



## ABAC Adjudication Panel Determination No 175/21

**Product:** Beer  
**Company:** Lucky Bay Brewing  
**Media:** Radio  
**Date of decision:** 9 August 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 radio advertising for Lucky Bay Brewing (“the Company”). It arises from a complaint received on 8 July 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:
  - 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;

- 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 8 July 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 advertising.

## The Marketing

10. The complaint refers to a radio advertisement for the Company, in the form of a song or jingle, a transcript of which is provided below:

**Singer:** You've just knocked off, what ya gunna do?

You need something that goes down smooth.

Just look for the can with the kangaroo.

Hey!

The unique taste of a microbrew.

That even your hipster mates will be into.

We're locally sourced and proud of it too.

Just look for the can with the kangaroo.

It's a lucky day with Lucky Bay.

## The Complaint

11. The complainant is concerned about the advertising as it:

*Promotes alcohol as a crutch to get through the day and impress your friends. Also on day time radio every hour on the hour.*

## 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.
  - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

## The Company's Response

13. The Company responded to the complaint by letter emailed on 15 July 2021. Its principal comments were:

### **Alcohol Advertising Pre-vetting Service Approval**

- Lucky Bay Brewing (LBB) used the contract Jingle services provided to us by Southern Cross Aus Stereo to develop the advert noted in this complaint. LBB did ask on several occasions about potential restrictions of advertising for a brewery/alcohol and our advertisement development was guided by Southern Cross Aus Stereo on this.
- LBB did not seek Alcohol Advertising Pre-vetting Service Approval for the advert, however Southern Cross Aus Stereo may have sought this or alternative advice before approving the advertisement.

### **Responsible Depiction of the Effects of Alcohol**

- In response to ABAC's query as to whether the radio advertisement implies that the consumer could achieve social success through the words "*...that even your hipster mates will be into*":
  - The premise of the wording "*...that even your hipster mates will be into*" suggests that LBB products appeal to a wide range of consumers and is not implying that any sense of achievement will be gained through consumption of LBB products.
  - The suggestion of social success by acceptance of "hipsters" in a rural and regional area of predominantly blue-collar workers is considerably farfetched. The song line is in fact a pun against "on trend" movements which may imply social success by consumption.
  - We do not believe that this line of wording would in any way suggest that being a hipster could increase social success nor does

the working state that by consumption you personally are in any way “hip”.

- In response to ABAC’s query as to whether the words “*You’ve just knocked off, what ya gonna do? You need something that goes down smooth. Just look for the can with the kangaroo*”, imply that an easy to drink alcohol beverage is needed to outweigh the stresses of a busy workday and assist with relaxation:
  - The opening line of the advertisement is a question on how someone might spend their leisure time, which is open to the listener to interpret and decide. For example, the listener may consider a cup of tea or walking the dog.
  - By posing a question as opposed to a statement (such as ‘you’ve just knocked off and you need a beer’) invites the listener to consider a wide variety of options. There is also no mention of the word ‘beer’ or ‘alcohol’ in the advert, so the suggestion of alcohol is intentionally ambiguous so to not promote the concept to at risk groups or minors.
  - The implying that “an easy to drink alcohol beverage is needed to outweigh the stresses of a busy workday and assist with relaxation” is a somewhat tenuous deduction the line which poses a question on how people might spend their leisure time.
- There is also no suggestion that the consumption of a beer will offer any therapeutic benefit or aid relaxation.

#### **Other comments**

- When making the complaint, the complainant has included The Advertisement Subject as: “*finished work and need a brew –*”. The “needing” of a brew or a beer is not actually featured in the advertisement, this has been deducted by the complainant and is not factual. The subject description may need to be altered to ensure it is technically correct in the complaints process.
- If the advertisement was promoting “alcohol as a crutch to get through the day” it would suggest “anytime consumption “and not reference the non-work time of “knocked off”.
- The advertisement states “it’s a lucky day with Lucky Bay” implying that consumption of LBB is a special occasion and hence condones moderation of alcohol consumption.

- The radio frequency playback is determined by Southern Cross Aus Stereo and is not directed by LBB. As a point of concession LBB could ask Southern Cross Aus Stereo to reduce its frequency and tailor play back times to appease the complainant.

### **The Panel's View**

14. This determination flows from a complaint about the messaging in a radio ad for Lucky Bay Brewing. The Company is a micro-brewery based in Esperance in Western Australia and produces a range of different craft beer types. The complainant contends the ad is inappropriate as it portrays alcohol as a crutch to get through the day and as being necessary to impress friends. The complainant also noted that the ad was played frequently during the day.
15. The complainant's concerns bring into focus two ABAC standards. Part 3 (c) (ii) provides alcohol marketing communications (which includes radio ads) must not show alcohol as a cause or contributor to the achievement of personal or social success. The second standard contained in Part 3 (c) (iv) provides that alcohol cannot be suggested as offering any therapeutic benefit or being a necessary aid to relaxation.
16. The ad takes the form of a jingle which contains the lines- 'You've just knocked off, what ya gunna do? You need something that goes down smooth. Just look for the can with the kangaroo.' Presumably it is this part of the ad the complainant interprets as suggesting alcohol is a crutch to get through the day. The Company argues that this would not be taken as suggesting alcohol is a necessary aid for relaxation.
17. Later in the jingle there is a line - 'The unique taste of a microbrew. That even your hipster mates will be into'. This would be the part of the ad which the complainant takes as suggesting that the product will impress your friends. The Company refutes this would be understood as breaching the ABAC standard.
18. Assessment of compliance with an ABAC standard is from the probable understanding of the marketing item by a reasonable person taking the contents of the marketing as a whole. This means the life experiences, values and opinions found commonly in the community is the benchmark.
19. The Panel does not believe the ad breaches the ABAC standard. The Panel noted:
  - a reasonable person will not listen to the ad and dissect it on a line-by-line basis but will absorb the messaging from the ad as a whole;

- the overall impression from the ad is that the Company's products are being positioned as a locally produced craft beer which will be a good and popular choice for consumption after work;
- to imply the beer will be liked by friends does not mean the product causes social success - all advertising seeks to promote products in a favourable light and the ad does not suggest the product brings about the achievement of personal success;
- nor does saying the beer is a good choice of alcohol after work imply the product is a necessary aid to relaxation.

20. The complaint is dismissed.