

ABAC Adjudication Panel Determination No. 114/19

Product: Pirate Life
Company: Carlton & United Breweries
Media: Digital (Instagram)
Date of decision: 9 December 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 an Instagram post promoting Pirate Life by Carlton & United Breweries (“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 suggests performing circus tricks after consuming a few cans of 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 letter dated 6 December 2019 as follows:

- Pirate Life have a relationship with Canadian circus company Cirque Alfonse. This relationship dates back to 2016. Cirque Alfonse have visited the Pirate Life brewery multiple times and performed at the 2016 Pirate Life birthday event. In 2018 Pirate Life brewed an Alfonse Ale to commemorate Cirque Alfonse's Tabarnak performance at the Adelaide Fringe Festival.
- The post from Pirate Life is a Marketing Communication as defined by the ABAC. CUB acknowledge that the execution of circus tricks as depicted in the Pirate Life post fall within the scope of Part 3(d) of the ABAC, being an activity requiring a high level of alertness. The post itself does not depict any alcohol consumption by the performers, however we acknowledge that the copy at the time the complaint was made implied the consumption of alcohol prior to the performance of acrobatic tricks. The copy of this post has now been amended to remove this inference, and therefore the post is now compliant with the standards articulated in the ABAC.
- The post is a video of the Cirque Alfonse troupe performing an acrobatic balancing trick. At no time during the video is any alcohol depicted or shown in connection with the performers. We note that one audience member appears to be holding a can of an unidentified beverage, however the performers themselves are at no point shown holding or consuming alcohol.
- We agree that the caption "When your homies @cirquealfonse do a quick act after sinking a few cans of IIPA. @gilbertstreethotel" breaches the Code with respect to Part 3(d) Alcohol and Safety. The copy has since been amended to read: "When your homies @cirquealfonse do a quick act before sinking a few cans of IIPA. @gilbertstreethotel".
- Please see a current screenshot of the post below:



- With this updated copy, the post does not breach Part 3(d), as it is clear in this caption that any potential alcohol consumption will occur after the acrobatics have been performed. Furthermore, because the performers are not holding or consuming any alcoholic beverages, when viewing the video in conjunction with the updated caption, it cannot be implied that the acrobats have consumed alcohol prior to their performance.
- 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 note that the post at issue is historical in nature, having been produced and uploaded before the acquisition of Pirate Life by CUB.
- As always, our goal is for consumers to enjoy our products responsibly and in moderation. Internally we have taken steps to reiterate the necessity of ensuring all current, past and future social content conforms with the ABAC.

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.
14. The Company's Instagram post is a video of a group of men performing a circus trick. The caption accompanying the video is "When your homies @cirquealfonse do a quick act after sinking a few cans of IIPA. [fist pump emoji] @gilbertstreethotel". The complainant believes the post clearly breaches the ABAC standard. The Company accepts the post with its original caption breaches the standard and has modified the Instagram post's caption.
15. The picture doesn't show actual consumption of the product, i.e. no one is seen physically drinking from the can. However, the original caption suggests that the circus performers consumed alcohol before performing the trick.
16. A reasonable person would take the post as a whole as showing the consumption of alcohol before performing an activity that requires alertness and physical coordination and accordingly, the Panel believes the original post to be inconsistent with Part 3 (d) of the Code. The Panel notes that the company has since modified the post to clarify that alcohol consumption is to occur after the circus performance.
17. The complaint is upheld.