



## ABAC Adjudication Panel Determination No. 76/19

**Product:** Pirate Life  
**Company:** Carlton & United Breweries  
**Media:** Digital (Instagram)  
**Date of decision:** 21 October 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 Instagram posts by Pirate Life which is owned by Carlton & United Breweries (“the Company”) and arises from a complaint received 4 October 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:

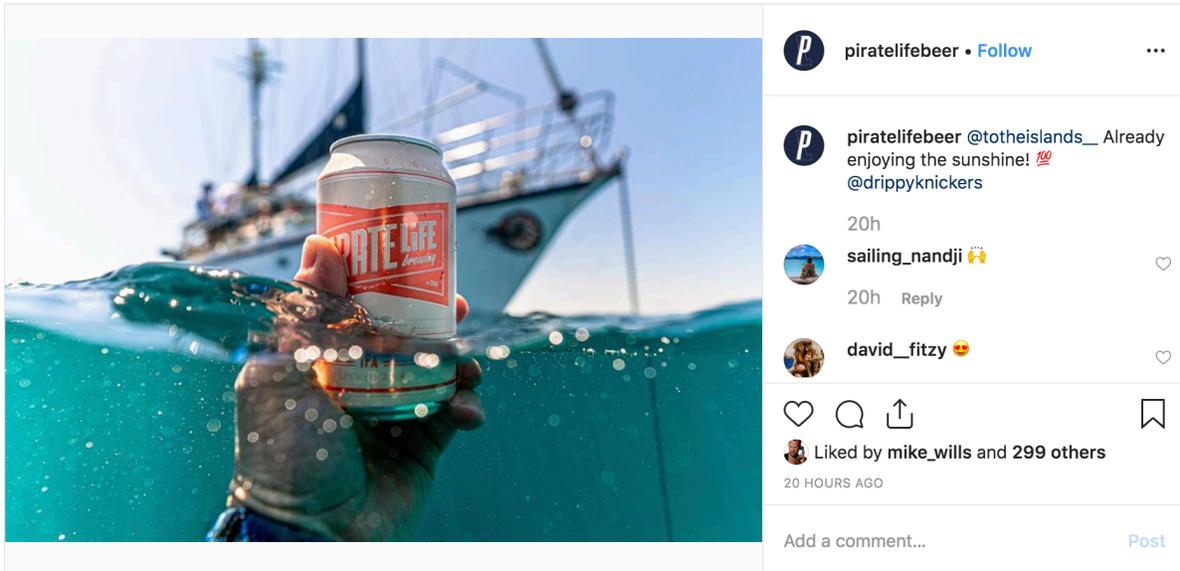
- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial 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 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 4 October 2019. The Panel endeavours to make a decision within 30 business days of the receipt of a complaint and this complaint has been determined within that timeframe.
8. 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 Facebook posts.

## The Marketing Communications

9. The Instagram post referred to in the complaint is included following:



### The Complaint

10. The complainant is concerned that:

- the Instagram post shows a can of beer being held in the water by someone swimming near a boat, the photograph is taken by the person holding the beer and the photographer is submerged;
- the photo creates a connotation between drinking and swimming in the open water and there is no context imaginable other than drinking the beer where this photo is taken;
- the person in the photo is either consuming the beer or it is implied that they are consuming the beer; and
- swimming in open water is a high risk activity and should not be associated with consumption.

### The ABAC Code

11. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

## **The Company's Response**

12. The Company responded to the complaint by letter dated 11 October 2019 advising that:
  - We agree that this picture breaches the Code with respect to Part 3(d) Alcohol and safety.
  - The post has been removed from Pirate Life's social media channels.
  - CUB is committed to ensuring our promotional and marketing material, and that of our associated entities such as Pirate Life, does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation.
  - We are disappointed that in this instance, CUB's usual level of scrutiny and rigour was not applied to our marketing communications. We are taking steps to ensure this will not be repeated in the future.

## **The Panel's View**

13. Part 3 (d) of the ABAC provides that an alcohol marketing communication must not show (including by direct implication) the consumption of an alcohol beverage before or during an activity that for safety reasons requires a high degree of alertness or physical coordination, such as swimming.
14. The Company's Instagram post shows a picture of a hand emerging from the sea holding a can of the product adjacent to a yacht. The complainant believes the post clearly breaches the ABAC standard. The Company accepts the post also breaches the standard and has removed it from its Instagram account.
15. The picture doesn't show actual consumption of the product, i.e. no one is seen physically drinking from the can. The image is no doubt an attempt to associate the product with summer pursuits as is implied from the accompanying text- 'Already enjoying the sunshine'. It is not impermissible to associate alcohol with sailing or being by the water, but it is self-evidently a breach of the Code to show the use of alcohol while swimming.
16. A reasonable person could take the image as endorsing the consumption of alcohol while swimming and accordingly the Panel believes the post to be inconsistent with Part 3 (d) of the Code.
17. The complaint is upheld.