



ABAC Adjudication Panel Determination No 73/23

Product: Alcohol
Company: Cheeky Monkey Brewing Co Pty Ltd
Media: Instagram and Facebook
Date of decision: 7 June 2023
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”) arises from a complaint received on 28 April 2023 and concerns social media marketing by Cheeky Monkey (“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:
 - (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 28 April 2023.
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

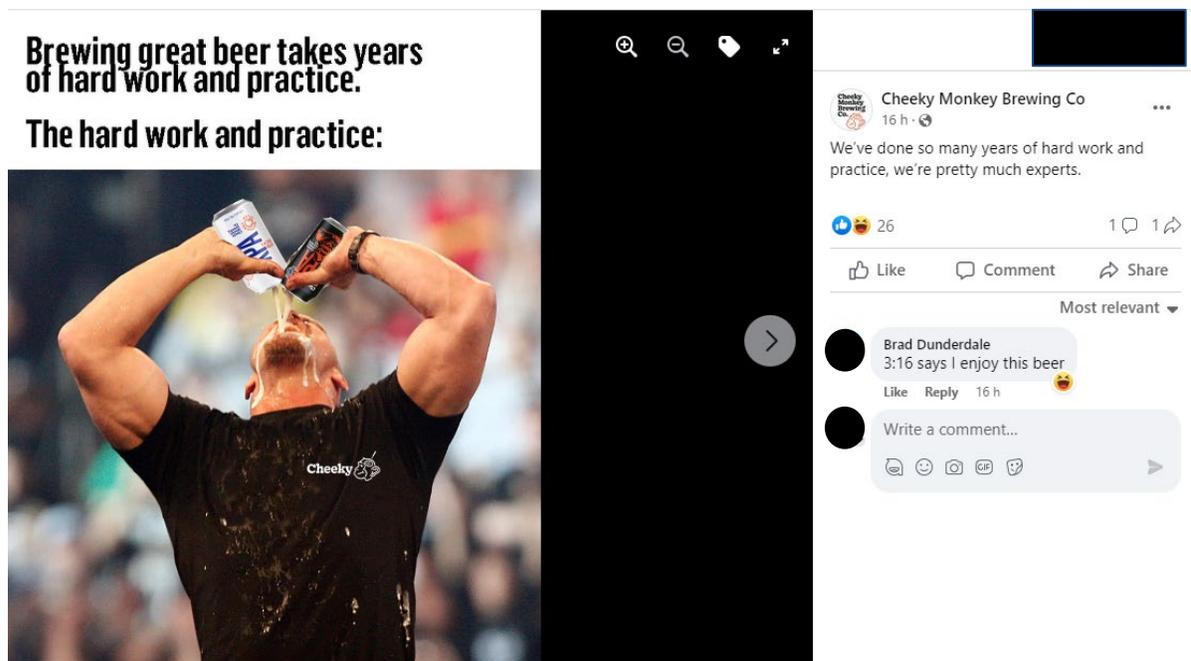
materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

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.

The Marketing Communication

10. The complaint relates to the following post made to Instagram and Facebook:



The Complaint

11. The complainant objects to the marketing as follows:
 - *The post is promoting the excessive consumption of alcoholic beverages on social media.*
 - *It may also appeal to younger market e.g teenagers and encourage them to also drink in excess, particularly as a meme.*

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.

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 Minor 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 confectionary 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 16 May 2023, advising that it would remove the post from Instagram and Facebook.

The Panel's View

Introduction

15. Cheeky Monkey is a West Australian based craft brewery which has been operating since 2012. This determination arises from a complaint about a post made to its Instagram and Facebook pages.
16. The post shows a photo that is captioned "*Brewing great beer takes years of hard work and practice. The hard work and practice:*", and below the caption is a picture of a person pouring two cans of alcohol into their mouth. The comment made by the Company accompanying the post reads "*We've done so many years of hard work and practice, we're pretty much experts*".

17. The complainant is concerned that the post portrays the irresponsible consumption of alcohol, and would also appeal to a younger demographic, particularly teenagers.
18. The complainant's concerns raise the following Code requirements that an alcohol marketing communication must not:
 - 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 – Part 3 (a)(i); and
 - have Strong or Evident Appeal to Minors – Part 3 (b)(i).
19. The Panel will consider these Code requirements in turn. The assessment of whether a marketing communication is consistent with a Code standard is from the probable understanding of the marketing by a reasonable person taking the content of the marketing as a whole. This means the benchmark is the values, opinions and life experiences shared by most members of the community. If a marketing communication can be interpreted in several ways, the most probable understanding is to be preferred over a possible but less likely interpretation.

Responsible and moderate portrayal of Alcohol Beverages

20. The Panel finds that the post breaches Part 3 (a)(i) of the Code. Drinking two cans of alcohol at the same time is excessive alcohol consumption, and the pouring of alcohol from a height into a person's mouth portrays that the consumption is rapid. The post does not depict a moderate or responsible approach to alcohol use.

Responsibility toward Minors

21. Beyond the issue of the post showing the irresponsible and immoderate consumption of alcohol, the complainant is also concerned that it will appeal to minors, particularly as it is formatted as a meme.
22. The relevant content standard is contained in Part 3 (b)(i) of the Code and provides that an alcohol ad must not have strong or evident appeal to minors. This might be breached if the ad:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors.

23. While it is possible the image could be applied as a meme, there is no particular basis to believe the image would resonate strongly with minors for that purpose. At its highest the image would have no more appeal to minors than it would to adults.

Conclusion

24. The complaint is upheld in relation to Part 3 (a)(i) and dismissed in relation to Part 3 (b)(i).
25. The Panel notes that the post has been removed from Instagram and Facebook.