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AdStandards.com.au

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	Case Number	0423/18
2	Advertiser	Tribe Breweries
3	Product	Alcohol
4	Type of Advertisement / media	Internet-Social-Inst
5	Date of Determination	26/09/2018
6	DETERMINATION	Dismissed

## ISSUES RAISED

2.7 - Native Advertising Advertising not clearly distinguishable

## DESCRIPTION OF THE ADVERTISEMENT

This instagram advertisement features a man and woman kissing, overlooking a waterfall. The text accompanying the image states "wilde\_beer Take me away ??? #wildebeer #livefree @mitch.cox"

## THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*Breaches of clause 3(b)(iii) This post is a clear breach of clause 3(b)(iii) of the ABAC Code. The woman and/or man in this post adults who are under 25 years of age, directly contravening clause 3(b)(iii) that "A marketing communication must not depict an Adult who is under 25 years of age and appears to be an adult". We think it is clear that this post constitutes marketing communications as they were "by or within the reasonable control of a marketer" for the purposes of the definition of Marketing Communication in clause 4 for the reasons set out below: o The caption referring to "wilde\_beer Take me away" and "#wildebeer" o A visually prominent man holding a bottle of Wilde Beer. In addition, and in any case, this post has not been placed in an*



*Age Restricted Environment for the purpose of clause 3(b)(iii). This makes any argument for exemption from clause 3(b)(iii) irrelevant. Breach of clause 3(b)(iv) This post also breaches clause 3(b)(iv) of the ABAC Code, which provides that “a Marketing Communication must not be directed to minors through any breach of the Placement Rules”. Rule (ii) of the Placement Rules provides that if a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience. Instagram constitutes the media platform on which the Marketing Communication appears. Instagram does have age restriction controls available to marketers which they can use to exclude Minors from the audience for their sponsored posts. This post featured on the official Instagram page ([https://www.instagram.com/wilde\\_beer/](https://www.instagram.com/wilde_beer/)) of Wilde Beer. However, these Posts do not utilise the age restriction controls available on Instagram to exclude minors in breach of rule (ii). This meant that there are no attempts to restrict minors from viewing this content, and that the post can be viewed by anybody without requiring login credentials that could establish viewers’ ages. Breaches of the AANA Code of Ethics In addition to the breaches of ABAC Code 3(b)(iii) and 3(b)(iv), this post offers no disclosure that clearly distinguishes the individuals may have been paid for their services.*

*This is in contravention with Clause 2.7 of the AANA Code of Ethics, stating “Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience”. As the AANA Code of ethics is “the overarching code setting out standards that apply to Advertising or Marketing Communications across any medium”, it is paramount that these clauses are strictly adhered to. This contravention has real-world consequences. Failing to disclose a paid promotion as such may give the appearance that the marketing communication is an unpaid endorsement and increase the influence of posts made by a social media influencer. Adolescents and young people are particularly vulnerable to the effects of social media, owing to their early adoption and near ubiquitous use of different digital platforms, and being highly susceptible to peer influences including identity and self-esteem (links: <https://www.liebertpub.com/doi/10.1089/cpb.2008.0228> , <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1083-6101.2007.00367.x> , <http://journals.sagepub.com/doi/10.1177/2056305116641342> ). In the case of alcohol marketing communications, prominently feature a young person or people, and in multiple posts of inappropriately young age in accordance with clause 3(b)(iii), alongside, holding, or drinking an alcoholic beverage, is likely to influence how the audience of that influencer engage with, positively perceive, and desire alcoholic beverages. Research has identified that adolescents who view alcohol-related content on their peers’ Facebook profiles find them to be believable and true sources of information (link: [https://www.jahonline.org/article/S1054-139X\(09\)00165-7/fulltext](https://www.jahonline.org/article/S1054-139X(09)00165-7/fulltext)), and that adolescents who perceive alcohol use as normative based on social media profiles are more likely to report interest in initiating alcohol consumption (links: <http://psycnet.apa.org/record/2011-11461-001>,*



*<https://www.sciencedirect.com/science/article/abs/pii/S030646030000099X>). The non-disclosure of marketing communications as such reinforces this normative and harmful behaviour. Request for action We ask that you request the advertiser to withdraw all posts depicting an adult under the age of 25 and to take steps to ensure that the advertiser does not engage social media influencers aged younger than 25 years, or who might have an audience comprising minors, to promote their products. In any cases where the marketing communication was uploaded depicting a person under the age of 25, but who is over the age of 25 at the time of making or determining the complaint, we request these marketing communications are withdrawn as they breached clause 3(b)(iii) at the time of making the communication, and should never have been uploaded. Given the harmful consequences of their multiple and repeated flouting of the ABAC code and irresponsible marketing of alcohol, we are concerned this complaint has not captured all examples where the advertiser and/or social media influencers have breached the ABAC code. We therefore strongly encourage additional action from ABAC to engage with the advertisers to encourage them to remove all other marketing communications that have depicted an adult under the age of 25 years of age. We also ask that you request the advertisers and/or social media influencers to withdraw all posts where breaches of the AANA Code of Ethics are found to have occurred.*

#### **THE ADVERTISER'S RESPONSE**

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

*Below is all relevant information relating to the post in question*

*wilde\_beerTake me away ??? #wildebeer #livefree ?? @mitch.cox  
wilde\_beer#wildernessculture #northernterritory #glutenfree #wednesdayvibes  
#thirsty #beers #arvodrinks #afternoondelight #craftbeer #craftbeerporn #craftbeerlife  
#paleo #fodmapfriendly #glutenfreevegan #glutenfreebeer #beachlife #sugarfree  
#lifeofadventure #wkndvibes #livingthedream #adventure #livelife #foodies  
#exploreeverything #wildernessculture #travelaustralia #humpday*

*Wilde Beer is a gluten free beer which is positioned for consumers that have gluten [or similar] in-tolerances and are unable to enjoy regular beer due to their physical limitations.*

*As a very small independent brand we do not do any advertising other than digital/social media [Instagram] due to limited marketing funds being available*

*Mitch Cox was able to provide lifestyle images from a trip he completed which included the opportunity for him to take said shots with the inclusion of Wilde Beer*

*You will note that this image along with our other 2 images also included in cases*



*0422/18 & 0424/18, and all other imagery on our site, utilise a consistent theme that focuses on lifestyle images/photos and where people (both male and female) are pictured with a beer in hand or just enjoying a fantastic location. No images pictured show any thing that could be deemed as excessive behaviour or anti social in any manner. This is inclusive of the amount/number of beer products shown in any photo.*

*We are cognisant to ensure that any imagery is always in good taste. We balance images to focus equally on males and females in the context of the broader posts we have on Instagram and ensure we do not utilise descriptions or hashtags that people would find offensive, portray bad or anti-social behaviour or market to anyone under a LDA*

*We were not aware of the age restriction capability on Instagram and will now investigate how to utilise this functionality.*

*I trust you will find that at Wilde Beer we endeavour to portray our brand in a very positive and socially accepted manner in line with advertising codes and we will continue to do so as it is a beer designed for and marketed towards adults requiring or choosing a gluten free lifestyle.*

## **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 is not clearly identified as advertising material and is therefore misleading.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that this Instagram post appeared on the brand's own account, @wilde\_beer, and features a man and woman kissing in front of a waterfall, and the man is holding a bottle of beer. The accompanying text states 'Take me away...#wildebeer #livefree @mitch.cox' and a series of hashtags.

The Panel considered whether the advertisement complied with Section 2.7 of the Code which requires that "Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience."

The Panel noted that it must consider two matters:

- Does the material constitute an 'advertising or marketing communication', and if so
- Is the advertising material clearly distinguishable as such to the relevant audience?

With respect to the first question, the Panel noted the definition of advertising in the



Code means:

“any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct”.

The Panel considered that the post appeared on the advertiser’s own Instagram page and it is reasonable to assume they have control over the post and was publishing the material with the intention of drawing a section of the public’s attention with the intention of promoting the product. The Panel considered the inclusion of the product and references to the product meant that it was promoting that product and in the Panel’s view the advertisement does meet the criteria of advertising and marketing communications.

The Panel considered that the post appeared on the advertiser’s own Instagram page and it is reasonable to assume that the brand owner would have control over the post. The Panel considered the inclusion of the product and references to the product meant that it was promoting that product and in the Panel’s view the advertisement does meet the criteria of advertising and marketing communications.

The Panel then considered the second question, which is whether the material is clearly distinguishable as advertising material to the relevant audience.

The Panel considered that the relevant audience for this post would be people who follow the @wilde\_beer account on Instagram. The Panel noted that this account has over 11,000 followers.

The Panel noted the post in question was posted on the advertiser’s own page and considered that it clearly depicted the product and referenced the brand name.

The Panel considered that this Instagram advertisement is clearly distinguishable as advertising material to the relevant audience and determined that the advertisement did not breach Section 2.7 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaint.

