



ABAC Adjudication Panel Determination No 173/23

Products: Tradie Beer
Company: Tradie Brands
Media: Instagram
Date of decision: 12 December 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 6 November 2023 in relation to an Instagram post made on 2 November 2023 by Tradie Brands (“the Company”) for the promotion of Tradie Beer (“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 6 November 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.

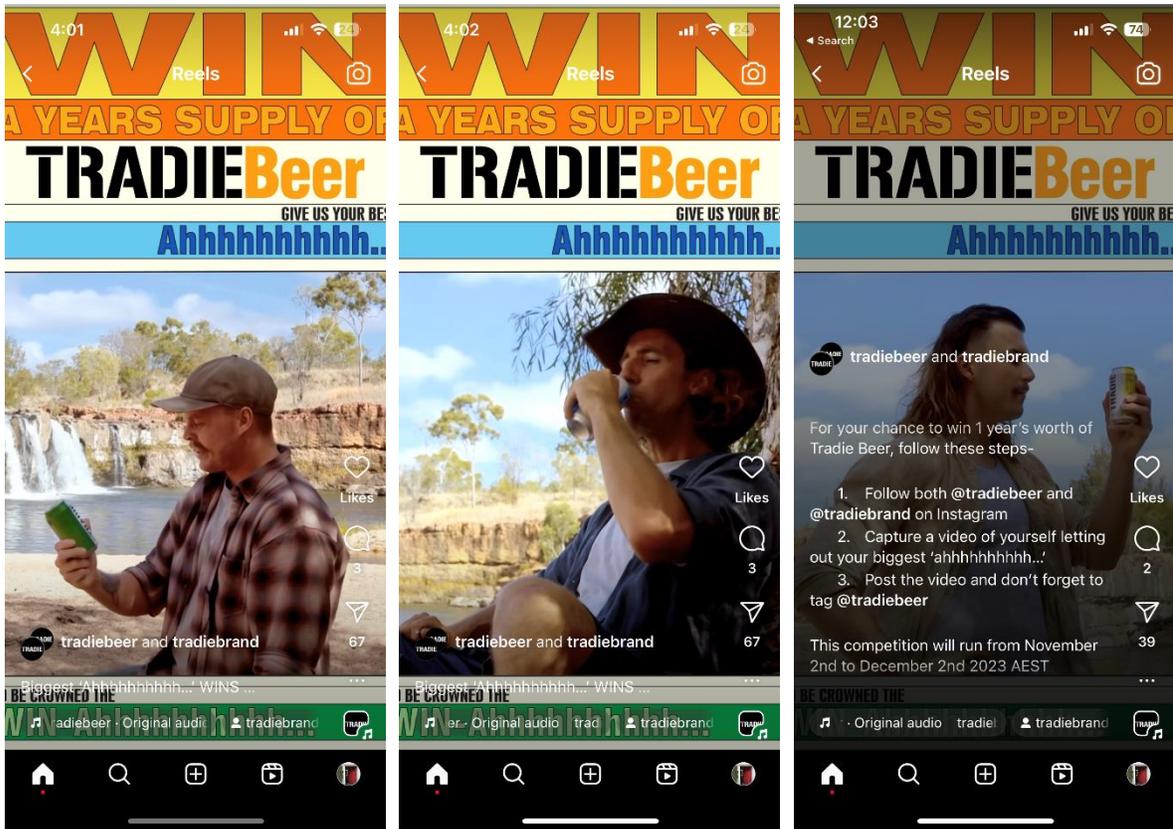
Pre-vetting Clearance

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

10. The complaint relates to the Instagram promotion of a competition by the Company. It is a video showing three people, each individually, taking a drink of the product, after which they express “Ahhhhhh”:

<https://www.instagram.com/p/CzIYuU-Rmd/>



Complaint

11. The complainant objects to the marketing as follows:
 - *The ad shows 3 men drinking beer and letting out an 'ahhh' representing the relaxation benefits.*
 - *The participants in this video have a clear mood change as soon as the alcohol is consumed. Alcohol Marketers must not suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment.*

The ABAC Code

12. Part 3 (c) of the Code provides that a Marketing Communication must NOT:
 - (i) suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment;

...
 - (ii) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

The Company Response

14. The Company responded to the complaint by email on 13 November 2023. Its primary comments were:
 - I've reviewed this individual's feedback and strongly disagree with their complaint. The "ahhhhhhhh" referred to in our Tradie beer advert implies thirst quenching refreshment and incredible tastes. That's exactly what an ice cold Tradie beer evokes due to its amazing taste combined with a Maloo Ute full of refreshment.
 - Ahhhhhhhh is known all over the globe as the sound of thirst quenching refreshment, we just happen to evoke an ahhhhhhhhh bigger than the big pineapple, maybe even bigger than the big prawn.
 - Crack a Tradie and you'll ahhhhhhhhh'ing in no time at all!
 - All feedback we've received regarding our advert has been extremely positive and we've received no feedback similar to this complaint from anyone else.

The Panel's View

15. Ben Goodfellow commenced the 'Tradie' brand in 2010 in men's underwear and over the subsequent period the highly successful brand has extended into workwear, boots, babywear, tools and personal care. The brand adopts an Aussie working class positioning which is self described as having 'personality, humour and function'.
16. In October 2023 the Company moved into alcohol products via a range of beers developed with Melbourne's Brick Lane Brewing. The Tradie beer brand is being promoted in part around three sporting personalities - Essendon AFL player Sam Draper and professional surfers Jackson Baker and Matt Wilkinson. The complaint relates to a video featuring the three personalities.
17. The video is posted to Tradie Beer's Instagram page and is promoting its 'Tradie Beer - Biggest 'Ahhhhhhhhh...' 2023 Competition. The competition is open to adults, with one of the requirements of participants being to post a video of their best 'Ahhhhhhhhh...' moment after sipping a Tradie Beer.
18. The Instagram post promoting the competition shows Messrs Draper, Baker and Wilkinson in the outback at a scenic location. Each man drinks a Tradie Beer and then expresses a long and pronounced 'Ahhhhhhh'. The text accompanying the video provides further information about the competition, including the prize, entry requirements, timeframes and where to locate the terms and conditions.
19. The complainant contends that:
 - the participants in this video have a clear mood change as soon as the alcohol is consumed; and
 - the ad shows three men drinking beer and letting out an "ahhh" representing the relaxation benefits.
20. The complainant's concerns raise Part 3 (c)(i) and (iv) of the Code which provide that an alcohol marketing communication must not:
 - suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment – Part 3 (c)(i); and
 - suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity – Part 3 (c)(iv).
21. In response to the complaint, the Company advised that:
 - The "ahhhhhhhh" referred to in our Tradie beer advert implies thirst quenching refreshment and incredible tastes. That's exactly what an ice

cold Tradie beer evokes due to its amazing taste combined with a Maloo Ute full of refreshment.

22. The Panel's role is to assess the consistency of alcohol marketing communications with ABAC standards from the standpoint of the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and attitudes found by most people in the community is the benchmark.
23. The Panel believes that the marketing is consistent with the ABAC standards, noting that:
 - the scenes depicting alcohol consumption each commence with the three men already drinking from a can of the product;
 - the video does not show or imply their mood or circumstances prior to taking a drink. That said the apparent scenario of the men being on a camping trip would reasonably imply a relaxed environment;
 - expressing 'ahhhhhh' after taking a drink is commonly used to portray enjoying the taste of a beverage. The ABAC standards do permit people to be depicted enjoying an alcohol beverage; and
 - taken as a whole the video would most likely be understood as a somewhat exaggerated reaction to tasting the product rather than suggesting relaxation or a change in mood.
24. The complaint is dismissed.