



ABAC Adjudication Panel Determination No 111/23

Product: Arvo Ale
Company: Better Beer
Media: Digital – Instagram and Tik Tok
Date of decision: 7 August 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 4 July 2023 in relation to social media marketing for Arvo Ale (“the Product”) by Better 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:
 - (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 4 July 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 content of the marketing

The Marketing

10. The complaint relates to a post to Instagram and Tik Tok. Links and a summary of the post are provided below.

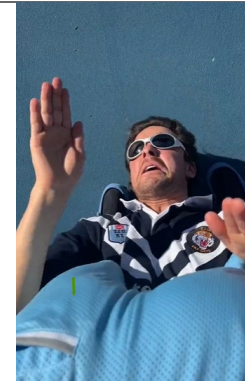
<https://www.instagram.com/p/CsGMeuKv0qh/>

<https://www.tiktok.com/@theinspiredunemployed/video/7231847856297053442>

The Instagram post is accompanied by the following:



The video commences with footage of people playing one on one basketball, and Jack Steele and Matt Ford drumming on each other's bottoms, in celebration of a successful shot.



The brewer, Hagrid, wearing a brown coat and wig, is shown descending a slope towards the basketball court, carrying a case of Better Beer Arvo Ale. He magically waves open the gate to the court.



Hagrid: *“You boys look parched”.*

Jack Steele: *“Yeah. We are actually”.*

Hagrid: *“Here. I brewed myself a new beer. Warning you though. She’s a wee bit crafty”.*



“Gimme More ” by Britney Spears starts playing, and we see the basketball players consuming cans of beer, lip syncing with the song, dancing and commando crawling across the court, holding cans of beer.



Jack Steele pours product over himself, and we see Hagrid pouring product from a height into another person’s mouth.





Complaint

11. The complainant objects to the marketing as follows:

- *We believe these advertisements are in breach of Standard 3(a) of the ABAC Responsible Marketing Code whereby a marketing communication and product 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 (ABAC Standard 3(a) Responsible and Moderate Portrayal of Alcohol Beverages)*
- *We submit that:*
 - *The advertising in Video 1 treats consuming alcohol to excess as amusing. The video encourages people to consume the product in an inappropriate and excessive manner. This is evidenced by:*
 - *The compilation of multiple influencers skolling beer*
 - *The continuous 'long pouring' of beer from a high distance into an influencer's mouth as he sings "give me more".*
 - *The selection of the song by popular artist Britney Spears "Gimme More". The lyrics are lip synced for the influencers as they are skolling beer and having it poured in their mouths/over their faces. The implication is that as they are rapidly drinking they are seeking to drink more; hence the repetition of "give me give me more!"*

- *ABAC recently noted in their “Report on ABAC Code Review” that humour is commonly used in alcohol advertising. We are not opposed to the use of humour in advertising, but treating excessive alcohol consumption as humorous and silly is irresponsible and harmful.*
- *We recognise that this video was not posted on the Better Beer Instagram or Tik Tok and was posted by the Inspired Unemployed. We note however that the social media stars of Inspired Unemployed are co-owners of the Better Beer company and posting on their main Instagram account will have a wider reach as their Instagram has more followers than the Better Beer page. This is a form of sponsored content using new media.*

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 email on 28 July 2023. Its primary comments were:
- This video was created to show that we have created a beer that’s ‘a wee bit crafty’. To deliver that message we chose to use the Britney Spears song ‘Give Me More’ as a reiteration of the flavour profile of this new beer.
 - We see no skolling off beers in this video and the long pour into ‘Liams’ Mouth at the end of the video is not akin to a ‘shoey’ or typical long pour drinking.
 - The overarching message in this video is that the guys wanted more of a new flavour packed beer.

The Panel's View

14. This determination has arisen from a complaint about social media marketing for Better Beer Arvo Ale. The marketing was carried over the Instagram and Tik Tok accounts of the comedy performers 'The Inspired Unemployed' and not the Company, but it is not contended that the Company did not have knowledge of or reasonable control over the marketing so as to enliven the jurisdiction of the ABAC Scheme.
15. The marketing is a video, centred around a group of friends playing basketball. Joining the group is a Hagrid character of Harry Potter fame, who says, 'you boys look parched' and introduces the group to Arvo Ale. The product is extravagantly received by the group while lip syncing and dancing to "Gimme More" by Britney Spears.
16. The complainant is concerned that the video encourages people to consume the product in an inappropriate and excessive manner, as evidenced by:
 - the compilation of multiple influencers skolling beer;
 - the continuous 'long pouring' of beer from a high distance into an influencer's mouth as he sings 'give me more'; and
 - the selection of the song by popular artist Britney Spears 'Gimme More'. The lyrics are lip synced by the influencers as they are skolling beer and having it poured in their mouths/over their faces. The implication is that as they are rapidly drinking and they are seeking to drink more; hence the repetition of "give me give me more!"
17. In response to the complaint, the Company argued that:
 - the video does not depict skolling and the long pour into a person's mouth is not akin to a 'shoey' or typical long pour drinking;
 - Britney Spears song 'Gimme More' is a reference to the flavour profile of this new beer; and
 - the overarching message in this video is that the guys wanted more of a new flavour packed beer.
18. These complainant's concerns raise Part 3 (a)(i) of the Code which requires 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.
19. In assessing if a Code standard has been breached, the Panel adopts the standpoint of the probable understanding of the marketing item by a

reasonable person. This means the attitudes, values and life experiences shared by most members of the community is the benchmark. 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.

20. Clearly the video is not to be taken seriously and a reasonable person would interpret the marketing in this context. It is highly unlikely a viewer would think the video is modelling how alcohol would be consumed. Nor does the video show excessive consumption in the sense that no one person appears to consume more than a single can of the product.
21. That said, the video does show exaggerated consumption, long and deep drinking and a long pour of the product from height. The 'Gimme More' soundtrack is more likely understood to be about the amount of consumption than the taste of the product given the depicted behaviours.
22. On balance, the Panel believes that a reasonable person would interpret the marketing as encouraging rapid and excessive consumption and is in breach of the Part 3 (a)(i) standard.
23. The complaint is upheld.