



ABAC Adjudication Panel Determination No. 180/20

Product: Pirate Life IIIIPA
Company: Pirate Life Brewing
Media: Facebook
Date of decision: 17 December 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 the advertising of Pirate Life IIIIPA (“the Product”) by Pirate Life Brewing (“the Company”) on Facebook. It arises from a complaint received on 26 November 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 26 November 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. ABAC pre-vetting approval was not obtained for the content of the advertisement.

The Marketing Material

10. The complaint relates to a Facebook post for Pirate Life IIIIPA, as shown below:



The Complaint

11. The complainant objects to the marketing as follows:
- *The use of the word "whopping" when describing the 29.2% ABV beer is being used to promote the beer based on its very high alcohol content.*
 - *The text is promoting the beer on its alcohol but trying to disguise it as a safety message, but it is still touting the beer as interesting based on the alcohol content.*
 - *In the copy of the Facebook post the only tasting note and description of the beer is the alcohol content. There is no description of hop character, malt character or any other component of the beer.*

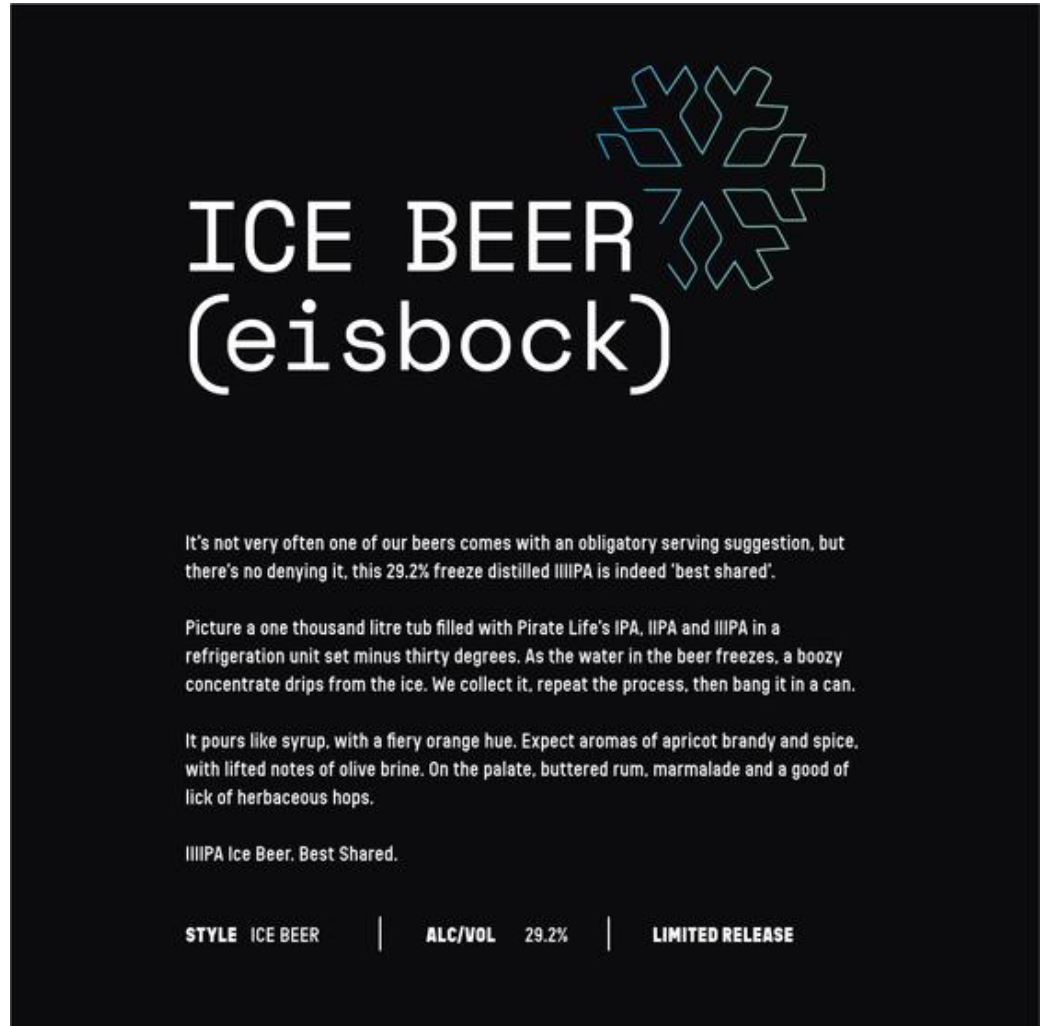
The ABAC Code

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.

The Company's Response

13. The Company responded to the complaint by letter emailed on 8 December 2020. The principal points made by the Company were:
- We agree that the Facebook post breaches the Code with respect to Part 3(a)(iv) emphasis on alcohol strength. It has been removed from Pirate Life's social media channels.
 - We do not accept that referencing the strength of the product constitutes a *per se* breach of the Code. In particular, we wanted to be certain that consumers of this product were cognisant of what they were purchasing – at 29.2% this product is not far off the ABV of a spirit (typically 40% ABV).
 - We agree, however, that use of the word 'whopping' goes beyond providing factual information and that it can be read as creating a positive emphasis on the ABV. For that reason, we have taken the post down.

- Although we fully intend for the product to appeal only to knowledgeable consumers of esoteric styles, we were especially careful to include both on-pack and in the tasting notes a description of what the beer is, how it was produced, what the flavour notes are, and crucially, the fact that a single can is not intended to be consumed in one sitting.
- We include the tasting notes below for your information.

The image shows a black rectangular label for 'ICE BEER (eisbock)'. At the top right is a stylized snowflake icon. The title 'ICE BEER' is in a large, white, sans-serif font, with '(eisbock)' below it in a smaller, lowercase, sans-serif font. Below the title are three paragraphs of white text. At the bottom, there is a horizontal line with three sections: 'STYLE ICE BEER', 'ALC/VOL 29.2%', and 'LIMITED RELEASE'.

It's not very often one of our beers comes with an obligatory serving suggestion, but there's no denying it, this 29.2% freeze distilled IIIIPA is indeed 'best shared'.

Picture a one thousand litre tub filled with Pirate Life's IPA, IIPA and IIIIPA in a refrigeration unit set minus thirty degrees. As the water in the beer freezes, a boozy concentrate drips from the ice. We collect it, repeat the process, then bang it in a can.

It pours like syrup, with a fiery orange hue. Expect aromas of apricot brandy and spice, with lifted notes of olive brine. On the palate, buttered rum, marmalade and a good of lick of herbaceous hops.

IIIIPA Ice Beer. Best Shared.

STYLE ICE BEER | ALC/VOL 29.2% | LIMITED RELEASE

- The term “IIIPA” is indicative of the beer style. Although there are few universally accepted definitions of what constitutes an IPA, IIPA, IIIPA or in this case IIIIPA, our intention is for it to communicate essential information about the style, taste and mouthfeel of the beer. This is further enhanced by the tasting notes, which note the thickness of the liquid, its colour, flavour notes of spiced apricot brandy, olive brine, buttered rum, marmalade, and herbaceous hops.
- We accept that the Facebook text could be construed as emphasising the alcoholic strength of the product.
- However, we do take issue with the complainant’s statement that *“The text is promoting the beer on its alcohol but trying to disguise it as a safety message, but it is still touting the beer as interesting based on the alcohol content.”* The fact this beer has a high ABV is incidental to both Pirate Life’s reason for brewing it, and our consumers’ reasons for purchasing it. This is a technically difficult production exercise that requires non-standard brewing techniques, resulting in an interesting liquid that challenges the standard conception of ‘beer’. The intention was not to brew the highest possible ABV beer, it was to utilise a complicated freezing maturation method to experiment with a very experimental style.
- Again, we do not accept that noting the ABV, and hence the fact the beer is best shared, on pack, in the tasting notes, and in the Facebook post, constitutes a breach. Unlike, say, a bottle of wine or spirits, which is commonly shared between multiple consumers or over a longer timeframe, a can of beer is generally consumed by one person in one sitting. We felt it important to convey that the standard beer consumption method would not be appropriate for this product.
- We agree that the use of the informal adjective ‘whopping’ does carry connotations of positive emphasis and should not have been used in conjunction with the ABV of this product. Hence, we have removed the post.
- Although the alcohol content of this product is high for beer, the key appeal it holds for consumers is the esoteric and challenging nature of the brew, and the unique process employed in its manufacture. We are disappointed that a poor choice of words in a social media post has obscured that intent.

The Panel's View

14. This determination concerns a Facebook post for the Company's product IIIIPA which is a limited release high alcohol to volume Indian Pale Ale. The post shows images of the product's label, a 'tasting note' and accompanying text to the images reads – 'No, you're not seeing double...you're seeing quadruple! This freeze distilled IIIIPA settles in at a whopping 29.2% ABV, so we reckon its best shared. Available now as takeaway only from our Port Adelaide Brewery, and online (Limited to 1 x 4 -Pack and 4 single cans per purchase) 🍷. Available from select stockists soon 😊'.
15. The complainant contends that the post is promoting the product based on its very high alcohol content by using the word 'whopping'. It is also argued that the tasting note and the accompanying text purport to provide information but in reality, only give emphasis to the strength of the product. Part 3 (a)(iv) of the ABAC provides that an alcohol marketing communication must not encourage the choice of a particular alcohol beverage by emphasising its alcohol strength (unless its low strength) or the intoxicating effect of alcohol.
16. In assessing if an alcohol marketing communication is consistent with a Code standard the Panel is to adopt the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means that the life experience, values, and opinions common in a majority of the community is to be the benchmark. If the message to be derived from the marketing item can be understood in several ways, then it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.
17. The Company concedes the accompanying text to the post by use of the word 'whopping' when referring to alcohol strength of the product goes beyond providing factual information and can be read as creating a positive emphasis on the ABV. The Company argues that the balance of the post is consistent with the Code standard contending the tasting note explains the brewing process and characteristics of the beer.
18. The purpose of the ABAC standard is that the alcoholic strength of a product is not to be emphasised as a selling point for the product. This does not mean that the alcohol to volume content should not be mentioned, as this is important information for consumers to make an informed purchase. The standard is breached if the reference to alcohol strength adopts emotive terms or becomes a primary as opposed to a secondary focus of the marketing material.

19. The Panel believes the post does breach the standard by using the descriptor of 'whopping'. The tasting note use of the term 'boozy' also raises implications of over emphasising the alcohol strength, although the term is contextualised. The note otherwise describes the brewing process and the taste and aroma of the product which is consistent with ABAC requirements.
20. The complaint is upheld.