



## ABAC Adjudication Panel Determination No. 140/20

**Product:** Bloke in a Bar beer  
**Company:** Bloke in a Bar  
**Media:** Digital (Instagram)  
**Date of decision:** 28 September 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an Instagram post by Bloke in a Bar (“the Company”) promoting its beer and arises from a complaint received 21 September 2020.
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 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 meeting 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 21 September 2020.
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 independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for this marketing communication.

## The Marketing Communication

10. The complaint relates to an Instagram post on 11 September 2020 by Bloke in a Bar.



## The Complaint

11. The complainant objects to the marketing as it could encourage rapid consumption by showing a shoey.

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;

## The Company's Response

13. The Company responded to the complaint by email dated 21 September 2020 advising that:
  - In regard to the complaint made pertaining to our Instagram post, I would like to dispute it's in breach of the guidelines.
  - I was at the photoshoot directing it myself. I'm aware of the rules surrounding the promotion of excessive or rapid drinking. I feel we did not breach these standards as I personally made sure only a small amount, roughly 1.5 mouthfuls of beer, was poured into the shoe.

- We also made sure that he didn't consume the alcohol but rather let it drip down his chest to get a better picture (or pictures). I believe that he isn't rapidly consuming the alcohol as it isn't consumed. Evident from the images. I also believe there isn't an excessive amount consumed.
- The post has been removed because although I don't feel it breached guidelines the fact that the question has been raised is enough for me to remove it. That is not what this brand stands for & we will be even more diligent going forward to completely remove any chance of this happening again.

### **The Panel's View**

14. This is the second determination to intersect with the media and alcohol business of Mr Denan Kemp. Mr Kemp is a former rugby league (NRL) player who since 2015 has developed rugby league focused media content as well as more recently branching into alcohol production, retailing and distribution. As noted in Determination 82/20 (dated 1/7/20), the 'Bloke in a Bar' banner overlays both sports media content and promotional material for the Bloke in a Bar branded beer. Marketing for the beer brand falls within the ambit of the ABAC Scheme and wider alcohol marketing regulatory obligations.
15. On 11 September 2020, a post was added to the Bloke in a Bar Instagram account. The post consisted of video of well-known former NRL player Luke Lewis doing what is colloquially known as a 'shoey'. A 'shoey' is the act of drinking (usually alcohol such as champagne or in this case beer) from a shoe or boot. The custom has disputed origins but has occurred in some circumstances since the 1800's as a celebration of success or as a ritual seeking good luck. In recent times the practice has been associated with Australians motor sports winners such as F1 driver Daniel Ricciardo. Shoey's were reputedly a popular celebration amongst the Cronulla-Sutherland Sharks players when the team won their first NRL premiership in 2016. Mr Lewis was a player in the Sharks team.
16. The complainant objects to the Instagram post as encouraging rapid consumption of alcohol. Part 3(a)(i) of the ABAC provides that an alcohol marketing communication (which includes an Instagram post) must not show or encourage the excessive or rapid consumption of alcohol. The Company contends the post is consistent with the Code standard as:
  - only 1.5 mouthfuls of beer were poured into the shoe;
  - Mr Lewis did not consume the beer, but he spilled it over his jersey 'to get a better picture';
  - the beer is not rapidly or excessively consumed - 'as it isn't consumed' as evident from the images; and
  - while believing the post was not in breach, it has been removed by reason of the question being raised.
17. It is recognised that in contexts such as a sporting triumph, alcohol like champagne is sometimes shaken and sprayed over people, and this isn't interpreted by a reasonable person as excessive or rapid alcohol consumption, but understood as a ritual of celebration. In this case, however, there is no context established about why Mr Lewis is 'doing a shoey' - he simply is within a post promoting the Company's

beer. While it is accepted that less than a can was poured into the boot and more beer went over his football jumper than was swallowed, the Panel believes the post does breach the rapid consumption standard. In reaching this conclusion the Panel noted:

- while the Company may not have intended to show rapid alcohol consumption, the test is how a reasonable person would probably understand the message;
- the post, without any context as to why alcohol is being portrayed in this manner, does not depict a moderate or responsible approach to alcohol use; and
- Mr Lewis pours the entire content of the boot into his mouth in a single motion as is done when alcohol is being sculled rapidly.

18. The complaint is upheld.