



ABAC Adjudication Panel Determination No. 79/18

Product: Philter Beer
Company: Philter Brewing
Media: Digital
Complainant: Confidential
Date of decision: 10 August 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns three Instagram posts promoting Philter Brewing (“the Company”) and arises from a complaint received on 6 August 2018.
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. 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 the other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 6 August 2018.
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 was determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content 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 identifies to the following posts by @philterbrewing on Instagram.



 philterbrewing • Follow

philterbrewing POSSIBLE SIDE EFFECTS
🍷 #philterbrewing #seductivelybeer
Photo by @gabbois

smoketankbbq Congrats on the write up gang!

philterbrewing @smoketankbbq cheers 🍷 !!!

_tjwatts Epic! 🙌🔥❤️

philterbrewing @_tjwatts 🍷

sticks_and_stones_agency @_tjwatts let's crack one again ASAP!!!

thesalisburyhotel Nicehanging with the sticks and stones gals and guysseductive mix

sticks_and_stones_agency @thesalisburyhotel match made in heaven... or hell... 🍷🔥🍷
freeyeephoto You turn me on



101 likes

5 DAYS AGO

Log in to like or comment.



 philterbrewing • Follow

philterbrewing HAPPY HUMP DAY
Increase your chances 🍷
#philterbrewing #seductivelybeer
#phuckeyes

Photo @kvnbnntt

booze_exchange CARPOOL!

freeyeephoto FAVE

philterbrewing @freeyeephoto 🍷🍷



80 likes

4 DAYS AGO

Log in to like or comment.





The Complaint

11. The complainant is concerned that the posts suggest that consuming their beer will lead to sexual activity and success as:
 - a) The images strongly imply sexual references (a woman touching herself/a switch that says “turn on”, a couple in a sexual position on a mattress and a group of naked people) and are accompanied by captions to back up these references (seductively beer and increase your chances).
 - b) Beer advertising should be void of such heavy sexual inference.
 - c) It is 2018 and the links between alcohol and sexual violence against women are well known.
 - d) Captions such as “increase your chances” are disgusting and offensive to women.
 - e) Consent if both parties is essential when having sex and implying that beer is going to help you get around that is morally wrong.
 - f) Depicting women in sexual scenarios has its place in society and can empower women, however that place is not in the alcohol industry.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (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, sporting, sexual or other success.

The Company's Response

13. The Company responded to the complaint by email dated 6 August 2018 advising:
 - a) Thank you for bringing the complaint to our attention. As discussed we have just had a new agency take over our social media and it is clear from the complaint that we need to address the direction moving forward.
 - b) Please note the actions we will take as a result of the complaint:
 - Remove the 3 posts in question
 - Send a copy of the code to our agency

The Panel's View

14. Philter Brewing is a new craft beer brewer having commenced operations in April 2017. The Company is not a signatory to the ABAC scheme but has co-operated with the Panel in this complaint process.
15. The complaint is about posts on the Company's Instagram account. The Company explains that the posts were associated with a new agency that has taken over the Company's social media direction. The Company appears to accept that the posts were inappropriate and has acted to remove them.
16. The Company is right to remove the posts as the complaint is well founded. In particular, the posts are inconsistent with the ABAC standard which provides that alcohol marketing is not to suggest that alcohol is a cause or contributor to the achievement of social success.
17. The Company would benefit from advice provided by the ABAC pre-vetting service in devising its marketing strategies. This advice could assist the Company and its social media agency develop marketing communications which reflect brand attributes, but in a manner consistent with community expectations about the responsible portrayal of alcohol and its use. The Instagram posts identified by the complainant fall well short of these expectations.
18. Accordingly, the complaint is upheld.