



ABAC Adjudication Panel Final Determination No. 102/19

Product: Carlton & United Breweries
Company: Pirate Life Social Lube
Media: Name, Packaging & Instagram Post
Date of decision: 2 January 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) concerns the name, packaging and an Instagram post for Pirate Life Social Lube by Carlton & United Breweries (“the Company”) and arises from a complaint received 11 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 11 November 2019.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.
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 the marketing communication.

Marketing Communication

10. The following product name, packaging and Instagram post is referred to in the complaint.



The Complaint

11. The complainant is concerned that the name of the beer and the Instagram post suggests the product will result in a change in mood or contribute to social success as 'Social Lubricant' is a common saying for anything (alcohol, weed, speed dating) that allows people to interact more comfortably in social situations.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success

The Company's Response

13. The Company responded to the complaint by letter dated 21 November 2019. The principal points made by the Company were:
- Social Lube is a Riesling Pilsner beer; the product of a collaboration between Riot Wine Co. (**Riot**) and Pirate Life Brewing. Riot are a wine company, whose product is available to consumers in cans or kegs and Pirate Life are a craft brewery who naturally also supply their products in these vessels, both parties are based in Adelaide, South Australia.

- We reject the assertion made by the complainant that either the name, packaging or advertising of the beer implies a link between consuming alcohol and causing a change in mood or social success.
- The Riesling Pilsner, Social Lube, was the result of a collaboration between Riot Wine Co. and Pirate Life Brewing. The name of the product is not intended to imply any kind of mood change or social success. As outlined in the ABAC Guidance Notes in respect of Part 3 of the ABAC *'There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration.'*
- Nothing in the product name, packaging or the Instagram post, dated 12 July 2019 identified by the complainant implies or states that the impact of the product is contributing to mood change or social success. Rather the product is a nod to the experience of sharing a beverage with friends in a social situation. The name and packaging of Social Lube is not intended to imply a change in mood or the cause of success, rather it acknowledges the product as being 'incidental to a friendly and lively social environment'. Furthermore, the name is also acknowledgement of the friendly and collaborative social environment between these two Adelaide based producers.
- Additionally, the product packaging and Instagram post identified by the complainant utilises a demure colour scheme of navy, dark green and white. The post and packaging do not use any attention-grabbing elements or make any claims that would lead to the implication that this product will cause success or mood change.
- Additionally, the copy of the Instagram post reads *'Teaming up with the legends @riotwineco we have created a unique drop that pushes the boundary of what wine and beer can be. Pouring all weekend at @beerandbbqfest'*. This copy further reinforces that the product is not intended to be interpreted by consumers as something that will change their mood or environment. It posits Social Lube as a unique brew, blending wine and beer, whilst the reference to the availability of the product at a Beer & BBQ Festival further emphasises the intent that the product is present at lively social events, rather than as a contributing cause of that mood.
- 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. Accordingly, we have taken all reasonable precautions both in the naming and marketing of this product to ensure that while it is an acknowledgement of the Riesling Pilsner as present in social environments, it is in no way intended to be implied to have caused social success or created a change in mood.

The Panel's View

14. The Company in conjunction with a wine producer Riot Wine has produced a Riesling Pilsner beer branded under the name of Social Lube. The complainant contends that this name suggests the product will result in a change in mood or

contribute to social success in breach of the ABAC standards on responsible alcohol marketing. The Company contends the name is consistent with the Code requirements.

15. On 12 December 2019 the Panel made a provisional determination that the product packaging was in breach of Part 3 (c) of the Code and consistent with the rules and procedures applying to decisions concerning product packaging, the Company was afforded an opportunity to seek a rehearing of the provisional determination by making further submissions. The Company has advised it will not seek a review of the Panel's decision and the Panel has proceeded to make a final determination of the complaint.
16. Part 3 (c) of the Code provides that an alcohol marketing communication must not suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment. Further, it is not permissible to show the consumption or presence of alcohol as a cause of or contributor to the achievement of social or other success. A marketing communication includes a product's name.
17. In response to the complaint the Company argues that:
 - there is no intention to imply any kind of mood change or social success through the brand name;
 - the name is a 'nod to the experience of sharing a beverage with friends in a social situation';
 - hence the marketing implies the product is incidental to a friendly and lively social environment and not a cause or contributor to the environment; and
 - the brand design and colour scheme is demure rather than attention grabbing.
18. In assessing the compliance of a marketing communication with a Code standard the Panel adopts the viewpoint of a reasonable person taking the content as a whole. This means the life experiences, values and attitudes held commonly by a majority of the community is the benchmark.
19. The standards contained in Part 3 (c) are broadly drawn and use language of the marketing 'may create' and 'or contribute' and 'a cause'. This means the marketing need not be the sole or dominate reason for a change in mood or the achievement of success but simply one of a number of reasons. On the other hand, the qualification of 'significant' to the test of a change in mood means that it might be possible for a marketing item to suggest alcohol is contributing somewhat to a minor change in mood and not breach the standard.
20. It is unusual, but not impossible, that a brand name alone would lead to a finding of a breach of a Code standard. This is because a name of itself won't normally imply product characteristics or suggest actions or behaviours likely to be reasonably interpreted as offending a Code standard. A more likely scenario is the combination of a brand name and its deployment with a product's packaging raising concerns about consistency with a standard. In this case the product packaging contains:

- the product name;
 - the two partner companies' names; and
 - text 'Riesling Pilsner' and the alcohol/volume content.
21. A 'social lubricant' might be commonly understood to mean a substance or activity which assists an individual or a group to interact more freely or more easily in a social setting. The complainant takes the product name to mean that the product helps people interact more comfortably. The Company argues the name would be taken as the product being a good choice in social situations but not as implying the product causes the social situation to be more successful.
22. While this is an example of a decision where reasonable opinion might be divided, on balance the Panel believes that the product name is in breach of the Part 3(c) standard. In reaching this conclusion the Panel has noted:
- The term 'lube' would be taken to mean lubricant or lubrication i.e. something which eases movement or reduces friction;
 - A social lubrication would be reasonably understood to suggest a substance or activity which assisted a social situation by reducing friction or say making conversation or interactions occur more freely;
 - the notion of 'lubrication' having an active impact suggests more than the product simply being incidental to a social setting but goes further to suggest that the product would be a contributor to the success of the social encounter; and
 - this is slightly reinforced through the graphic used with the name, of showing a drop (reasonably presumed as a drop of the product) above the 'u' in the word lube establishing that it is the product which is the lubrication.
23. The Panel makes a final determination that the product name, packaging and Instagram post is in breach of Part 3 (c) of the Code.