



## ABAC Adjudication Panel Determination No 149/24

**Product:** Better Beer  
**Company:** Better Beer Co  
**Media:** Digital – Instagram  
**Date of decision:** 1 November 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 1 October 2024 in relation to social media marketing for Better Beer (“the product”) by Better Beer Co (“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 1 October 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target 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

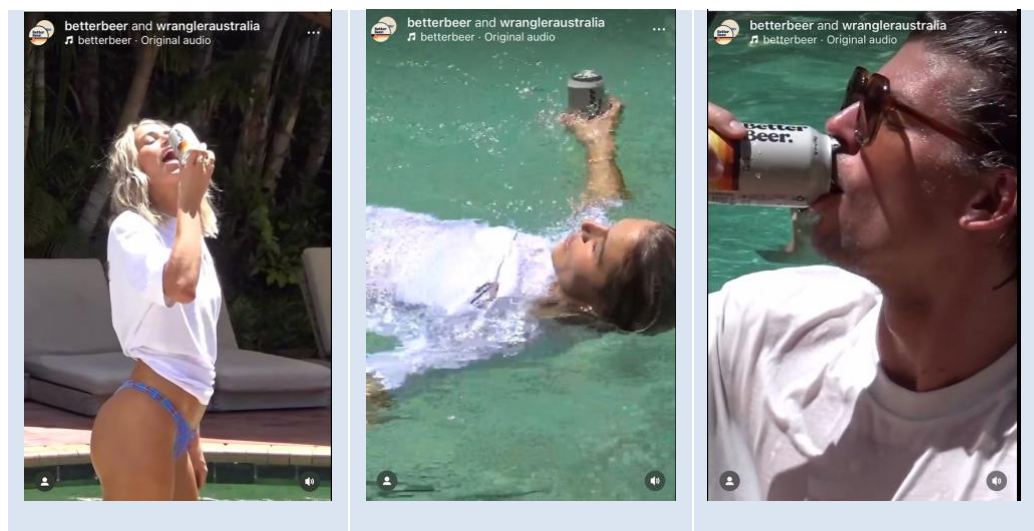
10. The complaint relates to an Instagram video post:

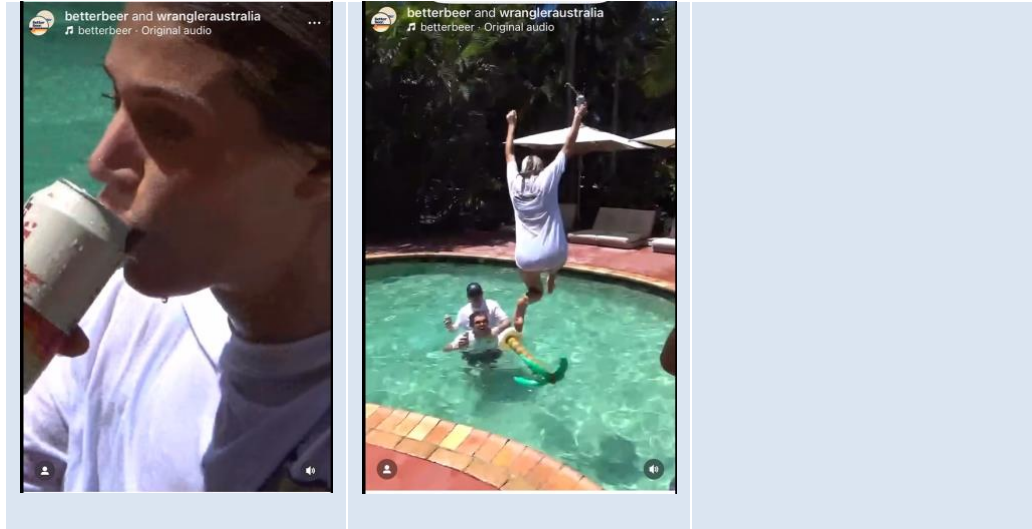
[Better Beer | Saddle up, because silly season is about to look even better! 🍷 Dropping soon... | Instagram](#)

The Instagram post is promoting a collaboration between Better Beer and Wrangler. It features people having a poolside get together, and is accompanied by Rock the Casbah by The Clash. The post is accompanied by the following words:



The following are screenshots taken from the video:





## Complaint

11. The complainant objects to the marketing as follows:

- *The advertisement is a video which shows multiple times of individuals drinking alcohol beer whilst swimming, jumping into the pool and drinking whilst being on the edge of the pool.*
- *The advertisement shows multiple instances (over 6 instances) of individuals: holding beer can whilst in a bathtub filled with water, sipping on a beer whilst next to a swimming pool, pouring beer into mouth whilst standing in a pool, floating in a swimming pool whilst holding a beer can, drinking from the beer can whilst in the pool, drinking from the beer can whilst in the pool and jumping into the pool whilst holding a beer can.*
- *This goes against Part 3 (d) as these instances show or imply consumption of alcohol whilst swimming. Swimming requires a high degree of alertness and physical coordination for safety reasons as stated in the ABAC Code Part 3 (d).*
- *These repeated video clips promote the message of alcohol consumption whilst near a body of water. This can negatively influence and promote the message of partaking in water activities whilst consuming alcohol. Even small amounts of alcohol can affect the behaviour and ability, increasing the risk of drowning. Alcohol can heighten the risk of drowning because it impairs judgment, increases risk-taking behaviour, reduces coordination, impairs reaction time and hypothermia.*
- *Young people are susceptible to seeing this advertisement and it promotes unsafe drinking practices as young people are able to access this advertisement. The Alcohol and Drug Foundation states that on social media alcohol consumption is normalised and often glamorised among*

*adolescents and young adults. There is strong evidence that this is linked to increased alcohol consumption and alcohol-related problems. This advertisement promotes the unsafe message to those who access social media including but not limited to adolescents and young people, that water and alcohol are activities that coincide together (Alcohol and Drug Foundation, 2024).*

## **The ABAC Code**

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
  - (b)(i) not have Strong or Evident Appeal to Minors, in particular;
    - (A) specifically target Minors;
    - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
    - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
    - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
    - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors
  - (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 23 October 2024, advising that it would await the Panel's decision on the matter.

## **The Panel's View**

12. This determination arises in relation to social media marketing for a collaboration between Better Beer and Wrangler. The video shows a number of people socialising in a pool area.

13. The complainant is concerned that the post encourages the consumption of alcohol before or while undertaking the risky activity of swimming, and that it also glamorises alcohol consumption to minors.
14. These concerns raise the following Code standards:
  - Part 3 (b)(i) which requires that an alcohol marketing communication must not have strong or evident appeal to minors; and
  - Part 3 (d) which requires that an alcohol marketing communication must not 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.
15. Compliance with these Code requirements will be considered by the Panel individually below. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians and assesses how this reasonable person would probably understand the marketing communication.

#### **Strong or evident appeal to minors**

14. The Part 3 (b)(i) standard provides that an alcohol marketing communication might have strong or evident appeal to minors if it:
  - specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
  - uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; and
  - creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors.
15. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material that may make it strongly appealing to minors include:
  - the use of bright, playful, and contrasting colours;

- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
  - the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
  - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
  - depiction of activities or products typically undertaken or used by minors;
  - language and methods of expression used more by minors than adults;
  - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
  - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
  - use of a music genre and artists featuring in youth culture.
16. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
16. The Panel does not believe the Part 3 (b)(i) standard has been breached. In reaching this conclusion the Panel noted:
- only adults are shown in the video;
  - while swimming pools have appeal across age groups including minors, the video does not have cues of minors using the pool such as pool toys;
  - the activities and interactions shown are adult in nature such as cooking a barbecue and playing cards; and
  - taken as a whole, the Instagram video would at its highest have incidental and not strong or evident appeal to minors.

## **Safety**

17. The policy intent of the Part 3 (d) standard is that alcohol marketing should not model alcohol consumption before or in conjunction with activities that are inherently dangerous such as swimming. This is because alcohol impacts on a

person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.

18. The Panel believes that the Part 3 (d) standard has been breached by the Instagram post. It depicts several images of people consuming alcohol while using the swimming pool and in scenes where use of the pool after alcohol use is a direct implication. A reasonable person would understand the marketing is showing alcohol consumption with the activity of swimming.
19. The complaint is upheld in relation Part 3 (d) of the Code.