



ABAC Adjudication Panel Determination No 168/21

Product: Great Northern Beer
Company: Carlton & United Breweries (Asahi Beverages)
Media: Facebook
Date of decision: 29 June 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”) arises from a complaint received on 14 June 2021 and concerns Facebook marketing for Great Northern Beer (“the Product’) by Carlton & United Breweries (“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 is within the Panel’s jurisdiction.

The Complaint Timeline

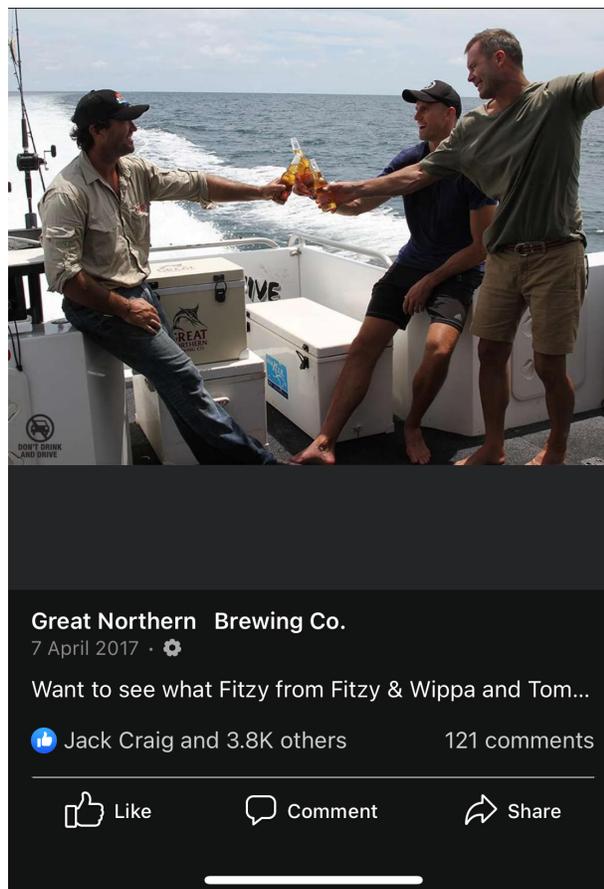
7. The complaint was received on 14 June 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 Facebook post:



The Complaint

11. The complainant has the following concerns about the marketing:
 - *High risk consuming alcohol on a boat, especially when travelling. Anyone could fall off the boat if feeling the effects of alcohol. Basic maritime knowledge knows how dangerous this can be if falling off into an ocean under the influence.*

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 Response

13. The Company responded to the complaint by letter emailed on 24 June 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communication referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.

Alcohol and Safety

- The picture shows three men at the back of a boat clinking bottles of Great Northern together in a cheers motion. The boat is evidently in motion, indicated by the wake downstream of the boat, which in turn implies that the boat is under the operation of an unseen party.
- The individuals who are about to enjoy their Great Northerns are not engaged in unsafe behaviour. They are sitting or standing sedately, they are all fully clothed, and there is no suggestion that they are about to undertake in any dangerous water sports activities, such as swimming or attempting to take control of the vessel.
- We do not accept that the act of drinking a beer while a passenger on a boat is inherently unsafe, and we draw the Panel's attention to some multijurisdictional examples of permitted on-water alcohol consumption for passengers:
 - The Sydney to Manly ferry operator was granted a liquor licence in 2016.

- Melbourne self-operated picnic boat provider GoBoat allows passengers to consume alcohol within strict limits, provided the skipper maintains a 0.0 BAC.
- Most Whitsundays tour boats are BYO.
- We note that the post is dated 17 April 2017 and has not attracted a complaint in the over four years it has existed on Facebook. We appreciate that the ideal post would positively identify the boat's skipper as not consuming alcohol, but we do not believe this image contains any suggestion that the individuals who are drinking are engaged in unsafe behaviour.
- As noted, although the boat's skipper is not identified, the fact the boat is moving suggests to the reasonable viewer of this image that the boat is not under the control of any the individuals shown drinking.
- Asahi Beverages is committed to ensuring our promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to the content of our advertising.

The Panel's View

20. This determination concerns a Facebook post for Great Northern beer that includes an image of three men each holding and clinking together a bottle of Great Northern beer while standing or sitting on a moving boat. The complaint expresses a concern that the advertisement is showing alcohol use by passengers of a boat due to the risk of falling off a boat while under the influence and how dangerous this could be.
21. The Company responds that it is not inherently unsafe for passengers of a boat to drink alcohol and provides examples of liquor licences permitting that activity.
22. The relevant ABAC standard provides that alcohol consumption is not to be shown before, or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination.
23. In assessing if a standard has been breached, the Panel is to have regard to the probable understanding of the advertisement by a reasonable person taking the contents of the ad as a whole. The reference to the "reasonable person" is drawn from the common law system and means that the attitudes, beliefs, values and opinions of the majority of the community is to be the benchmark.
24. The Panel appreciates that the complaint is genuine and that boat safety is important. That said, the Panel does not believe the advertisement to be in breach of standard 3(d). In reaching this conclusion, the Panel has noted:
 - as the boat is moving it is apparent that the three men shown are not in control of the boat and are passengers;

- it is generally accepted in the community that alcohol use by passengers of a boat can occur safely;
- the weather conditions do not appear to be dangerous for boating; and
- the men are each shown with one beer and there is no implication excessive alcohol use has or will occur.

25. Accordingly, the complaint is dismissed.