



ABAC Adjudication Panel Determination No 151 & 155/24

Product: Better Cider
Companies: Better Beer and Endeavour Group
Media: Social Media – Facebook and Instagram
Date of decision: 13 November 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 two complaints received on 3 and 10 October 2024 in relation to two different social media posts by Better Beer ('the Company') marketing Better Cider ('the product'). Endeavour Group organisations Dan Murphy's and BWS were tagged in both of the posts and in BWS's case, engaged in the comments section accompanying the first post.
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 complaints raise concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 3 and 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 sought prior to publication.

The Marketing

10. The first complaint relates to a video social media post which can be viewed at the following links:

[Link to Ad on Instagram](#)

[Link to Ad on Facebook](#)

The post is accompanied by the following words:



The video commences with people grooming the green fur coming out of their mouths.



We see a man with green fur climb into a taxi/Uber. He says:

No worries. I'll be at the pub in 10 minutes.

Okay bye.

We see a reflection of the driver in the mirror, and they are also growing green fur out of their mouth.

The scene changes to a pub, and we see a bartender with green fur growing out of his mouth push a beer across the bar. He says:

There you go mate.

We hear general pub noise and conversations, and see pictures of several people, including Jack Steele, with green fur growing out of their mouths.



We see a man – portrayed by Matt Ford - enter the pub. He has gleaming teeth, and no green fur growing out of his mouth.

We hear a little ding.



The pub falls quiet, and a number of people with green fur growing out of their mouths look at the newcomer.

Jack Steele questions:

Where's your furry teeth?



Matt Ford (MF) holds out a can of Better Cider and says:

I drink this now.



Jack Steele (JS) – *So if we drink that we won't have to deal with this?*

JS points to his furry mouth.

MF – *Well yeah.*



The people at the pub exclaim excitedly.



The pub becomes noisy again, and music plays.



The following comment was made on the post by BWS:



11. The second complaint relates to a static social media post:

[Link to Ad on Instagram](#)



The Complaints

12. The complainants object to the marketing as follows:

Complaint 151/24

- *The advertisement goes against ABAC Code 3 (c)(iv) “Suggest that the consumption of Alcohol offers any therapeutic or health benefit, is needed to relax, or helps overcome problems or adversity.”*
- *The advertisement suggests that consuming Better Beer Apple Cider helps the consumer in having clean white teeth. Evidence shows that alcohol can have a significant impact on teeth health and decay.*
- *Drinking alcohol can make you dehydrated when your body does not have enough water. Your body makes less saliva when it is dehydrated. Salvia is very important in protecting your teeth. When you are dehydrated, your teeth will be less protected from the acidic and sugary alcohol content of the drink. Having a dry mouth increases your risk of developing tooth decay.*
- *North Sydney Dental Practice states that high sugar content is in lots of alcohol drinks, as well as the acid in alcohol and anything that is fizzy/carbonated (the bubbles release acid), leads to tooth breakdown. This breakdown can lead to cavities and in the case of a diet high in acid; it can thin enamel causing irreversible damage as well as sensitivity.*
- *Poor oral health is linked to chronic diseases that can significantly impact an individual’s health and well-being. The Australian Bureau of Statistics states that it can be linked to cardiovascular disease, lung conditions, oral cancers, adverse pregnancy outcomes, stroke and diabetes (Australian Bureau of Statistics, 2023).*
- *Therefore, the Better Beer advertisement promoted by BWS and Dan Murphy's is portraying misinformation as the message is that drinking Better Beer Apple Cider will give you healthy, white shiny teeth.*
- *The Better Beer advertisement that further promotes BWS and Dan Murphy’s shows individuals going through everyday activities with green fur coming out of their mouths. It then focuses on a male individual coming into the pub and advertising to the crowd in the pub that Better Beer Apple Cider is what makes his teeth clean (non green and furry). As it highlights a gleaming smile that sparkles – which is also commonly found in teeth cleaning advertisements.*
- *Therefore, there is a concern that this advertisement is portraying misinformation about dental care. Which has the potential to impact the health and wellbeing of those who come across this advertisement, as there is a potential for being influenced by the advertisement message.*

- Australian Bureau of Statistics, 2023, 'Oral health and dental care in Australia', < <https://www.aihw.gov.au/reports/dental-oral-health/oral-health-and-dental-care-in-australia/contents/introduction> >

Complaint 155/24

- *The advertisement portrays that drinking 'Better Beer, Cider' will 'improve' oral hygiene. This can be seen through the visual of the man in the advertisement on the left holding the Better Beer Cider with a smile showing white clean teeth whilst the individual on the right is frowning with a mouth full of green fur, insinuating an 'unclean' mouth as the caption above him states "full sugar cider". The caption attached to the post stating, "For those who haven't given it a crack yet – it's got less than 1.7g of sugar per 100ms (which is sweet when you compare it to others) – so you don't have to deal with that furry tooth feeling anymore."*
- *This breaches ABAC Responsible Alcohol Marketing Code Part 3 (c)(iv) by suggesting that the consumption of alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.*
- *While the advertisement does not directly state that consuming Better Beer Cider is 'good' for oral health however it insinuates this message as it states: 'so you don't have to deal with that furry tooth feeling anymore' and using the images of the 'clean' and 'unclean' oral hygiene in the advertisement depicts this message. This can lead to misinformation about oral hygiene. Sugar content is a factor that can lead to poor oral hygiene as the post is insinuating that the low sugar content assists with oral hygiene. However, alcohol content can also have a negative effect on oral hygiene. Alcohol content can lead to dry mouth, where saliva keeps teeth moist which helps to remove plaque and bacteria from the tooth's surface. In which dry mouth is a risk factor for periodontal disease including tooth decay and gum diseases.*
- *Therefore, this advertisement can provide misinformation about oral hygiene to its audience. As it portrays that due to the low sugar content you do not have to worry about the oral health implications.*
- *The Australian population still has a large amount of the population with oral health concerns. With the Australian Government Department of Health and Age Care reporting that 1 in 25 people have no natural teeth left. It states, 'Having healthy teeth, mouth and gums is important for your general health and wellbeing. It means you can eat, drink and speak without pain or discomfort (Department of Health and Aged Care, 2024).'* This highlights the importance of ensuring that factual and correct information is provided to the general public, as oral health has a great impact on the overall health and wellbeing of people. As well as breaching

the ABAC Responsible Alcohol Marketing Code 3 (C) (iv) as it suggests that the consumption of alcohol offers health benefits (oral health benefits).

- Department of Health and Aged Care, 2024, 'Dental health', < <https://www.health.gov.au/topics/dental-health#:~:text=Dental%20health%20statistics%20show%20that,have%20no%20natural%20teeth%20left.> >

The ABAC Code

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

- (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.

The Company Responses

13. Better Beer responded to the complaints by email on 23 October 2024. Its primary comments were:

- Better Beer is not suggesting that drinking Better Cider will solve dental issues. Our Marketing is trying to draw attention to our low sugar cider by calling out the mouthfeel you get from drinking multiple high sugar beverages.
- We are showing consumers that our Cider is not full of sugar and it will not leave you with a furry green mouth like the skit shows.

14. Endeavour Group responded to the complaints by letter emailed on 16 October 2024. Its primary comments were:

- Endeavour thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. Endeavour understands that the Panel is considering what level of input Endeavour had in the creation or posting of the Content by Better Beer on its Instagram and Facebook pages, given that its brands BWS and Dan Murphy's were mentioned in the caption accompanying the post and reel, and the BWS Shepparton East store posted a comment on the Instagram post.
- As a signatory to ABAC, Endeavour commits to the objectives of the Code and prepares all marketing material within its reasonable control, in accordance with the Code.
- BWS and Dan Murphy's as part of Endeavour, are committed to maintaining their position as industry leaders in the responsible service of alcohol. This is highlighted by the fact that Endeavour formalised its status as a signatory to the Alcohol Beverages Advertising Code

Scheme in 2013 and it prepares all advertising within its reasonable control in accordance with the ABAC Responsible Alcohol Marketing Code (the Code). As a signatory to ABAC, Endeavour commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.

- Furthermore, BWS and Dan Murphy's maintain strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Endeavour has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage the responsible consumption of alcohol. These include:
 - ID25; we ask for ID if a shopper looks under the age of 25;
 - Our Refusal of Service Policy (Secondary Supply, Intoxication and School Uniform); and
 - Staff training that exceeds legal requirements, including our 'Leading in Responsibility' training module, team talkers, regular refresher and reminder courses.
- The processes outlined above provide Endeavour with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.

Background

- Endeavour is party to a supply agreement with Mighty Craft Operations Pty Limited (ABN 99 120 464 182) (MCO), the producer of Better Beer and Better Cider under which Endeavour's BWS and Dan Murphy's stores are retailers of the Better Beer and Better Cider products. As a retailer only, Endeavour did not have any involvement in the creation or approval of the Content.
- Since Endeavour had no input into the creation or approval of the Content, we respectfully submit that this question is best asked of Better Beer / MCO. Notwithstanding this, when Endeavour became aware of the comment posted by BWS Shepparton East, it promptly required that store to remove the comment and deactivated that store specific Instagram account. A remedial action will occur in the coming weeks whereby BWS will carry out an audit of Instagram and Facebook to identify and delete or deactivate any store specific BWS social media accounts found.

- The Content was not within Endeavour’s reasonable control (and therefore not a marketing communication which is subject to the Code for Endeavour’s purposes) because Endeavour did not have any involvement in its creation. Being added as a collaborator or being tagged was simply to indicate that Endeavour’s BWS and Dan Murphy’s brands are retail outlets for the product. In our view, the BWS Shepparton East comment on Better Beer’s Instagram post does not change this conclusion. Again, it was simply a comment arising out of the fact that the product can be purchased in BWS stores and that the product is popular with customers. However, as noted above, once we became aware of this comment, we promptly arranged for BWS Shepparton East to delete the comment.
- For the reasons set out above we respectfully submit that the Code does not apply to the Content in relation to Endeavour and therefore we do not believe it is appropriate for Endeavour to submit comments in relation to question 3, specifically whether the marketing breaches Part 3 (c)(iv) of the Code by suggesting that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

The Panel’s View

15. This determination arises from two complaints from the same complainant about social media marketing for Better Cider. The first complaint goes to a video that shows a highly exaggerated (and rather gross) scenario of people with green fur protruding from their mouth. The group are surprised and then excited after seeing a man (Matt Ford) without the fur. Matt explains this is because he now drinks Better Cider. The second complaint is about an Instagram post of the same effect.
16. The intended message of both marketing communications is that the high sugar content in standard products causes a furry feeling in the mouth and on teeth and this is avoided through choosing the low sugar content Better Cider. The complainant believes the marketing is irresponsible as it would be actually understood as suggesting Better Cider helps in having clean white teeth and oral hygiene whereas alcohol use is detrimental to dental health.
17. The complainant’s concerns raise Part 3 (c)(iv) of the Code. This standard provides that an alcohol marketing communication must not suggest that the consumption of an alcohol offers any therapeutic or health benefit or is needed to relax or helps overcome problems or adversity.
18. In assessing the consistency of a marketing communication with an ABAC standard the Panel is to adopt the probable understanding of the marketing item by a reasonable person. This means that the life experiences, values and beliefs common in most of the community is to be the benchmark.

19. The reasonable person test requires that if a marketing communication can be understood in several ways, it is the most likely interpretation that must be preferred over a possible but less likely understanding of the marketing message.
20. The Company contends the marketing is consistent with the ABAC standard arguing that:
 - Better Beer is not suggesting that drinking Better Cider will solve dental issues;
 - our marketing is trying to draw attention to our low sugar cider by calling out the mouthfeel you get from drinking multiple high sugar beverages; and
 - we are showing consumers that our Cider is not full of sugar and it will not leave you with a furry green mouth.
21. The Panel accepts that the complainant is raising a genuine point about the impact of alcohol use on dental health, but it does not believe the marketing would be probably understood by a reasonable person in the way submitted by the complainant. In reaching this conclusion the Panel noted:
 - clearly the marketing is creating a highly fanciful scenario that a reasonable person will not take seriously;
 - the takeout message is about the lower sugar content of the product compared to other products and a comparison of product ingredients such as sugar levels is permitted under the Part 3 (c)(iv) standard;
 - the marketing sufficiently establishes that the impact of the product is to lessen the furry feeling in the mouth compared to beverages with higher sugar levels; and
 - a reasonable person would not likely interpret the marketing as making health benefit claims about the product.
22. While the Panel believes the highly exaggerated use of the green fur contrasts the product to the furry mouth impact of a sugary drink rather than a claim of a dental health benefit, the Company needs to be mindful that the Part 3 (c)(iv) standard does not permit the suggestion of any therapeutic or health benefit. Care must be taken in messaging of marketing communications to ensure a reasonable person would not understand health benefit claims are being made.
23. The Endeavour Group was drawn into the complaint by the fact that its retail outlets were tagged in the posts. Endeavour had no input into the creation or approval of the marketing. Tagging does result in posts becoming accessible on the social media accounts of the retailers and once a marketing

communication is on these accounts the retailers have a responsibility to moderate content on their own accounts.

24. That said, as the marketing has been found not to breach Part 3 (c)(iv), then there can be no breach by Endeavour Group.
25. The complaints are dismissed.