



ABAC Adjudication Panel Determination Nos 81 & 83/21

Product: Beer
Company: Colonial Brewing Co
Media: Instagram
Date of decision: 6 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 two separate Instagram posts by Colonial Brewing Co. It arises from two complaints from the same complainant received on 8 and 14 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 8 and 14 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 determination was completed in this timeframe.

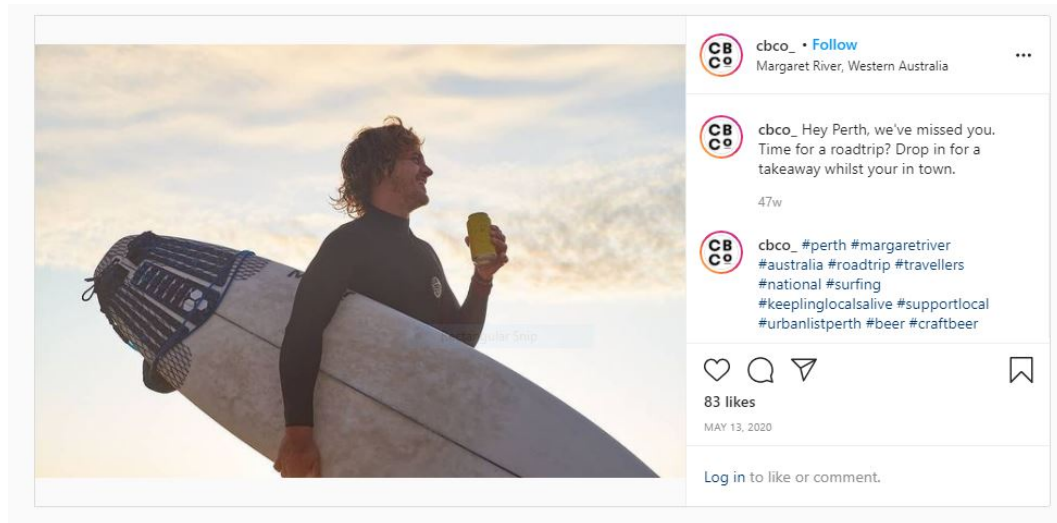
Pre-vetting Clearance

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

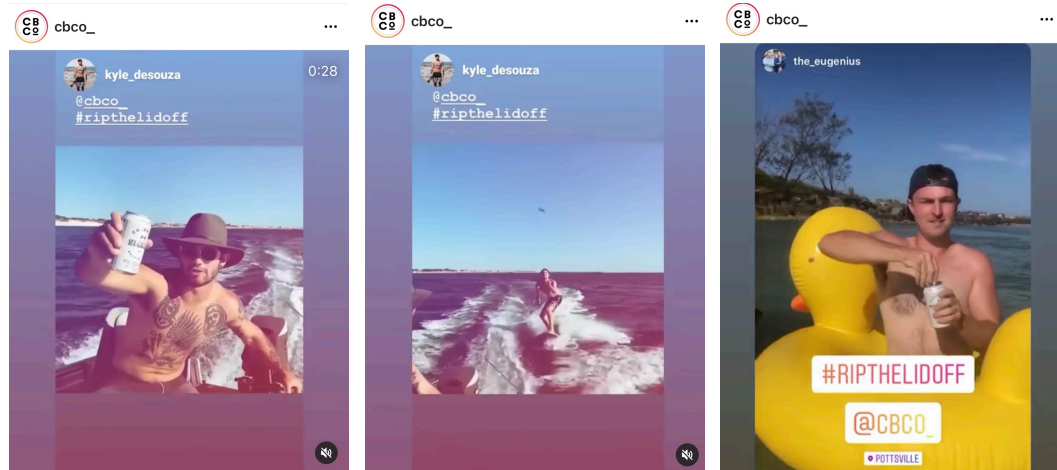
10. This determination relates to the following two posts on the Company's Instagram page:

Instagram Post 1



Instagram Post 2

Instagram Post 2 is a video promoting a competition. The video features a number of scenes of people in different scenarios opening and/or drinking a can of beer. In one scene a man who appears to be in control of a boat drinks from a can of beer before throwing it to a person wakeboarding, who catches the can and then appears to also drink from it. In the second scene, a man standing within a yellow duck inflatable in water, opens a can of beer and drinks from it. The following static screenshots are relevant to the complaint:



The Complaint

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

Instagram Post 1

This post demonstrates drinking alcohol during the high-risk behaviour of surfing. This a breach of the code section 3(d).

Instagram Post 2

A compilation of user submitted videos including one of a man wakeboarding while opening a beer. Another clip of a man swimming and then sculling a beer.

This post demonstrates drinking alcohol during the high-risk behaviour of wakeboarding. This a breach of the code section 3(d).

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 3 May 2021. The principal points made by the Company were:

- In relation to Instagram Post 1 - ABAC Code 3(d) states:

“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.”

- Note that the Code states before or during – the photo in question clearly depicts post surf (wet hair, sandy, and droplets of water on face). In this instance we do not feel this has breached the code.
- In relation to Instagram Post 2 - we'll remove the post without disputing.

The Panel's View

14. Colonial Brewing Co is a craft brewery founded in Western Australia in 2004, that has since grown into a national Australian owned brand. This complaint relates to two posts on the Company's Instagram account and raises concerns that the posts promote alcohol consumption during high risk activities.

15. 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, such as swimming.

16. The first post shows a man in a wetsuit with wet hair, holding a surfboard under one arm and a can of beer in the other hand as the sun is setting. The complaint raises a concern that this promotes alcohol consumption while surfing. The Company asserts that the photo clearly sets the scene as post surf due to the man having wet hair, sandy and droplets of water on his face.

17. The Panel does not believe that this post breaches the ABAC standard. The man appears to be standing on solid ground, has wet hair and the sun is setting in the background and the most likely interpretation of the image is that the man has concluded surfing for the day and prior to consuming the beer. It is not a breach of the standard to consume alcohol after the activity has concluded.
18. The second post shows a video including scenes of a man that appears to be operating a speed boat while drinking from a can of beer before throwing it to a person wakeboarding behind the boat who also appears to drink from the can. The video also includes a scene where a man in a river is in an inflatable rubber duck drinking from a can of beer. The Company removed this post and did not dispute the complaint.
19. The post shows or directly implies alcohol consumption occurring while operating a speedboat, wakeboarding and floating in a river, all activities that require a high degree of alertness and physical co-ordination. Therefore, this post breaches the relevant standard.
20. The complaint is dismissed in relation to the first post and upheld in relation to the second video post.