest in the 'Silky Wines' brand;
 - Silk Cartwright and Gifted Group agree to undertake marketing activities (e.g. act as a brand ambassador, and produce content on Silk Cartwright's social channels) in connection with the associated wine products; and
 - All intellectual property created by Silk Cartwright in connection with the marketing activities vests in Silk Cartwright.
- Importantly, the Licence Agreement does **not** provide AVL with any rights to:
 - direct or control the marketing content created by Silk Cartwright; or
 - approve, review, modify (or request modification of) or reject content created by Silk Cartwright prior to or after publication.
- AVL does not have any rights under the Licence Agreement to direct the removal of any material produced by Silk Cartwright. As noted in AVL's response dated 5 November 2024, the subject video was created and published without input or prior approval by AVL. The TikTok account is owned and managed by Silk Cartwright and/or Gifted Group, and AVL has

no ability to control the content that Silk Cartwright may post or publish from time to time.

The Panel's View

Introduction and Context

15. This determination arises from a complaint about a TikTok video and a website promoting Silky Wines. The complainant is concerned that the various claims suggest that the wine will improve your day, enhance your social situation or assist with personal issues.
16. These concerns raise four Code standards, namely that an alcohol marketing communication must not:
 - suggest that the consumption or presence of alcohol may cause or contribute to an improvement in mood or environment – Part 3 (c)(i);
 - show (visibly, audibly or by direct implication) the consumption or presence of alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success – Part 3 (c)(ii);
 - suggest that the success of a social occasion depends on the presence or consumption of alcohol – Part 3(c)(iii); and
 - suggest that the consumption of alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity – Part 3 (c)(iv).
17. Australian Vintage Limited is the producer of the wine and has accepted that the Silky Wines website is an alcohol marketing communication within its reasonable control, but claims that the Silk Cartwright TikTok video is not.

Is the TikTok Video an alcohol marketing communication within the ABAC?

18. The ABAC provides that a communication will be within the scope of the Code if it is a marketing communication for alcohol, in any media, **generated by, for, or within the reasonable control** of an alcohol producer, distributor or retailer, that has a discernible and direct link to Australia. The Company is an alcohol producer, whereas Ms Silky Cartwright is not an alcohol industry participant and hence is not bound by the ABAC Scheme in a direct sense.
19. The Company explains that the concept and vision for the product were developed in consultation between Ms Cartwright and the Company, with Ms Cartwright responsible for the creative design of the product labels and branding that incorporates the Silk Cartwright name. The relationship is embodied in a license agreement that inter-alia provides:

- Ms Cartwright granted the Company a licence to use the Silk Cartwright name and image for branding and marketing purposes; and
 - Ms Cartwright agreed to undertake marketing activities as a brand ambassador including producing content on Ms Cartwright's social media channels.
20. It is pointed out that the Company does not have rights under the license agreement to direct or control the marketing content created by Ms Cartwright or to direct the removal of content created by Ms Cartwright. Consistent with this, the Company states it was not involved in the TikTok video nor aware of its content before receipt of the complaint. It is on this basis the Company argues the video is not a marketing communication for ABAC purposes.
21. It can be accepted that the Company was not involved in the video, but the Panel does not accept that the video is not a marketing communication for ABAC purposes. Ms Cartwright is a social media influencer. A standard operating model for alcohol companies engaging with influencers is that the company does not have direct control or line of sight over the posts the influencer might make about an alcohol product. The influencer's social media posts will still be captured by the Code if the company's actions can be said to have generated the marketing communication.
22. In this case, the relationship between Ms Cartwright and the Company is highly structured. They are collaborators in the product and its branding and marketing. Ms Cartwright is described on the Silky Wines website as 'the founder' of the product and she features heavily in its marketing by the Company. Naturally, Ms Cartwright is going to create extensive social media content about the product resulting from her relationship with the product and the Company. In these circumstances, there is no doubt that the Company 'generated' the TikTok video to bring it within the scope of the Code.
23. While not a source of a binding Code standard, the ABAC Best Practice Guide for Responsible Digital Marketing Part 1 clause 7 recommends that alcohol marketers include as a term of all arrangements with a partner that promotes its brand a requirement to meet ABAC Code standards, and to remove content the Panel finds in breach of the Code.

Does the TikTok Video breach Part 3(c)(ii) of the Code?

24. The TikTok video promotes tickets to a pottery event celebrating the launch of Silky Wines. The complainant is concerned by the statement in the video, "*We'll drink wine, and it's really easy to make friends when you're a bit tipsy*". It is

contended that this suggests wine facilitates socialising and achieving social success.

25. The relevant Code standard is Part 3(c)(ii) which provides an alcohol marketing communication must not show (visibly, audibly or by direct implication) the consumption or presence of Alcohol as a cause of or contributing to the achievement of .. social.. or other success.
26. The Company submits that the statement does not imply that the consumption of alcohol may be a cause of social success as a reasonable person or viewer of the video would not consider the ease with which a person 'makes friends' to be an indicator of social success.
27. The assessment of the consistency of a marketing communication with a Code standard is from the standpoint of the probable understanding of the marketing item by a reasonable person taking its content as a whole. A 'reasonable person' has the opinions, values and life experiences shared by most members of the community.
28. The video shows Ms Cartwright presumably at her home, leaning over a kitchen bench with a glass of wine. She announces the pottery event to celebrate the launch of Silky Wines. The overall takeaway from the video is information about the structure of the event, at which wine will be present and consumed. While far from the only message, the consumption of wine is portrayed as a key element of the event.
29. Within this context, the Panel believes a reasonable person would probably understand the statement about drinking wine and making friends and this being easier when you're a bit tipsy does suggest that alcohol is a contributor to achieving social success. The Panel rejects the Company's submission that a reasonable person would not understand making friends as an indicator of social success. The opposite would likely be the case. The TikTok video is a breach of Part 3 (c)(ii) of the Code.

Does the Website breach Part 3(c) of the Code?

30. Beyond the TikTok video, the complainant also raised concerns that entries on the Silky Wines website *suggest "that the wines can help you cope with or enhance*

social situations and personal issues, such as breakups.” These concerns potentially raise several Code standards depending on context, namely:

- Part 3(c)(i) - that an alcohol marketing communication must not suggest that the consumption or presence of alcohol may cause or contribute to an improvement in mood or environment.
 - Part 3(c)(iii) - that an alcohol marketing communication must not suggest that the success of a social occasion depends on the presence or consumption of Alcohol.
 - Part 3(c)(iv) - that an alcohol marketing communication must not suggest that the consumption of alcohol helps overcome problems or adversity.
31. The website comprises several sections with each wine in the range having its entry permitting the purchase of the product. The entry describes the product's attributes and it is these entries that have the content identified by the complainant. Each entry will be reviewed in turn.

Pinot Grigio

32. The Pinot Grigio entry contains the description “*Picture this. A sunny day, seafood and friends. Or maybe just a slow weekday? No worries, this Pinot Grigio's got you. With its clean pear aroma and a hint of citrus and spice, it's your anytime uplift. Your day just got a whole lot better*”.
33. The Company submits that the entry would be understood as linking the claimed ‘anytime uplift’ and ‘Your day just got a whole lot better’ with the “*clean pear aroma and a hint of citrus and spice*”, and not the alcohol in the wine. This is argued to be reinforced by the imagery on the product.
34. The Panel believes the entry does breach the Part 3(c)(i) standard. A reasonable person will understand the description of the product as a whole and not artificially draw out the aroma of the product as causing or contributing to the ‘anytime uplift’ and making the day better as distinct from the totality of the product including its ABV.

Prosecco

35. The Prosecco entry includes the description “*You're celebrating. Promotion? Dumped your boyfriend? Or simply made it through a dull Tuesday? Dive into this*

bubbly prosecco with a zesty twist of passionfruit and a crisp apple finish. Zesty, fruity, and oh-so sparkling. You're so glad you bought this wine"

36. The Company submits that the statement is framed in past tense such that the occasion has already occurred and the wine is not the cause of the occasion and the success of the occasion is not dependent on the presence of the wine.
37. The Panel believes that a reasonable person would view the description as suggesting that the wine is a suitable product for a celebration which is not a breach of the Code standard, and does not suggest that the wine has caused any of the events or the celebration nor that it the success of a celebration is dependent on the presence or consumption of the wine.

Rose

38. The Rose entry includes the description "*Picture this. You're with friends and it's debrief time. Work drama? Tiff with your partner? This Rose, with its blush of rose petals and burst of berries, is your go-to drink. You sip, share and savour the stories. You're so glad you bought this wine.*"
39. The relevant provision is Part 3(c)(iv) of the Code which provides that an alcohol marketing communication must not suggest that the consumption of alcohol helps overcome problems or adversity.
40. The Company submits that the statement "*sip, share and savour the stories*" is an entirely different proposition to consuming alcohol as an aid to overcoming 'problems or adversity'. A reasonable person would not associate the sharing of stories and reminiscing on past memories as equivalent to the overcoming of problems or adversity or suggest the consumption of the wine helps or is a catalyst to the sharing and savouring of stories.
41. The Panel believes that a reasonable person would view the description as a whole as suggesting that the wine is a suitable product for catching up with friends to talk about what's happening in their lives, and doesn't suggest that wine will help a person overcome problems or adversity.

Conclusion

42. While not conceding a breach occurred with the website, the Company did recognise the wording could on occasion be improved and acted to make changes in advance of this determination and upon reflecting on the points made by the

complainant. This speaks well of the Company's willingness to take consumer feedback seriously and act responsively.

43. The Panel has upheld the complaint in part, finding that the TikTok video and the Pinot Grigio website description breach Part 3(c) of the Code. The other website entries have been found not to have breached Code standards.