



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0325-21
2. Advertiser :	Better Brewing Co
3. Product :	Alcohol
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	24-Nov-2021
6. DETERMINATION :	Upheld – Not 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 post dated 11/11/21 features several people consuming a beverage and then making loud moaning sounds. The caption on the post is "Yep, it's that good @betterbeer".

THE COMPLAINT

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

The post suggests drinking the canned beer leads to having a sexual therapeutic benefit. I feel it is an unprofessional and shameless self promotion of a product that ignores the current guidelines on alcohol advertising. The promoters should be held to the same standards as others in the industry.
The video also depicts a man riding a bicycle on a road drinking a beer which is reckless and illegal behaviour.

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:
Suggests drinking the product leads to a sexual therapeutic benefit.
Depicts a man riding a bicycle while drinking a beer which is reckless and illegal.

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

The Panel noted that the concern that drinking the product leads to a sexual therapeutic benefit is not an issue within the Code, however noted that this concern may be considered by ABAC.

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 the people in the advertisement make loud 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 loud 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 all 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 that this advertisement as a standard (not sponsored) post on @theinspiredunemployed 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 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 a broad 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.”

Riding a bike

The Panel noted a concern that the advertisement depicts a man riding a bicycle while drinking a beer which is reckless and illegal.

The Panel noted clause 256 of the Australian Road Rules (May 2021 version):

“256 Bicycle helmets

(1) The rider of a bicycle must wear an approved bicycle helmet securely fitted and fastened on the rider’s head, unless the rider is exempt from wearing a bicycle helmet under another law of this jurisdiction.

Offence provision.

Note: Approved bicycle helmet is defined in the dictionary.

(2) A passenger on a bicycle that is moving, or is stationary but not parked, must wear an approved bicycle helmet securely fitted and fastened on the passenger’s head, unless the passenger is:

(a) a paying passenger on a three or four-wheeled bicycle; or

(b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

Offence provision.

(3) The rider of a bicycle must not ride with a passenger on the bicycle unless the passenger complies with subrule (2).

Offence provision.”

The Panel noted that the man is depicted riding on a residential street while holding a (presumed) alcoholic beverage. The Panel noted the actual content of the beverage is unclear and it is unclear whether it is open. However the Panel considered that in the context of the advertisement, the impression is that the man is consuming an alcoholic beverage while riding.

The Panel considered that community standards are very clear on the issue of health and safety while riding a bicycle and considered that a depiction of an adult consuming an alcoholic beverage while riding a bicycle on a public road without a helmet secured is a depiction which is in breach of these community standards.

Drinking in public

The Panel noted that several scenes in the advertisement depict people consuming the beverage in apparently public places. The Panel noted that in many states it is illegal to drink in public places.



The minority of the Panel considered that the scenes are clearly intended for promotional purposes for the advertisement and that the people were not becoming intoxicated in public. The minority of the Panel considered that most members of the community would not interpret the advertisement as promoting unsafe behaviour.

The majority of the Panel considered that while the scenes may have been filmed for promotional purposes, the majority considered that the advertisement does show people drinking alcohol in public. The Panel considered that most members of the community would consider people drinking alcohol in public to be inappropriate and potentially unsafe.

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.