



ABAC Adjudication Panel Determination Nos 124, 139 & 140/21

Product: Beer
Company: Bloke In A Bar
Media: Instagram
Date of decision: 15 June 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”). It arises from three complaints received from a single complainant on 17 and 21 May 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 17 and 21 May 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 Instagram posts.

The Marketing

10. This determination relates to three Instagram posts.

Instagram Post 1



Instagram Post 2



Instagram Post 3



The Complaints

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

Instagram Post 1

- A photo prominently displaying Connor Watson (DOB 31 May 1996 - age 24 years) drinking the Bloke beer.
- 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.

Instagram Post 2

- A photo prominently displaying Zac Lomax (DOB 24 September 1999 - age 21 years) drinking the Bloke beer.
- This marketing communication uses a 21 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.

Instagram Post 3

- A photo prominently displaying Tom Trbojevic (2 October 1996 - age 24 years) drinking the Bloke beer.
- 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.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (b)(iii) Depict an Adult who is under 25 years of age and appears to be an Adult unless:
- they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.

The Company's Response

13. The Company responded to the complaints by emails on 19, 20 and 25 May 2021. The principal points made by the Company were:

- In regards to the Bloke merchandise, Bloke In A Bar was a show before a beer. So it's not only a beer company, just one part of it. We are a multi-faceted business. The merchandise exists without the beer. The Bloke brand was around for nearly three years before the beer.

Instagram Post 1

- That photo shoot was advertising Budgy Smugglers that we were selling. The beer is not the main focus on the shot but rather summer & budgies.
- the Budgy Smugglers were Bloke branded. Specifically made in a partnership with Budgy Smuggler. We had four colours with four players modelling them.
- The photo has been deleted to save any confusion.

Instagram Post 2

- This post is clearly a shirt advertisement. As we were selling the shirts in the image.
- Regardless, the image has been deleted.

Instagram Post 3

- In Instagram Post 3, Tom Trbojevic wasn't paid for the shoot and is a friend. We had a BBQ in the backyard and were taking some photos.
- Regardless, the image has been deleted.

The Panel's View

14. The 'Bloke in a Bar' is a rugby league and sports focussed business of former NRL player Denan Kemp. The Bloke in a Bar brand has been translated into various merchandise and includes an alcohol product. One of the media outlets of the business is an Instagram account and this determination concerns three posts on the account. In each case the concern is that the posts feature current NRL players, all aged under 25, promoting the Company's beer.
15. Part 3 (b)(iii) of the ABAC provides that an alcohol marketing communication (which includes Instagram posts) must not depict an adult who is under the age of 25 unless they are not visually prominent, or the person has not been paid and the marketing communication has been placed within an age restricted environment. In this case:
 - each of the players shown are under the age of 25;
 - all are shown in a visually prominent way; and
 - the Bloke in a Bar Instagram account has not been aged restricted.
16. The Company points out that the purpose of posts 1 and 2 was to promote the sale of 'Bloke' branded clothing items rather than alcohol as such. The third post was a social occasion attended by the player Tom Trbojevic and was not intended to be an alcohol promotion. While this may have been the Company's intention, in each of the posts the players are shown holding the Bloke branded beer. Placing the beer with the players does make the posts 'alcohol communications' even if posts 1 and 2 are also clothing promotions.
17. The Company is fully entitled to have the various arms to its business i.e., sports commentary, alcohol products and venues, and clothing items. It is entitled to market its various products and services. When it is marketing its alcohol products and alcohol brand, it should be doing so consistently with regulatory requirements applying to alcohol marketing and this includes the standards contained in the ABAC. It needs to be kept in mind that an item of marketing material can have several purposes and having an intention to promote clothing items does not mean the same marketing item cannot also be regarded as an alcohol marketing communication. This will clearly be the case if alcohol products are placed in the marketing material from a business that retails alcohol products.
18. The complaint is upheld.