



ABAC Adjudication Panel Determination No 244/21

Products: Pacific Ale and Extra Refreshing Ale
Company: 4 Pines Brewing
Media: Facebook and Instagram
Date of decision: 22 November 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”) concerns Instagram and Facebook advertising by 4 Pines Brewing (“the Company”) featuring its Pacific Ale and Extra Refreshing Ale (“the Products”). It arises from a complaint received on 15 October 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 meet 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 15 October 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 an 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.

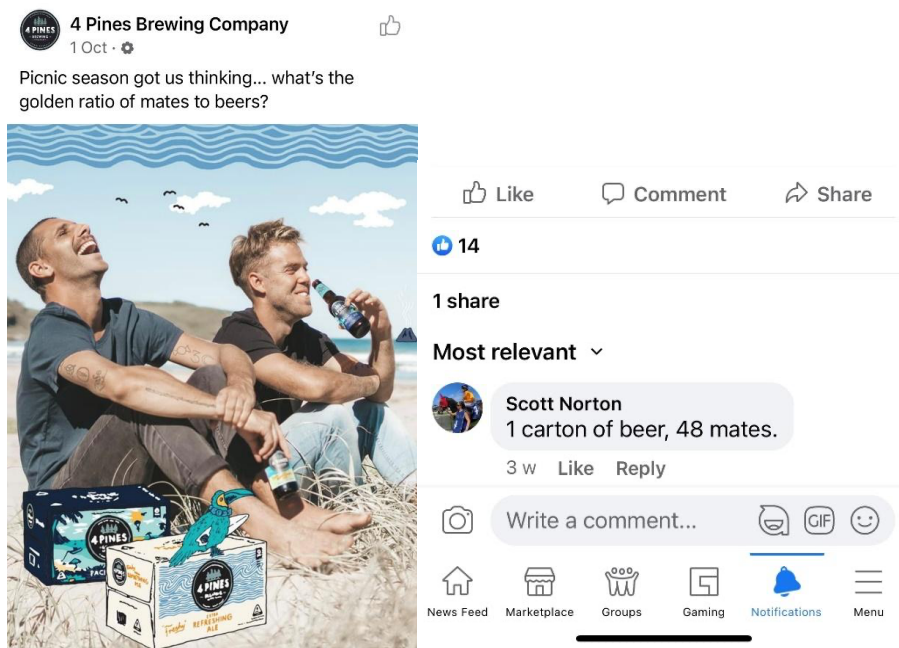
The Marketing Communication

10. The complaint relates to Facebook and Instagram posts, as shown below:

Instagram post with comments



Facebook post with a comment



The Complaint

11. The complainant objects to the marketing as follows:
 - *Two blokes sitting on the beach next to two cases.*
 - *And then you ask what's the golden ratio of mates to beers? You're encouraging irresponsible excessive drinking, which is reflected in the comments on the social post. 4 Pines haven't even moderated this post. There is zero community management.*

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.

The Company's Response

13. The Company responded to the complaint by letter emailed on 27 October 2021. The principal comments made by the Company were:

- The alcohol marketing communication referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.
- There is no interpretation of the Instagram and Facebook posts that supports the implication of excessive or rapid consumption.
- The image shows two men sitting fully clothed on the beach, each holding one bottle of beer. The cases referred to by the complainant are not 'real' cases: they are below life-size illustrations superimposed on the image for the purpose of demonstrating to consumers what the cases look like, accompanied by other illustrations in the 4 Pines style – birds, stylised waves, and clouds. It is laughable to suggest a reasonable viewer would see this image and take the interpretation that the 4 Pines is suggesting the two individuals will be consuming one case of beer each.
- Similarly, the post copy 'picnic season got us thinking... what's the golden ratio of mates to beers?' is not in any way intended to suggest that a significant number of beers are required to have a good time. The reference to 'picnic season' is clearly meant to be interpreted as a reference to easing COVID restrictions and spring weather in NSW and Victoria, enabling larger groups of friends to catch up for picnics. The focus of the post is on 'mates' rather than 'beers'.
- The comments made by users underneath the post are at worst ambiguous. The Facebook comment appears to suggest that one case (24 bottles) should be shared between "48 mates" which strikes me as the direct opposite of excessive consumption. The comment on the Instagram account "we thinking 1:24" doesn't specify which element of the ratio is which – it could be read as suggesting one case is shared between 24 mates, i.e. one beer each. The complainant has interpreted this as 1 mate per 24 beers, which we do not endorse and have not endorsed in either the image or the post copy.
- 4 Pines 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 placement and content of our advertising.

The Panel's View

14. This determination concerns a post on the Company's Instagram and Facebook accounts. The complainant believes the post encourages irresponsible, excessive drinking.
15. The post includes a photo of two men sitting on the beach, each drinking from a bottle of beer. Hand-drawn illustrations of two cases of Product are superimposed on the photo, along with illustrations of birds, clouds and waves. The text accompanying the post reads "Picnic season got us thinking...what's the golden ratio of mates to beers?".
16. The ABAC provides in Part 3 (a)(i) that alcohol marketing must not encourage excessive consumption or consumption inconsistent with the Alcohol Guidelines.
17. In assessing if an ABAC standard has been breached, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and opinions held commonly by most members of the community is the benchmark. If the marketing message can be interpreted in several ways, it is the most likely meaning which is to be preferred over a possible but less likely interpretation.
18. The Company argues that the post does not breach the ABAC standard. It is submitted:
 - the cases referred to by the complainant are not 'real' cases but are smaller than life-size illustrations superimposed on the image;
 - the post copy is not intended to suggest excessive drinking and the comments made by users are either ambiguous or suggest moderate drinking; and
 - a reasonable viewer would not interpret the post as suggesting the two individuals will be consuming one case of beer each.
19. The Panel does not believe the post would be understood as encouraging excessive consumption. The post takes the form of a photograph and superimposed graphics of drawings of two cases of beer, a toucan holding a surfboard resting on one of the cases and clouds and birds placed in the sky. The two men are drinking a bottle of beer each and don't appear affected by alcohol. The drawn graphics distinguish the cases of beer from the 'live' scene of the two men. Most likely the post would be understood as simply representing an image of

the product and not be taken as giving a message about excessive consumption levels.

20. The comments on the post on both Facebook and Instagram, while not created by the Company, are the Company's responsibility. While the ABAC doesn't go to imposing moderation obligations as such, if comments are made so that the probable understanding of the post becomes inconsistent with Code standards, then the Code will be breached.
21. Neither the Facebook nor Instagram posts elicited many comments. The single comment made to the respective post on both platforms would not alter the probable understanding of the post.
22. The complaint is dismissed.