



ABAC Adjudication Panel Determination No 74/21

Product: Venue
Company: Bacchus Brewing Co
Media: Instagram
Date of decision: 18 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 an Instagram post for Bacchus Brewing Co. 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 post on the Company's Instagram page:



The Complaint

11. The complainant has the following concerns about the marketing:

The post suggests that drinking craft beer will improve your chances of social and sexual success.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

The Company's Response

13. The Company responded to the complaint by email on 8 April 2021. The principal points made by the Company were:
- The meme is basically pointing out that craft beer is loved by both women & men alike. Either party could be making the comment and any sexual innuendo is totally out of context.
 - In this instance, it was used as part of a Valentine's Day promotion. If you look at the wording that accompanied the meme, it is clearly inferring that either one of the couple had suggested going to Bacchus for Valentines Day and the other saying, just offering me craft beer would make my day.
 - We could just as easily have used - You had me at "I eat Pizza" with Come down & enjoy a homemade pizza & a tasting paddle of some of the best craft beers in Australia... either way, it's implying that coming to Bacchus is going the extra mile for your valentine.

The Panel's View

14. The question for this determination is whether the Company's Instagram post shows the consumption or presence of an alcohol beverage as a cause of or contributor to the achievement of personal, social, or sexual success contrary to Part 3 (c) (ii) of the ABAC. The post depicts a stylised and somewhat retro image of a man and women in formal evening wear looking intently at each other. This image is accompanied with the phrase – 'You had me at "I drink craft beer"' and information about tasting some craft beer. The accompanying text to the post provides more detail about an event run by the Company on Valentines Day 2021.
15. The Company responds to the complaint by stating:
- the meme points out craft beer is loved by both men and women and there is no sexual innuendo in the post;
 - the post is part of a Valentine's Day promotion and is inferring that if either one of the couple had suggested going to the event the other would say 'just offering craft beer would make my day'; and

- the same post could have used pizza instead of craft beer to make the point.
16. The Panel is to place itself into the shoes of a 'reasonable person' when assessing the consistency of the marketing communication with the ABAC standard. This means the test is - how would a person probably understand the post given the life experiences, values and opinions shared across most of the Australian community. When a marketing message might be taken in a few ways, it is the most probable interpretation which is to be selected rather than a possible but less likely understanding of the message.
 17. Taken as a whole, the post is providing information about an event held by the Company. It is open that the meme and the phrase "You had me at "I drink craft beer"" could be understood as submitted by the complainant, but the Panel thinks the more likely understanding is the event appeals to craft beer aficionados and not that the use of the product leads to social/sexual success. The Panel does not believe a reasonable person will be concerned about the post nor believe it inconsistent with the intent of the Part 3 (c) (ii) standard.
 18. The complaint is dismissed.