



ABAC Adjudication Panel Determination No 60/22

Product: Beer
Company: Better Beer
Media: Instagram
Date of decision: 23 August 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Instagram marketing by Better Beer (“the Company”). It arises from a complaint received on 9 August 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 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 9 August 2022.
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.

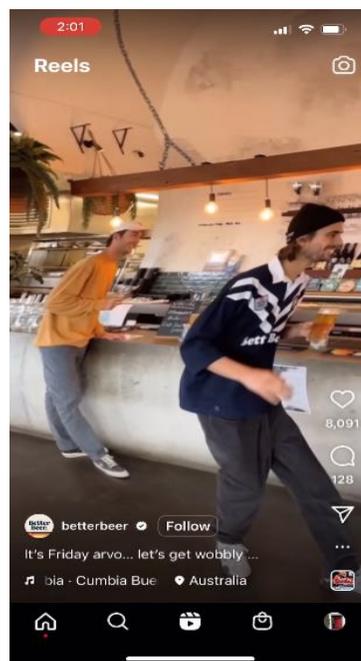
Pre-vetting Clearance

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 communications

The Marketing Communication

10. The complaint relates to a video posted to Instagram by the Company. The video is set in a bar and shows patrons drinking beer as they interact and walk around the area. Special effects have been used to distort the appearance of the people and background and the accompanying text reads “It’s Friday arvo...let’s get wobbly...”.

A screenshot of a scene from the video, showing the original accompanying text, is shown below.



The Complaint

11. The complainant objects to the marketing as follows:
 - *The ad encourages people to drink to get “wobbly” or “legless” which is a direct breach of code of conduct.*
 - *Using influencers to encourage drinking to intoxication, i.e. wobbly, is a direct breach.*
 - *This is not good enough by a beer brand.*

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 Response

13. The Company responded to the complaint by letter emailed on 15 August 2022. The principal points made by the Company were:
 - We have since removed the word ‘WOBBLY’ from our Instagram’s Comment section.
 - The distorted image and accompanying song are part of a TIK TOK trend and has no reference to drinking and/or being intoxicated.

The Panel’s View

14. Better Beer originated from a collaboration between Matt Ford and Jack Steele and the founder of the Torquay Beverage Company, Nick Cogger. Messrs Ford and Steele are better known as the Inspired Unemployed who are social media personalities. The pair have 1.4 million followers on Instagram and clearly meet the description of social media influencers.
15. The Company maintains an Instagram account with 69,000 followers. On 8 August 2022 a video was posted to the Company’s Instagram account showing the Inspired Unemployed in a bar having a drink of beer and interacting with a third man. The notable feature of the post is that it is filmed using the wave filter

available on Instagram. The effect of the filter is to give the video a wobble distortion as if the image is being viewed in a concave and/or convex mirror.

16. The post was accompanied with the tune 'Cumbia Buena' from Grupo La Cumbia. The short text with the video reads - "It's Friday arvo...let's get wobbly...". It is this post that attracted the complaint, with the concern being that the post is encouraging viewers to get wobbly or "legless" from excessive alcohol consumption.
17. Part 3 (a)(i) of the ABAC provides that an alcohol marketing communication (which includes social media posts) must not show or encourage excessive consumption, misuse or abuse of alcohol or consumption inconsistent with Australian Alcohol Guidelines. Assessment if a standard has been breached is from the probable understanding of the marketing item by a reasonable person.
18. In response, the Company explained that the distorted image and accompanying music are part of a Tik Tok trend and has no reference to drinking and/or being intoxicated. While not conceding a breach of the ABAC standards, the Company advised that it had removed the word "wobbly" from the accompanying text.
19. It seems the use of the wave filter emerged as a viral trend on Tik Tok and other social media around June 2022 and like many viral trends will remain popular for several weeks or months before being overtaken by another new trend. Further, the use of various filters is a standard video technique for social media and alcohol companies (and marketers more generally) are using filters with their social media marketing.
20. There is no ABAC prohibition on using filters in creating content. Clearly, however, the effect of the filter will be a factor in how a reasonable person will understand and interact with the content. In this case the Company is correct in claiming there is no inherent correlation between the widespread use of the wave filter and alcohol use.
21. Absent the impact of the wave filter, the underlying video in the post does not depict irresponsible alcohol use. The video shows Messrs Ford and Steele having a single drink in a bar. No rapid consumption is shown and (absent the filter effects) the men don't appear intoxicated. So, the question is how a reasonable person would understand the video with the effects of the filter and the accompanying text message.

22. The Panel believes the post would most likely be understood as breaching the Part 3 (a)(i) standard. In reaching this conclusion the Panel noted:
- the phrase - "It's Friday arvo...let's get wobbly...", raises an implication of drinking until intoxicated;
 - the effect of the filter gives rise to an implication of a person being intoxicated through either being unsteady or having vision impaired by excessive consumption; and
 - the visual effect combined with the text message would be probably understood as either encouraging excessive consumption or treating the effects of excessive consumption as amusing.
23. The complaint is upheld.