



ABAC Adjudication Panel Determination No 206/24

Product: Better Beer
Companies: Better Beer Co
Media: Digital - Instagram
Date of decision: 20 January 2025
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 12 December 2024 about an Instagram post 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, marketing placement. 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 essential 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;
 - Specific broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - The Outdoor Media Association Code of Ethics and Policies restricts the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes address the placement or 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 and meet the standards contained in the ABAC.
 4. Ad Standards provides a common entry point for alcohol marketing complaints for ease of public access. Upon receiving a complaint, Ad Standards supplies a copy to the ABAC’s Chief Adjudicator.
 5. The Chief Adjudicator and Ad Standards independently assess the complaint and stream it into the complaint process that matches the nature of the issues raised in the complaint. Occasionally, 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 is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 12 December 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint. Still, this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide on the issue. The complaint was completed in this timeframe.

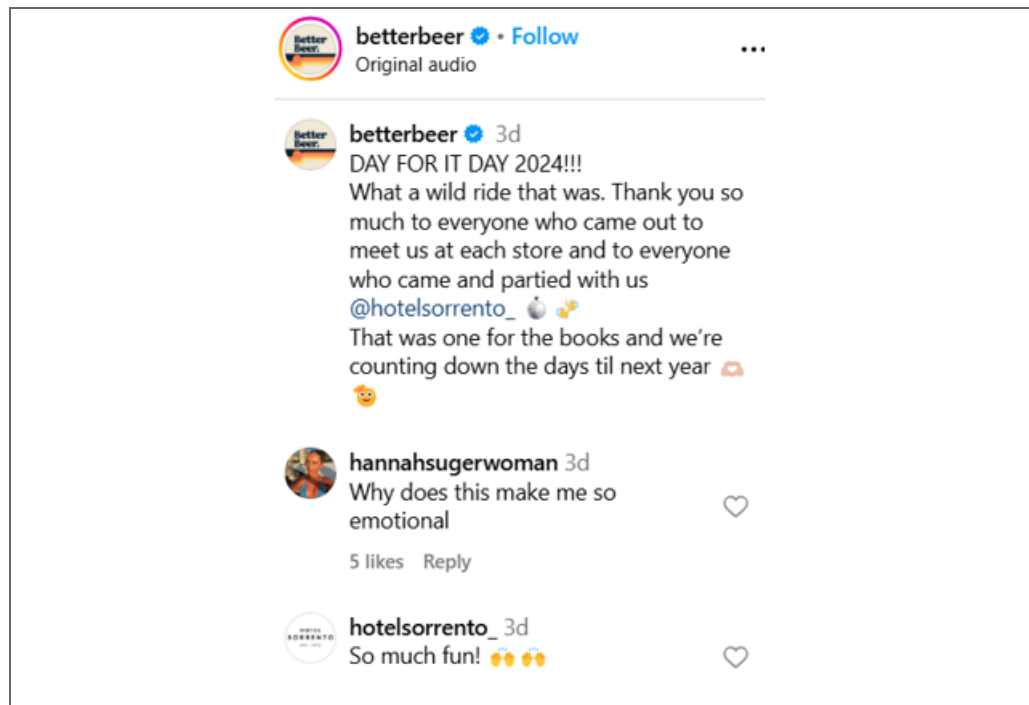
Pre-vetting Advice

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 before 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 Instagram post promoting Better Beer:

https://www.instagram.com/reel/DDWYnO9TSZp/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWFIZA%3D%3D



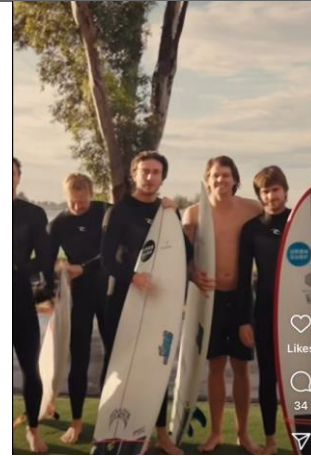
The video commences with footage of a group of surfers standing together.

Off-screen: “Now filming”

Jack Steele (JS): “24 Day for a Day starts right now”.

We then see footage of different people surfing.

Going Kokomo by Royel Otis is played in the background.



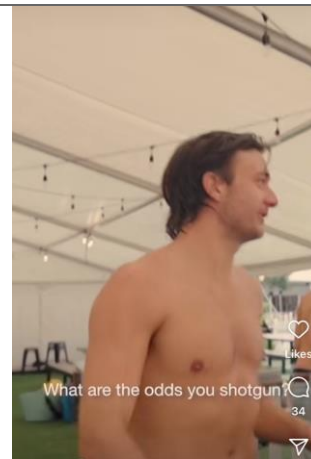
The scene changes to a marquee after surfing.

JS: *Hey Fizza. What are the odds you shotgun?*

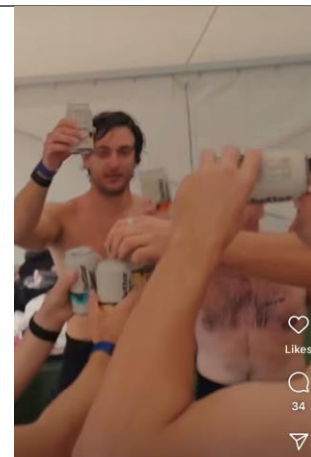
Group of people: 3,2,1 drink.

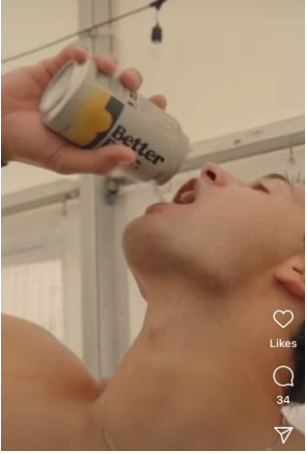
Cheering follows.

We are not shown any image of anyone doing a shotgun.



Footage shows that Better Beer is being consumed.



<p>We are shown an image of a person pouring Better Beer into their mouth.</p> <p>As the day progresses, several images follow of people, some of whom are drinking Better Beer.</p>	
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Complaint

11. The complainant objects to the marketing with its main points:
- *The advertisement shows a man saying, ‘What are the odds you shotgun?’ later to show a man sculling a drink.*
 - *The ad shows unsafe practices that can shape and normalise unhealthy alcohol behaviours*
 - *I believe the ad is in breach of Part 3 ABAC Code (a)(i) by encouraging the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.*
 - *The Company has had earlier complaints upheld against its marketing.*

The ABAC Code

12. Part 3 of the Code provides that an Alcohol Marketing Communication must NOT:
- (a)(ii) 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;

The Company Response

13. The Company responded to the complaint by email on 10 January 2025. Its primary comment was that Jack Steele dares someone to do a shotgun; no one takes up the dare. The group of people then 'cheers.' The next shot is of Liam drinking Better Beer—no shotgun.

The Panel's View

14. Better Beer entered the Australian market in 2022 as a venture between the comedy duo The Inspired Unemployed (Matt Ford and Jack Steele) and experienced industry participant Nick Cogger. The company's principal marketing method is social media, and this determination arises from a video reel posted to Instagram.
15. The video is a series of scenes filmed at the Company's 2024 'Day For It' promotional activities. The phrase 'Day For It' has been used in various skits of the Inspired Unemployed and has been adopted since 2022 as the name for an annual event featuring discounted prices on Company products and merchandise and a celebration with brand supporters.
16. In 2024, the Day For It event was held on December 7 at the Sorrento Hotel in Victoria and, according to the Company's website, involved:
 - cheap beer, cheap merchandise and great prizes;
 - discounted prices for the purchase of Better Beer at several retailers and online; and
 - DJs, music and dancing at the Sorrento Hotel party.
17. The complainant submits that the Instagram video depicts the rapid and irresponsible consumption of alcohol. This concern enlivens Part 3 (a)(ii) of the post, which provides that an alcohol marketing communication must not 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.
18. It is noted that the actual conduct of the event at the Sorrento Hotel is not within the regulatory remit of the ABAC Scheme. Liquor Control Victoria is the government regulator of licensed premises, and the Hotel is responsible for operating consistently with its obligations under Victorian law, including the responsible service of alcohol. It is not suggested that the hotel did not meet its requirements for hosting the event.
19. The scope of the Panel's assessment is the video as a marketing communication and whether a reasonable person viewing the video would

probably understand that rapid and/or excessive alcohol consumption is being shown or encouraged.

20. As the complainant pointed out, there is a scene where a 'shotgun' is mentioned. This is the drinking of a can of beer very rapidly by punching a hole in the can and then consuming the beer in a single motion. As the Company pointed out, the video does not show this practice.
21. The video depicts various scenes of the day, some but not all of which were filmed at the party at the hotel. Other shots include a beach and people surfing, people outside an alcohol retailer, people travelling in a car, champagne sprayed over a crowd, and a vision of a helicopter towing a large Better Beer banner. The fast-paced video, accompanied by loud music, gives an impression of people enjoying themselves in a good-spirited and boisterous fashion.
22. That said, the video does not focus extensively on shots of the actual consumption of alcohol. There is a single and very short shot of a man drinking quickly from a beer can. This shot and the reference to a shotgun needs to be understood within the context of the video as a whole. It would be advisable not to include this shot or mention a term such as shotgun, but on this occasion these inclusions are not considered as determining the take out of the entire video.
23. The ABAC standards don't preclude a marketing communication showing people having an enjoyable occasion while consuming alcohol. It is not permitted to suggest the success of a social occasion depends on the presence or use of alcohol, and alcohol use has to be shown to be consistent with the consumption levels in the Australian Guidelines to Reduce Health Risks from Drinking Alcohol.
24. This is a case where reasonable minds might differ on how a person would probably understand the video. On balance, the Panel believes the video as a whole shows an enjoyable series of activities; however, rapid or excessive alcohol use is neither actually shown nor necessarily implied.
25. The complaint is dismissed.