



## ABAC Adjudication Panel Determination No. 92/19

**Product:** Brewdog  
**Company:** Brewdog Australia  
**Media:** Instagram  
**Date of decision:** 19 November 2019  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns digital marketing promoting Brewdog products by Brewdog Australia (“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 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 29 October 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 Communication

10. The complaint relates to the following Instagram posts.



**brewdogau** • Follow

**brewdogau** #throwbackthursday to back in 2010 when we first released our 41% quadruple IPA, Sink The Bismarck. It contains four times the bitterness and is ice distilled four times to create a full out attack on your taste-buds. Not tried it yet? Get your hands on it in one of our favourite locals @brewskibar and let us know what you think!

#bt #drinkslo #quadrupleipa #ipa #craftbeer #amplified #highoctane #strongbeer #highabv #abv #hops #icedistilled #craftnotcrap #craftbeernotcrapbeer #brewdogaustralia #brewdog #sinkthebismarck #bismarck #beerporn #instabeer #beerstagram #brewpix

Like Comment Share

Liked by brunswickbeercollective and 116 others

MARCH 22, 2018

Add a comment... Post



**brewdogau** • Follow  
Brisbane, Queensland, Australia

**brewdogau** Help us get over this #MondayBlues by sharing what beery activities you were up to over the weekend 🍺

Sample any new brews?

55w

**brewdogau** .

#mondaymotivation #monday #mondaymood #mondays #weekendover #newweek #newweekmotivation #newbrews #newbeer #newbeers #craftbeer #craftbeerforthepeople #beerglass #tapbeer #beerontap #brandedaustralia #brandedau

Like Comment Share

Liked by hetorp and 134 others

OCTOBER 8, 2018

Add a comment... Post

## **The Complaint**

11. The complainant is concerned about the marketing as:
  - the first post promotes the 41% abv beer based on its high alcohol content and the use of hashtags such as #highoctane, #amplified and #highabv; and
  - the second post shows that alcohol can cause a change in mood and can provide a source of motivation by including a picture of two pints with the caption “Help us get over this #MondayBlues by sharing what beery activities you were up to over the weekend??” and the use of hashtags including #mondaymotivation, #mondaymood and #newweekmotivation.

## **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
  - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment

## **The Company’s Response**

13. The Company responded to the complaint by email dated 30 & 31 October 2019 advising that:
  - the Instagram posts complained of are 12 months and 19 months old with very few views and were posted well prior to current Brewdog Australia management; and
  - the posts were removed on the day ABAC notified Brewdog Australia of the complaint.

## **The Panel’s View**

14. Brewdog is a craft brewer originating in Scotland and shortly to open a new facility in Brisbane. In advance of brewing in Australia the Company’s products have been available in Australia and have been promoted via social media channels.
15. The complainant has identified two Instagram posts which it is argued are inconsistent with ABAC standards. The first concerns a beer - Sink the Bismarck - which has a very high alcohol to volume strength of 41%. It is contended that the post promotes the purchase of the product based on its strength. The second post is for the Company more generally, rather than a particular product, and it is contended this post shows alcohol as a cause of a significant change in mood.

16. In responding to the complaint the Company explained the posts (from March and October 2018 respectively) were old, not extensively viewed and were posted well prior to the Company's current management taking over the Company. The Company removed the posts but did not seek to mount an argument as to whether the posts breached the relevant ABAC standards or not.
17. The advice of the Company that its management has changed can be accepted at face value and this may explain some context about the posts, but it does not excuse the Company from its obligations to meet good standards in alcohol marketing. There is no suggestion that the Company doesn't accept its social obligations to market responsibly and the quick removal of the posts reflects this.
18. The Panel, under its operating procedures, is still to make a ruling on the posts even though they have been removed. The Panel believes the 'Sink the Bismarck' post does breach Part 3 (a) (iv) of the Code. While simply stating the alcohol content of a product is not a breach (indeed this is important information in guiding an informed choice by a consumer) the post through the use of hashtags such as 'highoctane', 'strongbeer' and 'amplified' together with other narrative features could be reasonably taken as encouraging the choice of the product by emphasising its strength.
19. The second post breaches Part 3 (c)(i) of the Code by suggesting the use of alcohol may contribute to a significant change in mood, namely getting over 'Monday blues'.
20. Accordingly, the complaint is upheld.