



ABAC Adjudication Panel Determination No 148/21

Product: XPA
Company: Capital Brewing Co
Media: Instagram
Date of decision: 27 May 2021
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”) concerns Instagram marketing by Capital Brewing Co (“the Company”). It arises from a complaint received on 25 May 2021.
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 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 meeting 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

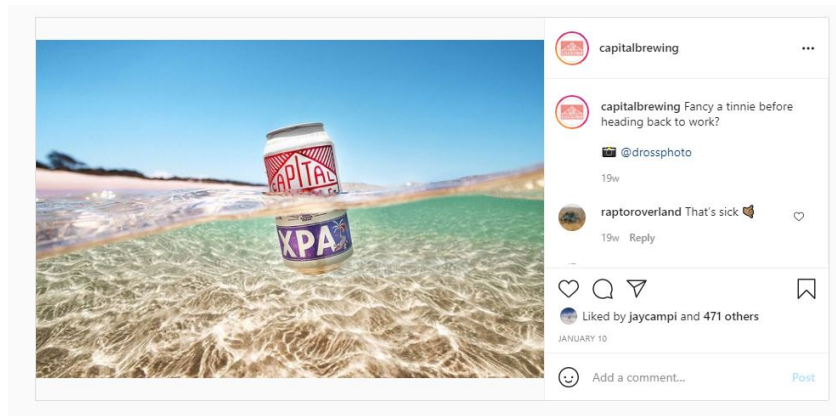
7. The complaint was received on 25 May 2021.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the post.

The Marketing

10. This determination relates to an Instagram post, as follows:



The Complaint

11. The complainant has the following concerns about the marketing:
 - *The advertisement implies it's okay to either a) throw your empty beer can in the water at the beach, or b) drink beer while swimming at the beach.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

13. The Company was notified of the complaint on 27 May 2021 and responded by email on the same day, as follows:

- *Capital Brewing accepts the breach of Part 3(d) of the Code and has taken the image down from our social media channels.*

The Panel's View

14. This determination deals with the consistency of an Instagram post with the ABAC standard in Part 3 (d) of the Code. The post is a photograph of a can of the Company's product floating in the ocean near the shoreline. The accompanying text reads - Fancy a tinnie before heading back to work. The complainant contends the post would be understood as implying irresponsible behaviour of either littering or drinking while swimming.

15. The ABAC standard does not permit the depiction of alcohol consumption before or during a dangerous activity such as swimming. To be breached, a marketing communication must show or directly imply a person is consuming alcohol in conjunction with a dangerous activity such as swimming. The assessment of consistency with the Code is from the probable understanding of a reasonable person.

16. The Panel does not believe the post is inconsistent with ABAC standards. It is noted:

- the photograph is staged to highlight the product and does not show any person in the shot;
- the can does not appear to be opened and no direct implication of consumption can be drawn;
- the accompanying text is neutral or slightly implies that any beach activity such as swimming has been completed and a person is returning to work; and
- it is consistent with the ABAC to place an alcohol product in a pleasing setting and a reasonable person would not take the post as encouraging littering.

17. The complaint is dismissed.