



ABAC Adjudication Panel Determination No 142/21

Product: Soursop & Indica Sour Berliner Weisse
Company: One Drop Brewing
Media: Packaging and Website
Date of decision: 5 July 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”) arises from a complaint received on 24 May 2021 and concerns the packaging of Soursop & Indica Sour Berliner Weisse (“the Product”) by One Drop Brewing (“the Company”).
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 are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 24 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 marketing.

The Marketing

10. The complaint refers to the following packaging and website extract.



URS Soursop & Indica // 4 Pack - 5.3%
330mL cans.

Fruit & Flower Sour Series.

A Berliner Weisse style ale with a heavy handed addition of fruit and flowers. Carribean Soursop and Indica-dominant Hemp combine with two selected types of Lactobacillus and a special Acetic blend to give a tart, foral, tropical little number to enjoy during these coastal lazy days. Bring a towel, grab some shades, and come chill out on the beach. This beer tastes so dope - and the irie vibes are on us!!

The Complaint

11. The complaint is directed to the packaging as referenced on the Company's website. The website shows a picture of the product can and provides a description of the product upon which the complainant contends that the 'product

heavily references weed culture and implies that a change of mood could occur by drinking the beverage'. In part the Website entry states:

- Caribbean Soursop and Indica-dominant Hemp combine with two selected types of Lactobacillus and a special Acetic blend to give a tart, foral, tropical little number to enjoy during these coastal lazy days; and
- This beer tastes so dope- and the Irie vibes are on us!!

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.
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.

The Company Response

13. ABAC emailed the complaint to the Company on 24 May, 8 June and 18 June 2021. The Company confirmed that the email address used to contact them was correct, but did not respond to the complaint.

The Panel's View

14. This determination concerns the packaging (can design) of the Company's Soursop & Indica Berliner Weisse beer. The complainant points to the Company's website description of the product to contend that the can design references weed culture and implies a change of mood could occur by drinking the beverage. The Company acknowledged the receipt of the complaint but failed to make any substantive response.
15. The Company is not a signatory to the ABAC Scheme and has given no prior commitment to market consistently with the ABAC standards nor to comply with Panel determinations. That said, the Company has previously engaged in the ABAC complaints process (see Determination 75, 80 & 81/19). Further, while many smaller craft brewers are not ABAC signatories, almost universally alcohol producers accept the social and corporate responsibility associated with participation in the alcohol industry and will engage in the public complaints process and accept Panel findings. The Panel has proceeded on this basis.
16. The complaint is directed to the packaging of the product and not the Website entry as such. The can design has the following key features:

- a black background colour;
 - 'One Drop' brand name in white;
 - 'Soursop & Indica Berliner Weisse' product name in yellow; and
 - numerous green hemp leaf images.
17. Clearly the contentious element of the can design is the hemp leaf images. The status of cannabis in Australia is quite nuanced and varies from State to State and on the uses to which parts of the cannabis plant are put. Certainly, in some circumstances cannabis possession and use is criminal, or unlawful and in other circumstances use of cannabis and products derived from hemp are both lawful and used industrially. It goes beyond the scope of this determination to detail this quite complicated area.
18. There is no ABAC provision prohibiting drug references in alcohol marketing as such. This can be contrasted with the Portman Group Code in the United Kingdom which has a provision that states - A drink, its packaging and any promotional material or activity should not in any direct or indirect way suggest any association with, acceptance of, or allusion to, illicit drugs. The possibly relevant ABAC provisions for the current complaint are Part 3 (a) (ii) and c (i) which collectively require that alcohol marketing not:
- show or encourage (including by direct implication) irresponsible or offensive behaviour related to the consumption or presence of an alcohol beverage; and
 - suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment
19. The complainant argued that the packaging implied a change in mood arising from drinking the product, and the Company's website entry about the product does give some basis to this argument. That said, in assessing the can design itself, the Panel does not believe an ABAC standard is breached. In reaching this conclusion the Panel noted:
- the can does raise hemp/cannabis imagery, however there is no ABAC standard which directly precludes such imagery;
 - given that hemp products and extracts are lawfully used in a range of products, it cannot be fairly concluded that a hemp leaf image is encouraging irresponsible or offensive behaviour; and
 - the can design cannot of itself be said to be suggesting a change in mood, given there is no initial mood established which is then altered by the introduction of the product.

20. Although the complaint was not directed to the website, the language in the website entry does, in part, suggest a significant change in mood and illicit drug impacts (as opposed to the lawful use of hemp derived elements in beverages and foodstuffs). References to 'dope' and 'Irie vibes' directly imply a change in mood and potentially illegal drug use related to the consumption of the product. The entry should be amended to remove such inferences and the Company would be well advised to seek pre-vetting guidance in its marketing material for the product.
21. The complaint is dismissed in relation to the packaging, with a finding that the website entry describing the product is inconsistent with Part 3 (a) (ii) and (c) (i) of the Code.