



## ABAC Adjudication Panel Determination No. 71, 77 & 80/21

**Product:** Bloke Lager  
**Company:** Bloke in a Bar  
**Media:** Digital  
**Date of decision:** 10 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 Instagram posts by Bloke in a Bar (“the Company”) and arises from three complaints received 6 and 7 April 2021 from a single complainant.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

### **The Complaint Timeline**

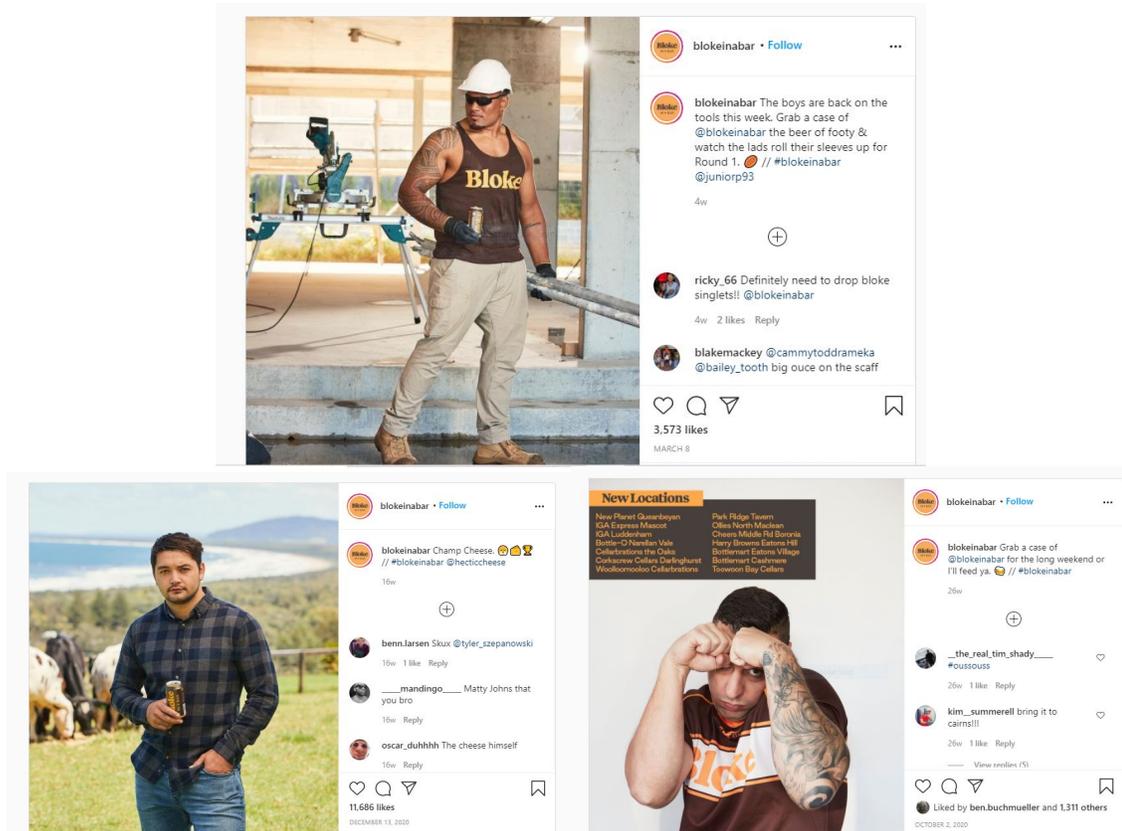
7. The complaints were received on 6 and 7 April 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The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

## The Marketing Communication

10. The complaint relates to the following three posts to the Bloke In A Bar Instagram account.



## The Complaint

11. The complainant objects to the marketing for the following reasons:

*A photo of a NRL Player on a construction site while drinking a beer. This post demonstrates drinking alcohol before/during the high risk behaviour of working on a construction site. This a breach of the code section 3(d)*

*A post with a photo of Brandon Smith (31 May 1996 - age 24 years) promoting the Bloke Lager standing in a field with some cows. This marketing communication uses a 24 year old prominently displayed in a non-natural situation in a non-age restricted area. The NRL player seems to have some commercial arrangement with the brewery with his frequent appearances on behalf of the brewery.*

*A photo of the owner with his arms up like he is starting a fight with the caption "Grab a case of @blokeinabar for the long weekend or I'll feed ya. ?? // #blokeinabar". Associating violence with alcohol is inappropriate and should not be featured in alcohol advertising. This could encourage irresponsible behaviour.*

## **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;
  - (b)(iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
    - they are not visually prominent;
    - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment;
  - (d) A Marketing Communication must NOT 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 dated 7 April 2021. The principal points made by the Company were:
- a) In regard to the first clench, it is extremely clear its being done in parody. It is absolutely not promoting irresponsible behaviour but rather comedically taking the mickey out of myself. It has been taken down though because obviously they will twist anything they can to make it look bad when it's clearly a joke.
  - b) In regard to the 24 year old, I was unaware that a 24 year old was not old enough to take a picture to promote beer. That has been taken down.
  - c) In regard to the work site, the tools they allude to are 10 metres away and not plugged in. It is simply there as a prop. It was inspired by the MANY VB ads I've seen over the years of "A Hard-earned thirst" where tradies would be finishing up work then have a beer. He is not drinking the beer in the shot. Simply packing up about to have one after a hard days work. I fail to see how this could be considered an issue when VB have made a brand using this exact premise.

## **The Panel's View**

14. This is the third determination to intersect with the media and alcohol business of Mr Denan Kemp. Mr Kemp is a former rugby league (NRL) player who since 2015 has developed rugby league focused media content as well as more recently

branching into alcohol production, retailing and distribution. As noted in prior determinations, the 'Bloke in a Bar' banner overlays both sports media content and promotional material for the Bloke in a Bar branded beer. Marketing for the beer brand falls within the ambit of the ABAC Scheme and wider alcohol marketing regulatory obligations. The complaints relate to three posts on the Bloke in a Bar Instagram account. Each Instagram post raises for consideration a different ABAC provision and each post will be considered in turn.

15. The first post shows a man on a construction site wearing a branded singlet and holding a Bloke in a Bar beer. The complainant is concerned that the post demonstrates drinking alcohol before/during the high risk behaviour of working on a construction site. The Company argues that the tools are only props, no drinking of alcohol is shown and the scene is one of packing up after a hard days work and before drinking the beer.
16. The ABAC provides in Part 3 (d) that alcohol marketing communications including 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. The Panel has previously found that working on a construction site requires a high degree of alertness and physical co-ordination for safety reasons. The key question is whether a reasonable viewer of the posts would understand the posts as showing alcohol consumption during this activity.
17. On balance the Panel believes the post does breach the standard. A reasonable viewer would see a man wearing safety boots, gloves and safety helmet and moving metal piping while holding a beer, which together directly implies alcohol consumption while working on a construction site. While the advertiser may have intended the message to be that the beer is only to be consumed after the activity is concluded, there are no cues to support that interpretation.
18. The second post features the Melbourne Storm player Brandon Smith posing with a can of the product. Mr Smith is 24 years old, and Part 3 (b) (iii) provides that adults appearing in alcohol marketing communications must be at least aged 25. While there are some specific and limited circumstances provided in the Code where an under 25-year-old can be shown in alcohol marketing, they are not applicable in this case and the post is in breach of the ABAC standard.
19. The third post shows an image of the owner with his fists clenched and raised with the caption "*Grab a case of @blokeinabar for the long weekend or I'll feed ya. ?? // #blokeinabar*". The complainant is concerned that the post is associating violence with alcohol and could encourage irresponsible behaviour. The Company argues that it is extremely clear the pose is a parody and absolutely not promoting irresponsible behaviour but rather the owner comedically taking the mickey out of himself.

20. Part 3(a)(ii) of the ABAC provides that an alcohol marketing communication must not show or encourage the irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
21. The question is whether a reasonable person would take the post as encouraging offensive behaviour namely alcohol related violence. On balance the Panel does not believe the post would be taken as promoting offensive behaviour. The post is clearly tongue in cheek and would be seen that way. There is no interaction shown with another person and the post would not be taken as threatening.
22. Accordingly, the complaint is upheld in relation to the first two posts and dismissed in relation to the third post.