



ABAC Adjudication Panel Final Determination No 21/22

Product: The Good Life West Coast DIPA
Company: Banks Brewing
Media: Packaging
Date of decision: 15 March 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) concerns the packaging of The Good Life West Coast DIPA (“the Product”) by Mr Banks Brewing Co (“the Company”). It arises from a complaint received on 15 February 2022.
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 the 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 February 2022.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

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 product packaging.

The Marketing Communication

10. The complaint relates to the packaging of The Good Life West Coast DIPA:



The Complaint

11. The complainant objects to the marketing as follows:

- *We believe this labelling/packaging is in breach of Part 3 of the ABAC Responsible Marketing Code whereby a marketing communication and product must NOT:*
 - *(b)(i) have Strong or Evident Appeals to Minors*
- *The brightly coloured, cartoon-style design is likely to appeal to Minors;*
- *The font used to display “The Good Life’ is playful and child-like.*
- *The lack of identification as alcohol aside from the niche beer term “DIPA” may cause confusion for minors and adults. The term “DIPA” is also not prominent on the label.*

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.

13. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal 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's Response

14. The Company responded to the complaint by email on 17 February 2022. The principal comments made by the Company were:
- This beer is in the same situation as the last few complaints that it is no longer in production and all sales channels/advertising have now ceased.
 - This beer won't be made again or advertised.
 - As mentioned in our last correspondence with you our designer has been contacted and the ABAC guidelines sent to him for future label designs.

The Panel's View

15. This determination concerns the packaging (can design) of a limited release West Coast Double Indian Pale Ale (DIPA) branded as 'The Good Life' by Banks Brewing. The complainant believes the can design appeals to minors due to:
- the brightly coloured, cartoon-style design;
 - 'The Good Life' brand name uses a playful and child-like font;
 - the product packaging does not establish its alcoholic nature by relying on the acronym 'DIPA'.
16. On 28 February 2022 the Panel made a provisional determination that the product packaging is in breach of Part 3 (b)(i) of the Code. Consistent with the rules and procedures applying to decisions concerning product packaging, the Company was afforded an opportunity to seek a re-hearing of the provisional determination by making further submissions. As the Company has not sought a rehearing, the Panel has proceeded to make a final determination on this complaint.
17. Part 3 (b) of the ABAC provides that an alcohol marketing communication must not appeal strongly to minors. The standard might be breached if the marketing:
- 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.
18. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community are to be the benchmark.
19. In response to the complaint, the Company did not mount an argument about the consistency of the packaging with the standard. Rather it was pointed out that the product was no longer being made and that in future label designs the Company's designer will take into account ABAC guidelines.
20. Product packaging can give rise to strong appeal to minors if it creates confusion with confectionery or a soft drink. Confusion with a soft drink might occur if:
- the packaging fails to clearly identify the product as an alcohol beverage through the use of an alcohol term like beer, ale, vodka, style of wine etc or reliance is made of more subtle alcohol references or terms understood by regular adult drinkers but less likely to be understood by minors e.g., IPA, NEIPA;
 - the packaging has a visual design that resembles a soft drink, such as the display of fruit images, bright block colours and the use of a font style or iconography found typically on soft drinks or fruit juices;
 - the use of terms commonly associated with a soft drink or fruit juice e.g., orange, lemon, blueberry, pop, smash etc; and
 - the type of physical package used and whether this is like that used by soft drinks or fruit juices e.g., prima style juice box.
21. On balance the Panel believes that the packaging does breach the Part 3 (b) standard. In reaching this conclusion the Panel noted:
- the labelling fails to unambiguously establish the product as an alcohol beverage and relies on the descriptor 'DIPA' that is not widely recognised beyond dedicated craft beer consumers;

- that said the packaging does not resemble well recognised soft drink designs eg bold block colours are not used and this reduces the likelihood of confusion with a soft drink
- a number of design elements create a relatable imagery for minors, such as the use of cartoon style imagery of a teddy bear head and the solar system;
- bright and playful colours are used which are likely to be eye-catching for minors; and
- taken as a whole a reasonable person would probably understand the packaging as having a strong and evident appeal to minors.

22. Accordingly, the Panel makes a final determination that the product packaging is in breach of Part 3 (b)(i) of the Code.