



ABAC Adjudication Panel Determination No. 82/20

Product: Bloke In A Bar Lager
Company: Bloke In A Bar
Media: Digital (Instagram)
Date of decision: 1 July 2020
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 Instagram marketing by Bloke in a Bar (“the Company”) and arises from a complaint received 15 June 2020.
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

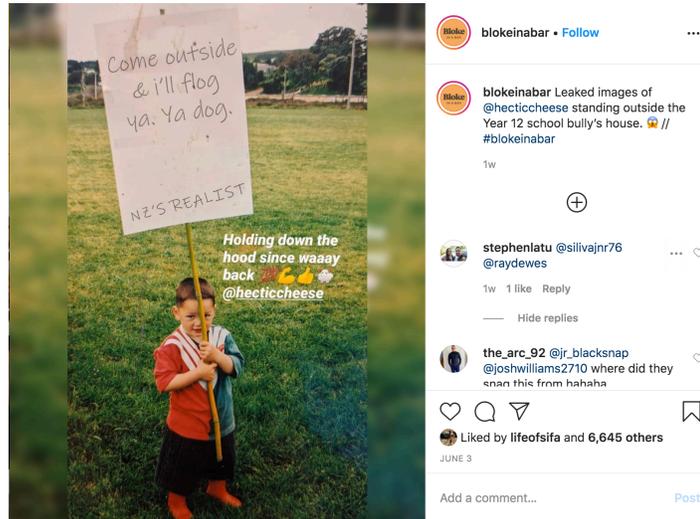
7. The complaint was received on 15 June 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 post on the Bloke in a Bar Instagram account.



The Complaint

11. The complainant objects to the marketing as the person in the ad is clearly less than 18 years old and is prominently featured as the only person within the ad (and therefore their role is not incidental).

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example a family socialising responsibly) and where there is no implication they will consume or serve alcohol;

The Company's Response

13. The Company responded to the complaint by email dated 15 June 2020. The principal points made by the Company were:
- a) Bloke In A Bar is a sports network that focuses on Rugby League.
 - b) The image in question is actually a friend of mine, Brandon Smith, who plays in the NRL. The post was posted for the intention of comedy for Rugby League fans who follow Brandon Smith & Rugby League. He's something of a cult hero known for his tenacity. So, the joke was a photoshopped sign showing that even as a child he had tenacity.
 - c) To avoid confusion going forward I've changed the pages description to better reflect it's purpose. I apologise it wasn't much clearer before. I hope this clears any dramas up & again sorry for the inconvenience.

The Panel's View

14. Denan Kemp played for several clubs in the National Rugby League (NRL) competition before retiring in 2013. In 2015 Mr Kemp started a rugby league podcast called 'The Locker Room' which later also developed into a webcast. Continuing his entrepreneurial spirit, Mr Kemp has branched into the alcohol industry through owning a bar on Queensland's Gold Coast and introducing a beer branded as a 'Bloke in a Bar' to the Australian market. The Bloke in a Bar brand name is used for not only the craft beer, but for rugby league focussed social media channels and some branded clothing. This determination results from a complaint about a post on the Bloke in a Bar Instagram account.
15. The post in question shows a photograph of a young boy wearing a football jumper which has been photoshopped to have the boy holding a sign with a message to an older bully. Apparently, the boy in the photo is Brandon Smith who is a current member of the Melbourne Storm NRL team and an international player for New Zealand. Mr Smith is known as a fierce competitor and the post showing his pugnacious character at a young age would be seen as amusing by NRL fans. The post doesn't show any alcohol products nor reference alcohol use.
16. The basis of the complainant's concern appears to be that a child is shown on an Instagram account which is headed Bloke in a Bar and was described as a beer/bar company and referred to an email address for bottle shops to place orders for the beer. The ABAC creates standards for alcohol marketing communications which aim to have alcohol as a product and alcohol consumption portrayed in a responsible manner. The Part 3(b) standard is that alcohol marketing must not have strong or evident appeal to minors. A specific requirement is that a minor must not be depicted in alcohol marketing unless shown incidentally in a natural situation (such as a family having a meal) and where there is no implication that the minor will consume or serve alcohol.
17. The Bloke in a Bar brand is premised on a sport focussed (particularly rugby league), good natured banter that people (particularly males) might have over a beer. The brand has been built on Mr Kemp's insights as a former NRL player and is directed towards fans of that sport. The venture into alcohol is possibly a means to monetise Mr Kemp's earlier and successful NRL 'Locker Room' shows. In any event, once alcohol product promotion is introduced, certain regulatory obligations are raised.
18. It is fair to say that the Company was surprised by the complaint and probably didn't particularly appreciate that its Instagram account might intersect with the ABAC scheme. The post in question wasn't intended to be promoting the 'Bloke in a Bar' beer but was seen as solely NRL focussed. To 'avoid confusion', the Company has now amended the description of its Instagram account to read 'Bloke in a Bar is an online sports network. 18+ only'.
19. The Company might be categorised as a mixed business comprising sports commentary and alcohol product distribution and sales. As such not every output which the Company produces over social media will fall within the ambit of the ABAC scheme, but those outputs which are 'alcohol marketing communications' will need to be consistent with ABAC standards. A review of recent posts on the Company's Instagram account reveal that while the great majority are sports related with no

specific alcohol references there are some which are directed at promoting the Company's beer product. Simply removing references to the beer product in the overall Instagram account's description will not stop these posts being alcohol marketing communications.

20. In this way the Company might be compared with a hotel which is primarily in the business of providing guest rooms for accommodation but also has a restaurant and bar at which alcohol is sold. An advertisement for the hotel which only promotes its rooms and makes no mention of alcohol is not an alcohol marketing communication. If, however, the hotel promotes itself by an ad referencing say 'two for one' cocktails at the hotel bar, then that ad is captured by the ABAC scheme.
21. The post in question would not be characterised as an alcohol marketing communication and in any event, it would not breach the ABAC standard in Part 3(b)(ii). There is no alcohol product depicted and no suggestion that the child depicted in the post will serve or consume alcohol. The ABAC standard is intended to ensure marketing does not have strong appeal to minors and there is no reasonable basis to believe the post would encourage an under 18 year old to use alcohol.
22. In dismissing the complaint, the Company is strongly encouraged to engage with the ABAC pre- vetting service which can provide independent advice on the Company's marketing and social media channels to assist the Company to operate consistently with its regulatory obligations as it promotes the alcohol side of its business.