



ABAC Adjudication Panel Determination No 56/24

Product: Tradie Beer
Company: Tradie Beer
Media: Digital - Instagram
Date of decision: 3 May 2024
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 April 2024 in relation to a video posted to Tradie Beer’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.

www.instagram.com/reel/C5XMmPPPy7s/?igsh=MXdvMDN0Zm56ejlxYQ==

coachcoleofficial and tradiebeer
Original audio

• Follow ...

coachcoleofficial 3w
CALLING ALL TRADIES!

As a four time premiership coach, I'm a big believer that "the harder you work, the more you're rewarded." So I've teamed up with @tradiebeer to reward your hard work on the tools, by delivering you refreshing cold beers direct to site!!

"Friday Knock Offs" start next Friday April 12th (Melbourne Only) and all you need to do is like this post, tag your business and let me know where you're working! I'll select a few sites and come out so you can your weekend off with a nice big Ahhhhhhhhhh.....

Words to song	Image
<p>The video commences with images of a man visiting building sites in a Tradie Beer branded ute, and handing out drinks to workers at the sites. The images are accompanied by a song to the tune 'Santa Claus is coming to town', with the words superimposed.</p> <p><i>"You better work hard and get the job done.</i></p> <p><i>Cause if you work hard the froffies will come.</i></p> <p><i>Tradie Beers are coming to site."</i></p>	
<p><i>"I'll come to you on Fridays in my beer delivery car.</i></p> <p><i>I'll kick your weekends off with a grin and a nice big Tradie Ahhhhhhhhhh....."</i></p>	

The song finishes, and the video shows a man sitting on the tailgate of a ute holding a beer and saying:

“Have you had a hard week on the tools?

Then you need a refreshing cold Tradie Beer.

Just like the video and comment below let us know where you’re gonna be next Friday the 12th of April and I’ll come out with the ute and deliver you some nice cold, refreshing Tradie Beer.

Ahhhhhhhhhh...”

Man takes a drink.



Complaint

11. The complainant objects to the marketing as follows:

- *Tradie Beer are driving around to worksites giving workers free beers. This is irresponsible and potentially illegal.*

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:

- (a)(i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;
- (d) show (visibly, audibly or by direct implication) the consumption of Alcohol 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.

The Company Response

13. The Company responded to the complaint by email on 19 April 2024. Its primary comments were:
 - Coach Cole is an influencer we have a relationship with but are not across all of his content. He has done this without direction from us.
 - The video is encouraging 'knock off drinks' which implies:
 - work has been completed for the day before any drinking is done
 - the drinks will be consumed at the end of the working day so no tools or machinery will be handled during or post consuming the beer.

The Panel's View

14. This determination arises from a video created by a social media influencer called 'Coach Cole' who adopts the persona of a football coach. The video introduces a promotion for Tradie beer where Melbourne tradespeople are invited to like and comment on the post in order to be in the running for the coach to visit their worksite on a Friday to be gifted a Tradie beer.
15. The video shows the coach visiting a couple of building sites to hand out beers which are consumed by the tradespeople. Overlaid on the video are the words to a song from the coach explaining the concept of the promotion. The video was posted to the Instagram accounts of both Tradie beer and Coach Cole.
16. The complainant objects to the video. It is contended giving free beer to workers on worksites is 'irresponsible and potentially illegal'. In response the Company advises that:
 - Coach Cole is an influencer we have a relationship with but are not across all of his content. He has done this without direction from us.
 - The video is encouraging 'knock off drinks' which implies:
 - work has been completed for the day before any drinking is done; and
 - as the drinks will be consumed at the end of the working day no tools or machinery will be handled while or after consuming the beer.
17. While the Company may not have created the video, there is no doubt the video is a marketing communication to which the ABAC standards apply. This

is because the video was posted to the Company's own Instagram account for which it is responsible and clearly the Company is linked to the influencer such that the video was generated because of the relationship between the two.

18. The concern of the complaint brings into play two ABAC standards, namely that alcohol marketing communications must not:
 - show or encourage irresponsible behaviour or offensive behaviour that is related to alcohol use- Part 3 (a)(ii); and
 - show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical coordination - Part 3 (d).
19. 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.
20. There is no doubt that the consumption of alcohol before or during the performance of construction work is potentially dangerous. It goes without saying that alcohol use impairs co-ordination and affects judgement and that to safely use tools and navigate the hazards inherent on a building site requires both coordination and judgement. Under Victorian industrial safety laws it might be unlawful to consume alcohol while working on building sites, although it is not required that the Panel review these laws to determine the complaint.
21. The issue to be assessed is whether the video would be probably understood as showing or encouraging alcohol use during work or whether the video sufficiently establishes that any consumption would occur after the completion of the workday.
22. While it is not entirely without ambiguity, the Panel believes the most probable understanding of the video is that the promotion is for the gifting of beers to be consumed at the completion of the working week and after work has finished. In reaching this conclusion the Panel noted:
 - the promotion is set as occurring on a Friday, raising the implication of the end of the standard working week;
 - the promotion is described in the accompanying text to the video as 'Friday Knock off' which links the alcohol use occurring after a worker has 'knocked off' for the day;

- the words to the song include - 'I'll kick your weekend off with a grin and a nice big Tradie Ahhhh' which again suggests consumption starts when work has ended and the weekend began;
- the coach explains after the song that the promotion arises if a tradesperson has '*had* a hard work on the tools' which also implies the conclusion of work; and
- while somewhat less clear cut, the lighting in the video suggests that the coach is delivering the beer in the mid afternoon and not the morning when work would still be underway.

23. The complaint is dismissed.