



## ABAC Adjudication Panel Determination No. 119/16

**Product:** Little Dove Pale Ale  
**Company:** Gage Roads Brewing  
**Media:** Digital  
**Complainant:** Confidential  
**Date of decision:** 1 December 2016  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital advertising for Little Dove Pale Ale by Gage Roads Brewing (“the Company”) and arises from a complaint received 24 October 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 24 October 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 Communication

10. The complaint describes the advertisement as:

Yelp, Gage Roads Brewing Co, and Peg Leg are teaming up to shout you free beer on Wednesday 26 October! We're tapping a keg of Little Dove new world pale ale, the Champion Beer at the 2016 Australian International Beer Awards, and pouring 'til it runs dry. Here's how to score your free pint: 1. Come down to Peg Leg bar from 6pm on Wed October 26 with the Yelp app on your phone 2. Check-in at Peg Leg. 3. Drink and be merry!

WHAT YOU NEED TO KNOW: + Join the FB event page for juicy updates: [facebook.com/events/1323](https://facebook.com/events/1323)... + Offer is one free pint of Little Dove new world pale ale. + Free beer is with check-in on the free Yelp phone app. + Download Yelp now to save time on the door. + Free beer available until the keg runs dry

11. The Company has supplied the following copy of the advertisement:

## Details

Yelp, Peg Leg Pymont, and Gage Roads Brewing Co are teaming up to celebrate an exceptional local business and an award-winning brewery, and in the process shouting you free bar food and a beer on Wednesday 26 October!

We're tapping a keg of Little Dove new world pale ale, the Champion Beer at the 2016 Australian International Beer Awards. Join us to learn more about this award-winning beer and check in on Yelp for free bar food and a beer, and the Peg Leg boys will have you covered.

1. Come down to Peg Leg bar from 6pm on Wed October 26 with the Yelp app on your phone
2. Check-in at Peg Leg.
3. Celebrate a great local business and brewery!

### WHAT YOU NEED TO KNOW:

- + You must be 18+ and drink responsibly
- + One free drink per person max
- + Offer is for one free pint of Little Dove new world pale ale
- + Free beer is with check-in on the free Yelp phone app only
- + Download Yelp now to save time on the door
- + While stocks last.

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### WHAT IS YELP?

A kick-ass free app that helps you win at life. Find the best places to eat, shop, drink, and play in Sydney and around the world.

### ABOUT PEG LEG

A wood-and-brass pirate bar in Sydney's maritime home of Pymont. Owners and bartenders Manuel and Colin have worked in some of the best cocktail bars in London.

### ABOUT GAGE ROADS BREWING CO.

A brewery on the sunny coast of Western Australia that makes world-class Australian craft beers.

## The Complaint

12. The complainant is concerned that the advertising:

- encourages excessive drinking by offering free alcohol until the keg runs dry and places no stated limit on the number of free beverages; and
- challenges people to consume alcohol by inviting people to “drink and be merry” and to share with friends.

### **The ABAC Code**

13. 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;
  - (a)(iii) challenge or dare people to consume an alcohol beverage;

### **The Company’s Response**

14. The Company responded to the complaint by letter dated 1 November 2016. The principal points made by the Company were:
- The complaint references a Yelp promotion Gage Roads supported with Little Dove New World Pale Ale. Thanks for bringing this complaint to our attention. As a precaution we immediately removed the Gage Roads Instagram post once this was brought to our attention and an internal investigation into the content was made.
  - When we reviewed the Yelp promotion in full it became quite clear that the complaint was edited snippets with motivated bias. It’s disappointing to think this motivation exists but it is Important to note that key terms and conditions in the “What you need to know” section below were left out of the complaint content you supplied to us;
    - You must be 18+ and drink responsibly
    - One free drink per person max
    - While stocks last
  - The NSW Gage Roads Instagram post had a link to this Yelp Facebook post to ensure that these conditions were read as part of the promotion. I believe the editing of the content on the social media posts shows motivation to depict a tone that isn’t present when full content is viewed.
15. The Peg Leg Bar was also invited to respond to the complaint, but failed to do so.

## The Panel's View

16. Yelp is a digital platform which houses crowd sourced reviews about local businesses and advertising from businesses. Commencing in the United States in 2004, the platform was launched in Australia in late 2011.
17. Peg Leg is a Sydney bar and restaurant. In October 2016, Peg Leg in conjunction with the Company posted a Yelp entry promoting an event to be held at the bar on 26 October 2016. The promotion involved the alcohol product Little Dove Pale Ale, which is produced by the Company. The Yelp post described the event in the following terms “Yelp Peg Leg Pymont and Gage Road Brewing Co are teaming up to celebrate an exceptional local business and award winning brewery and in the process shouting you free bar food and a beer on Wednesday 26th October”.
18. The complainant raises a concern about this Yelp post. It is argued that the post encourages excessive alcohol consumption and that readers are challenged to consume the product and “drink and be merry”. In making the complaint, the complainant supplied a text of what is stated to have been the Yelp post viewed by the complainant.
19. This complaint highlights one of the challenges in dealing with digital marketing. The Panel has not been able to confirm the content of the Yelp post as seen by the complainant. A copy of a post supplied by the Company is substantially similar to that described by the complainant, but there are some material differences. These differences go to the use of expressions such as:
  - “shout you free beer”;
  - “pouring till it runs dry”;
  - “how to secure your free pint”;
  - “drink and be merry”; and
  - “free beer available until the keg runs dry”.
20. The Company advises that the complainant's description omitted some key references that were present in the post. These references were:
  - “you must be 18+ and drink responsibly”;
  - “one free drink per person max”; and
  - “while stocks last”.

21. In an attempt to reconcile the differences in relation to the content of the Yelp post, the Panel made further enquiries of the Company. The Company advised that “we are unable to see any edit history for Yelp or Peg Leg Pymont posts, so I can't say 100% if there has been edits made before we looked at them”.
22. The ABAC system is based upon a review of marketing material as seen by a complainant. Clearly, it is the nature of online material that its content can be altered very quickly. Further, there is invariably a gap between when a complainant might view material online, make a complaint to the ASB and that complaint is transmitted to the Panel's executive officer and inquiries made to source a copy of the marketing material. In short, several days may pass between a complaint being made and the Panel being able to secure a copy of the relevant marketing material. In online terms, a couple of days can equate to an eternity.
23. As the Company cannot be entirely certain what the content of the Yelp post might have been at the time viewed by the complainant, the Panel has proceeded on the basis that the expressions as described by the complainant were in fact included on the Yelp site and publicly visible at the time the site was viewed by the complainant.
24. The compliant raises a concern that the marketing item is encouraging excessive consumption and is challenging people to consume an alcohol beverage. The ABAC provides in section 3, that marketing must not encourage excessive or rapid consumption or challenge or dare people to consume an alcohol product.
25. The Company contends that read as a whole, the post would not be taken in the way suggested by the complainant. The Company points to other expressions in the post such as “one free drink per person max” as making clear that excessive consumption is not being encouraged.
26. Assuming the text of the post was as described by the complainant, the Panel does not believe the ABAC standards have been breached. In reaching this conclusion, the Panel has noted:
  - In assessing the probable understanding of a marketing communication by a reasonable viewer, the content and context of the marketing item as a whole needs to be considered;
  - The overall aim of the marketing item is to promote the event at the bar featuring the Company's alcohol product;
  - The event is promoted by reference to “free beer”;
  - Taken alone and without consideration of other content or context, the promotion of “free beer” and expressions such as “pouring till it runs dry” are suggestive of excessive consumption;

- However, these expressions are contextualised by other descriptions in the post such as “here’s how to score your free pint” (implicitly one pint not continuous free drinks) and “offer is one free pint of Little Dove”;
- The expression ‘drink and be merry’ of itself both historically (from its biblical origins) and in contemporary use does not imply intoxication or excessive consumption;
- Taken as a whole, a reasonable interpretation of the marketing item is that a person attending the event is entitled to one free pint of the product with this offer remaining open until the “keg runs dry” meaning while stocks remain;
- The event is about trying the product but it cannot be said that people are being “challenged or dared” to consume the product.

27. Accordingly the complaint is dismissed.