



## ABAC Adjudication Panel Determination No 211B/21

**Products:** Larry Pale Ale, Sally IPA, Eddie XPA, Donnie Dark Ale, Macca Aussie Lager, Tilly Ginger Beer.

**Companies:** Your Mates Brewing

**Media:** Packaging and Instagram

**Date of decision:** 12 October 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 the packaging of six products marketed by Your Mates Brewing (“the Company”), as well as two Instagram posts by the Company. It arises from a complaint received on 3 September 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel's jurisdiction.

### The Complaint Timeline

7. The complaint was received on 3 September 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 complaints were completed in this timeframe.

### Pre-vetting Clearance

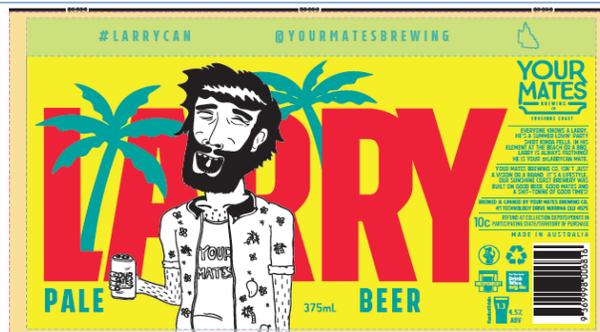
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was provided for the label for Eddie XPA (Approval Number 18494).

### The Marketing Communication

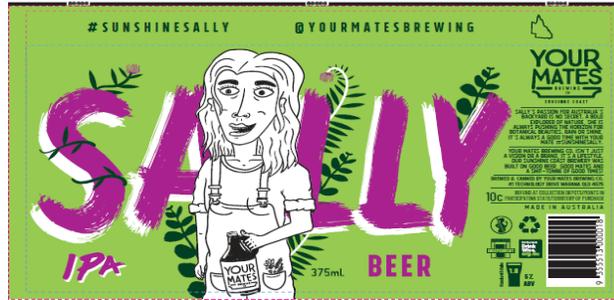
10. The complaint relates to the packaging of six products as well as two Instagram posts by the Company, as shown below:

#### Packaging

##### *Larry Pale Ale*



**Sally India Pale Ale**



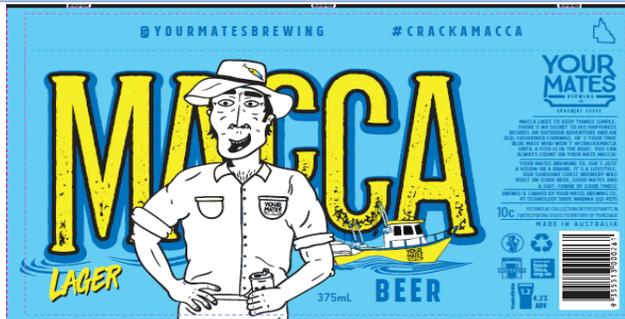
**Eddie Session XPA**



**Donnie Dark Ale**



**Macca Aussie Lager**



## Tilly Ginger Beer

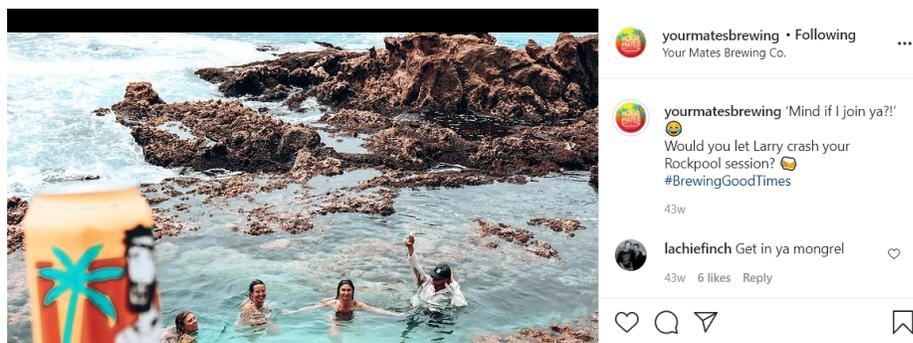


## Instagram Posts

### Instagram Post 1:



### Instagram Post 2:



## The Complaint

11. The complainant objects to the marketing as follows:
- *The cans are all designed around cartoon images that appeal to minors, my 12-year-old son saw one and wanted to try it because of the cartoon appearance.*
  - *They posted a photo of someone drinking and driving a boat.*
  - *They posted a photo of people drinking while swimming which I saw was against ABAC standards.*

## The ABAC Code

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

(b)(i) have Strong or Evident Appeal to Minors.

- (c) 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 coordination, such as the control of a motor vehicle, boat or machinery or swimming.

13. Part 6 of the ABAC Code provides that:

**Strong or Evident Appeal to Minors** means:

- (i) likely to appeal to strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minors beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionery or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

## **The Company Response**

14. The Company responded to the complaint by letter emailed on 10 September 2021. The principal points made by Your Mates Brewing were:

### **Introduction**

- We take the complaint and our compliance with the code very seriously and are very happy to engage with the panel to resolve the issues raised. We confirm that we do agree to be bound by the panel's decision in relation to this complaint.

### **Alcohol Advertising Pre-Vetting Service**

- The Instagram posts referred to in the complaint did not receive pre-approval. Whilst we did not in any way intend for either post to breach the code, we appreciate that some members of the public may interpret these images in a negative way and have therefore removed the images to prevent any further issues.
- We note that Your Mates did seek and receive pre-approval from the ABAC in relation to the packaging for 'Eddie Session XPA' and 'Sambo' (which was a limited release item and no longer produced). We attach the relevant approval for 'Eddie' (ABAC approval 18494). The branding on our remaining products is very similar in style and format to these approved labels.

### **Date of First Retail Sale**

- The first packaged form of these products was sold in 2017, though 'Larry Pale Ale' had previously been sold in the form of draught beer since 2015. This is the first time we have ever received an ABAC complaint. Our view is that this demonstrates that our products do not have strong or evident appeal to minors because, if they did, it is likely a complaint would have been made already given the widespread distribution of the products.

### **Responsibility Towards Minors**

- We do not consider that the packaging of any of our products breaches part 3(b)(i) of the code because it does not have any strong or evident appeal to minors. Furthermore, we operated on the understanding that, having received pre-approval for 'Eddie', it was unlikely that further products based on a similar template would be inappropriate.

- The imagery used in the packaging resembles a 25+-year-old individual which appeals to our target demographic of 25-35-year-old beer drinkers. This imagery is intended to align with mature animation shows enjoyed by this demographic (such as Archer), which use high-end, detailed graphics. We do not believe that the imagery appeals strongly to minors or is in any way similar to animations typically enjoyed by minors, which are much more childlike in appearance. In particular, we note that the panel has recently considered the use of cartoon images in relation to Ballistic Beer Co (Determination 150/20). The panel dismissed the complaint and determined: 'This does not mean, however, that the use of drawn characters means minors will be automatically attracted to the marketing. In the current case, the style employed is akin to an adult graphic novel, which uses themes and a storyline which is quite evidently adult in nature.'
- Our view is that Your Mates' packaging is of a similar type considered in that complaint and does not appeal to minors.
- We have used all six core colour groups in our branding as a way of expressing each character's persona and personality. The bright colours feed into the image design described above and we do not consider that they specifically appeal to minors. We note that marketing which is aimed at minors typically utilises a more concentrated mix of more vibrant colours, with softer lines. Our packaging does not at all align with such marketing. We note that in considering the use of colours the panel has previously dismissed complaints where 'the colours used are muted and not the sharp and contrasting colours more likely to appeal to minors' (Determination 97/20). Our view is that the colours used in our packaging are muted and do not specifically appeal to minors.
- All of our products contain the word 'BEER' inserted in large text in the front, bottom right side of our packaging to ensure it is clear that our products are alcoholic beer. This was a decision made by us as an extra precaution specifically to ensure that the nature of the product is clear.
- We do not consider that the use of first names as product names makes the products any more attractive to minors than adults. Personas in alcoholic advertising are commonplace (Johnny Walker, Jack Daniel's, Captain Morgan, James Squire, etc) and do not have any special relationship with products for minors. Furthermore, we have chosen the names based on older Australian male and female names in an effort to distance any appeal to minors. In our

view it is far more likely that adults will relate to these product names than minors.

- For the reasons above, we do not believe that a reasonable person would believe that any of our products would have strong or evident appeal to minors. There is nothing in the packaging which is likely to appeal strongly to minors or specifically targeted at minors. There is no particular attractiveness for a minor beyond the general attractiveness the products have for an adult (if anything they are far more likely to appeal to adults). No imagery or brand identification is likely to appeal strongly to minors or create any confusion with confectionary or soft drinks.

### **Safety**

- Instagram Post 1 shows an image taken whilst we were anchored on a fishing trip at lunch time. The motorboat was not on at the time this photo was taken. Your Mates takes illegal alcohol consumption very seriously and it was not intended to imply that the drinker was in control of the boat (for reference we attach our alcohol policy). Having said that, we understand the possibility for this perception and have accordingly removed the photo. We will ensure that our social media team is briefed in relation to this issue to prevent any further misconceptions moving forward.
- Instagram Post 2 shows an image that was user-generated content and our response was not intended to condone the inappropriate use of alcohol in any way. As discussed above, Your Mates takes the responsible consumption of alcohol very seriously and the image has been removed. We will also ensure that our social media team is briefed on this issue and is made aware of our specific obligations under part 3(d) of the code.

### **Concluding Comments**

- Your Mates appreciates the opportunity to be involved in the resolution of the complaint and we are happy to provide any further information or clarification if required. As we have set out above, we take our obligations under the code very seriously and do not believe that our products offend any part of the code. If the panel determines that there are any areas of concern, we will of course work together to resolve them.

## **The Panel's View**

15. Your Mates Brewing is a craft brewery with its origins commencing in 2013 and its first commercial production in 2017. Since 2018 it has operated from a brewhouse in Warana on Queensland's Sunshine Coast. The Company's beers are also available to purchase online and from venues and bottle shops predominately throughout Queensland, as well as a smaller number of locations in Sydney, Melbourne and Perth.
16. A key part of the Company's product offering is the "Your Mates" range, consisting of Larry Pale Ale, Sally IPA, Eddie XPA, Donnie Dark Ale, Macca Aussie Lager and Tilly Ginger Beer ("the Products").
17. This complainant identified concerns with marketing communications from three different alcohol companies. This decision reviews the packaging of the Products, as well as two Instagram posts promoting the Products. Determination 211A/21 concerns marketing from a second company, 10 Toes Brewing, while the issue raised about the marketing of a third company was not within the remit of the ABAC. This determination deals first with the Instagram posts before examining the Products' packaging.

## **The Instagram posts**

18. The complainant has raised concerns about whether it is appropriate for Instagram posts promoting the Products to show people drinking while driving a motorboat in the first post and swimming in the ocean in the second post.
19. Part 3 (d) of the ABAC 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 coordination. It can be readily accepted that controlling a boat and swimming are activities that require alertness and physical coordination to be performed safely.
20. In assessing if an ABAC standard has been breached, the Panel is to have regard to the probable understanding of the marketing communication 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.
21. Instagram Post 1 shows a man sitting in the driver's seat of a motorboat at sea, with his feet on the steering wheel. He is drinking from a can of one of the

Products. Whilst the boat is stationary there is no doubt that the man consuming the Product is in control of the boat. This post is inconsistent with the Part 3 (d) standard.

22. Instagram Post 2 shows four people swimming, one of whom appears to be holding a can of the Product in the air. A can of Larry Pale Ale is shown in the foreground, and the caption alongside the photo is:

“Mind if I join ya?!” 😂

Would you let Larry crash your Rockpool session? 🍺”

23. The Panel considers Post 2 shows a person drinking alcohol while swimming and is also in breach of the Part 3 (d) standard.
24. The Company has advised that any breach of the Code was unintentional but acknowledges that some members of the public may interpret these images in a negative way. It has removed the images.

### **The packaging**

25. The complainant is concerned that the cans are designed around cartoon images that appeal to minors. To support their concern, they related that the cartoon images have drawn the attention of their 12-year-old child to the Products.
26. This concern brings into play Part 3 (b)(i) of the ABAC which provides that an alcohol marketing communication (which includes product labels and packaging) must not have strong or evident appeal to minors. This standard might be breached if the packaging:
- specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and
  - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
27. The Company argues that its Products’ packaging does not breach the ABAC standard. It is submitted:

- Larry Pale Ale has been in the market since 2017, and no complaints have been received previously;
- the label for Eddie XPA was granted pre-vetting approval, and the Company believed it unlikely that further products based on a similar template would be inappropriate;
- the images on the cans are of people who are at least 25 years old, and are intended to appeal to consumers in the Company's targeted age demographic of 25 to 35 years;
- the colours used in the packaging are muted and do not specifically appeal to minors;
- the word 'BEER' is shown in large letters on the packaging, making it clear that the Products are alcoholic; and
- the first names used in the naming of the Products (Larry, Sally, Eddie, Donnie, Macca and Tilly), are more likely to be familiar and relatable to older people, rather than minors.

28. The Panel has considered the Part 3 (b) standard on previous occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:

- the use of bright, playful, and contrasting colours;
- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors;
- language and methods of expression used more by minors than adults;
- inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);

- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
  - use of a music genre and artists featuring in youth culture.
29. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
30. As expressly recognised in the definition of 'strong or evident appeal to minors' contained in Part 6 of the ABAC, this might involve the use of animation or cartoon characters. This does not mean, however, that the use of drawn characters means minors will be automatically attracted to the marketing. There are many styles of animation with some styles quite evidently directed to adults.
31. The Panel does not believe the Products' packaging breaches the ABAC standard. In reaching this conclusion the Panel noted:
- the packaging sufficiently identifies the Products as being alcoholic beverages and the style and design of the labelling would not cause confusion with a soft drink;
  - the artwork depicts clearly adult characters in scenes that would not strongly resonate with minors;
  - the colour scheme used is not bright but muted and mature; and
  - taken as a whole, the appeal of the packaging design to minors would be incidental and not strong or evident.

## **Conclusion**

32. The complaint is upheld in relation to the Instagram posts that breach Part 3(d) and dismissed in relation to the packaging of the Products.