



ABAC Adjudication Panel Determination No. 85/20

Product: Boston Brewing Growlers
Company: Boston Brewing Co
Media: Digital (Instagram)
Date of decision: 2 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 an Instagram re-post by Boston Brewing Co (“the Company”) and arises from a complaint received 18 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 18 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 Boston Brewing Co Instagram account.



The Complaint

11. The complainant objects to the marketing as featuring a baby as the sole figure in a brewery ad is unnatural and inappropriate.

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 letter dated 29 June 2020. The principal points made by the Company were:
 - a) The post is a repost and was posted 76 weeks ago in January 2019 so it feels like someone has a bit of an axe to grind about something. The post doesn't actually say there is beer in the Growler, it could be our finest rainwater which is a key ingredient to our beer.
 - b) The post was reposted as we are a family friendly environment, it was not our original content. A patron called @thecraftytraveller had posted this post which obviously depicts that a family had enjoyed their time at the brewery. An adult's arm can be seen holding up the child and it is a light-hearted, good natured post about a family day out. We do not support children or patrons

under the age of 18 drinking alcohol and have a fantastic record with the local police who check through the venue regularly without complaint.

c) I can't really justify it more than that and we have deleted the post.

The Panel's View

14. This determination concerns a post on the Company's Instagram account which shows a photograph of a baby being supported on an outdoor table and positioned between two 'growlers' bearing the Company's name and logo. A growler is a ceramic or stainless-steel jug commonly sold at breweries as a means to carry beer. The complainant contends the image is 'unnatural and inappropriate'.
15. A key ABAC standard is that alcohol marketing communications (which includes Instagram posts) must not have strong or evident appeal to minors. This standard, found in Part 3(b) of the Code, includes a specific requirement that minors not be depicted in alcohol marketing unless shown in an incidental role in a natural situation (such as a family sharing a meal) and where there is no implication they will consume or serve alcohol.
16. The Company points out the post was not original material created by the Company but rather is a repost of an Instagram post made by a private individual. It is noted the post is 18 months old and is not immediately found on the Company's Instagram feed but rather requires a viewer to scroll through quite a number of more recent posts. It is argued the post is light-hearted, good natured and would have been originally made by someone (with a family) visiting the Company's Denmark brewery in Western Australia.
17. It is not in dispute that third party material, once adopted by an alcohol company adding the material to a social media site controlled by the company, becomes a marketing communication for which the company needs to take responsibility. The issue is whether the post breaches the Part 3(b)(ii) standard. The Panel does believe on balance that the post breaches the standard and in reaching this conclusion noted:
 - the policy intent of Part 3(b)(ii) is that minors should not feature prominently in alcohol marketing and, if seen at all, only in a background role where the minor is clearly not involved with alcohol products;
 - because of the young age of the child it would not be reasonably considered that the child would consume or serve alcohol, however clearly the same scene, but with an older child, would self-evidently breach the standard;
 - the scene created, however, prominently features the child and two beer growlers and the child cannot be regarded as incidental or background to the scene; and
 - while each case must be assessed on its own merits, the better position is not to place minors irrespective of age so directly with an alcohol product.
18. It can be accepted that the Company in reposting the image had no intention to encourage either underage drinking or an irresponsible approach to alcohol use and immediately removed the post upon reviewing the complaint. The Complaint is upheld.