



## ABAC Adjudication Panel Determination No. 113/19

**Product:** Capital Brewing  
**Company:** Capital Brewing Co.  
**Media:** Digital (Instagram)  
**Date of decision:** 5 December 2019  
**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 an Instagram post promoting Capital Brewing Co. (“the Company”) and arises from a complaint received 26 November 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:

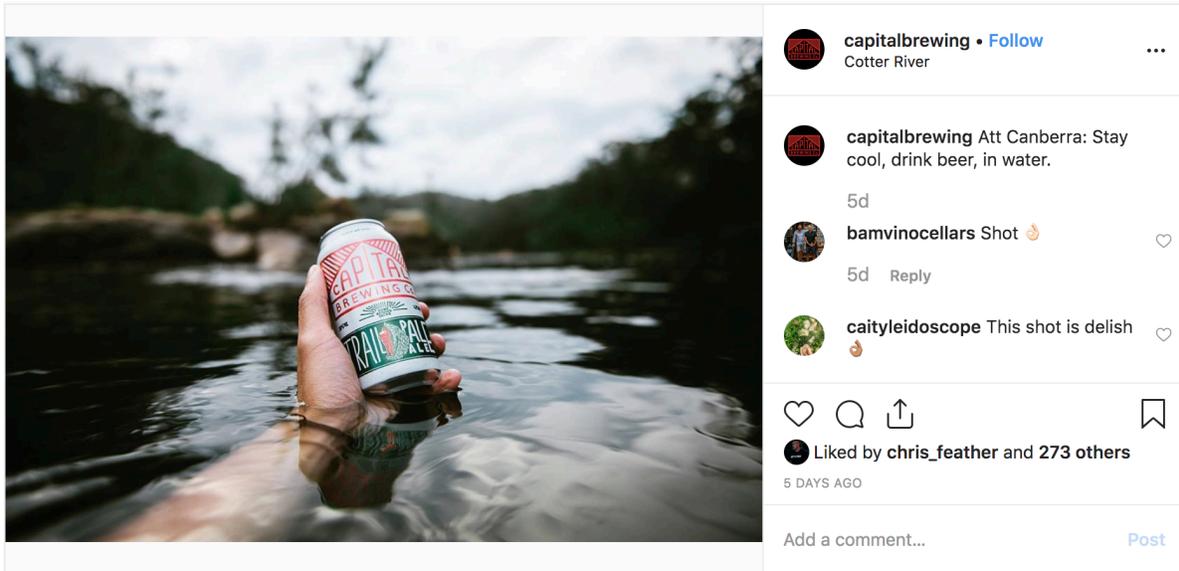
- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial 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 26 November 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 Instagram post.

## The Marketing Communications

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



### The Complaint

10. The complainant is concerned that the post associates drinking beer and swimming, where swimming is a high risk activity not to be associated with drinking beer.

### 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 email dated 27 November 2019 as follows:

- We agree that this picture breaches Part 3(d) Alcohol and safety of the ABAC Code.
- The social post was done on the fly without consideration to the ABAC code. We usually schedule our posts and review them all before going out, making sure we abide by the ABAC Code.
- We have removed the post from all of our social media channels.

- We are 100% committed to ensuring all our marketing and communications moving forward abide by the ABAC Code and this is a one-off occurrence that will not be repeated.

### **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 a river holding a can of the product. 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. However, the accompanying text 'Att Canberra: Stay cool, drink beer, in water.' encourages consumption of beer while cooling off in water, presumably while swimming. It is not impermissible to associate alcohol with 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 would 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.