



## ABAC Adjudication Panel Determination No 117/22

**Product:** Social Beast Pale Ale  
**Company:** Brewmanity Beer Co  
**Media:** Instagram  
**Date of decision:** 18 December 2022  
**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”) arises from a complaint received on 8 December 2022 and concerns social media marketing via Instagram by Brewmanity Beer Co (“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 8 December 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 the following Instagram post:



### The Complaint

11. The complainant objects to the marketing as follows:
  - *Post shows 4 people consuming alcohol, one being a security guard (as distinguished by his tag) drinking beer on a rooftop.*
  - *It presents a security guard on duty consuming alcohol.*

## **The ABAC Code**

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
  - (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 phone and email on 8 December 2022, and email on 12 December 2022. The principal comments made by the Company were:
  - The post has now been removed from Instagram.
  - It is not clear the man in the photo is a security guard. For example, is it a security tag as suggested by the complainant or is it a logo on a jumper?
  - It is not clear that anyone is consuming alcohol in the image. For example, is the man in the photo consuming alcohol or clearing away the table?

## **The Panel's View**

14. Brewmanity Beer Co is a Melbourne based craft brewery founded in 2015 by former AFL player David Neitz. The Company uses social media as one of its marketing channels, and it is a post made to its Instagram account that has drawn the complaint.
15. The post is a photograph of three women and one man at a table positioned on a Melbourne city rooftop. All four are holding cans of Social Beast Pale Ale. While no physical drinking is shown, the direct implication is that each of the group is consuming the product. The scene is friendly, and each person is smiling or laughing.
16. All of the group are dressed casually in dark clothing. The man is wearing a dark jacket with a front zip. He has a tag or identification lanyard on the front of his

jacket which has a number on it in large font but given the overall size of the photograph it is not clear exactly what the tag is. The image is accompanied by the following text:

brewmanity Christmas party season  
has arrived and there's nothing quite  
like some rooftop beers! Where's your  
favourite in Melbourne? Let us know  
in the comments and maybe, just  
maybe we'll get some Brewmanity in  
there 🍷👉

#Brewmanity #GoodBeer  
#FromAGoodPlace  
#MelbourneRooftop

17. The complainant interprets the photograph as showing a security guard at a bar consuming alcohol while on duty. While the complainant does not fully elaborate why the post is objectionable, it is taken that showing a guard drinking at work sends the wrong message about alcohol use. In terms of the ABAC, two standards are potentially raised by the complaint namely, that a marketing communication must not:
  - show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage - Part 3 (a)(ii); and
  - 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 - Part 3 (d).
18. Upon being advised of the complaint, the Company removed the post from its Instagram account. The Company however does not concede the post is in breach of ABAC standards. It is submitted that it is not clear if the man is a security guard, or the tag relates to security. Further it is claimed it is not clear that the people shown are consuming alcohol or that the man is drinking as opposed to clearing away the table.
19. The assessment of whether a marketing communication is consistent with a Code standard is from the standpoint of the probable understanding of the marketing item by a reasonable person. 'A reasonable person' is someone attributed with 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.

20. Based on a combination of the photograph and the accompanying text, the post would most probably be understood as showing friends drinking alcohol at a Melbourne rooftop bar. It is not entirely clear what the status of the man is. It is conceivable, as submitted by the complainant, that the man is a security guard working at the bar and the image shows him drinking while on duty.
21. Alternatively, he seems to know the women and they are all friendly. He might be a security guard who has finished work and joined his friends. Or the tag might not be related to security work at all but is simply an identification tag/pass that most office workers hold.
22. It is accepted that it would not be appropriate for an alcohol marketing communication to model alcohol use by an on-duty security officer. But it is not clear that the post would be taken in this way. In reality, most people viewing the Company's Instagram account will very quickly just scroll by the post and not pour over the image in great detail.
23. On balance, the Panel does not believe a reasonable person would most probably understand the post is encouraging irresponsible or offensive alcohol use. The image doesn't suggest excessive consumption, no one appears affected by alcohol, the scene is sedate and shows adults quietly socialising. It is not likely that a reasonable person will pay too much attention to the tag on the man's jacket and then imagine a backstory that leads to a conclusion that irresponsible alcohol use is being championed by the post.
24. The complaint is dismissed.