



ABAC Adjudication Panel Determination No. 115/19

Product: Brewdog
Company: Brewdog
Media: Website/Twitter
Date of decision: 20 December 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital marketing promoting Brewdog products by Brewdog (“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 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 26 November 2019.
8. The Panel endeavours 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.

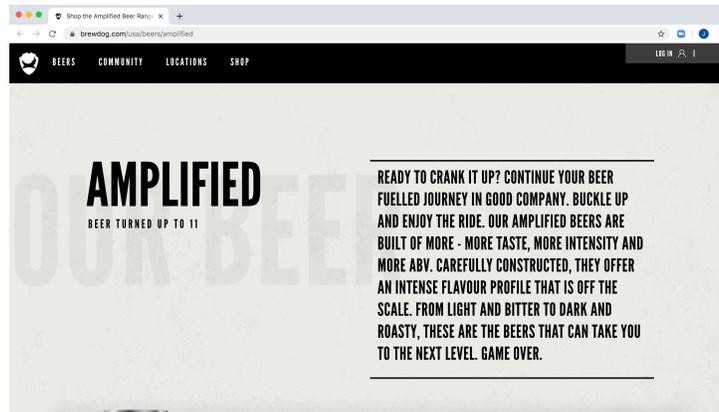
Pre-vetting Clearance

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 Communications

10. The complaint relates to:

- Brewdog website <https://www.brewdog.com/usa/beers/amplified>.



- Brewdog Tweet 5 September 2019:



The Complaint

11. The complainant is concerned about the marketing advertising beers based on their high alcohol strength:

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol

The Company's Response

13. The Company responded to the complaint by email dated 10 December 2019 advising that:
- BrewDog Australia is an Australian based company that is a subsidiary of BrewDog PLC, a UK based company. When you click on the link to the BrewDog website as listed in the complaint; it takes you to the American website. This is very clear, and it even asks you whether you mean to be on the American website when you land on it.
 - I can't locate the tweet by James Watt.
 - I am confused that as Operations Manager of BrewDog Australia I am answering a complaint about a tweet from the UK containing a link to a US based website; and I believe there is no case to answer.
 - I would also like to note that the beers on the BrewDog USA website and referred to in the tweet are US exclusives not available in Australia.

The Panel's View

14. In 2007 James Watt and Martin Dickie launched a craft brewery in the small Scottish fishing port of Fraserburgh. The company founded by Watt and Dickie began producing beer under the branding of BrewDog. In 12 years BrewDog has become a major business operating hotels and bars throughout the United Kingdom and Europe and establishing subsidiary brewing operations in the USA. As part of this global expansion BrewDog has recently opened a brewery in Brisbane and commenced marketing Australian made beers under the BrewDog branding.
15. This determination concerns social media marketing for BrewDog seen by the complainant. The concern raised is about promoting the choice of alcohol products based on the alcoholic strength of the product. Part 3 (a) (iv) of the ABAC provides an alcohol marketing communication must not encourage the choice of a particular alcohol beverage by emphasising its alcohol strength or the intoxicating effect of alcohol.
16. In response to the complaint the Operations Manager of BrewDog Australia advised the website referenced in the complaint is from the American subsidiary of BrewDog and that the beers referenced on the site are not available in Australia. Further, it seems the tweet from Mr Watts does not relate to Australian BrewDog products as such.

17. Alcohol is a global product and internet platforms are equally global in their reach. In contrast the ABAC scheme is limited in its reach to marketing which is linked to Australia. This is reflected in the Code which describes its application to 'marketing communications in Australia generated by or within the reasonable control of a marketer'. This means the scheme and the remit of the Panel does not extend to every alcohol marketing item which can be accessed in Australia over a digital platform. To fall within the ambit of the scheme the marketing item must have a discernible and direct link to Australia.
18. In this case the marketing is found on an American website and a twitter account and relates to products which apparently are not available on the Australian market. While global trade and communication is such that it would be conceivable that an Australian resident might access the products via online ordering and international shipping, it is fair to say that the products are not on retail sale in Australia.
19. Further, while BrewDog Australia is part of the global BrewDog group, it seems the marketing items did not originate in Australia, were not generated in Australia and it would be highly marginal that the Australian entity could be said to have the requisite measure of 'reasonable control' over the marketing to bring it within the scope of the ABAC scheme. Many of the major alcohol producers in Australia are part of international corporate groups. The fact they have Australian based subsidiaries does not extend the reach of the ABAC scheme to all of the marketing activities which take place overseas and are designed to market products in other countries. The ubiquitous nature of the internet does not alter this fact.
20. Accordingly, the Panel believes the marketing communications identified by the complainant do not fall within the jurisdiction of the ABAC scheme and as a result the Panel has no authority to make a substantive decision on the consistency of the marketing with the ABAC standards. In these circumstances the complaint is dismissed.