



## ABAC Adjudication Panel Determination No 181/24

**Product:** 12 Days of Christmas Vodka  
**Company:** Billson's  
**Media:** Social Media - Instagram  
**Date of decision:** 4 December 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This provisional determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 15 November 2024 about Instagram marketing of 12 Days of Christmas Vodka (“the product”) by Billson’s (“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 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 marketing content 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 November 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, however, this time frame does not apply in the case of

complaints regarding product packaging and brand names. This is because of the two-step process involving a provisional and then a final determination.

### 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 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

10. The complaint relates to a social media post made by the Company:



## Complaint

11. The complainant objects to the marketing as follows:
  - *Santa Claus' is a well-known image that attracts the attention of minors. Whilst the advertisement may not be directly advertising to minors it is still using imagery and wording that does attract the attention of minors. I believe these breaches ABAC Code 3 (b) Responsibility toward Minors.*

## The ABAC Code

12. Part 3 (b)(i) of the Code provides that An Alcohol Marketing Communication must NOT:
  - (i) have Strong or Evident Appeal to Minors, in particular;
    - (A) specifically target Minors;
    - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
    - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
    - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
    - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

## The Company Response

13. The Company responded to the complaint by email on 26 November 2024. It advised that it had chosen to remove the post in question from its grid.

## The Panel's View

### Introduction

14. This determination is about an Instagram post for 12 Days of Christmas Vodka by Billson's. The marketing is an Instagram post showing a man dressed in a Santa Claus costume holding a package of the product outside the Billson's brewery. The text accompanying the post reads '🎄 Can confirm. Santa approved. 🙌👍'.

15. The complainant contends that the post will have high appeal amongst minors due to the popularity of Santa Claus with minors. This concern brings into focus the ABAC standard in Part 3 (b)(i) of the Code that provides that alcohol marketing must not have strong or evident appeal to minors.

### **Strong and Evident Appeal to Minors**

16. The Part 3 (b)(i) standard might be breached if the marketing:
- specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an Adult;
  - uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; and
  - creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors.
17. The Panel has considered the Part 3 (b) standard on many occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material that may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
  - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
  - the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
  - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
  - depiction of activities or products typically undertaken or used by minors;
  - language and methods of expression used more by minors than adults;
  - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
  - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
  - use of a music genre and artists featuring in youth culture.

18. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
19. The Company did not provide a reasoned response to the complaint but rather chose to simply remove the Instagram post.
20. The inclusion of Santa Claus is fairly common practice in the marketing of products of all kinds in the lead-up to Christmas and Santa images and references have been applied by alcohol marketers over the years. Not surprisingly this has seen several complaints and Panel decisions on the concern that the use of Santa in an alcohol marketing communication will have strong or evident appeal to minors.
21. A review of the past decisions shows several recurring points, namely:
  - there is no prohibition in referencing Santa Claus in alcohol marketing as such;
  - that said, the inclusion of a Santa Claus character in marketing will invariably elevate the potential of the marketing communication to have a strong appeal to minors;
  - whether the individual marketing communication has a strong appeal to minors is always a case-by-case assessment; and
  - the context of the use and depiction of the Santa Claus character is key in determining the appeal of the marketing communication to minors.
22. By way of illustration on the importance of context, in Determination 03/08 the Panel considered a TV ad for an alcohol retailer that showed a man in a Santa Claus costume come into the liquor store, approach the counter and remove his hat and white beard. The context establishes that he had left his pre-Christmas shopping late, and products are identified as potential purchases. The ad was held not to breach the strong appeal to minors standard as in the context the ad established:
  - the man was a customer and not the 'real Santa';
  - much of the ad focussed on the products and their prices which would not appeal strongly to minors; and
  - taken as a whole, the ad would not have appealed strongly to minors.

23. In contrast, the Panel did find the depiction of Santa Claus imagery a breach of the standard in Determination 121/22. This case involved a T-shirt with an image of anthropomorphised cans of beer replicating the scene of a child sitting on the knee of Santa Claus. The combination of the appealing characters, Santa Claus and the highly relatable scenario of sitting on Santa's knee to ask for presents, was strongly appealing to minors.
24. The Panel believes the appeal to minors of the current Instagram post to be an on-balance decision upon which reasonable minds might disagree. The image shows the man in the Santa costume holding a box of Billson's mixed products outside the Company's brewery. Beyond the Santa costume and the box that resembles a wrapped Christmas present product there are no other elements likely to appeal to minors e.g. there are no other Christmas cues like a Christmas tree or a social/family party that minors might relate to.
25. That said, the Panel finds the post does breach the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted that:
- Santa Claus is the dominant feature of the post and this means the marketing is centred upon a character who is highly recognised and relatable to minors;
  - Santa is carrying the product box which in both its dimensions and its packaging resembles a Christmas present that a minor might receive from Santa; and
  - these two elements combined would likely influence a reasonable person to probably understand the post has evident appeal to minors.
26. The complaint is upheld.