

ABAC Adjudication Panel Determination No. 126/19

Product: BrewDog
Company: BrewDog
Media: Youtube
Date of decision: 30 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 digital marketing promoting BrewDog products by BrewDog (“the Company”) and arises from a complaint received 23 December 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 23 December 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 a video on the Brewdog Network Youtube Channel that shows the co-founders of BrewDog testing a variety of beverages, including beer and cognac before cycling on a closed track in France to determine which beverage resulted in the fastest time.

(<https://www.youtube.com/watch?v=0b5pko6q7DI&t=555s>)



The Complaint

11. The complainant is concerned that a Youtube video shows the co-founders of BrewDog and the main brand ambassadors for BrewDog Australia, James Watt and Martin Dickie performing a challenge of riding bikes while drinking beer and then cognac, therefore promoting drinking alcohol with a high risk activity such as cycling.

The ABAC Code

12. 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

13. The Company responded to the complaint by email dated 24 December 2019 advising that:

- BrewDog Brewing Australia is indeed a fully owned subsidiary of BrewDog PLC, the UK based company. The Australian entity has different management from BrewDog PLC. I (Calvin McDonald) am responsible for BrewDog Australia solely.
- The marketing for the Australian arm is controlled in-house within Australia, and I'll always be happy to take reasonable responsibility for content on BrewDogAU or DogTap Brisbane and post within the ABAC guidelines.
- BrewDog AU has no influence on marketing originating outside of Australia. There was no involvement by BrewDog Australia in the creation or posting of this video; and it indeed has not been posted on any Australian based social media. BrewDog AU does not have any influence or control over BrewDog Network; the content of which is based in its entirety from outside of Australia.
- In the video, the cycling is on a closed track – not a public road. There is also no drinking of the beer while cycling... they seem to be mainly pouring it over their heads as far as I can see; then make some posturing claims about the beer clearly for attempted comedic purposes.
- This is really all beside the point though. To quote point 17 in the ABAC determination 115/19:

“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.”
- It is clear that this video does not have a “discernible and direct link to Australia” and as such should again be dismissed.

The Panel's View

14. BrewDog is a craft brewing company originating in Scotland and now with operations in Europe, the United States and most recently Australia. The Australian brewery with associated facilities is located in the Brisbane suburb of Murarrie and opened in November 2019.
15. As a global company, BrewDog is obliged to operate in accordance with the laws and regulatory frameworks which apply to their various national markets. Naturally for the Australian operations this means the Company has to comply with Australian requirements. In terms of its marketing in Australia, BrewDog must comply with the amalgam of statutes, regulations and codes of practice which collectively regulate

alcohol marketing in this country. While the Company has not formally become a signatory to the ABAC scheme it nonetheless co-operated with the complaint process and stated its willingness to meet good community standards in marketing.

16. The issues raised squarely by the complaint are firstly:
 - does the post on the BrewDog Network internet site fall within the scope of the ABAC scheme and if so, secondly;
 - is the post consistent with the ABAC standard contained in Part 3 (d).
17. It is not unusual for alcohol products and brands on the Australian market to be ultimately owned by an international company. For instance, Carlton & United Breweries, the producer of brands such as VB and Carlton Draught is owned by the global alcohol company Anheuser-Busch InBev (AB InBev). bThe parent company owns brands such as Corona, Budweiser and Stella Artois. By the first quarter of 2020 CUB will in turn have been purchased by the Japanese headquartered global alcohol company Asahi Group Holdings.
18. Global alcohol products and brands will be marketed in many (sometimes hundreds) markets of individual nation states. It will often be possible to view the marketing which was prepared to promote a product in say United States or a European nation in Australia via a digital channel. The internet is of course global in reach. The mere fact that a global alcohol entity creates a marketing communication does not automatically mean that the ABAC scheme has a role in regulating the marketing communication. The marketing communication must itself come within the remit of the ABAC scheme.
19. By way of illustration, an advertisement for Corona beer might be made by the Canadian subsidiary of AB InBev with the aim of marketing the product in Canada. While the purpose of the ad was to promote the product in Canada, the ad might be viewed in Australia over the Internet say either on the Canadian website of AB InBev or via a digital platform such as YouTube. The fact that CUB is owned by AB InBev and Corona is on sale in Australia does not mean the ad is a marketing communication which must comply with the ABAC. Rather the ad will need to meet the regulatory obligations in place in Canada, not Australia.
20. The ABAC expresses its jurisdictional reach (and its limits) by stating that it applies to 'all marketing communications in Australia generated by or within the reasonable control of a marketer'. A marketer is in turn defined to mean a producer, distributor or retailer of alcohol beverages. The context of the Code as a whole makes it clear the 'producer, distributor or retailer' must be an entity with a discernible link to Australia.
21. In most instances a marketing communication brought before the Panel is self evidently one which falls within the jurisdiction of the ABAC. This will be because the marketing item was created in Australia, to sell a product in Australia and will have been disseminated over a medium located or at least accessed by an Australian based alcohol industry participant. The position is somewhat more nuanced if the marketing communication has some of these features but lacks others. In these instances, a case by case assessment is required as to whether the marketing communication falls within the jurisdiction of the ABAC scheme.
22. The complaint concerns a post on an internet site entitled the BrewDog Network. The complainant believes the post is within the scope of the ABAC because it features James Watt and Martin Dickie, the co-founders of BrewDog.

Both gentlemen have in other posts and on other online channels spoken about the Company's expansion to Australia. It is contended the BrewDog Network aims to promote BrewDog brands in all markets in which BrewDog products are available including Australia.

23. In response the Company contends the post is not within the scope of the ABAC. It is argued that the post was not created in Australia and the Australian BrewDog had no involvement, nor any measure of control over the content of the post.
24. Mr Watts and Mr Dickie are the founders of BrewDog, and while it's beyond the scope of this determination to fully examine the ownership structure of the parent company and its Australian subsidiary, it is clear enough that both gentlemen are interested in the Australian venture. It's also fair to say that all promotions of BrewDog brands to some extent benefit the Australian subsidiary even if those promotions are targeted to other markets. The BrewDog Network also will have some following in Australia even if the material posted on the network does not originate in Australia.
25. That said, the Panel does not believe the post falls within the jurisdiction of the ABAC scheme. It would appear:
 - the post was not created in Australia;
 - does not relate to BrewDog AU;
 - there does not seem to have been any activity by the Australian entity to adopt the messaging in the post;
 - the post would fall within the remit of the UK regulatory regime for alcohol marketing; and
 - taken as a whole the post is not within the reasonable control of the Australian entity.
26. The more appropriate forum to assess the consistency of the post with marketing regulatory obligations is in the United Kingdom where the post appears to have been created, where Messrs Watts and Dickie are based, and it seems the website is hosted.
27. The complaint is dismissed.