



## ABAC Adjudication Panel Determination No 62/21

**Product:** Summer Red  
**Company:** Cattleyard Brewing Co  
**Media:** Instagram  
**Date of decision:** 6 May 2021  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post for Cattle Yard Brewing Co’s Summer Red (“the Product”). It arises from a complaint received on 1 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

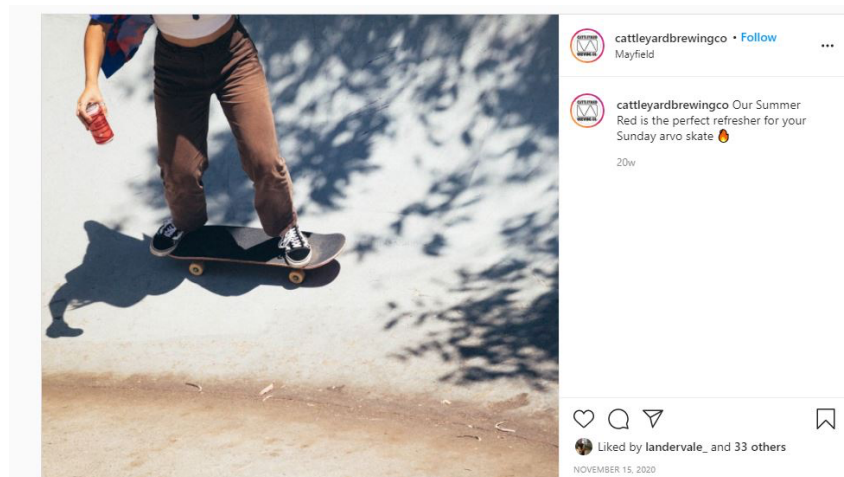
7. The complaint was received on 1 April 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 before/during the high-risk behaviour of skating.*

## 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 7 April 2021. The principal points made by the Company were:
  - Please know by no means was it our intention to promote drinking whilst undertaking a high-risk activity such as skating (thus the closed can). We could have mentioned, "for a post-skate beer".
  - We have taken the post down and hope that solves the complaint.
  - We will review the Code and see this as a learning experience.

## The Panel's View

14. Cattleyard Brewing was founded in 2017, developing beer for sale at 'Groovin the Moo' festival events. Since then, the Company's range of products and distribution has grown beyond music festivals to other outlets. This complaint relates to a post on the Cattleyard Brewing Co Instagram account promoting its Summer Red beer.
15. The relevant post features an image of a person shown from waist down riding a skateboard while holding a can of beer with the accompanying caption, 'Our Summer Red is the perfect refresher for your Saturday arvo skate'.
16. The relevant standard in Part 3(d) states that marketing communications 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. Skateboarding is self-evidently an activity that to be safely carried out requires a rider to be alert and physically co-ordinated. To show or imply alcohol consumption occurring during skateboarding will be in breach of the standard.
17. The Panel believes the standard has been breached by a combination of an image of a person skateboarding while holding a can of beer and the caption referring to the product as perfect for a Saturday arvo skate.
18. The complaint is upheld.