



ABAC Adjudication Panel Determination No 61/21

Product: Yuzu Koji Rice Lager
Company: Edge Brewing Project
Media: Instagram
Date of decision: 17 April 2021
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 post for Yuzu Koji Rice Lager (“the Product”) by Edge Brewing Project (“the Company”). It arises from a complaint received on 6 April 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:
 - (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

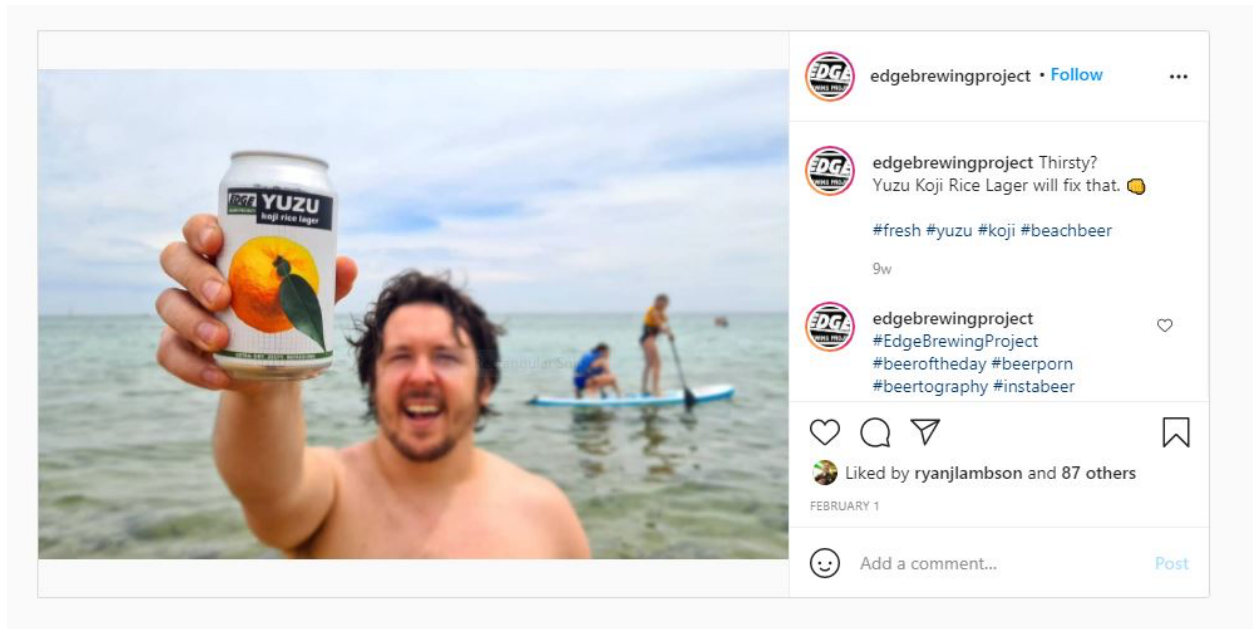
7. The complaint was received on 6 April 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 marketing.

The Marketing

10. This determination relates to the following Instagram post:



The Complaint

11. The complainant has the following concerns about the marketing:

The brewer holding a can of the rice lager while swimming in the ocean. The caption includes the hashtag #beachbeer

This post demonstrates drinking alcohol during the high-risk behaviour of swimming.

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 on 6 April 2021. The principal points made by the Company were:
 - While I don't believe this breaches the Code, I will happily delete the post and keep the Code in mind for future posts.
 - The post should no longer be showing now.

The Panel's View

14. This determination deals with an Instagram post for Edge Brewing. The post consists of a beach and water scene where a shirtless man either in or adjacent to the sea is shown holding a can of the product. The complainant argues that the post is inconsistent with Part 3 (d) of the Code.
15. The Company does not believe the post breaches the ABAC standard but nonetheless the post has been removed upon receipt of the complaint. The issue is essentially whether the post would be understood by a reasonable person as showing alcohol consumption before or during the activity of swimming.
16. While it's not entirely clear from the image as to whether the man is actually in the water, the Panel believes the most probable understanding of the post is that alcohol consumption is occurring or is implicitly endorsed as being acceptable with swimming. This message is inconsistent with the Part 3 (d) standard.
17. The complaint is upheld.