



ABAC Adjudication Panel Determination No 205/21

Product: Alcohol
Company: 3 Ravens Brewery
Media: Facebook Post
Date of decision: 22 September 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 a Facebook post for 3 Ravens Brewery (“the Company”). It arises from a complaint received on 26 August 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

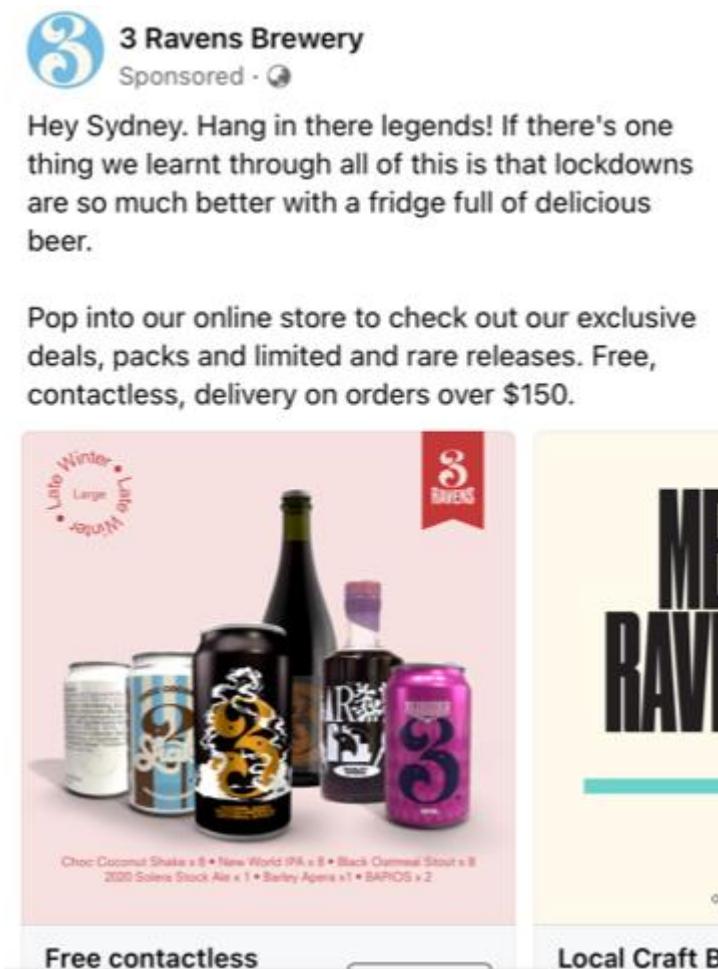
7. The complaint was received on 26 August 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue.
The complaint 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 Facebook post.

The Marketing

10. The complaint concerns the following Facebook post:



The Complaint

11. The complainant objects to the marketing communication as follows:

- *The phrase “If there’s one thing we learnt through all of this is that lockdowns are so much better with a fridge full of delicious beer” implies that excessive alcohol consumption is a necessary coping mechanism during difficult times. This implication is misleading and potentially harmful given the body of evidence suggesting that excessive alcohol consumption is more likely to cause or exacerbate mental health problems.*
- *The phrase is also encouraging irresponsible drinking that is inconsistent with the NHMRC Australian Guidelines to Reduce Health Risks from Drinking Alcohol.*

The ABAC Code

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

- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
- (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 email on 27 August 2021. Its principal comments were:

- Thanks for bringing this to our attention. Firstly, I would like to say that we have paused the ad and it is no longer running.
- Secondly, I would like to state that the messaging of our ad was intended to imply that having delicious beer in your fridge is better than the alternative (beer that isn't delicious) - lockdown or no lockdown. It's about quality, not quantity and is most definitely not intended to promote excessive, rapid consumption and/or that drinking beer offers therapeutic benefits.

The Panel's View

14. Since late June 2021 Greater Sydney and other areas of NSW have been in lockdown as the State experienced a major wave of Covid-19 cases. This current set of government restrictions to deal with the pandemic has impacted on households and businesses alike with one outcome being that pandemic references have become a common backdrop in marketing messages employed across industries including alcohol retailing.
15. 3 Ravens is a longstanding Australian craft brewer with its operations commencing in 2003. The Company uses social media channels to promote its product range and this complaint relates to paid advertising on Facebook. The post shows a photograph of some products and has accompanying text which in part reads- 'Hey Sydney. Hang in there legends! If there's one thing we learnt through all of this is that lockdowns are so much better with a fridge full of delicious beer'.
16. The complainant believes the message in the advertisement is irresponsible. It is argued that the post implies that excessive alcohol consumption is a necessary coping mechanism during difficult times. Further, it is contended the message in the ad is encouraging consumption beyond the levels identified as causing harm in the Australian Alcohol Guidelines.
17. The ABAC provides in Part 3 (a)(i) that alcohol marketing must not encourage excessive consumption or consumption inconsistent with the Alcohol Guidelines. Further, Part 3 (c)(iv) makes it impermissible to suggest that alcohol consumption offers any therapeutic benefit or is a necessary aid to relaxation.
18. The Company responds that it had no intention to convey the meanings suggested by the complainant. The point of the ad was to suggest that having a delicious beer in the fridge is better than the alternative - beer that isn't delicious. While not conceding the ad was inconsistent with the ABAC standards, the Company has paused the ad.
19. The assessment of consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. If a marketing message can be understood in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the message.
20. While the Company may have had no intention to convey a message inconsistent with the Code, the operative test is not the Company's intentions but how the message would most likely be understood by a reasonable person. In this respect

the Panel believes the post does breach the Part 3 (a)(i) and (c)(iv) standards.

The Panel noted:

- it is possible to read the post in several ways, but the more likely understanding is that covid lockdowns are best responded to ‘with a fridge full of delicious beer’;
- the combination of ‘hang in there legends’, ‘one thing we have learnt through lockdowns’ with the fridge full of beer phrases raises a direct implication that the consumption of alcohol is a coping mechanism for the lockdown;
- it is not a breach of the Code to promote the purchase of multiple containers of alcohol e.g. by a case or carton - but to encourage a subsequent consumption pattern which is excessive or inconsistent with the Alcohol Guidelines is a breach;
- an ad referencing a ‘fridge full of beer’ will not necessarily be encouraging excessive consumption as alcohol has a long shelf life and can be consumed over time and by multiple people, not a single person. The context of the ad and its overall message is critical in how it is likely to be understood; and
- in the current context, the message of a fridge full of beer combined with the lockdown and ‘hang in there’ references does raise a direct implication of consumption beyond the Alcohol Guidelines.

21. The Complaint is upheld.