



## **ABAC Adjudication Panel Determination No 68/21**

**Product:** Beach Beer Bondi  
**Company:** The Bondi Brewing Co  
**Media:** Instagram  
**Date of decision:** 12 April 2021  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### **Introduction**

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post for Beach Beer Bondi (“the Product”) by The Bondi Brewing Co (“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:

*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 letter emailed on 8 April 2021. The principal points made by the Company were:

- Firstly, without consideration we removed the posts on the 7th of April 2021 even before we decided to respond to the complaint. We believe ABAC is a necessary regulatory body and helps uphold community values and considering this and that the Instagram post was from over a year ago it holds no advantage to our business to remain live.
- At The Bondi Brewing Co we are committed to promoting the responsible consumption of alcohol and take care in monitoring the way we communicate our brand and products, making sure we operate within ABAC guidelines and liquor licensing laws to minimize harm to the public.
- My assessment of the post: This particular post was not pre-vetted.
- This post was of my wife (ironically doesn't drink BOND! ) posing with the beer whilst we were at her parent's house on holidays in the summer of 2019. The photo was taken as she was standing in the shallow end of the pool, the beer was un-open and my wife was in a floatation device which in my opinion at the time was not a high risk situation.
- Purpose of the post: As an active volunteer surf lifesaver, I am often communicating the phrase 'Swim between the flags' during summer. This was the intention of the post, not to drink beer in a high-risk environment. It is apparent that our beer related Instagram page may not be the right platform to share this message.
- In this instance our usual high level of scrutiny may have not been applied and as a result this post has made it to our feed as an oversight. We have taken steps with our social media procedures to ensure that our posts are consistent with the code so that it won't be repeated in the future.

## **The Panel's View**

14. This determination assesses whether an Instagram post from the Company is consistent with the ABAC standard contained in Part 3 (d) of the Code. This is the standard which provides that alcohol marketing must not show the consumption of alcohol before or during any activity which for safety reasons requires a high degree of alertness or physical coordination.
15. The post shows a woman resting in a floatation aid while in a swimming pool. The woman is holding a can of the Company's product. While contending the activity shown is not dangerous, the Company has removed the post given its commitment to advertising consistently with ABAC standards.
16. The post doesn't depict the woman physically swallowing alcohol, but the reasonable implication is that alcohol might well be consumed while in the pool. Swimming and engaging in water activities does require alertness to be conducted safely.
17. The Part 3 (d) standard has been breached by the post. The complaint is upheld.