

Case Report

1. Case Number :	0262-22
2. Advertiser :	Better Brewing Co
3. Product :	Alcohol
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	23-Nov-2022
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement is promoting the brand reaching 100,000 followers and features a number of short scenes, including:

- A man spraying himself in the face with a beer
- A person flipping off the bow of a boat
- Men pouring beers over their heads in the middle of a store
- A man opening a bottle with his eyesocket
- A woman pouring a beer through a shoe and drinking it
- A man walking up an aisle in a church, stripping of his suit and doing a dance move in his underwear
- A man sitting on a carton trolley being pulled behind a motor bike, using the spinning back wheel of the bike to open his beer.

The caption of the post reads:

"We are 100K strong [flexing arm emoji] We don't know how, but 100K of you amazing people are a part of the best community ever. And to top it off, it's our first birthday today! [party popper emoji] So this is a big than you to every single on of you!! It's been a hell of a year [face exhaling emoji] And here's to many more [clinking beers emoji, yellow heart emoji DAY FOR IT!!!"

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

In many parts of this video you will see multiple breaches to the ABAC code. excessive and rapid consumption of alcohol, as well as irresponsible behaviour by the means of

doing a “shoey” (sculling alcohol via a shoe), holding alcohol above the head and pouring down the throat.

There are also breaches of alcohol safety which can be seen in the video where a male is seen riding a wheeler attached to the back of a motorbike, using the motorbike wheel to open his beer and then drink it.

The video also ends with a clear breach in Responsible depiction of the effects of alcohol, where three females sip the beer and let out a sexual moan after consumption.

THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Advertiser did not provide a response.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant’s concerns that the advertisement depicts unsafe behaviour and includes sexualised content.

The Panel viewed the advertisement and noted the advertiser did not respond.

Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the Practice Note for the Code states:

“The use of the word “sex” does not, of itself, make an advertisement unacceptable. However, such advertisements must not contain images that are overtly sexual and inappropriate having regard to the relevant audience.

“Images of naked couples embracing when viewed in a public space, has been found to be inappropriate and to not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

“Sexualised images which include elements which would be attractive to children, such as cartoons or depictions of Santa, when in a medium which can be seen by children have been found to not treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience..”

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is “sexual intercourse; person or persons engaged in sexually stimulating behaviour”.

The Panel considered that although at one point some people in the advertisement make moaning sounds, they are all dressed and it is clear they are not engaging in sexual intercourse or sexual behaviour. The Panel considered that the advertisement did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is “the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters”.

The Panel considered that the sounds were not dissimilar to sexual sounds and that there was a sexual element to the advertisement.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is “the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity”.

The Panel noted that there was one scene of a man at a church who pulls off his clothing, however noted that the man was still wearing underwear. The Panel noted that most of the people in the advertisement are fully dressed and considered that the advertisement did not contain nudity.

Is the issues of sexuality treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is “understanding and awareness to the needs and emotions of others”.

The Panel considered that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel noted the audience for this advertisement are followers of the brand’s Instagram account. The Panel considered that the audience for the advertisement would be predominately adult.

The Panel considered that while loud moaning sounds are heard and some members of the community may interpret these sounds as sexual, it is clear upon viewing the

advertisement that the intention is to suggest that consumption of the product will result in a feeling of ecstasy. The Panel noted that all people making this sound in the advertisement are fully dressed and in public.

The Panel considered that the level of sexuality in the advertisement is mild and the advertisement is not inappropriate for viewing by an adult audience.

Section 2.4 Conclusion

The Panel determined that the advertisement did not breach Section 2.4 of the Code.

Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted the Practice Note to Section 2.6 which states:

“Images of unsafe driving, bike riding without helmets or not wearing a seatbelt while driving a motor vehicle are likely to be contrary to prevailing community standards relating to health and safety irrespective of whether such depictions are for the product/service being advertised or are incidental to the product.”

Motorbike scene

The Panel first noted the scene of the man sitting on a carton trolley being towed by a motor bike, who uses the spinning back wheel of the bike to open a beer. The Panel considered that the man was not wearing a helmet or any safety gear, and that the trolley he was riding on was not designed for this use. The Panel considered that the man’s actions would be seen by most members of the community to be extremely dangerous, and a behaviour which could easily result in death or serious injury.

Boat scene

The Panel noted the scene of the man who jumps of the bow of a boat and summersaults into the water. The Panel considered that while it is common practice for some people to jump off boats into the water to go swimming, there is no indication that it was safe to do so from this position on this boat. The Panel considered that as the man summersaults off the railing his head appears to almost hit the bow of the boat. The Panel considered that there is significant community concern relating to water safety, as there have been many recorded incidents of people hitting their heads and drowning under conditions such as these.

Tackle scene

The Panel noted the scene of the two men playing football, where one picks the other up and tackles him to the ground headfirst. The Panel noted that this is commonly known as a spear tackle and is an illegal tackle in rugby union, rugby league and AFL

due to the potential of severe injury to the person being tackled. The Panel considered that this scene was showing dangerous behaviour which could result in significant injury.

Opening bottle with eye

The Panel noted the scene where a man appears to open a bottle with his eye. The Panel noted that this is the kind of party trick often displayed at social events. However, the Panel considered that eyes are easily damaged and that using this sensitive area to open a beer bottle has the potential for injury and irreversible damage to be done.

Shoey

The Panel noted the scene where a woman drinks a beverage from a shoe, known as a 'shoey'. The Panel considered that this is a behaviour which has been popularised by sporting professionals celebrating a win.

The Panel considered that promoting drinking in this way was promoting drinking at a rapid pace. The Panel considered that this scene in combination with multiple scenes of people drinking and partying, pouring drinks over themselves etc suggested an overall promotion of drinking to excess and drinking in a manner which would be against prevailing community standards on safe alcohol consumption.

Overall

The Panel noted that the advertisement was made up of videos from the brand's own page, but also videos submitted by members of the community. The Panel considered that trends on social media often result in people participating in dangerous behaviour in order to receive likes and comments, or attention from their preferred brands. The Panel considered that in posting unsafe behaviour as part of its videos, the brand has used its profile on social media to promote and encourage this kind of behaviour. The Panel considered that in doing so, the brand risks encouraging further copy-cat or other dangerous or inappropriate behaviour in its followers.

The Panel considered that the advertisement, particularly the five scenes mentioned above, promoted and condoned unsafe behaviour in a manner which would be against prevailing community standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement did breach Section 2.6 of the Code, the Panel upheld the complaint.

ABAC

The Panel noted that advertisements about alcohol products may be considered against the provisions of the AANA Advertiser Code of Ethics as well as the Alcohol Beverages Advertising Code Scheme (ABAC). The Panel noted that complaint/s in this case were referred to ABAC for assessment. The Panel noted that the ABAC Responsible Alcohol Marketing Code (ABAC Code) is an alcohol specific code of good marketing practice and has specific standards which apply to the promotion of alcohol products. The Panel further noted that it can only consider complaints about alcohol advertising under the concept of prevailing community standards as set out by the AANA Code of Ethics. The Panel noted that the advertisement may be considered by the ABAC Chief Adjudicator or the ABAC Adjudication Panel applying the ABAC Code, as well as this determination under the Code of Ethics

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser has not provided a response to the Panel's determination. Ad Standards will continue to work with the relevant authorities regarding this issue of non-compliance.

January 2023 – Ad Standards has confirmed that the advertiser has removed the post.