



ABAC Adjudication Panel Determination No 15/21

Product: Sierra Nevada Pale Ale
Company: Phoenix Beers
Media: Instagram
Date of decision: 25 February 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns television advertising for Sierra Nevada Pale Ale (“the Product”) by Phoenix Beers (“the Company”). It arises from a complaint received on 8 February 2021.
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:
 - 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;
 - 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 8 February 2021.
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 the advertising.

The Marketing

10. The marketing referred to in the complaint is a television commercial as described below:

The commercial is set in an outdoor, natural environment, birds are tweeting and it is very peaceful. It opens with footage of a person's legs running past camping or hiking bags, one of which contains two cans of unopened Sierra Nevada Pale Ale. An unopened box of Sierra Nevada product can also be seen amongst the bags.



The person then jumps into a lake, where two other people are already swimming.



The words “Pool Party” are then superimposed on the scene.



The commercial closes with a shot of a can Sierra Nevada Pale Ale, with mountains, pine trees and a lake in the background, and the words “Sierra Nevada Enjoy Outdoors” superimposed.



The Complaint

11. The complainant is concerned about the advertising as:

Drinking alcohol whilst swimming is known to increase the risk of drowning. The ad promotes risk taking behaviour whilst drinking - jumping off a small cliff into a waterhole and swimming.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (d) show 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 on 8 February 2021. Its principal comments were:
 - The ad does not encourage drinking and swimming. No cans are depicted as opened and none are seen held by the participants in the water.
 - These advertisements are a play on words of modern social activities (in this case "Pool Party") that aim to encourage people to get outdoors and enjoy the natural wonders the world has to offer. This can also be seen in other ads for Sierra Nevada Pale Ale, one of which shows two people in a double canoe with the words "Ride Share" superimposed, and another of which shows an angler releasing his catch, with the words "Throwback Thursday" superimposed.

The Panel's View

14. Phoenix Beers is a Western Australian based importer and distributor of craft beers. One product in the Company's range is a pale ale from the American brewer Sierra Nevada. This determination concerns an advertisement for Sierra Nevada Pale Ale which was seen by the complainant during a broadcast of an AFLW game on subscription television.
15. The advertisement is set in a beautiful outdoor area and shows some product in a camp site as a man jumps from a rise into a lake to join two other people who are already in the water. The complainant believes the ad is highly irresponsible as it promotes drinking with risk taking behaviour. It is noted alcohol use and swimming increases the risk of drowning. Part 3 (d) of the ABAC provides that a television ad must not show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination. Jumping into a waterhole or lake would clearly be an activity which requires alertness and physical co-ordination to be performed with relative safety.
16. The issue then is whether the ad shows or directly implies the consumption of alcohol before the man jumps into the water to join his companions. The Company contends the ad does not do this. It is argued that no cans of the product are shown as opened and the term 'pool party' used in the ad is a play on modern social activities that aim to encourage people to enjoy natural wonders.
17. Assessment of the consistency of an ad with an ABAC standard is from the standpoint of the probable understanding of the ad by a reasonable person. This means the values, opinions, and life experiences held commonly by most people in the community is the benchmark. If an ad can be interpreted in several ways, it

is the most likely interpretation which is to be preferred over a possible but less probable interpretation.

18. The Panel does not believe the ad is in breach of the standard. The ad does place alcohol with people jumping into the lake and swimming. It does not however depict consumption of the product. The most likely interpretation of the ad is the group is enjoying a day of outdoor activities including swimming and that the party will at some point consume some of the product. The ad does not suggest the consumption has already occurred as the cans have not been opened and there are no images of empty cans or indications that the group have say eaten a meal at which consumption might be expected. A reasonable person would anticipate that the beer might be consumed later in the day after the swimming has finished. The standard does not prohibit placing alcohol products in scenes near water. It prohibits depictions of consumption before or during dangerous activities. The ad does not offend this prohibition.
19. The complaint is dismissed.