



ABAC Adjudication Panel Determination No. 95/16

Product: Various
Company: Stockade Brew Co
Media: Digital
Complainant: Confidential
Date of decision: 12 August 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 digital advertising on Instagram by Stockade Brew Co (“the Company”) and arises from a complaint received 14 July 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 14 July 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 not obtained for this marketing communication.

The Marketing Communications

10. The advertising complained of is a series of Instagram posts by Stockade Brew Co. It includes the following selection of posts relevant to the issues raised in the complaint and which are listed from (a) to (h) for ease and subsequent reference:
 - a. “Thankyou craft breweries for making my drinking problem seem like a hobby. #stockadebrewco.”, flanked by a 375ml bottle and a beer tap for a product named “Peachy Keen Peach Gose”. Caption by Company includes #OnlyJoking #Thankyou #CraftBreweries.
 - b. “It’s strange how 8 glasses of water a day seems impossible But 8 glasses of beer is so damn easy. #stockadebrewco”, flanked by a 375ml bottle and a beer tap for a product named “Duel Hoppy Lager”. Caption by Company “Who else tried 8 glasses of great craft beer this weekend? #HndKrftdnOz #Thursday #Friday # Saturday”. Two user generated responses of “I know I did” and “I bloody did!”.
 - c. “Remember: Beer has food value. But food has no beer value #stockadebrewco.”, flanked by a 375ml bottle and a beer tap for a product named “Peachy Keen Peach Gose”. Caption by Company “Packed Full of Peaches”.
 - d. “Beer is good, but Beers are better. #stockadebrewco”, flanked by a 375ml bottle and a beer tap for a product named “Duel Hoppy Lager”. Caption by Company includes #DrinkinModeration.
 - e. “24 hours in a day 24 beers in a case. Coincidence? I think not. #stockadebrewco”, flanked by a 375ml bottle and a beer tap for a product named “The Sesh Golden Session Ale”. Caption by Company includes #funny #DrinkResponsibly.
 - f. “I only drink beers on days that end with ‘Y’ #stockadebrewco”, flanked by a 375ml bottle and a beer tap for a product named “Chop Shop Pale Ale Ale”. Caption by Company “Is it craft beer o’clock yet?”.
 - g. An image of a round glass pool full of beer in a backyard with the caption “Beer Pool A must have in every Aussie Backyard” next to the Stockade Brew Co logo. Caption by Company “Tag a mate who’d love to swim in one of these!”.
 - h. A retro cartoon image of a smiling man holding up a bottle of beer with the text “Beer! Drink all you want they’ll make more” next to the Stockade Brew Co logo. Caption by Company “We promise to always make MORE

rad beers #HndKrftdnOz #DrinkinModeration #craftbeer
#newbreweverymonth #comingsoon”.

The Complaint

11. The complainant is concerned that the advertising promotes binge drinking, irresponsible drinking and objectification of women.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;

The Company’s Response

13. The Company responded to the complaint by email dated 2 August 2016.
14. We don’t believe that any of the ads in question breach section (a)(i) “encouraging excessive consumption”. Our opinion is that these are clearly tongue-in-cheek expressions and allow for any reasonable and/or rational person to interpret them as such. Specifically the feedback we provide on each is as follows;



- This is utterly tongue in cheek.
- A lot craft breweries are seen as run by hobbyists. Home brewers are hobbyists

- Note the text accompanying this image states #OnlyJoking to reinforce that this is completely meant to be a joke and not to be taken seriously.



- This is not suggesting that one should drink 8 glasses of beer a day instead of water. It is merely pointing out that the suggested number of 8 glasses of water is seemingly difficult but IF it were beer (a drink we love), it would be easier.
- The analogy made in the image is in reference to 8 glasses a day, however please note the text which accompanies the image says, “who else tried 8 glasses of great craft beer *this weekend?*” with the hashtags reinforcing Friday, Saturday, Sunday across the whole weekend.



- As is the case with all these kinds of posts, it's clearly humour with no basis in fact.
- We're pointing out that this particular beer is full of peaches, which makes it taste better (giving it more value)



- There is nothing wrong with having more than one beer?
- Note the hashtag, "DrinkInModeration"



- Note the hashtag #DrinkResponsibly
- We're not telling people to drink a beer every hour on the hour. That's just ridiculous. It's humour.



- There is nothing wrong with consuming beer on any given day of the week. Last time we checked, it was totally ok to have a beer with dinner mid-week. Is the complainant suggesting that this post is inappropriate because we should only consume beer on the weekend?



- Once again a ridiculous, over the top, humorous post where reality and fiction are so far apart.
- Note: the text states, “Tag a mate who’d love to swim in one of these!” No where do we state or even suggest that people should consume a pool’s worth of beer. Even writing this statement is ridiculous!



- This is a statement saying we’ll never run out of beer and keep making more great beers
- Note the hashtag, “DrinkInModeration”

- “Drink all you want” is relative and assumes a level of personal responsibility by the drinker

The Panel’s View

15. The Stockade Brew Company is a craft brewery located in Goulburn, NSW, and produces a range of beer products. The Company promotes its offerings via digital media including Facebook and Instagram.
16. The complaint concerns a series of posts on the Company’s Instagram account. The posts detailed in paragraph 10 collectively include a number of comments and references which the complainant takes as encouraging excessive alcohol consumption. The Company contends in reply that the posts are light-hearted and ‘tongue in cheek’ and would not be fairly interpreted as encouraging irresponsible alcohol use.
17. In assessing if an alcohol marketing communication is consistent 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. Reference to ‘a reasonable person’ is drawn from the Australian Common Law and means that the benchmark is the attitudes, values and opinions common in a majority of the community.
18. The Panel believes the Instagram posts collectively do breach the ABAC standard. In reaching this conclusion, the Panel has noted:
 - Humour is a factor in how a reasonable person would probably understand a marketing communication, but humour will not excuse a marketing communication which is evidently inconsistent with a Code standard.
 - The humour used in a number of the posts is based upon underlying references to excessive alcohol consumption and are a play on these references.
 - The posts would be interpreted as encouraging and condoning excessive consumption or the misuse of alcohol consumption, specifically including:
 - ‘Thank you craft breweries for making my drinking problem seem like a hobby.’
 - ‘It’s strange how eight glasses of water seem impossible but eight glasses of beer is so damn easy.’
 - ‘24 hours in a day, 24 beers in a case. Coincidence? I think not.’
 - ‘Beer. Drink all you want. They’ll make more.’
19. The Panel notes that the Company is not a signatory to the ABAC scheme and is not contractually bound to abide by a Panel determination. That said, the Company has cooperated with the Panel’s processes and enabled the

determination to be made. The Company is encouraged to make use of the ABAC scheme, particularly the pre-vetting service in devising its marketing material. This service allows alcohol marketers to have independent verification that their marketing approaches are consistent with industry best practice.

20. Accordingly, the complaint is upheld.