



## ABAC Adjudication Panel Determination No. 46/16

**Product:** The Crafty Bavarian range  
**Company:** Urban Purveyor Group  
**Media:** Radio/Digital/Point of Sale  
**Complainant:** Confidential  
**Date of decision:** 6 May 2016  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a radio, digital and point of sale advertisements for the Urban Purveyor Group (“the Company”) and arises from a complaint received 23 March 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 23 March 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 complaint has 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 obtained for some elements of these marketing communications.

## The Marketing Communication

10. The complainant refers to company website, Instagram and twitter posts and point of sale ads for “The Crafty Bavarian” range of beers.
11. At <http://www.craftybavarian.com.au/about-us/>, under the heading ‘A Word From Our Crafty Bavarian’ includes:

“All my beers (or my girls, as I like to think of them) are brewed with Ye Ol’ Bavarian Reinheitsgebot tradition in mind, so you can enjoy high quality and highly good-looking beers free of preservatives, additives or chemicals. (You’re welcome).”
12. At <http://www.craftybavarian.com.au/> the home page scrolls through four different characters and presents a cartoon depiction and brief introduction for each. Clicking ‘learn more’ for each character leads to expanded character descriptions and image. Described below is the short ad followed by the longer ad and description for each beer.

### Munich Lager

The image on the homepage includes the Crafty Bavarian logo and the name of the beer with a drawn image of a woman with long wavy red hair, wearing a leopard print bikini and red stilettos standing in front of a lion and holding a whip. The following text is next to the image:

Roll up roll up! Behold the Bavarian showstopper that can tame lions just as easily as she tames the hearts of men with her restrained bitterness. Light-bodied and full of flavour, this is one woman who will make you want to run away and join the circus.

Clicking on 'learn more' leads to this page:

<http://www.craftybavarian.com.au/munich-lager-beer/>

Next to the beer name and Crafty Bavarian logo there is the drawn image of the woman from waist up.

Below this image is the text “Introducing” above a drawn picture of a lion followed by the following text:

MUNICH LAGER KELLER BEER

Roll up, roll up! Behold the Bavarian bombshell..

Exotic and alluring, men get whiplash from doing double takes (and occasionally from her whip itself). But don't be fooled by her carefree charm – beneath her sweet-tempered exterior this woman is as wild as the lions she tames.

Independent and strong-willed, she tames lions as easily as she tames the hearts of men, and it was rumoured her impressive circus skills are the result of a stint with the secret service...

An absolute showstopper, this lady will make you want to runaway and join the circus.

Now about the Beer (a paragraph then describes the beer)

### Blonde Moment

The image on the homepage includes the Crafty Bavarian logo and the name of the beer with a drawn image of a woman with short wavy blonde hair, wearing a spotted print bikini and red stilettos and sitting on a towel on the beach with a beachball next to her. The following text is next to the image:

This bombshell will make you believe that blondes really do have more fun. Summery and mild, she's all about being low-carb and high fun. This is one lady that will leave you craving a blonde moment.

Clicking on 'learn more' leads to this page:

<http://www.craftybavarian.com.au/blonde-moment-beer/>

Next to the beer name and Crafty Bavarian logo there is the drawn image of the woman from waist up.

Below this image is the text "Introducing" above a drawn picture of a beachball followed by the following text:

### BLONDE MOMENT LOWER CARB BEER

This Bondi bombshell will make you believe that blondes really do have more fun.

But don't let the blonde facade fool you – this golden goddess is more complex than your average blonde. Beneath her sweet, easy-going facade bubbles away a personality that packs a punch and an intellect that's brighter than the highlights in her hair. Summery and seductive, this is one lady that will leave you craving a blonde moment.

Now more about the beer (a paragraph then describes the beer)

### Hop Dock

The image on the homepage includes the Crafty Bavarian logo and the name of the beer with a drawn image of a woman with long wavy red hair, wearing nautical inspired retro clothing and sitting on two suitcases on the deck of a ship with a small dog pulling on one of the cases. Her clothing reveals her cleavage and her legs in suspender stockings. The following text is next to the image:

Ahoy there sailors! Say hello to this spicy nautical nymph and her pooch, Stretch. This lady is a well-travelled wanderer, bouncing from dock to dock – and from sailor to sailor – leaving her signature aroma of toffee and bananas wherever she travels.

Clicking on 'learn more' leads to this link:

<http://www.craftybavarian.com.au/hop-dock-wheat-beer/> -

Next to the beer name and Crafty Bavarian logo there is the drawn image of the woman from waist up.

Below this image is the part of the drawn picture on the homepage that shows the small dog followed by the following text:

HOP DOCK WHEAT BEER

Ahoy there sailors! Say hello to this nautical nymph...

Striking and seductive, with puppy dog eyes that rival her precious pooch, this lady is a well-travelled wanderer who somehow has never had to pay for a fare.

Her ability to hop from one dock to another has earned her the title of Queen of the High Seas. But don't be fooled; this queen doesn't need a king.

She's more of a captain-in-every-port kind of gal.

NOW ABOUT THE BEER\_(a paragraph then describes the beer)

### Butchers Bride

The image on the homepage includes the Crafty Bavarian logo and the name of the beer with a drawn image of a woman wearing retro style clothing, red stilettos, suspender stockings and an apron. She is standing in a room where cuts of meat are hanging from hooks and holding a meat cleaver and the cleaver, her apron and the walls of the room are splattered with blood and a meat hook is lifting up one corner of her skirt to reveal her legs. The following text is next to the image:

This stunner isn't your average housewife – beneath her smooth malt veneer, she's slightly fruity. Currently married to husband number 8, there's a reason men keep coming back for more...

Clicking on 'learn more' leads to this link:

<http://www.craftybavarian.com.au/butchers-bride-pale-ale-beer/>

Next to the beer name and Crafty Bavarian logo there is the drawn image of the woman from waist up.

Below this image is the text "Introducing" above the drawn picture on the homepage followed by the following text:

**BUTCHER'S BRIDE PALE ALE BEER**

As the name implies, this stunner isn't your average housewife.

Although she's undeniably charming and indisputably striking, you don't want to get on this lady's bad side. Currently married to Husband No. 8 (after Husband No. 7 disappeared under suspicious circumstances), she's a man-eater with a temper quicker than Usain Bolt down a 100 metre stretch. Intense she might be, there's a reason men keep coming back for more...

Now more about the beer (a paragraph then goes on to describe the beer)

### **The Complaint**

13. The complainant is concerned that the advertising conflates women with beer in order to sell its product. The company states this quite explicitly with the phrase "All my beers (or my girls, as I like to think of them)". This style of advertising objectifies women and suggests that women - or 'girls' as described on the site - can be categorised in the same way as consumable products. The characters are all sexualised and depicted as either subordinate or sexually manipulative and violent. These are harmful stereotypes about women and women's sexuality used to sell beer to men. It is clear from these and previous ads produced by the Urban Purveyor group for their German themed restaurants that men are the primary target audience. The complainant viewed the ads online, however, photos tweeted or instagrammed by visitors to the restaurant show print versions of these ads placed on tables. It is socially irresponsible and misogynistic to combine harmful depictions of women with men's alcohol consumption. Conflating women with consumable products is sexual objectification. An advertisement does not need to include a real photograph of a woman to be exploitative and degrading to women. The complainant provided the following examples:
  - "The Bavarian Showstopper" (Munich Lager) is a sexualised depiction of a woman shown with an angry expression, described as sexually manipulative and violent due to 'restrained bitterness.'
  - "Blonde Moment" depicts the stereotype of 'bimbo' in a bikini, with a wide eyed, surprised expression on her face. This woman is described as 'low-carb' (the beer may be 'low-carb' but the woman is described in the same way which would be a reference to dieting) and "high fun." She's "easy-going" and "seductive." Her "intellect" is described as something that would defy her appearance.

- "Hop Dock" describes a 'nautical nymph' who is 'seductive' and has sex with sailors, presumably for money as she has 'never had to pay a fare.' A sexualised stereotypical depiction of women as sexually manipulative for personal gain.
- "Butchers Bride" is a sexualised depiction of a violent, sexually manipulative woman with a "quick temper" and who murdered her 7th husband.

### The ABAC Code

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

- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

### The Company's Response

15. The Company responded to the complaint by letter dated 15 April 2016. The principal points made by the Company were:

- Thank you for taking the time to give your feedback, we take all complaints very seriously and this concern you have raised is no different. We feel very strongly that you have misinterpreted these advertisements.
- It is important to note that much of the copy that forms the basis for this complaint is outdated, as we have previously made changes and removed copy from both our website and media in line with previous feedback received from the ABAC pre-vetting service.
- Specifically, the below comments made regarding sections of our advertising are outdated (as in no longer online, in media or anywhere else) and are therefore not applicable:

***"All my beers (or my girls, as I like to think of them)..."*** (in reference to the Crafty Bavarian Brewing Co. website "About Us" page)

***"the woman is described as...high fun"*** (in reference to Blonde Moment Low Carb Beer)

**“She’s ‘easy-going’ and ‘seductive’”** (in reference to Blonde Moment Low Carb Beer)

**“Seductive”** (in reference to Hop Dock Wheat Beer)

**“Never had to pay for a fare”** (in reference to Hop Dock Wheat Beer”)

- To accurately uphold this complaint within the parameters of the ABAC Code, it needs to be argued that:
  - The illustrations encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage by portraying the Crafty Bavarian Brewing Co. characters in a sexual manner – where it is socially irresponsible to combine harmful depictions of women with men’s alcohol consumption
  - The advertisements show that the presence of alcohol as a cause/contributor to a significant mood change or environment or sexual or social success by aligning each brand with a female character and giving personal characteristics to the products
- Firstly, it is prudent to identify that these advertisements are not aimed at only men. It cannot be assumed in any way that these advertisements are entirely aimed at a male market and therefore it would be a stretch to suggest that the intention is to create a harmful depiction of women alongside male alcohol consumption. Each of the illustrated women is a metaphor for the beer she represents; telling the tale of the product’s characteristics and personality by way of fun and engaging imagery and copy. Therefore each of these characters becomes a representation of the beer, rather than suggesting in any way that the presence of this beer would result in or encourage irresponsible behavior.
- The stories on beer coasters in venue and the website set these Crafty Bavarian Brewing Co. ladies apart from traditional pin up girls with intriguing tales that are arguably based on the idea of empowerment, and recognise the multidimensional qualities of women. From incorporating university degrees (Blonde Moment), to explicitly stating *“this queen doesn’t need a king”* (Hop Dock), we aimed to portray strong, independent women, and therefore strongly disagree with the above statement made in the complaint. If anything, these message of empowerment resonate more with a female than male market.
- Secondly, when reviewing these advertisements alongside section 3(c)(i) or (c)(ii) we believe it is inaccurate to suggest that these advertisements are implying that the beers will elicit a change of mood, behaviour, status or appeal of an individual if consumed. The metaphors and double



entendres contained within the copy for these beers are a creative vehicle for communicating the characteristics and flavours of the beers. The wording does not suggest that a person will feel compelled to act any differently upon drinking the beer. The beer uses metaphors and personification to bring the tasting notes of each individual beer to life in a compelling way.

- With this in mind, we strongly believe that these have been misinterpreted. The complainant has stated that the Munich Lager is depicted as *“violent due to ‘restrained bitterness’”*, however the restrained bitterness mentioned is in direct reference to the tasting notes for this particular style of beer. In no way is restrained bitterness being used to imply violence.
- In reference to our Blonde Moment Low Carb Beer, the complainant states *“her intellect is described as something that would defy her appearance”*. Our Blonde Moment beer was named in reference to the style of beer (it is a blonde beer variety) and in fact inverts the stereotype of a “dumb blonde” by highlighting her achievements and sharp intellect, including *“graduating from university with a degree in marine biology”*, a copy line which was updated upon advice from ABAC pre-vetting service in January 2016.
- Furthermore, the complainant claims that; *“the characters are all sexualized and depicted as either subordinate or sexually manipulative and violent”* – a statement that we strongly disagree with. All of our illustrations and character stories were developed with the aim of depicting our beers in a unique and appealing way, and great lengths were taken to ensure that our descriptions of the beers were humorous while also portraying empowered versions of femininity.
- The complainant makes various references to the appearance of our female illustrations. Our designers worked very closely with ABAC pre-vetters throughout the ABAC pre-vetting approval process in order to incorporate their feedback and changes to ensure that the illustrations depicted women who were visibly older than 25 years of age. Specifically, efforts were made to remove any features that could be deemed youthful or cute (such as the proportion of their eyes to the rest of their facial features) which may be misleading to a younger audience. The complainant refers to the Munich Lager Keller Beer illustration as being *“shown with an angry expression”*, however this is in reference to our old creative. This illustration was reworked in line with pre-vetting feedback mentioned above in order to depict a less serious facial expression. Furthermore, each Crafty Bavarian Brewing Co. woman is

hand illustrated and is a celebration of hand crafted art, much the same as the Australian brewed craft beer that they represent.

- The illustrations and advertising were never intended to discriminate against women and we apologise for any offence that may have resulted from the outdoor advertising.
- The advertising on the whole is aimed at educating the general public about our new range of craft beers
- We are a family-friendly business, with a large contingent of respected and highly valued female team members and by no means would we ever discriminate against women.

## **The Panel's View**

### **Background**

16. The Urban Purveyor Group operates a number of licensed restaurants across Australia under the names of 'Bavarian Bier' Cafes and 'Munich Brauhaus'. This Determination concerns a part of the Company's business which involves the promotion of a range of craft beers sold at the Company's venues.
17. The complaint provides a detailed critique of the marketing campaign as a whole and, in particular, materials related to four craft beers. Namely:
  - Munich Lager;
  - Blonde Moment;
  - Hop Dock; and
  - Butcher's Bride.
18. The underlying concern expressed by the complainant is that the marketing objectifies women and suggests that women can be categorised as consumable products. By describing each of the craft beer brands as a 'girl', the complainant contends the characteristics of the beers / girls rely on damaging stereotypes about women's sexuality to sell the products.
19. As mentioned in paragraph 2, the regulation of alcohol marketing comprises of an amalgam of laws and codes of practice. The AANA Code of Ethics applies to most marketing irrespective of the product or the service being promoted and contains standards going to:
  - Discrimination against a person or a section of the community on account of their gender.
  - Marketing not employing sexual appeal in a manner which is exploitative and degrading.

- Treating sexuality with sensitivity to the relevant audience.
20. It is clear that the core criticisms of the Company's marketing communications by the complainant goes to the standards contained in the Code of Ethics rather than the alcohol specific standards contained in the ABAC. This means that the complaint will result in a decision on Code of Ethics issues by the Advertising Standards Board as the relevant adjudicative body for that particular Code and this Determination will not deal with these concerns. As the complaint, however, also goes to some matters which raise issues under the ABAC, it is necessary to make this Determination to adjudicate upon the ABAC-specific concerns.
21. The standards which are raised under the ABAC by the issues contained in the complaint together with the nature of the marketing communications go to:
- Whether the marketing can be said to encourage irresponsible or offensive behaviour that is related to alcohol use;
  - The suggestion that the consumption or presence of alcohol may create or contribute to a significant change in mood; or
  - The suggestion that the consumption or presence of alcohol is a cause or contributor to the achievement of social or sexual success.
22. In responding to the complaint, the Company has made several references to feedback that it has received from ABAC pre-vetters on the marketing communications. The Company contends that in light of this feedback, a number of changes have been made to the marketing which means that the materials as they are currently available to the public are somewhat different to those which were viewed by the complainant.
23. There are two important points to note in relation to this observation by the Company. Firstly, the ABAC scheme consists of the pre-vetting service and the public complaints adjudication process. These processes are completely independent of each other and advice received through the pre-vetting service does not quarantine a marketing communication from being subject to a subsequent public complaint and to that complaint being upheld by the Adjudication Panel.
24. Secondly, while the material may now be in a different form from the time it was viewed by the complainant, it is the Panel's responsibility to make a Determination based on the marketing material as at the time it was publically available and accessed by the complainant. Accordingly, the Panel has proceeded to make a Determination on the state of the marketing communications as at the time the materials appeared when the complainant viewed them.

## **The marketing communications**

### Alcohol related offensive behaviours

25. The Panel has reviewed the marketing communications related to the four craft beer brands against the relevant ABAC standards. In doing this, the Panel is to consider the probable understanding of the marketing material by a reasonable person taking the content of the material as a whole.
26. The Panel does not believe that the marketing material breaches the section (a)(ii) standard. While the material might be argued to be demeaning to women and reliant on stereotypes of female characteristics, these are issues for the ASB under the Code of Ethics to consider. The requirement created by the ABAC standard is that offensive behaviour related to alcohol use is not to be encouraged by the advertising e.g. drunken loutish behaviour.
27. The complaint references stereotypes of female behaviour which are sexually based, however it cannot be fairly said that the marketing is promoting say alcohol fuelled violence or sexual harassment influenced by alcohol use.

#### Change in mood and achievement of success

28. Section (c)(i) and (ii) provide that a marketing communication must not suggest that the consumption or presence of alcohol may create or contribute to a significant change in mood or to the achievement of social, sexual or other success.
29. The key concept in this standard is that of causation. It is permitted to associate alcohol with a convivial mood and attractive successful people, but it cannot be suggested that alcohol was a cause of the mood or achievement of the success.
30. The marketing technique employed by the Company is to attribute to each of the branded craft beers particular characteristics which are aligned to the fictional female characters. These characteristics describe the type and flavour of the beer but go on to give particular personality traits to the products. The question is whether the descriptions in the context of the marketing as a whole suggests that success, sexual or otherwise, may be caused by the presence or use of the products.
31. The Panel has reviewed the marketing communications of the four branded craft beers and concluded that, on balance, the marketing does not breach the section (c) standard. Assessing the material as a whole, it cannot be fairly concluded that the products are implying that sexual or other success will be achieved by their use or their presence. The sexual language is linked to the characteristics of the beer and not to its impact.
32. While the Panel believes it is obliged to dismiss the complaint, the style of marketing consistently adopted by the Company which is centered upon dated stereotypes of women and focuses on women as the object of the male view appears out of step with modern Australia. As Canadian Prime Minister Justin Trudeau responded when asked why it was important to have an equal number of women in his Cabinet – “Because it’s 2016”. Possibly the Company might equally realise that it is ‘2016’ in devising its marketing.