



ABAC Adjudication Panel Determination No 180/24

Product: Zoncello
Company: Zonzo Estate
Media: Digital – Instagram
Date of decision: 4 December 2024
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 13 November 2024 about social media marketing for Zoncello (“the product”) by Zonzo Estate (“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, 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. 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 13 November 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

- 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.

The Marketing

- The complaint relates to four Instagram posts:

Image 1:

<https://www.instagram.com/p/DBase5dNsPC/?igsh=MWxqd3h3enBnb3lwMQ==>
posted on the 22 October 2024



Image 2:

https://www.instagram.com/p/DBYV_-6NO8w/?igsh=MW96M3pqZzV1Z3J2aQ==
Posted on 21 October 2024



Image 3:

<https://www.instagram.com/p/DBGUctSNiS4/?igsh=YTA4YXRtczlhazNO>

Posted on the 14 October 2024



Image 4:

<https://www.instagram.com/p/DAcehCiMkNw/?igsh=MTdtMXp4aGs4dXJ5YQ==>

Posted on the 28 September 2024



Complaint

11. The complainant objects to the marketing as
 - *The complaint relates specifically to 4 images of people consuming Zoncello while sitting by a pool seen on their Instagram account.*
 - *The Instagram posts appear to be in breach of Standard 3 (d) Alcohol and Safety of the ABAC Responsible Marketing Code whereby a marketing communication and product 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.

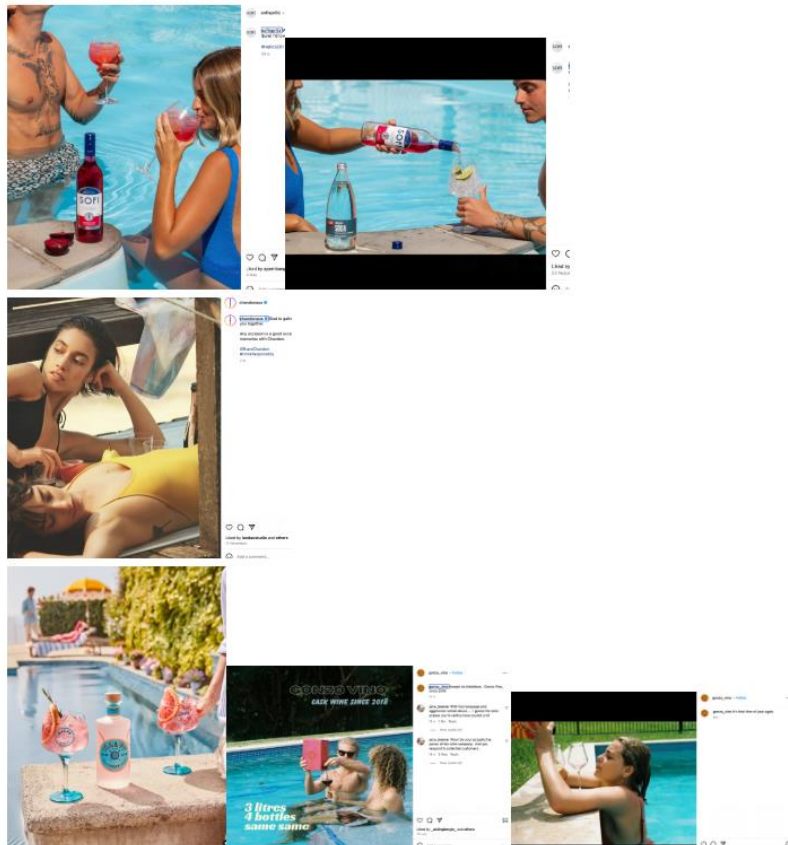
The ABAC Code

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 email on 27 November 2024. Its primary comments were:

- We want to be compliant in all our advertising and marketing activity and do take this seriously, however, this complaint is intriguing to us, especially considering that many other alcohol brands produce similar content and advertise in a similar way.
- Please see examples below.



- Are these companies also in breach? Are they also being investigated?
- We do believe these are fair questions to ask.
- We would love to understand from you exactly how we're not compliant with the four images that have been flagged by you. As this has not really been addressed and the information sent by you can easily be open to interpretation.
- For us, the images showing people sitting poolside are just that - people sitting by the pool enjoying each other's company with no intention of swimming. When these images are put in the context of the wider accompanying campaign which has been rolled out over the last almost two years and the accompanying hero video you can see that not once does anyone get in the water.
- I do think it is important to view these images in the context in which they were intended. As we know it is easy for things to be misconstrued.
- You can find the campaign video [HERE](#) for context.
- As you can see, in two of the images the subjects are clothed (the male does not even have a swimsuit on). The intention of this campaign was not to breach any guidelines or regulations but merely sell the la dolce vita lifestyle.

The Panel's View

Introduction

14. This determination concerns four Instagram posts marketing the limoncello and prosecco spritz, Zoncello. The complainant contends that each of the posts display unsafe alcohol use with the use of a swimming pool.
15. The Company is based in Victoria's Yarra Valley and produces a range of red and white wines, spirits and two beer styles. While not a direct signatory to the ABAC Scheme, the Company is committed to responsible alcohol marketing and has provided a detailed response to the complaint. In part, the issues raised by the Company go to the general operation of the ABAC Scheme and these points will be addressed before turning to the consistency of the Instagram posts with the ABAC standards.

ABAC Scheme and the Company's Observations

16. The Company found it 'intriguing' that it had been asked to respond to the complaint when it believed that its Instagram marketing was consistent with several other examples of marketing from other alcohol companies. It was asked if the other examples provided would be investigated.

17. The ABAC Scheme has three core components, namely:
 - the Code that sets out the standards of good practice for alcohol marketing;
 - proactive regulation including copy advice and education and training resources on best practice marketing for alcohol marketers; and
 - reactive regulation, being the public complaints and adjudication process.
18. The complaint process provides an avenue for community members to raise concerns about alcohol marketing. Essentially a complaint will be referred to the Panel for adjudication unless:
 - the complaint does not raise an issue under the ABAC Code e.g. the complaint might raise an issue under another regulatory regime such as the AANA Code of Ethics or is an RSA concern more effectively considered by a State Liquor licensing body;
 - the marketing material has already been fully considered in an earlier ABAC determination; or
 - the issue raised has been consistently dismissed.
19. The critical point is that the trigger of a Panel adjudication is the expression of concern by a member of the public as opposed to the ABAC Scheme instigating an investigation of itself. Hence the other examples of marketing submitted by the Company will be assessed by the Panel if a public complaint about the marketing is received.
20. It should be noted that at any given time there is disseminated by alcohol producers, distributors and retailers a very large number of alcohol marketing communications. This is particularly the case with social media marketing which can be created easily, quickly and cheaply. With the sheer volume of marketing, it is almost inevitable that a proportion will not meet the ABAC standards.
21. Accordingly, the ABAC Scheme places a significant focus on building a compliance culture within the alcohol industry to avoid marketing material not meeting the standards going into the market. This includes the pre-vetting service that gives an independent assessment of a marketing communication against Code standards before it is released. For major branding decisions and core marketing campaigns, pre-vetting is both best practice and prudent risk management.
22. The complaints process is more akin to a safety net enabling the wider community to raise concerns about individual examples of marketing material. To these concerns, it is not an answer to point to other examples of marketing

and contend that my marketing material is consistent with that used by other marketers any more than a speeding ticket can be defended by saying there are other speeding cars on the road.

Are the Instagram posts consistent with the Code standard

23. Part 3 (d) of the Code provides that alcohol marketing cannot show or directly imply the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination.
24. 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 or swimming. This is because alcohol impacts a person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.
25. It is important to note that the Code standard does not prohibit an alcohol brand from being associated with water-based activities. The point of the standard is that alcohol should not be consumed while undertaking the activities and marketing should not suggest that it is acceptable to use alcohol in this way. What this means for water-based activities is that an item of marketing can:
 - show an alcohol product at a beach or adjacent to a swimming pool if it is clear that alcohol is not being consumed; or
 - show alcohol consumption but it is established that the dangerous activity like swimming, surfing, scuba diving etc has finished and will not be recommenced.
26. 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.
27. So what would likely influence how a reasonable person would understand a marketing communication set next to a swimming pool as to whether a person depicted was going to consume alcohol and then enter the pool to swim? Some factors might be:
 - How is the person dressed e.g. are they fully clothed or wearing swimming gear or are they wearing a floppy hat and sunglasses or swimming cap and goggles;

- the positioning of the person i.e. is the person in the pool, immediately adjacent to the pool or some distance from the edge of the pool;
- whether the person is shown consuming the product (including, if not shown, consumption is directly implied);
- how is the alcohol product presented e.g. is it an open can or bottle or closed or does it seem the product has been already partially consumed; and
- the time of day of the scene depicted e.g. it is more likely swimming is completed if it is late afternoon as opposed to the morning.

28. The Company argued the posts did not breach the Code standard, contending:

- the images show people sitting poolside enjoying each other's company with no intention of swimming;
- the social media images are taken from a wider accompanying campaign featuring a video where no one enters the water. It is important to view the social media images in the context in which they were intended so that they are not misconstrued; and
- in two of the images the subjects are clothed (the male does not even have a swimsuit on). The intention of this campaign was not to breach any guidelines or regulations but merely sell the la dolce vita lifestyle.

29. The Panel accepts that the Company has no intention to breach the ABAC or any other regulatory guidelines and that the images were still shots taken from a video created for the campaign. The video does not show people swimming but rather places the product in the setting around the pool. As mentioned, the ABAC standard does not prohibit associating an alcohol brand with the beach or a swimming pool, it is the implication that alcohol is being consumed before or during swimming that it is not permitted.

30. That acknowledged, the test for assessing the posts is not the Company's intention but how a reasonable person would probably understand the messaging in the posts about alcohol use. Further, it cannot be assumed that a viewer of the posts will be following the wider marketing campaign about the product, be familiar with the video and interpret the Instagram posts informed by the context of the video. Rather, the opposite should be assumed, i.e. the viewer of the Instagram posts will take the posts as a freestanding item of marketing and not in a wider context.

31. The four posts are briefly described as follows:

- Post 1 shows a man sitting on the side of a swimming pool, wearing a shirt, and shorts (not swimmers) with his bare feet in the water. He has sunglasses on and is pouring a glass of Zoncello. It seems to be in the afternoon. The accompanying text reads - This is your sign to stop by your local bottle shop on the way home tonight, so you can enjoy a mid-week tipple in the evening sunshine with your besties.
- Post 2 shows the bare legs and arms of a woman sitting on the side of a swimming pool holding an empty bottle of Zoncello. It appears to be late morning or early afternoon. The accompanying text reads - 100% quaffable **responsibly.
- Post 3 shows a woman wearing swimwear, sitting at the side of a swimming pool with her legs in the water. A glass and bottle of Zoncello is next to her. The accompanying text reads - You'll find us lapping up the Spring sunshine, with the perfect Spritz in hand. Run, don't walk to your nearest bottle shop to stock up.
- Post 4 shows a man and woman sitting at the side of a swimming pool. The woman is wearing swimwear and a wrap around her waist. She is wearing sunglasses. The man is wearing a shirt and shorts and sunglasses. There is a partially consumed bottle of Zoncello and each has a glass of the product. It appears to be late afternoon. The accompanying text reads- A sunny afternoon necessity! Best shared with those you love.

32. The Panel believes on balance that posts 2 and 3 breach the Part 3 (d) standard, noting:

- post 2 shows a woman partially in the pool holding an opened and empty bottle of the product implying consumption has occurred which is also implied by the word 'quaffable' in the accompanying text;
- post 2 is set at a time of day swimming is likely to occur;
- the woman in post 3 is wearing swimmers, is partially in the pool, and has a glass of the product implying consumption is occurring; and
- post 3 is set at a time of day swimming could be reasonably expected with swimming also mildly suggested by the word 'lapping' in the accompanying text.

33. On balance the Panel does not believe posts 1 and 4 breach the Part 3 (d) standard, noting:

- The man in post 1 is clothed and wearing sunglasses and the time of day suggests swimming may have been completed;

- The couple in post 4 are clothed or partially clothed and wearing sunglasses and the time of day suggests swimming may have been completed.

34. The complaint is upheld in part.