



## ABAC Adjudication Panel Determination No 119/22

**Product:** Bridge Road Brewers & Friends Craft Beer Christmas Countdown Advent Calendar  
**Company:** Bridge Road Brewing  
**Media:** Packaging  
**Date of decision:** 23 December 2022  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 9 December 2022 and concerns the packaging by Bridge Road Brewing (“the Company”) of a beer advent calendar (“the Product”).
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 9 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 obtained for the product packaging.

## The Marketing Communication

10. The complaint relates to the packaging of the Product by the Company as shown below:



## 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*
- *We submit that the products are likely to appeal to minors through use of:*
  - *The brightly coloured and cartoon-style design and artwork; and*
  - *Strong associations with a product that is normally associated with children's Christmas confectionary products i.e. chocolate advent calendars.*
- *While cartoon in nature the product packaging also makes light of a number of irresponsible drinking behaviours including consuming alcohol from a bucket and consumption whilst undertaking swimming activities.*

## 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;
- (b)(i) have Strong or Evident Appeal to Minors;
- (d) 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.

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 complaint was forwarded to the Company on 9 December 2022, and they declined the invitation to respond.

## **The Panel's View**

### **Introduction**

15. Since being established in 2005, Bridge Road Brewers has grown to employ approximately 40 people, and currently operates a taproom, pizzeria and brewhouse in Beechworth, Victoria. In the lead up to Christmas 2022 the Company released a Christmas 'advent calendar' containing 24 separate beers from the Company's range and other Australian craft brewers. It is this form of packaging that has drawn the complaint.
16. The packaging is a modified beer carton. The modification is that the top of the carton is able to be opened via a series of numbered 'windows' with each number and window revealing one of the 24 beers. Hence the carton operates as an advent calendar.
17. The carton shows an Australian Christmas illustrated scene centred around a relatively large can of beer being poured into a stream. The top of the river is the same colour as the beer, but downstream is shown as being blue in colour, as though it is just water at this point. The words 'Seasons Greetings from Beechworth Victoria' are superimposed over the image. A central character is depicted wearing speedos and a Santa hat, floating on the stream holding a glass of beer. Also depicted are:
- various Christmas tropes, including a stocking full of gifts, a wreath, gingerbread man and house, pudding, candy cane, gifts, baubles and Santa hats;
  - a melted snowman with a carrot nose;

- kangaroos, including one wearing a Santa hat with their pouch full of gifts, one wearing clothes as they sit in the driver's seat of a yellow cab and a joey sitting in a Christmas stocking;
  - horses, wearing clothes and sitting on chairs arm wrestling;
  - other clothed animals;
  - two people in stereotypical black and white striped prison garb, one of whom is carrying a ball and chain; and
  - a person squatting with an old fashioned musket style rifle and holding a helmet or bucket such that it obscures their face.
18. The bottom of the packaging shows the same illustration as the top (although there are no numbered 'windows' to open). The ends of the packaging both show the logos of the brewers whose products are included, along with a picture of waratah and wattle flowers and the words '24 craft beer cans from Australia's best brewers'. The sides both show the words 'Craft Beer Christmas Countdown' and '24 craft beer cans from Australia's best brewers', with illustrations of a Christmas tree with presents, an esky containing beers and a bearded man on an inflatable raft, wearing a Santa hat, sunglasses and speedos, holding a glass of beer, and with a carton style thought bubble containing the words 'Bridge Road Brewers + Friends'.
19. The complainant argues the packaging is not appropriate for an alcohol product due to:
- the brightly coloured and cartoon-style design and artwork appealing to minors;
  - packaging the product as an advent calendar, which is a style of packaging often associated with children's confectionary ie a Christmas chocolate advent calendar; and
  - depicting irresponsible drinking behaviours such as consuming alcohol from a bucket and consumption whilst undertaking swimming activities.

### **The Company and the ABAC Scheme**

20. The Company is not a signatory to the ABAC Scheme and has not given a prior commitment to abide with ABAC standards of responsible alcohol marketing. This of itself is not unusual in regard to smaller alcohol market participants. What is however very unusual is the Company's refusal to respond to the expression of public concern and cooperate with the public complaints process.

21. Alcohol marketing falls within a shared regulatory domain, with some obligations imposed directly by government and others like the ABAC Scheme derived from industry-led initiatives. Overwhelmingly alcohol companies accept that there is a social and corporate responsibility that comes with working with alcohol given the great individual and community harm that attaches to the misuse of the product. This responsibility includes marketing alcohol in accordance with high standards.
22. In the unusual instance that an alcohol company refuses to engage in the public complaints process and comply with a Panel decision, the matter is referred to the relevant State Liquor Authority. In the case of the Company the relevant body is Liquor Control Victoria.
23. The ABAC standards largely mirror the obligations imposed on Victorian liquor license holders in relation to alcohol promotion. For instance, the ABAC standard requiring that marketing not be strongly appealing to minors has its equivalent in the Victorian Responsible Liquor Advertising and Promotion Guidelines. Principle 7 of the Guidelines provides that 'the advertising and or promotion of liquor must not encourage under-age drinking or otherwise be likely to appeal to minors'.
24. The relationship between the ABAC Scheme and Victorian regulator is documented in an MOU between the bodies. The MOU expressly deals with the referral of cases from ABAC to the regulator in instances of non-compliance by an alcohol company with a Panel determination. It is hoped that in the future the Company might reconsider its decision not to engage in a complaints process.

#### **Consistency with the ABAC standards - General considerations**

25. The concerns raised by the complainant invite consideration of several Code standards namely that an alcohol marketing communication (which includes product packaging) must not:
  - have strong or evident appeal to minors- Part 3 (b)(i);
  - show or encourage the excessive consumption of alcohol - Part 3 (a)(i);  
and
  - show the consumption of alcohol before or during an activity that for safety reasons requires a high degree of alertness or physical coordination - Part 3 (d).
26. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly

held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.

27. The underlying concern expressed in the complaint is the adoption by the Company of an advent calendar inspired style of packaging. Advent calendars are of German origin with the first known wooden calendar dating from 1851. The concept of the doors or windows on the calendars seem to date from the 1920s and the popular version with chocolate behind the doors/windows apparently appearing in the late 1950s.
28. Like many Christmas related items, the Christian and religious origins of the calendars has decreased in prominence and been overtaken by Santa Claus and/or a more secular 'holiday season' imagery. Equally the calendar has morphed into many product areas well beyond the chocolate type referenced by the complainant. Advent inspired packaging is used in products extending from cosmetics to alcohol. The Company is one of a number of alcohol producers/retailers with advent type promotional packaging on the market.
29. The ABAC standards don't purport to either authorise or prohibit any particular class of marketing material or technique. Rather the Code encompasses a wide variety of marketing communications, all of which are required to adopt and model a responsible approach to alcohol use. In other words, it is entirely open to the Company to use an advent calendar themed beer carton, provided the individual packaging design used is consistent with the ABAC standards.

### **Strong Appeal to Minors**

30. The complainant's primary concern is that the packaging raises strong appeal to minors through the use of brightly coloured cartoon like illustrations and the association of advent calendars with children's confectionery. Alcohol marketing might have strong appeal to minors if it:
  - 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.
31. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
  - the use of bright, playful, and contrasting colours;

- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors;
- language and methods of expression used more by minors than adults;
- inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
- use of a music genre and artists featuring in youth culture.

32. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.

33. There are some elements of the packaging that would be relatable and familiar to minors, particularly the Santa Claus imagery and Christmas stocking. In other respects the packaging would not be highly relatable with a beer carton not being a type and style of package used for products commonly encountered by minors. Given it is a beer carton, it is not likely to be confused with a common style chocolate advent calendar even with the numbered windows.

34. On balance, the Panel does not believe that the packaging breaches the Part 3 (b) standard. In reaching this conclusion the Panel noted:

- the Christmas imagery has broad appeal, including but not exclusively for children and adolescents;
- while chocolate advent calendars would have familiarity with minors, advent calendar inspired packaging is used for many different products, aimed towards a variety of ages;

- a beer carton is of size and type of packaging that irrespective of the imagery, is not likely to resonate strongly with minors;
- much (not all) of the imagery depicts 'Australiana' activities recognised by older adults as opposed to minors eg a game of two-up and arm wrestling;
- the animal characters are depicted and dressed as adults as opposed to more childlike anthropomorphised characters employed in children's books; and
- taken as a whole, a reasonable person would assess the packaging's overall impact as having incidental as opposed to strong or evident appeal to minors.

### **Responsible depiction of alcohol use**

35. Beyond the principal concern, the complainant raised concerns that imagery on the carton showed excessive alcohol consumption and alcohol use with a dangerous activity. Firstly it is argued a person is shown drinking excessively from a bucket. This raises Part 3 (a)(i) of the Code, which prohibits the encouragement of excessive or rapid alcohol consumption.
36. The Panel does not believe the standard has been breached. The image pointed to by the complainant does not appear to show alcohol consumption. The scene seems more likely to be a Ned Kelly reference, as what the complainant took to be a bucket, appears to be a helmet with an eye slit. The presence of the musket and the general 'Australiana' tropes used on the packaging as a whole reinforce that conclusion.
37. The second image pointed to by the complainant was 'consumption whilst swimming'. The packaging does show a Santa Claus character with a beer while on an inflatable lounge in the stream. Part 3 (d) of the Code provides that alcohol consumption should not be depicted before or during an activity that for safety reasons requires a high degree of alertness or physical coordination.
38. Any activity that involves swimming or involves a person in a swimming pool or the ocean or a river/stream should not be undertaken with alcohol. Accordingly, it would be far preferable that the packaging did not contain the image of a character consuming alcohol while on the lounge. That said, it is not likely that a reasonable person would take the image in the context of the busy and elaborate individual scenes shown on the packaging as a serious endorsement of consuming alcohol and undertaking an inherently dangerous activity.
39. Based on taking the packaging as a whole, the Panel does not believe the Santa Claus image causes the entire packaging to be in breach of the ABAC standard.

40. While the Panel is dismissing the complaint, the Company is strongly recommended to engage in the ABAC Scheme and take advantage of the pre-vetting service in developing major branding and marketing materials. The Company's refusal to properly co-operate with the complaints process speaks poorly of its commitment to corporate responsibility.
41. The complaint is dismissed.