



ABAC Adjudication Panel Determination No. 1/19

Product: Beer
Company: Southern Bay Brewery
Media: Digital (Twitter)
Date of decision: 17 January 2019
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 marketing on Twitter by Southern Bay Brewery (“the Company”) and arises from a complaint received 2 January 2019.
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 2 January 2019.
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 this marketing communication.

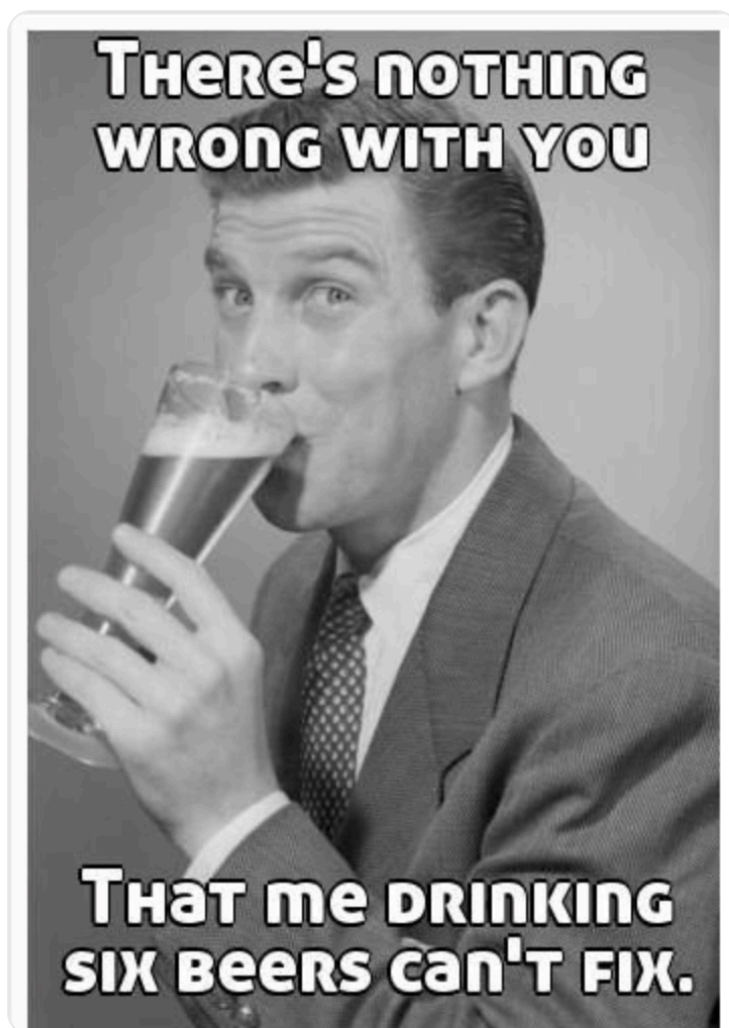
The Marketing Communication

10. The complaint relates to the following post on the Company’s Twitter account.



Southern Bay Brew Co @SouthernBayBrew · 21 Dec 2018

Only 6 beers? Tag a mate!



The Complaint

11. The complainant objects to the marketing as six beers is clearly in excess of responsible drinking practices and the accompanying text clearly implies that the reader should consume in excess of six beers.

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

- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment

The Company's Response

13. The Company responded to the complaint by email dated 7 January 2019. The principal points made by the Company were:
- a) The post itself, along with many others was generated by a contracted media company based in Tasmania which is separate from the Brewery. Perhaps ABAC should first investigate the media company and the legal paperwork prior to adjudicating on the post, as we do not wish Southern Bay Brewery associated with any adverse finding (if it was to occur) if it is not warranted.
 - b) Nonetheless, I offer the following:
 - i. The social media post that was the source of the complaint has been removed in good faith.
 - ii. The meme posted on Social Media was a light-hearted photo of a well dressed man in approximately the 1950's sipping a beer. This was not intended in any way to support excessive or rapid drinking of beer.
 - iii. The photo itself has a small tapered beer glass that is likely to hold approximately 285ml. It is similar to many old 1950's style greeting cards widely displayed in the marketplace nowadays that seem to be accepted by the general public.
 - iv. We believe the post itself was humorous and not intended to be taken seriously. We also have the opinion that the complaint was based on political correctness that has gone too far, based on the large voice of the vocal minority.
 - v. We do not believe the post suggested excessive beer consumption.
 - vi. We do not believe the post suggested that the consumption of six beers suggested it would change the person's tolerance of another individual. We believe the post relates to a more relaxed outlook. It certainly would not contribute to any significant change in behaviour.

The Panel's View

14. There has been a significant growth in the number of craft brewers operating in Australia in recent years. As an industry group the Craft Brewers have yet to formally join the ABAC scheme although engagement between the scheme and this part of the alcohol industry is increasing and the Panel's experience has been that individual brewers which have been subject to public complaints about marketing items have responsibly participated in the complaints process. This has been the case in this determination where the Company has responded to the complaint and facilitated the completion of the determination.

15. The Company has been selling craft beer products in the market since 2012 although its facilities in Geelong have a much longer history. As part of the Company's marketing approach it has opened a twitter account and the complaint relates to one of its tweets. In its response to the complaint, the Company alludes to a relationship with a 'contracted media company' which is separate from the Brewery. The implication is that the tweet was created by the social media contractor without direct reference to the Company.
16. While it might be case that the Company did not consciously create the individual tweet, this is not relevant for ABAC purposes. It is standard practice for alcohol companies to have relationships with media service providers to produce marketing copy. The relationship might require that the contractor comply with all relevant laws and codes including ABAC in carrying out its work. For the ABAC scheme the responsibility for marketing rests with the alcohol industry participant and the ABAC processes don't seek to pull apart commercial relationships between alcohol companies and media service providers. These relationships and their proper management to achieve compliance with ABAC obligations rests with the alcohol industry company.
17. The tweet in issue adopts a retro feel of the 1950's with a picture of a man in a suit consuming a glass of beer with the written message ' There's nothing wrong with you that me drinking six beers can't fix'. To the complainant this message breaches the ABAC standard relating to marketing not encouraging excessive consumption of alcohol.
18. The Company contends the tweet is clearly humorous and not intended to be taken seriously. The test for how a marketing communication is to be assessed against an ABAC standard is the probable understanding of the communication by a reasonable person. This means that the life experiences, opinions and values common in a majority of the community is the benchmark.
19. It would be fair to believe that a reasonable person is sufficiently worldly to take the tweet as being lighthearted and not seriously advocating that six beers be consumed to overcome a negative perception someone might hold about another person. In fact the humour relies on an assumed shared experience amongst many in the community that references the intoxicating effects of alcohol.
20. The ABAC does not prescribe how alcohol is to be marketed in terms of the creative process. There are countless ways in which a message about a product and its brand attributes might be conveyed in a clever and often humorous manner. What the Code does not permit is messaging which encourages the misuse of alcohol and this includes promoting excessive consumption or suggesting alcohol should be used to overcome a deficit such as dealing with an objectionable person.
21. On balance the Panel believes the tweet does breach the section (a) and (c) standards. Not because the message would be taken as seriously saying it's good to consume six beers in one session of drinking but because it implies that it is a common and acceptable experience to have used excessive alcohol consumption to navigate difficult situations.
22. The Company (and its contracted media agents) are encouraged to access the ABAC pre-vetting service to gain advice about marketing consistently with the

ABAC requirements. Clearly the Company intends to market responsibly and the pre-vetting service can assist in meeting this goal.

23. The complaint is upheld.