



ABAC Adjudication Panel Determination No 161/24

Product: Sanctus Brewing
Company: Sanctus Brewing Co
Media: Digital – Instagram
Date of decision: 15 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 a complaint received on 14 October 2024 about social media marketing for Sanctus beer (“the product”) by Sanctus Brewing Co (“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, 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 14 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 obtained for the marketing.

The Marketing

10. The complaint relates to four Instagram posts:

Image 1

https://www.instagram.com/p/DA9iar2zQQN/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWFIZA==

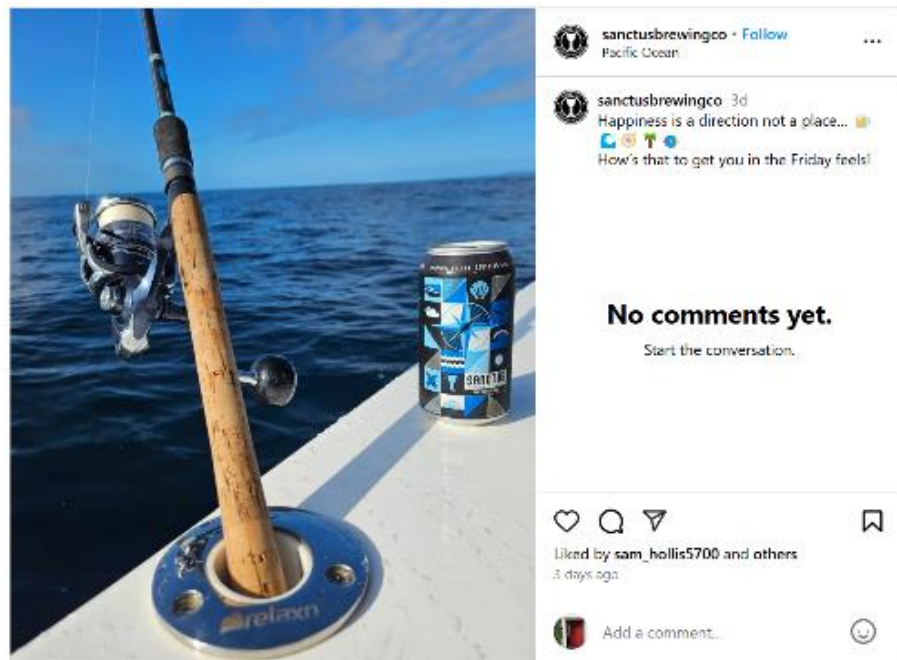


Image 2

https://www.instagram.com/p/DARxkOmyPnp/?utm_source=ig_web_copy_link&igsh=MzRIO DBiNWFIZA==



sanctusbrewingco • Follow

sanctusbrewingco 1w
Nothing beats that Friday knock-off feeling! 🍻👉👌👍👏👊👊👊👊👊
Except when you pair it with a case of Sanctus Nor'Easter Lager...


No comments yet.
Start the conversation.

Liked by robertfurey and others
October 4

Add a comment...

Image 3

https://www.instagram.com/p/DAe7rjUysEo/?utm_source=ig_web_copy_link&igsh=Mz RIODBiNWFIZA==



sanctusbrewingco • Follow
Convent Beach, Yamba

sanctusbrewingco 2w
Sunday sessions made with the beer for here 🍻👉👌👍👏👊👊👊👊👊

No comments yet.
Start the conversation.

September 29

Add a comment...

Image 4

https://www.instagram.com/p/DACyX2QsgYY/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWFIZA==



Complaint

11. The complainant objects to the marketing as:
 - *Sanctus brewing and distilling have several advertisements which display beer with water-based activities.*
 - *Image 1 shows a fishing rod with a beer can resting on the side of what can be assumed as a boat or some sort of watercraft in the ocean or body of water. With the caption, "Happiness is a direction not a place". While the advertisement does not directly show the consumption of alcohol whilst controlling a boat it does picture the items together alluding to an association. This can adversely advertise to the general public the unsafe message that alcohol and water-based activities can be associated together. The Royal Life Saving Australia states that on average 49 people drown in Australia every year whilst using boats and watercraft. It states that alcohol consumption is one of the risk factors that can be attributed to these deaths (Royal Life Saving, 2024). This highlights the utmost importance of ensuring that unsafe practices are not advertised to the general public to maintain and support a high standard of practice and ensure lives/ fatal accidents are prevented.*
 - *Image 2 shows 2 individuals holding beers on the side of the pool. There is a 4 pack of beer placed on top of what looks like a 10-pack box of beer. I*

believe that this is in breach of Section 3 (A) (i) (A) of the ABAC code. Firstly, the advertisement shows a large amount of alcohol between 2 people. While it does not state that it is solely for the 2 individuals it alludes to this message by what is captured in the image. The Australian Drinking Guidelines state that no more than 4 standard drinks should be consumed on any one day and no more than 10 standard drinks should be consumed in a week. The amount of beer photographed in image 2 can be presumed to be more than 8 standard drinks between the 2 individuals, placing them over the Australian Alcohol Guidelines. This could further promote unsafe/risky drinking behaviours.

- *Secondly image 2 shows the 2 male individuals sitting beside a pool in what can be associated with swimming clothing on. With a towel over the shoulder of the individual on the left which can further promote this message of having been or going swimming. ABAC Code Section 2 (D) states, “An Alcohol Marketing Communication must NOT show (... or by direct implication) the consumption of alcohol before or during any activity, for safety reasons, requiring a high degree of alertness of physical coordination, such as ... swimming.” While the image does not directly show the consumption of alcohol whilst swimming, the several factors within the image can lead to this assumption. As it shows:*
 - *The individuals being dressed in swimming attire*
 - *towel placed over the individual on the lefts shoulder*
 - *and sitting directly in front of a swimming pool*

Therefore, I believe that this advertisement is promoting unsafe drinking practices. Data from the Royal Life Saving Society revealed that 2,760 men lost their lives due to drowning from July 2003 to June 2018. 49% of fatal drowning and 35% of non-fatal drowning is estimated to involve alcohol (Royal Life Saving Australia, 2024). This highlights the utmost importance of ensuring that the general public is not misinformed or adversely influenced by unsafe alcohol practices.

- *Image 3 shows an individual male holding a surfboard and drinking a beer with his other hand, on the sand next to the water. With the caption stating, “Sunday sessions made with the beer for here ?????”. Similarly to image 1 and 2, I believe that it breaches ABAC Code 3 (D) as surfing is a water-based sport that requires a high level of alertness or physical coordination. The caption can be seen by a reasonable person that there is an association between alcohol (beer) consumption and surfing portrayed in the post. This sends the message to the general public that these two factors are associated together further promoting the unsafe message of alcohol consumption whilst in and around water-based activities such as surfing.*

- *Lastly Image 4 shows an individual reaching for a can of beer whilst what looks like rock fishing. The Royal Life Saving Australia states that, “Rock fishing is considered by many as Australia’s most dangerous sport, rock fishing accounts for 4% of all drowning deaths in Australia (Royal Life Saving, 2024).” Therefore, this shows that rock fishing requires a high degree of alertness or physical coordination especially due to unpredictable changes in the ocean and due to slippery and sharp rocks. Therefore, advertising alcohol consumption whilst rock fishing is a clear risk factor and promoting an unsafe practice to the general public.*

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
 - (a)(i) Show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:
 - (A) Excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day)
 - ...
 - (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 5 November 2024. Its primary comments were:
 - We take our responsibility under the ABAC Code seriously and are committed to responsible marketing practices.
 - **Image 1:** This image does not imply the consumption of alcohol during boating activities. The beer is simply shown alongside fishing gear on a stationary vessel, not indicating that it’s being consumed while operating the vessel. To address any potential concerns, we have updated the caption to reflect a post-event context.
 - **Image 2:** While the image shows two individuals seated beside a pool with beer nearby, we do not intend to imply excessive consumption or that all the beer displayed will be consumed by these individuals. The beer carton shown is representative of a typical purchase and does not suggest excessive drinking. Both individuals are shown in a relaxed setting without

suggesting any imminent swimming activities. The caption has been amended to clarify that the image represents a post-event scene.

- **Image 3:** In this image, we did not intend to imply that alcohol was consumed immediately before or during any active water activity such as surfing. The individual is shown enjoying a beer at the beach but not in connection with entering the water. The caption has similarly been adjusted to clarify this as a post-event scenario.
- **Image 4:** We understand the concerns regarding this image, as it could appear to some as a promotion of unsafe activity. To avoid any misinterpretation, we have removed this image from our marketing materials.
- As a smaller brand, we strive to balance effective, responsible marketing with the resources available to us. Like other respected brands in the industry, we have featured imagery that complements our coastal location and lifestyle. In developing this content, we note that other brands with far greater legal oversight, such as Great Northern and Stone & Wood, regularly depict their products in similar natural, outdoor settings such as fishing, boating, and the ocean, which can be considered an established approach to marketing Australian-made beer.

The Panel's View

14. This determination arises in relation to four Instagram posts by Sanctus Brewing. The complainant is concerned that each of the images display unsafe alcohol use with water based activities and one image shows a large amount of alcohol being consumed by two people.
15. These concerns raise two Code issues, namely 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, such as the control of a motor vehicle, boat or machinery or swimming – Part 3(d); and
 - show, directly imply or encourage excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day) – Part 3 (a)(i).

Alcohol and Safety

16. Part 3 (d) of the Code provides that an alcohol marketing communication 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.

17. 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 on a person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.
18. It is important to note that the Code standard does not prohibit an alcohol brand 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 clearly established that the dangerous activity like swimming, surfing, scuba diving etc has finished and will not be recommenced
19. 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.
20. So what would likely influence how a reasonable person would understand a marketing communication set at a beach as to whether a person depicted was going to consume alcohol and then enter the water to swim or engage in water based activities? 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 water, immediately adjacent to the water or some distance from the water;
 - whether the person is shown consuming the product (including, if not actually shown, but 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 the activity is completed if it is late afternoon as opposed to the morning.

21. Image 1 positions a closed can of the product on a boat out at sea next to a fishing rod sitting in a rod holder. The accompanying text reads, "Happiness is a direction not a place. How's that to get you in the Friday feels!". The complainant is concerned that while the ad does not directly show consumption of alcohol while controlling a boat, it does picture the items together creating an irresponsible association.
22. The Company argues that the image does not imply the consumption of alcohol during boating activities. The beer is simply shown alongside fishing gear on a stationary vessel, not indicating that it's being consumed while operating the vessel. However, they advised that to address any potential concerns, they have updated the caption to reflect a post-event context by adding the copy 'When the afternoon Nor'easter picks up and it's time to head in, after a day of fishing there's nothing better than kicking back with a Nor'easter Lager!'.
23. The Panel does not believe the post breaches the Part 3 (d) standard. A series of extrapolations are needed to conclude that the post is implying alcohol consumption while in control of the boat which cannot be safely drawn namely:
 - that consumption is occurring whereas no consumption is depicted and the can shown has not been opened;
 - that a person in control of the boat is drinking alcohol whereas the boat may well have several persons on board with the person in control of the boat not consuming.
24. While maintaining the original post did not breach the standard, the Company advised that the accompanying text has been revised to read 'When the afternoon Nor'easter picks up and it's time to head in, after a day of fishing there's nothing better than kicking back with a Nor'easter Lager!'.
25. Image 2 shows two men consuming alcohol, one of whom is wearing swimming shorts and has a towel over his shoulder and the other is wearing a t-shirt, shorts and a cap. The men are sitting on a rock overlooking the ocean. The caption with the image is 'Nothing beats that Friday knock off feeling. Except when you pair it with a case of Sanctus Nor-Easter Lager.'
26. The complainant is concerned that the men are sitting by a pool and wearing swimming clothing and one has a towel over his shoulder suggesting he has or is going to go swimming.
27. The Company argues that both individuals are shown in a relaxed setting without suggesting any imminent swimming activities, noting that the caption has been amended to clarify that the image represents a post-event scene. This amendment to the accompanying text does suggest the men will not be swimming.

28. That said, the Panel is to assess an item of marketing as it was at the time the complaint was made. The Panel believes the image of the man without a shirt and with a towel over his shoulder is highly suggestive that he could begin swimming after the consumption of the product, and on balance the Panel believes the post does breach the standard.
29. Image 3 shows a man wearing a t-shirt, shorts and a cap standing on the beach with a surfboard under his arm and drinking from a can of beer, with the caption 'Sunday sessions made with the beer for here'. The complainant is concerned about associating alcohol use with surfing.
30. The Company argues it did not intend to imply that alcohol was consumed immediately before or during any active water activity such as surfing. The individual is shown enjoying a beer at the beach but not in connection with entering the water. The caption has similarly been adjusted to clarify this as a post-event scenario.
31. On balance the Panel believes the post does not breach the standard, noting:
 - the man is dressed including in a hat and he does not appear he is going to immediately enter the water;
 - the time of day suggests it is later in the afternoon and use of the water has largely finished, e.g. the image does not show anyone else swimming.
32. Image 4 shows a man wearing a t-shirt, cap and shorts fishing off rocks on the water's edge while reaching for a can of beer from an esky, with the caption 'The beer for here'.
33. The complainant notes that Royal Life Saving Australia states that, 'Rock fishing is considered by many as Australia's most dangerous sport, rock fishing accounts for 4% of all drowning deaths in Australia (Royal Life Saving, 2024).', therefore rock fishing requires a high degree of alertness or physical coordination especially due to unpredictable changes in the ocean and due to slippery and sharp rocks.
34. The Company accepted that the image could appear to some as a promotion of an unsafe activity, and to avoid any misinterpretation had removed this image from their marketing materials.
35. The Panel considers that rock fishing is an activity that requires a high degree of alertness and as such this image showing alcohol consumption during this activity breaches the Code standard.

Excessive consumption

36. In addition to the alcohol and safety concerns, the complainant submitted that Image 2 encouraged excessive alcohol consumption. This post shows two men sitting adjacent to a sea swimming pool. Both are holding a can of the product and positioned between them is a carton of the product with an additional 4 cans sitting on top of the carton. The caption with the image reads 'Nothing beats that Friday knock off feeling. Except when you pair it with a case of Sanctus Nor-Easter Lager.'
37. The complainant contends that the post implies the men will engage in excessive consumption. This is refuted by the Company which argues that the post does not imply excessive consumption or that all the beer displayed will be consumed by these individuals. The beer carton shown is representative of a typical purchase and does not suggest excessive drinking.
38. While it may not have been the Company's intention to imply excessive consumption, the test is not what the Company intended to convey in the post but the most likely interpretation of the post by a reasonable person.
39. On balance the Panel believes that the Instagram post directly implies or encourages excessive consumption in breach of Part 3(a)(i) through showing two individuals drinking with a carton of beer between them. This is further reinforced through the accompanying text.

Conclusion

40. The Panel has found that Image 2 breaches Part 3 (a)(i) (A) and Part 3 (d) of the Code and that Image 4 breaches Part 3 (d) of the Code. The complaint in relation to Images 1 and 3 is dismissed.