



ABAC Adjudication Panel Determination No 104/21

Product: Pacific Ale
Company: Stone & Wood Brewing Co
Media: Instagram
Date of decision: 31 May 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 Instagram marketing of Pacific Ale (“the Product”) by Stone & Wood Brewing Co (“the Company”). It arises from a complaint received on 5 May 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

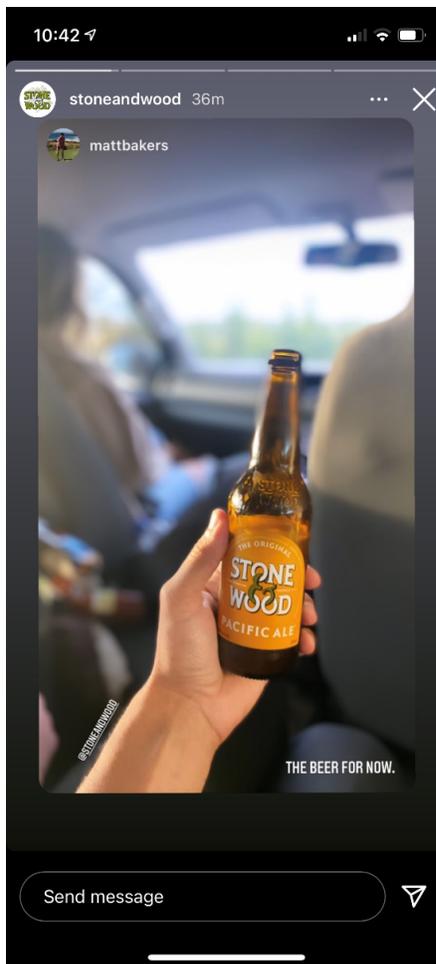
7. The complaint was received on 5 May 2021.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

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 post.

The Marketing

10. This determination relates to an Instagram post, as follows:



The Complaint

11. The complainant has the following concerns about the marketing:
 - *Open alcohol in a vehicle is illegal.*
 - *The person who is holding the bottle and taking the photo is in the back seat of a vehicle. You can clearly see the bottle is open, and half drunk. You are also able to see the front passenger looking ahead out of the windscreen which indicates the vehicle is likely moving.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.

The Company's Response

13. The Company responded to the complaint by email on 11 May 2021. The principal points made by the Company were:
 - On receipt of the complaint, the Instagram story was immediately removed. We understand that though the content was created by a third party, that we are responsible for anything then shared on our owned channels.
 - To avoid future complaints, we have completed additional ABAC training across all marketing and social media teams within Stone & Wood, and the wider Fermentum family, to ensure all ABAC regulations are strictly adhered to.

The Panel's View

14. Stone & Wood Brewing is based at Byron Bay in the Northern River district of New South Wales. The Company produces a core range of craft beers together with limited release products. The Company promotes itself through social media platforms including Instagram. This determination concerns an Instagram post which shows the hand of a person holding an opened bottle of product in the back seat of a motor vehicle.
15. The concern expressed in the complaint is that it is illegal for alcohol to be consumed in a moving motor vehicle and hence the post is modelling irresponsible behaviour. Part 3 (a)(ii) of the Code provides that an alcohol

marketing communication must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.

16. Responsibility for laws regulating alcohol use and motor vehicles rest with each Australian State and Territory. While the core 'drink driving' laws are reasonably consistent across Australia, e.g. the 0.05% blood alcohol limit for persons in control of a motor vehicle, the rules regarding passengers in motor vehicles consuming alcohol vary somewhat. It is unlawful for passengers to consume alcohol and/or for there to be an opened alcohol container in Queensland, Western Australia, Tasmania, and the ACT. This is not the case in New South Wales, Victoria, and South Australia. It is noted the Company is based in NSW, however its social media posts will be accessed by persons across the nation.
17. Given the variable legal position, it is not entirely clear that showing a passenger with an opened bottle of beer does in fact encourage irresponsible behaviour. That said, it would be prudent to not show alcohol being consumed in a motor vehicle and it is noted the Company removed the post upon receiving the complaint. Alcohol misuse does play a role in many road accidents each year. The better view, because alcohol consumption by motor car passengers is illegal in many parts of Australia, is that to show such behaviour is inconsistent with the Part 3 (a)(ii) standard.
18. The complaint is upheld.