



ABAC Adjudication Panel Determination No. 90/19

Product: Pirate Life
Company: Carlton & United Breweries
Media: Digital (Instagram)
Date of decision: 28 November 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 Instagram posts by Parker Seigle and Alessandro that tag Pirate Life and posts by Pirate Life that tag Parker Siegele and Alessandro referencing Pirate Life beer which is owned by Carlton & United Breweries (“the Company”) and arises from a complaint received 29 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 29 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 Instagram posts.

The Marketing Communications

9. The following posts by Parker Siegele are referenced in the complaint.

- Post 1



- Post 2



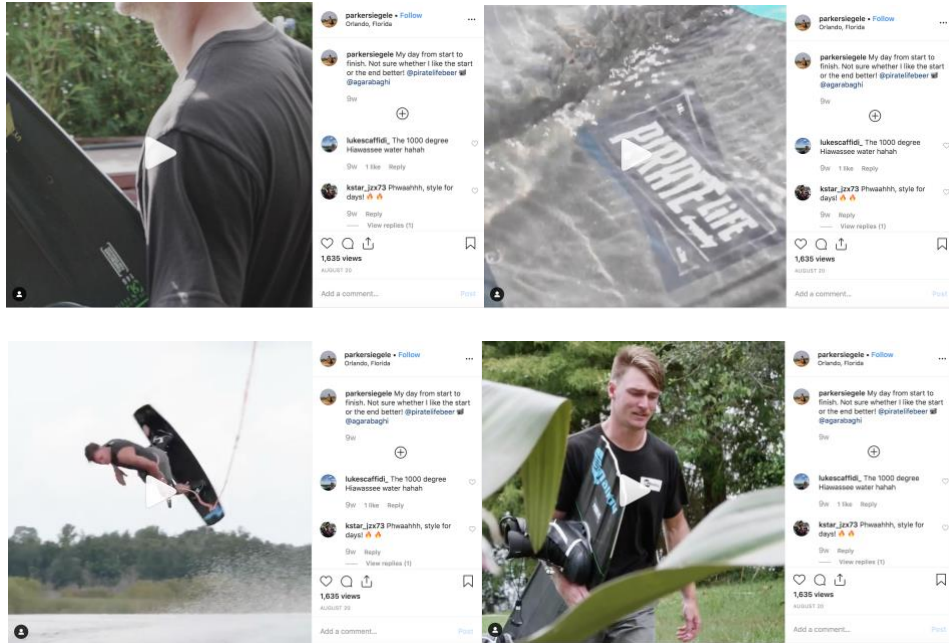
- Post 3



- Post 4



- Post 5: Video Instagram post by Parker Siegele that tags Pirate Life referred to in the complaint is footage of Parker Siegele preparing for a day of wakeboarding, wakeboarding and concluding his day and sitting down next to an esky and drinking from a Pirate Life beer as he looks over the water. The following screenshots were taken from the video.



- Post 6



10. Comment on one of the posts referred to in paragraph 9, #teammunted, is included following.



The Complaint

11. The complainant is concerned that:
 - Pirate Life has partnered with Parker Siegele, a professional wakeboarder;
 - Instagram posts by Parker Siegele are being used to promote Pirate Life products, by reason of a formal agreement, branded gear, social media posts by Pirate Life depicting and tagging Parker Siegele and referring to him as a Team Rider, social media posts by Parker Siegele and his cameraman that depict, reference and tag Pirate Life;
 - Parker Siegele is shown drinking Pirate Life or in situations where drinking Pirate Life is implied in his posts dated 22 October, 18 September, 20 August, 20 June and 18 April, in circumstances where he is aged 24 (born 7/7/95);
 - In the video post by Parker Siegele dated 20 August and by Pirate Life dated 27 August, because Instagram's videos are perpetually looped, this post shows high risk behaviour (wakeboarding) then drinking and then wakeboarding again;
 - Parker Siegele's posts dated 18 September, 20 August and 29 May associate drinking with boating;
 - In the post dated 18 April, @ryancowboyanderson comments '#teammunted' to which Parker Siegele replies with the crying, laughing emoji and the rock on sign of the horns emoji, seemingly endorsing the post and dangerous drinking, where munted has a darker meaning but in this context it would imply getting excessively drink; and
 - There are many more breaches and inappropriate posts, its not my job to manage Pirate Life and their affiliates social media, they should be doing this themselves.

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
 - (b)(iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - they are not visually prominent;

- they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment;
- (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

13. The Company responded to the complaint by letter dated 8 November 2019. The principal points made by the Company were:

- Pirate Life have a formal sponsorship arrangement in place with professional wakeboarder Parker Siegele ("Parker").
- We reject the assertion made by the complainant that any of the posts, or the sponsorship relationship between Pirate Life and Parker implies a link between consuming alcohol and performing the physical act of wakeboarding. None of the posts identified by the complainant show or imply that beer should be consumed before or during the physical act of wakeboarding or performing wakeboarding tricks.
- The sponsorship relationship between the parties falls within the scope of Part 2(b)(v) of the ABAC and therefore does not fall within the remit of the Code. Pirate Life provides Parker with consideration support, being payment or other in lieu alternative. Parker has been identified as a professional within the wakeboarding sporting code by various publications and such sport is one of individual participation. Therefore the sponsorship of Parker is akin to the sponsorship of sporting teams as is commonplace in other sporting codes and clearly falls outside the scope of the ABAC Code. Parker has agreed to be associated with Pirate life.
- As a result of satisfying the definition of sponsorship outlined in the ABAC, the relationship itself, and any utilisation by Parker of the Pirate Life logo on his uniform (including on his wakeboard, which is critical to the sporting activity) are exempt from the ABAC Code in accordance with Part 2(b)(v).
- CUB notes that the definition of Sponsorship clearly excludes branded merchandise. Therefore, the use by Parker of Pirate Life branding, including his wakeboard, utilised during his participation in the sport is akin to a brand logo being permissible on participant uniforms as specifically incorporated into the Sponsorship definition and falls within the Sponsorship exception and thus outside the scope of the Code. However, the use of branded merchandise

outside Parker's participation in the sport (and flowing from the sponsorship arrangement) falls within the scope of the ABAC Code.

- CUB acknowledge that the sponsorship exception does not extend to the promotion of brand attributes or associated advertising that flows from the existence of the sponsorship relationship, and therefore Instagram content created or posted by Parker that promote the relationship with Pirate Life fall within the remit of the ABAC.
- CUB acknowledge that the sponsorship exception does not extend to the promotion of brand attributes or associated advertising that flows from the existence of the sponsorship relationship, and therefore any Instagram content created or posted by Pirate Life that promote the relationship with Parker fall within the remit of the ABAC.
- Pirate Life do not have a sponsorship relationship or otherwise with Alessandro Garabaghi, and therefore Alessandro's content is not within the reasonable control of Pirate Life and is therefore not within the scope of the Code.
- The Instagram post by Parker on 18 April 2019 does not of itself breach Part 3(a)(i). The shot clearly depicts Parker holding a single can of Pirate Life's Pale Ale. Nothing in the shot encourages excessive consumption. Parker is not depicted consuming the beverage itself, and at most it can be implied that he will consume one Pale Ale, which contains 1.5 standard drinks. CUB and Pirate Life supports the responsible marketing of alcoholic beverages and notes that the phrase 'munted' when used in relation to alcohol in the Australian vernacular refers to a state of intoxication. Pirate Life provides brand ambassadors, including Parker, with responsible marketing guidelines. CUB acknowledges @ryancowboyanderson's comment and any endorsement of such comment does not encourage the responsible consumption of alcohol. We also note that the term #teammunted has a specific meaning within the wakeboarding subculture and will request that Parker remove the post in its entirety.
- Instagram content created by Parker and Pirate Life fall within the scope of the ABAC and therefore breaches the Code with respect to Part 3(b)(iii). Such content will be removed from Pirate Life social media channels and we have requested that Parker remove them as well. However, use by Parker of Pirate Life branded gear used whilst performing the sport of wakeboarding falls within this exemption and is not a breach of the Code. Further, posts by Alessandro Garabaghi are not within Pirate Life's control and therefore do not fall within the scope of the ABAC.

- We do not accept that the images or videos depicted in the posts identified by the complainant show or create an implication of drinking alcohol in connection with physically performing the act of boating or wakeboarding. As per the guidance notes in respect of Part 3(d), the purpose of this Part has '*no intention to exclude every association between alcohol and activities that, for safety reasons, require a high degree of alertness or physical co-ordination.*' Overall these posts do not overtly depict, or imply that any alcohol will be consumed prior to any such activity. To address each post individually:
 - **Post 1: Parker holding a Pirate Life beverage and wakeboard.** It is clear Parker has finished his wakeboarding activity for the day. Parker is fully clothed, in shorts, t-shirt, a cap and what appears to be a pair of shoes. This is not wakeboarding apparel and strongly suggests that Parker has finished wakeboarding for the day, gotten changed out of his sporting apparel and is now enjoying a beer once the wakeboarding activity has concluded.
 - **Post 2: Parker sitting on a boat, holding a Pirate Life beer.** In this image, Parker is sitting on the back of a boat, holding a can of Pirate Life beer. The shot only captures a small section of the back of the boat, and the photo has been taken by a third party and not by Parker. There is no implication from this photo that after this image has been captured Parker will commence driving the boat. The fact that a third party has captured the image makes it clear that there is at least one other person on board who can safely drive the boat back to shore.
 - **Post 3: Parker holding a Pirate Life beer.** In this image there is no implication that wakeboarding or any other activity requiring a high level of concentration is going to occur. Parker is standing in front of a lake, however there is no wakeboarding paraphernalia pictured and he is dressed in a t-shirt. The mere presence of water cannot be taken as a suggestion that swimming or wakeboarding will occur and the general quality of light would suggest that it is later in the afternoon and Parker is potentially set to enjoy a beverage in the afternoon sun.
 - **Post 4: Parker holding a Pirate Life beer at Pirate Life Brewing.** There is no implication that any activity requiring a high level of concentration will occur. Parker is sitting at a bar bench, an activity that does not of itself require a high level of concentration.
 - **Post 5: Parker engaging in wakeboarding activity and having a beer at the end of the day.** The video commences with Parker hitting the water and engaging in some wakeboarding activity. After the activity ceases, it is clear that Parker has completed such activity

for the day: he cleans down the boat, puts on casual (non-wakeboarding) attire and retires to the nearby home to sit in the patio before any consumption occurs. We note the complainant raises concerns that the video is looped, however a reasonable consumer viewing content on the Instagram platform would understand the loop style presentation, and that due to its nature plays multiple times from start to end and would presume that once the video commences again this is the start of the video afresh and that no consumption has occurred before the wakeboarding activity.

- **Post 6: Image of Pirate Life beer in front of a boat.** In this image the beer is prominently featured at the front of the image, whilst a boat that is docked and clearly covered is depicted out of focus in the background. Noting in this image implies that any activity requiring concentration will occur. The boat is clearly moored, has a protective cover over the entire vessel and is very clearly not about to be utilised. The blue and slightly apricot cloudy sky in the background and general quality of light would suggest that the day is drawing to a close and Parker is set to enjoy a beverage in the twilight hours.
- CUB is committed to ensuring our promotional and marketing material, and that of our associated entities such as Pirate Life, does not encourage or promote any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation. We are disappointed in this instance, that CUB's usual level of scrutiny and rigour was not applied to our Instagram posts in respect of Part 3(b)(iii). In addition, we will be removing the posts from Pirate Life's channels and we will ask Parker to remove the posts as well. Additional face to face training has also been made available.

The Panel's View

14. Parker Siegele is a professional wakeboarder from South Australia's Barossa Valley. Pirate Life was originally an independent craft brewer but is now an alcohol product within the CUB stable. Pirate Life is brewed in Adelaide.
15. The Company advises that it is one of the sponsors of Mr Siegele. While the precise terms of the sponsorship arrangement have not been disclosed, it appears that the Company supports Mr Siegele in cash or kind and in return Mr Siegele is associated with the Pirate Life brand through his clothing and wake boarding equipment bearing the Pirate Life name and logo.
16. The complainant has examined the social media posts of Mr Siegele and has raised a number of concerns. Specifically, it is argued that as Mr Siegele is under the age of 25, his involvement in alcohol marketing is a breach of the ABAC which requires adults featured in marketing to be at least 25 years of age. Further, it is contended

that some posts encourage excessive alcohol consumption and others suggest the use of alcohol while engaged in the inherently dangerous activity of wake-boarding.

17. The ABAC in Part 2(b)(v) states that the Code standards do not apply to 'sponsorship'. Sponsorship is subsequently defined to mean an agreement involving the payment or other consideration by a marketer to support 'a sporting or cultural property, event or activity' in return for which the sponsored party agrees to be associated with the sponsor's alcohol beverage. It is specifically noted that a sponsorship includes the placement of a brand name and/or logo on uniforms of sporting participants.
18. On most occasions in the past when the Panel has considered the sponsorship exception to the Code standards it has been in relation to the support of sports competitions or sports teams. There is however no logical reason why an individual sportsperson cannot be sponsored. This means that the direct manifestation of the sponsorship such as the Company branding appearing on Mr Siegele's sports equipment and clothing is captured by the exception.
19. The exception, however, has a defined scope and all marketing which flows from the existence of the sponsorship such as social media posts are captured by the ABAC standards. In practice, this means showing the sponsored athlete in say a branded uniform participating in the sport, would be within the frame of the sponsorship. But the same athlete promoting the alcohol product in some positive way e.g. speaking about the attributes of the product in a television ad, goes beyond the sponsorship and is marketing captured by the ABAC.
20. Here, Mr Siegele is shown promoting the product by holding cans of the product in various settings. These posts are not within the sponsorship exception and this is accepted by the Company in its response. The posts, however, are not on the Company's social media sites and have not been posted by the Company. Therefore, to be held responsible for the contents of the posts, they must be within the reasonable control of the Company. In this regard it would seem the Company accepts it has an ability through its relationship with Mr Siegele to have a measure of control over how Mr Siegele portrays the Pirate Life brand and products. This presumably arises through the terms of the sponsorship arrangements. In any event, it is not disputed by the Company that it can influence Mr Siegele's posts or at least have them moderated and have any offending posts removed. In contrast, the Company says it has no relationship with nor control over the posts of Alessandro Garabaghi.
21. It seems that Mr Siegele was born in July 1995 and at the time of the posts was 24 years old. This means all of the posts which are not captured by the sponsorship arrangements will breach Part 3 (b)(iii) of the Code which requires adults depicted in alcohol marketing (subject to particular exceptions) to be at least 25 years of age.
22. The complainant further contends that other posts place alcohol use in conjunction with the actual performance of wake-boarding. Part 3 (d) of the Code provides that

the consumption of alcohol cannot be shown before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination. Wake-boarding certainly requires a high degree of physical co-ordination, however, the Panel does not believe the individual posts breach the standard. In this regard it is noted the posts:

- show the product being held next to water, but clothing and other cues indicate no wake-boarding is occurring or has finished;
- show the product on a rubber dinghy on a calm pond or lake where the person with the product is not in control of the craft; and
- in one case a video of wake boarding is shown but there is no suggestion that alcohol consumption has occurred before or during the activity and a reasonable person would not interpret the 'looping' of the video as meaning alcohol is being endorsed as being used in conjunction with the actual conduct of the activity.

23. The post of 18 April is argued to imply excessive consumption, and this is accepted as a possible interpretation by the Company. The Panel finds this post in breach of Part 3 (a) of the Code.

24. The Panel finds the following Instagram posts by Parker Siegele breach Part 3 (b)(iii):

- 22 October 2019
- 18 September
- 20 August
- 20 June
- 29 May
- 18 April

25. The complaint is otherwise dismissed.