



ABAC Adjudication Panel Determination No. 36-7/16

Product: Beer
Company: Bright Brewery
Media: Point of sale & Digital
Complainant: Confidential
Date of decision: 3 March 2016
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 point of sale and digital materials for Bright Brewery and arises from complaints received 19 February 2016.
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”) – 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 – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
 4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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.

The Complaint Timeline

7. The complaints were received on 19 February 2016.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaints have been determined within this timeframe.

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 these marketing communications.

The Marketing Communication

Activity Sheets

10. Bright Brewery has produced various 'beer monsters' activity sheets. All sheets are drawn outlines of images intended to be coloured in, are signed by the artist 'striffle', include the name of the beer monster at the top of the page and the Bright Brewery logo and the words "Coloured By" at the bottom of the page.
11. The 'IPA Beer Monster' is a picture of a one legged monster holding a container of hops.
12. The 'Marzen Beer Monster' is a picture of a smiling 'girl' monster with two antennae four arms and a tail that is holding a bag of malt and emptying it out.
13. The 'Dubbel Beer Monster' is a picture of a monster with a scarf, horns and covered in fur that is holding a pencil and clipboard.
14. The 'Porter Beer Monster' is a picture of a monster with three heads, a tail and holding a paddle.
15. The 'Brewer Ryan Beer Monster' is a picture of a monster that has a beard, moustache, stag horns, is wearing overalls, a checked shirt and boots and is holding a glass of beer.
16. The 'Stout Beer Monster' is a picture of a monster that has a large chest and arms, horns and is carrying a keg under one of its arms.

Bar poster

17. The bar poster features the six beer monster images outlined above. At the top of the poster is the Bright Brewery logo and the heading "Beer Monsters" in orange and brown and at the bottom of the page is the orange text "Ask at the bar for a beer monster to colour in".

Instagram post

18. The post by Bright Brewery features an image of five of the activity sheets and the Bar Poster referred to above arranged on gravel. Only the Brewer Ryan sheet has been coloured in and signed and includes a speech bubble that says "beer is good" and the text "Beer is good says Dad".
19. The following text accompanied the post "This one's for kids (of all ages)...the beer monsters have arrived! With thanks to the excellent beer artistry of

@striffle, we now have 5 Beer Monsters plus a Brewer Ryan Beer Monster for kids to colour in while at Bright Brewery this summer. #beermonsters #striffle #brightbrewery #colouringin #beerart #beerfun #forthekids #seehighcountry #visitvictoria #lovebright. Various user generated posts follow.

The Complaints

20. The complainants are concerned that the material is blatantly advertising alcohol to minors.

The ABAC Code

21. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors;

22. Definition in Part 5 of the ABAC provide:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A 'Minor' means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

The Company's Response

23. The Company responded to the complaint by letter received 26 February 2016. The principal points made by the Company were:

- Bright Brewery is a small family owned and operated craft brewery, bar and restaurant located in the heart of Bright, Victoria. We passionately manufacture craft beers that are of the highest quality, full flavoured and with genuine character that showcase our region. We strongly advocate responsible consumption of alcohol and market our products as beers for savouring. We seek to share an appreciation for the enjoyment of good food and drink and the great lifestyle of Bright. Bright Brewery stands as a hub for visitors and locals to gather, providing a family friendly,

comfortable and multipurpose venue to relax, refresh and rejuvenate, while soaking in everything that Bright and the great outdoors has to offer. Our desire is for Bright Brewery to be truly welcoming to all, providing genuine hospitality and friendly service to everyone who comes through our doors.

- In 2015 Bright Brewery received the Silver Award for Tourism Wineries, Distilleries & Breweries at the RACV Victorian Tourism Awards, and was named Business of the Year at the Alpine Shire Business and Tourism Awards. We also received the top award for Excellence in Hospitality at the Alpine Shire awards.
- Bright Brewery is a family friendly venue, regularly welcoming families and family groups to our venue for a meal, social activity or events. We aim to cater for all ages, so that everyone may enjoy their time at Bright Brewery. This includes the provision of a kids menu, high-chairs and play toys for children, as well as our close proximity to a large adventure playground. Bright Brewery's bar staff are regularly approached by customers of all ages for paper and pens so that children may draw while seated in our restaurant for meals. An idea was suggested by our staff to provide printed colouring-in sheets that show our primary business operations – manufacturing beer – as well as providing a memento for families to remember their visit to Bright Brewery.
- In seeking to support local artists, we approached Melbourne based illustrator Scott Triffle to adapt his existing portfolio of Beer Monsters, which he had created for exhibitions of his artworks, into an outline format for colouring in, showing the process our brewer undergoes to manufacture beer, which requires specific ingredients and scientific procedures. Mr Triffle redrew a selection of his existing Beer Monster artworks in a way to demonstrate the ingredients and process of manufacturing beer under the guidance of our brewer, who is shown holding the final result. The actions of the monsters show that a vocation in brewing requires understanding of maths, chemistry and agriculture (for ingredients).
- During development and implementation, the Beer Monsters were not considered to be advertising or marketing of the brand, as they were intended to only be an in-house service to enhance Bright Brewery's family friendly nature, meeting the frequent requests for a colouring-in activity.
- A post was published on social media by Bright Brewery to show that this new colouring-in service is now available at Bright Brewery. The intention of the post was to further highlight the family friendly nature of Bright Brewery's restaurant to parents, directed at our social media audience of women and men between 25-44.
- Posters for the in-house service were also placed at the bar so that parents would know the colouring-in activity is available. Customers

approach our bar staff and request the activity sheet, which are provided free-of- charge on request.

- The Beer Monsters have been very popular with families since their implementation in December, receiving a significant amount of praise for the fun and relevance of the service adding to the Bright Brewery experience.
- On receiving notification of the complaint from ABAC and the Advertising Standards Bureau, the social media posts and venue posters were removed while Bright Brewery's Management Team considered the complaint.
- It was not the intention for the activity sheets to be a marketing communication. The aim was to enhance the family friendly nature of our tourism-driven business and provide a memento for customers to remember their visit to Bright Brewery. On review of the complaint, Bright Brewery Management recognises that there may be ambiguity with this form of communication in the connection to an alcohol production process being exposed to children. Therefore, they have currently been withdrawn.
- Following review of the complaint and The Code, Bright Brewery recognises that these items may breach the Code if they were to be considered advertising. For that reason, Bright Brewery has:
 - removed the service of providing these activity sheets with their current design;
 - removed the poster at the bar; and
 - deleted the Instagram post.
- Bright Brewery is also taking the following steps:
 - Communicating the requirements of the Code to staff;
 - Seeking further clarification on what constitutes advertising and marketing communications in relation to this case and the use of Bright Brewery's logo and brand for communicating a restaurant, venue, family business and passionate community supporter, as opposed to just an alcohol reference;
 - Considering a redraw of the withdrawn activity sheets so that they do not include any beer references, which includes removal of:
 - (ii) the word "beer" from the title (and we will seek advice on calling them "Brewery Monsters" with the word Brewery reflecting the restaurant and venue),
 - (iii) the glass in the hand of the brewer,

- (iv) the keg under the arm of the Stout Monster.

The Panel's View

Introduction

24. The Bright Brewery is a small craft brewery located in the Victorian country town of Bright. In addition to the manufacture of beer, the brewery has established entertainment areas, a cafe / bar and picnic / playground facilities. During a visit to the brewery and its facilities, the complainant became aware of children activity sheets and it is these sheets, with a related poster and Instagram post, which is the subject of this determination.
25. The Company is not a signatory to the ABAC Scheme and as such is not contractually bound to the ABAC Standards of good marketing practice, nor is it obliged to accept a Panel adjudication. That said, the Company has stated its commitment to good practice in alcohol marketing and has fully cooperated in the Panel's processes, enabling the determination to be made.
26. The nature of the complaint, and the materials involved raise, firstly, a threshold question of whether the materials are "marketing communications" for ABAC purposes. If so, the second question is whether these marketing communications are consistent with the ABAC Standard, which requires that alcohol marketing not have a strong or evident appeal to children.

Are the activity sheets a marketing communication?

27. The ABAC establishes a code of good practice in alcohol marketing. The Code, by Part 2 (a) provides a non-exhaustive description of the types of marketing communications which are subject to the ABAC Standards, whereas Part 2 (b) expressly lists some materials and marketing activities to which the Code does not apply. In responding to the complaint, the Company states that in developing and implementing the activity sheets, it did not consider the sheets as "advertising or marketing of the Company brand", but rather as a "service" to:
- Enhance the family friendly nature of the brewery's venues;
 - Meet a customer demand for children's drawing and colouring in materials; and
 - Be a memento for customers to remember their visit to the brewery.
28. The activity sheets consist of the outlines of "monster" images, which can be coloured in. Each sheet features an element of the beer manufacturing process and also includes the Company name and logo. The Panel believes the sheets can fairly be regarded as a marketing communication for ABAC purposes. In reaching this view, the Panel has noted:
- A marketing communication can have more than one purpose e.g. to be a children's activity, as well as promote a Company brand.

- The sheets are intended to be a memento of a visit and hence taken away from the venue.
- The sheets contain the Company name and logo.

Are the marketing communications inconsistent with the ABAC Standard?

29. Part 3 (b)(i) of the ABAC provides that a marketing communication must not have strong or evident appeal to minors. The Definition section of the Code provides further information as to what might be considered as having strong or evident appeal to minors and specifically references imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors.
30. In assessing if a marketing communication is inconsistent with a Code Standard, the Panel is to have regard to the probable understanding of the communication by a reasonable person, taking its content as a whole. The reference to a reasonable person is drawn from the Australian common law system and means that the views, opinions and values of a majority of the community is to be the benchmark.
31. The Panel believes that the activity sheets, and related material, namely the poster and the Instagram post, are in breach of the ABAC Standards. Clearly, the materials are directed expressly at children and the use of the characters involved in the beer-making process, together with the inclusion of the Company name and logo would, taken as a whole, breach the ABAC requirements.
32. It is noted that the Company has withdrawn the materials from circulation and is giving consideration to whether modified materials might be used in the future. The Company is strongly advised to seek the assistance of the ABAC Pre-Vetting service in developing its marketing and communications. The Pre-Vetting service would provide an independent assessment to the Company that its materials are consistent with good practices in alcohol marketing and communication.
33. Accordingly the complaints are upheld.