



ABAC Adjudication Panel Determination No 58/24

Product: Bucketty's Brewing Co
Company: Bucketty's Brewing Co
Media: Digital - Instagram
Date of decision: 20 April 2024
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 9 April 2024 in relation to a video posted to Bucketty's Brewing Co's ("the Company's") Instagram account.
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 April 2024.
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 Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the marketing.

The Marketing

10. The complaint relates to a video posted to the Company's Instagram page.

The video shows the Company's owner Nick McDonald sitting in a chair speaking to camera. The words spoken are mostly superimposed on the video. The video starts with a scroll down of the number of members.

Words spoken by Nick:

So, we lost a whole bunch of followers on the first of January on Instagram and I wonder if it's because many of you guys out there are like, you know what, I'm not drinking alcohol anymore.

I'm going to judge you for it.

Because Bucketty's is super fresh and it makes you feel good.

We have music. And it's a whole bunch of fun. And it supports a local business.

So don't unfollow us.

But you know what's crazy? You're not watching this. Because you don't follow us.

Oh the irony. (Superimposed on video, but not spoken).

I'm going to say to you that being part of Bucketty's and the feel and warmth and soul. It's good for your health. We're a community based organisation.

Loud crashing sound off screen.

Fuck. Nice one mate. (Spoken by someone off screen)

Brings people together. And that's important for your mental health.

My mental health. And our stability. Our ability to survive God dammit.





buckettys • Follow

Original audio



buckettys 7w

Here's a shout out to all yall we lost on IG over NY... #RIP

You're welcome to swing back around sometime. We're here for you, and our beer is good for the soul 🍻

#buckettysbrewery #brookvale
#craftbeer #sydneybrewery
#beerstagram #northernbeaches
#brewery



maxytaylor85 7w

Dude don't even sweat it - as long as people actually walk through the door it's all jiggy! That's the important part.

2 likes Reply



Liked by tr.ina5941 and others

February 14



Add a comment...



Complaint

11. The complainant objects to the marketing as follows:
- The words “I’m going to judge you for it” in response to someone not drinking or unfollowing an alcohol page provide a negative response and challenge someone to continue drinking after making a choice to stop or cut back. This breaches Part 3 (a)(iii) of the Code.
 - The claims that Bucketty’s Brewery or consuming Bucketty’s products “makes you feel good” and brings a “feeling of warmth and soul”, imply that attending their brewery or consuming their products brings about a positive change in mood and environment. This breaches Part 3 (c)(i) of the Code.
 - The claims that attending Bucketty’s Brewery or consuming Bucketty’s products are “good for your health” and “good for your mental health” suggest that a health benefit is offered by alcohol. This breaches Part 3 (c)(iv) of the Code.

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
- (a)(iii) challenge or dare people to consume Alcohol or portray the refusal of Alcohol or choice of abstinence in a negative light;
 - (c)(i) suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment;
 - (c)(iv) 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

13. The Company responded to the complaint by email on 11 April 2024. Its primary comments were:
- Thanks for the notification. I've removed the post, however I would like to address a couple of comments.
 - In the video the caption quotes me incorrectly. I actually say "I'm not going to judge you for it".
 - I also don't promote the drinking of alcohol in the post, however I do encourage a connection to our community and the benefits of being part of the Bucketty's Community, which is more than just drinkers.

- We have heaps of low and no alcohol options in the venue that are increasingly popular.

The Panel's View

14. Bucketty's Brewing Co is an independent brewery located in Brookvale, to the north of Manly in NSW. The Company commenced in 2017 and currently operates a brewery, bar and is a venue for live music. Social media platforms are an important method by which the Company promotes its products and activities, and this determination arises from a post on the Company's Instagram account.
15. The post is a video from Nick McDonald the founder of the Company where he expresses concern about a significant drop in Instagram followers that occurred in early 2024. He speculates on why this may have occurred and then expands on the benefits of being an Instagram follower of Bucketty's and the adverse impact the loss of followers might have on the business.
16. The complainant is concerned about the video's messaging. It is contended that the video conveys several sentiments about alcohol use which are inconsistent with ABAC standards for good alcohol marketing practice. Specifically, it is argued that following expressions breached ABAC standards:
 - 'I'm not going to judge you' to a person choosing to abstain from alcohol use - portrays the refusal of Alcohol or choice of abstinence in a negative light – Part 3 (a)(iii);
 - consuming Bucketty's products 'makes you feel good' - suggests that the consumption of alcohol may cause or contribute to an improvement in mood or environment – Part 3 (c)(i); and
 - attending Bucketty's brewery or consuming its products are 'good for your health' and 'good for your mental health' - suggests that the consumption of alcohol offers a therapeutic or health (including mental health) benefit – Part 3 (c)(iv)
17. Upon receiving the complaint, the Company removed the video without conceding the post breached the ABAC standards. It was contended that the post does not promote the consumption of alcohol as such but rather encourages a connection to the Bucketty's community and the benefits of this community. It is noted the Company's venue offers low and non-alcoholic products.
18. In assessing if a marketing communication is consistent with a Code standard, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. A reasonable person is someone who holds the

opinions, values and life experiences that would be found by most people in the community.

19. It is also important to note that a marketing communication is to be assessed as a whole. What this means is that a reasonable person will not watch an Instagram video and undertake a frame by frame examination of every image or necessarily weigh up with judicial precision each word spoken to determine its meaning. Rather it can be assumed a reasonable person will view the video with passing interest, and absorb the essential messaging conveyed by the marketing item.
20. The video is a call from the owner of the business to stay engaged with the 'Bucketty's community'. He is regretful and a little worried to have lost a noticeable number of followers on the Instagram account and wonders whether this is a New Year's resolution from people to give up drinking. He notes this is fine, but makes an argument that Bucketty's - both the products and the venue - is a community which is worthwhile and beneficial.
21. From this the Panel believes a reasonable person would probably understand the owner saying:
 - by all means give up drinking alcohol; but
 - Bucketty's is a good product, as is staying engaged with the Bucketty's community i.e. staying in touch with what we are doing is a positive thing for your wellbeing.
22. The Panel believes the video messaging and the accompanying text with the post does stray into suggesting that the alcohol products are good for you and would likely be taken as suggesting the consumption of alcohol contributes to an improvement in mood or environment as well as the beer being good for mental health and/or for the soul.
23. The Panel does not believe the video is portraying abstinence from alcohol in a negative light. Further, the Panel believes the messaging does claim that the Bucketty's venue of food, drink and music is a worthwhile community to be part of, but this message related to the venue as opposed to alcohol use as such is not inconsistent with Code standards.
24. The complaint is upheld in regard to Part 3 (c)(i) and Part 3 (c)(iv) but dismissed in relation to Part 3 (a)(iii).