



ABAC Adjudication Panel Determination No. 151/18

Product: Wilde Beer
Company: Tribe Breweries
Media: Digital
Date of decision: 17 December 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital marketing for Wilde Beer by Tribe Breweries (“the Company”) and arises from a complaint received 10 December 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 Code”) – 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 and Policies – which place 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 other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 Ad Standards 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

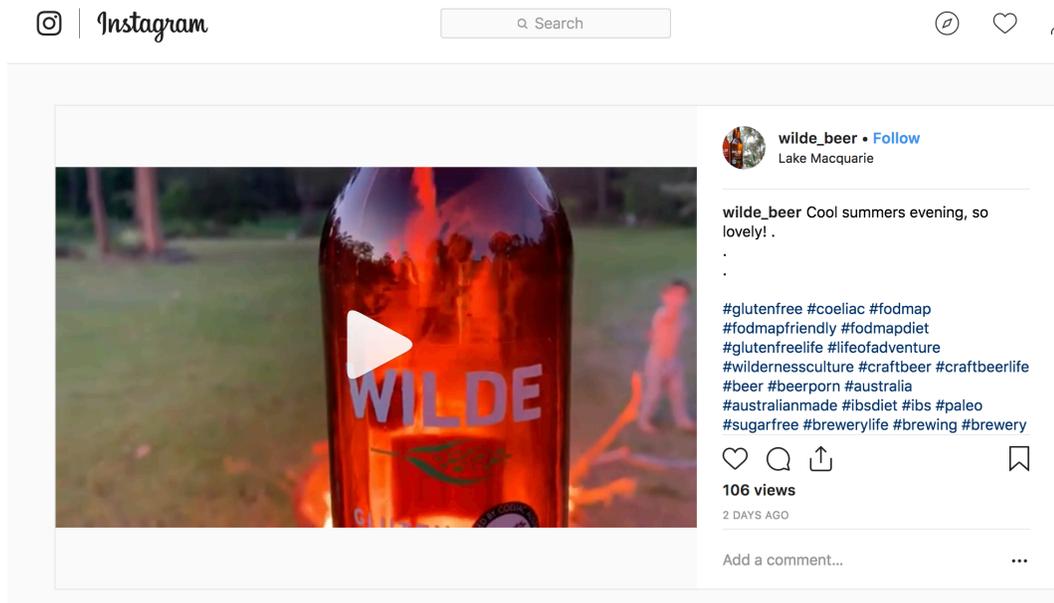
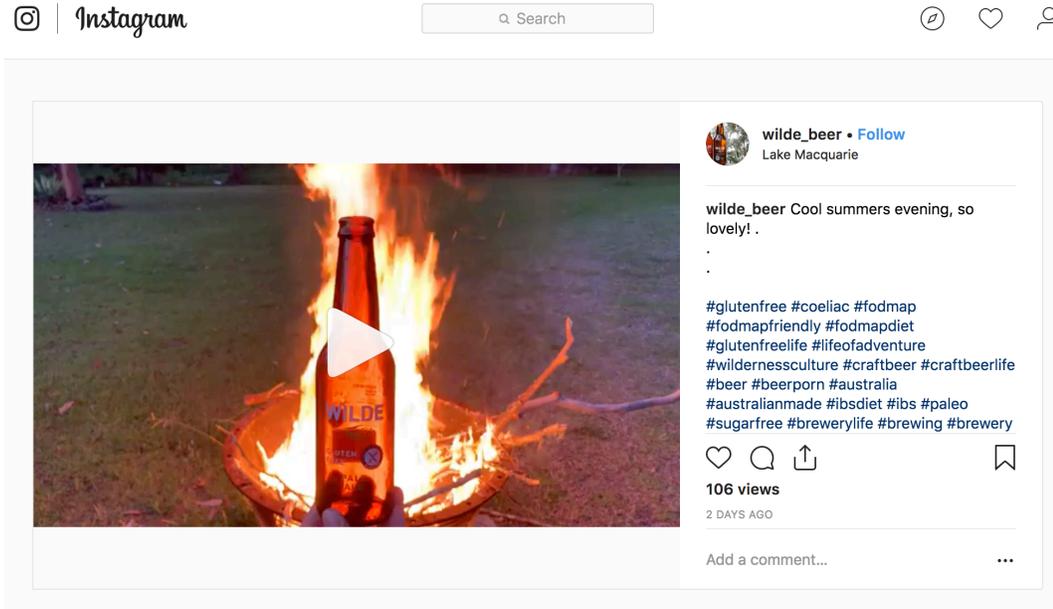
7. The complaint was received on 10 December 2018.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in 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 the content of this marketing communication.

The Marketing Communication

10. The complaint relates to a video clip on the Wilde Beer Instagram account uploaded on 7 December 2018. It shows a hand holding a bottle of Wilde Beer and bringing it closer to the camera with a blazing fire pit and lawns in the background. Toward the end of the clip a small child is shown walking into view on the other side of the firepit and calling out. Following are screenshots from the video clip.



The Complaint

11. The complainant objects to the marketing as it shows a child in an alcohol ad.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol;

The Company's Response

13. The Company responded to the complaint by email dated 10 December 2018. The Company advised that the video post of 7 December that showed a child wandering into the shot in the last second included an editing error and the post has been removed.

The Panel's View

14. Part 3 (b) (ii) of the ABAC provides that a minor is not to appear in an alcohol marketing communication unless they are shown 'in an incidental role in a natural situation and where there is no implication they will consume or serve alcohol'.
15. In an Instagram post referencing Wilde beer a small child is briefly seen entering the frame of a video which features an empty beer bottle being shown in front of an open fire. The Company explains the final few seconds of the clip were intended to be edited so that the child is removed. This has now occurred.
16. Therefore in substance the complainant's concern that a child appeared in a clip promoting an alcohol product has been accepted and acted upon by the Company. The Panel acknowledges the explanation that the child appeared in the clip in error and that this now has been rectified.
17. In terms of a formal decision, the Panel does not believe the Code provision has been breached. Viewing the clip as a whole conveys that it was focusing on the outdoor scene with the fire and the bottle. The appearance of the child was incidental to the scene as a whole. There was no suggestion that the child would be consuming alcohol or that the posting was endeavouring to encourage under-age drinking.
18. Accordingly the complaint is dismissed.