



ABAC Adjudication Panel Determination No 60/21

Product: VB Beer
Company: Asahi Beverages
Media: Instagram
Date of decision: 5 May 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 VB Beer by Asahi Beverages (“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

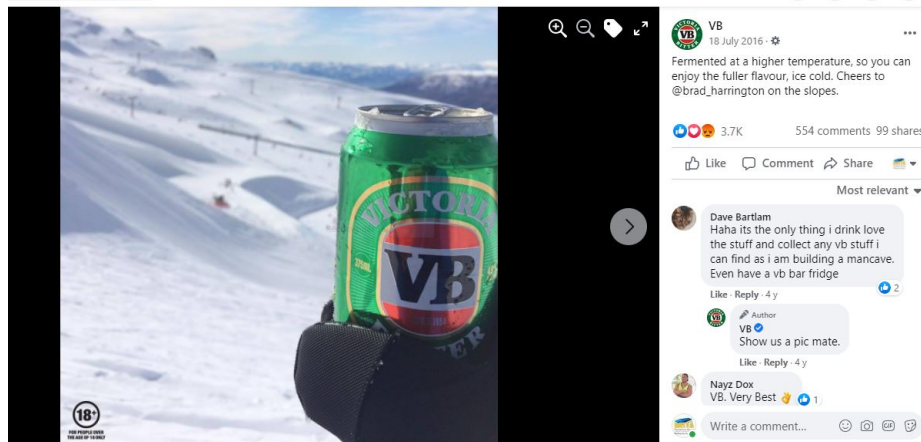
7. The complaint was received on 6 April 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 caption and image imply that the person in the photo was drinking while on the ski slopes. The ring pull of the can is open.

This post would suggest that ski/snowboarding was condoned while drinking VB. Mixing high risk activities and drinking is against the code.

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 15 April 2021. The principal points made by the Company were:

- The alcohol marketing communication referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.
- The picture shows a gloved hand holding an open VB can at some distance from the ski fields – indistinct skiers or snowboarders can be seen in the background of the image. The image is accompanied by the post copy, “Fermented at a higher temperature, so you can enjoy the fuller flavour, ice cold. Cheers to @brad_harrington on the slopes.”
- There is nothing to suggest that the individual holding the VB is about to undertake any skiing or snowboarding beyond the complainant's interpretation. It is very common for bars and restaurants on the snowfields to be situated extremely close to the ski slopes, and for a close-cropped photo such as this one to give the impression that the bar patron is much closer to the active ski field than may in fact be the case. As regards the copy, “on the slopes” is a common colloquialism for being at a ski resort, regardless of whether anyone is doing any skiing (or snowboarding).
- Likewise, there are no skis or snowboards present in the foreground of the image. It is not possible to determine that the individual is undertaking a snow-based physical activity. The only positive identifier of activity that the complainant is able to point to is the individual's snow glove, however given the outdoor setting and the context supplied by the “ice cold” portion of the copy, it is not unreasonable to assume that the individual has concluded his skiing activity but has retained his gloves for reasons of comfort while clutching an ice-cold beverage in an already cold environment.
- Unfortunately, given the post date of 18 July 2016, almost five years ago, the precise context of the image has likely been lost. I appreciate that perhaps more could have been done to positively identify the individual as having concluded their skiing or snowboarding activity, but I do not accept the image

and copy per se implies the VB can is being consumed before or during skiing or snowboarding activity. There is no clear, positive evidence this is the case, and the simple fact this image has existed on social media for almost five years without attracting a complaint would suggest the reasonable assumption is that skiing or snowboarding activity has concluded.

- Asahi Beverages is committed to ensuring our promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to the placement and content of our advertising.

The Panel's View

14. This complaint relates to a post on the VB Instagram account that includes an image of a gloved hand holding an open can of VB Beer where the person holding the beer appears to be on or overlooking a ski slope. The image is accompanied by the caption, "Fermented at a higher temperature, so you can enjoy the fuller flavour, ice cold. Cheers to @brad_harrington on the slopes."
15. The complaint raises the concern that the caption and image imply the photo was taken while on the ski slopes, the ring pull on the can is open implying consumption, and mixing high risk activities and drinking is against the code. The relevant ABAC standard raised by the complaint is Part 3 (d) which provides that an alcohol marketing communication (which includes Instagram posts) 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.
16. The Company refutes that the post is inconsistent with the ABAC standard. It is argued that:
 - the photo shows the gloved hand at some distance from the ski fields, and there is nothing to suggest that the individual holding the VB is about to undertake any skiing or snowboarding;
 - it is very common for bars and restaurants on the snowfields to be situated close to the ski slopes and for a close-cropped photo such as this one to give the impression that the bar patron is much closer to the active ski field than may in fact be the case;
 - the reference in the copy to "on the slopes" is a common colloquialism for being at a ski resort, regardless of whether anyone is doing any skiing (or snowboarding);

- there are no skis or snowboards present in the foreground of the image and the only positive identifier of activity is the individual's snow glove, however given the outdoor setting and the context supplied by the "ice cold" portion of the copy, it is not unreasonable to assume that the individual has concluded his skiing activity but has retained his gloves for reasons of comfort while clutching an ice-cold beverage in an already cold environment; and
 - the fact this image has existed on social media for almost five years without attracting a complaint would suggest the reasonable assumption is that skiing or snowboarding activity has concluded.
17. Snowboarding and skiing are sports requiring a high degree of alertness and physical co-ordination. It will not be a breach of the standard to simply associate the product with the sport and not show any consumption of the product before or during the activity. It will be a breach if the most likely interpretation of a post is that consumption is occurring prior to snowboarding or during a break in snowboarding but the activity will resume.
 18. While it is possible to interpret the post as implying consumption during the performance of skiing or a related snow field pursuit, the Panel believes the more likely understanding drawn from the post is the association of drinking the product 'ice cold', as opposed to promoting drinking during a dangerous activity. Snow gloves are being worn, but no other cues are given that skiing/snowboarding is about to take place e.g., there is no sporting equipment shown. The accompanying text is ambiguous and certainly doesn't state the person in the image is about to ski/snowboard.
 19. It is noted that the post was made in July 2016. There is no 'statute of limitations' within the ABC Scheme on making complaints about very old marketing material and there may be an example where an old marketing communication remains impactful. However, in most instances, given the dynamic nature of social media, it is very likely that the average consumer today will not see or be potentially influenced by a social media post buried deep in the archives of an Instagram account.
 20. The complaint is dismissed.