



ABAC Adjudication Panel Determination No 91/22

Product: Beer
Company: Travla Beer
Media: Instagram
Date of decision: 4 December 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 31 October 2022 and concerns social media marketing via Instagram by Travla Beer (“the Company”).
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 the 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 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 31 October 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 sought for the marketing.

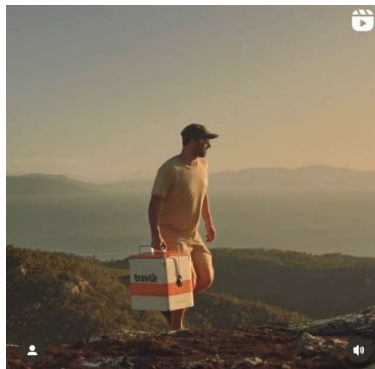
The Marketing Communication

10. The complaint relates to a compilation video at the following link:

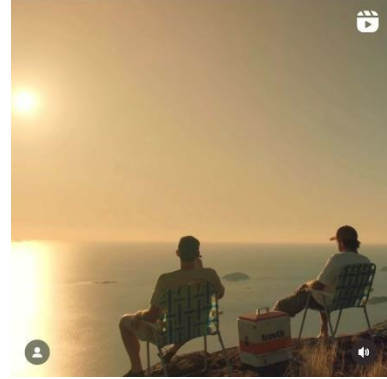
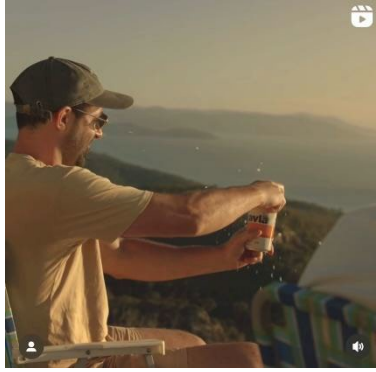
<https://www.instagram.com/p/CkFktTmJVae/>

The following is a summary of the video, with screenshots to assist with visualisation:

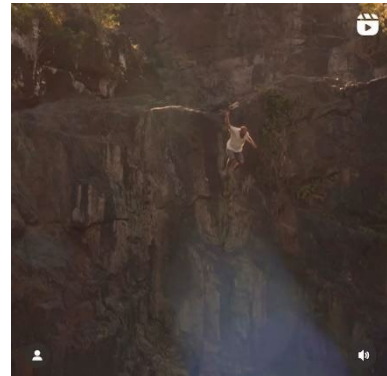
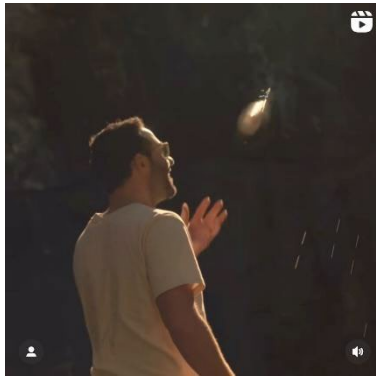
The video commences with footage of a man walking with an esky through a remote, scenic location.



We then see two men sitting on folding chairs, overlooking a water view. There is an esky between them. A man takes a beer from the esky and opens it.

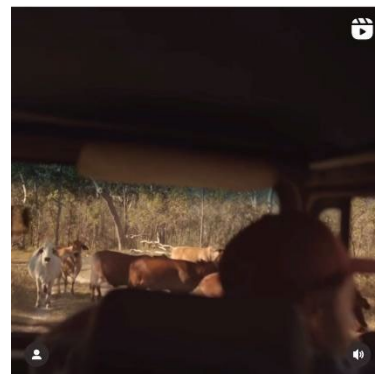


We see footage from behind of the man drinking.

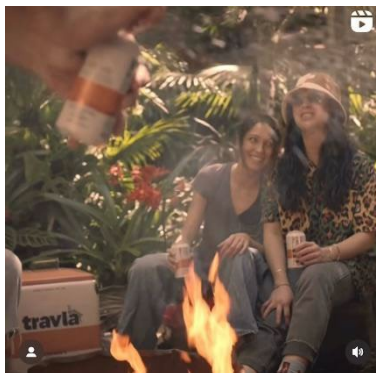


Next, we see a man climbing over some rocks to a waterhole. He is carrying an esky. One man throws a beer to the other, following which we see a person jumping from a cliff into the water.

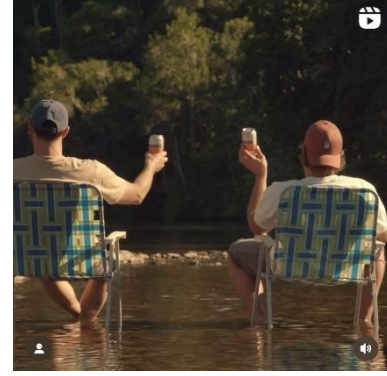
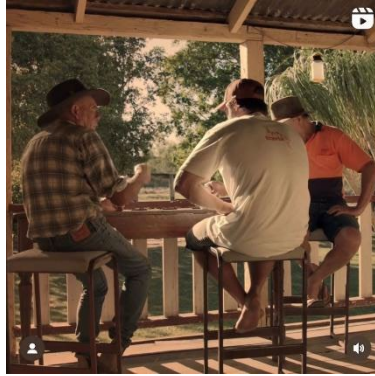
The men are shown travelling by car to another location...



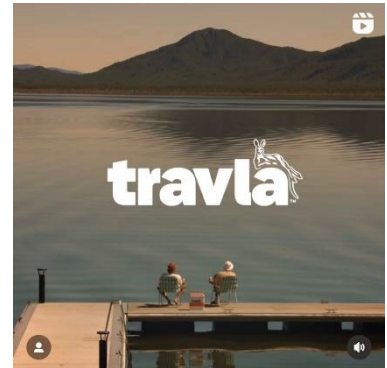
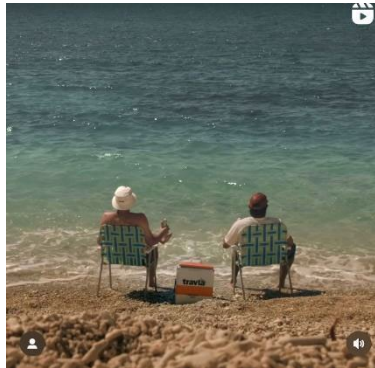
...where they walk through a rainforest, again carrying the esky, and cook on an open fire. People are shown holding and opening cans of beer.



We once again see people travelling by car to arrive at a third location, where one of the men is shown sitting with others in what looks like a bar, and then sitting on the back of a ute drinking beer.



The video concludes with a number of shots from behind of the men sitting on folding chairs with an esky between them. The final frame is superimposed by the Travla Beer logo.



The Complaint

11. The complainant objects to the marketing as follows:

- *A number of blokes travelling around the country drinking Travla beer and Travla beer being part of their adventures. They're driving off road from place to place and jumping off cliffs and having a grand old time with their beer.*
- *Given this entire ad is showing people driving off road jumping off cliffs and then driving around again, I'm assuming this is a no alcohol beer? It's not clear from the ad.*

The ABAC Code

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

- (d) 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.

The Company's Response

13. The Company responded to the complaint by letter emailed on 2 November 2022. The principal comments made by the Company were:

- We, at first, struggled to understand which aspect of the ABAC code the complaint was raised against as the complaint itself felt more general.
- We are now clear that the ABAC proposed breach is of section 3 subsection (d).
- We note we take the guidelines very seriously, agree that the conversation is meaningful, and worthwhile, but do not prima facie accept that a breach has occurred.
- In our response we agree to accept the ruling of the panel and look forward to building a closer relationship in the future as a new brand, with big ambitions in this space. We also want to preface this with a note that we have received a lot of very positive feedback on the advertisement, the production quality, and the message, aligning with Government organisations to showcase Australia to a global audience which we feel is incredibly important right now with tourism returning, but also a time to reflect on the simple things in life that are right outside our doorsteps. We have received no complaints alluding to this sort of negative connection such as that raised in the complaint.
- In saying that we accept that this complaint has been received and are ecstatic with the chance to respond.

Alcohol Advertising Pre-vetting Service Approval

- Due to our launch timeline being so close to the editing deadline, we did not specifically engage the ABAC pre-vetting service. We have reached out

previously though and are dedicated to using ABAC as a sounding board moving forward, for both digital and above the line, and have requested a contact to assist us with this – we are presently getting the next round of materials ready to share with ABAC.

Safety

- Though yet to engage ABAC directly, we did consider the guidelines heavily when directing the video.
- As a result, we ensured that any person driving a vehicle or jumping into water was not portrayed actively consuming the product prior to engaging in these activities. In each scene prior to these activities, the person in question is only seen handing the product to someone else and not partaking.
- In our response we accept that the communication is within our reasonable control as our video shared on our brand page on Instagram
- In constructing the video shoot for the ad we were very aware of the guidelines which we take very seriously, which is why we are taking this complaint seriously as well, we took caution not to showcase any examples of the product being consumed during any of the activities that could be considered dangerous.

Specific to the wording of the complaint

- “Travelling around the country” - Yes, this is a key message, get out there and explore this great country.
- “Drinking Travla beer” - There are 2 scenes where the product is consumed.
 - Andy Allen at 12 secs sitting on a lawn chair
 - Travis Fimmel at 48 secs sitting on the rear tray of a vehicle
- “And Travla beer being part of their adventures” - Yes, a common theme in nearly every single beer advert ever created...and we took every precaution to ensure that the depiction of a good time does not clash with the specific rules within the ABAC guidelines. This is an area we spoke about a lot in directing the film, showcasing the great outdoors without glorifying the product but still making a connection between the brand and the scenes.
- “They are driving off road” - Never after consuming or while consuming the product.

- “Jumping off cliffs” - Never after consuming or while consuming the product.
- “Having a grand old time with the beer” - Yes, but never at a time before or during a dangerous activity.
- There are no examples in the video in question of the product being consumed prior to or whilst driving a motor vehicle, boat, machinery or swimming – further, we went to great lengths NOT to imply or connect any of the driving or activities to the consumption of the product. The video, by design, conveys a connection between the brand and the activity, not the product and the activity.
- It is noted that Travis jumping into the water may be considered dangerous in and of itself, but the focus of this response is to the complaint which does not suggest (rightly) that there is any suggestion of the product being consumed before or during this activity.
- We look forward to having a good relationship with ABAC and will continue to attempt to abide by the standards, so, if the panel does not agree with our position and feels the ad requires editing, we would happily remove specific scenes which are of concern.

The Panel’s View

14. Travla Beer is a new entrant to Australia’s craft beer market with the product becoming available in late October 2022. The founders of the Company are well known Australian actor Travis Fimmel and MasterChef winner and now judge Andy Allen. The goal of the Company is to produce a world class beer with lower calories than a standard beer.
15. As part of the launch of the product, a video has been produced that follows Andy and Travis as they travel to various scenic bush and beach/waterfront sites. The video has been placed on social media platforms and was seen by the complainant on Instagram. It is the video that has drawn the complaint.
16. The video adopts a laid-back style set to a cover version of the 1934 song “Don’t Fence Me In” (originally by Cole Porter and Robert Fletcher). It shows various scenes of moderate alcohol consumption. The complainant contends the marketing video is irresponsible as it depicts alcohol use in conjunction with dangerous activity such as driving and jumping off a cliff into water.
17. This concern raises Part 3 (d) of the Code which requires that a marketing communication must not 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.

18. In response, the company has explained that:
 - the video was cut with the ABAC guidelines in mind;
 - the consumption of beer has not been shown before or during driving, swimming or other dangerous activity; and
 - specifically in relation to the cliff diving scene, Andy is shown consuming alcohol sitting on a lawn chair and it is Travis who jumps from a cliff into the water.
19. The issue for assessment is whether the video shows alcohol consumption before or during a dangerous activity as believed by the complainant or whether the scenes of alcohol consumption are positioned as either occurring after anything requiring physical coordination for safety reasons has finished, or with an activity that is not inherently dangerous.
20. This assessment is to be from the standpoint of the probable understanding of the marketing item by a reasonable person taking its content as a whole. This means the benchmark is the attitudes, values and life experiences shared commonly in the community. If a marketing communication could be interpreted in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the marketing message.
21. Further, a marketing communication like a video, is to be assessed as an average consumer would watch it. This means the video is not to be studied frame by frame but run at normal speed and with a reasonable measure of attention.
22. The overall understanding a person would probably take from the video is that two friends are having a driving adventure over several days to some beautiful spots and enjoying a beer along the way. Consumption is always shown as moderate, and generally occurring in late afternoon. That invokes that the driving for the day has been completed and there is no reasonable interpretation of 'drink driving' being encouraged.
23. Equally, the scenes with the two men drinking while sitting in fold out chairs overlooking water, show them fully clothed and with no cues that they are likely to drink then swim e.g. there are no towels seen. The only overtly problematic scene involves the diving off the cliff into water.

24. In this diving scene, the men are seen taking chairs and an esky to a waterhole. Then one of the men takes a beer from the esky and throws it to the other. Immediately after this, one of the men is shown jumping from a cliff top into the water hole. The Company contends that Andy is given the beer while it is Travis who does the cliff dive.
25. While the Company's explanation may well be factually correct, this is not how a reasonable person would probably understand the scene. It is more likely, that with an esky of beer, the probable understanding is that both men will be drinking and the sequence shows the taking of a beer prior to the cliff dive. This does raise the reasonable implication that the consumption occurred prior to the dive, and there is no doubt diving from a cliff into water is an inherently dangerous activity that should not be undertaken after alcohol consumption.
26. It is appreciated that this is a single scenario within a much longer video, however the scenario does put alcohol consumption directly before the cliff dive and it is apparently the one continuous event. The Panel concludes in this regard, the Part 3 (d) standard has been breached.
27. It is noted that the Company intends to engage with the ABAC pre-vetting service in developing major marketing materials. This is a welcomed commitment and speaks well of the Company's intention to meet good standards in its marketing.
28. The complaint is upheld.