



ABAC Adjudication Panel Determination No. 68/15

Product: VB
Company: CUB
Media: Sponsor's brand on football uniform
Complainant: Neil Murray
Date of decision: 4 June 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel ("the Panel") concerns the inclusion of the VB logo on jumpers worn by rugby league players and arises from a complaint received 12 May 2015.
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”) – 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 – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
 4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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 12 May 2015.
8. The Panel endeavour 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 has been determined within 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 VB logo is placed on the front and back of NSW Country player's football jumpers and on their shorts. The logos reflected the Company's sponsorship of the Country team in the annual fixture between a city (Sydney) and NSW Country teams.



The Complaint

11. The complainant states that it is wrong to show Australian Rugby League players wearing jumpers displaying alcohol advertising in prime time viewing slots when young children will be watching, as alcohol can be a harmful substance if not consumed sensibly.

The ABAC Code

12. Part 2b of the ABAC provides that the Code does not apply to:
(v) Sponsorship
13. Part 3 of the ABAC provides that a Marketing Communication must not:
(b)(i) have Strong or Evident Appeal to Minors;

14. Definitions in Part 5 of the ABAC provide:

‘Sponsorship’ means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor’s Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

‘Strong or Evident Appeal to Minors’ means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A ‘Minor’ means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia

The Company’s Response

15. The Company responded to the complaint by letter dated 1 June 2015. The principal points made by the Company are:

- (a) It is our understanding that this relates to the City versus Country match that was telecast on Sunday 3 May 2015, where the VB logo appeared on the Country team’s jersey. Before I talk to the specifics of the complaint I’d like to provide some detail in relation to Carlton and United Breweries’ (CUB) involvement with sport.
- (b) Stakeholders, including major sporting codes, alcohol manufacturers and broadcasters, have invested significantly over the past three decades to ensure that the association between alcohol and sport is positive, responsible and in line with community standards. Whilst there are select lobby groups who are against this type of sponsorship and so too some members of the public, there are great numbers in the community and indeed in government who support companies like ours being able to

invest in and be associated with sport.

- (c) In the case of CUB, over the years our business has made a huge investment in sport at both an elite and grass roots level. The CUB business has also long been committed to the responsible marketing of our products and ensuring our marketing is targeted to adults and our beers enjoyed in a responsible manner.
- (d) It is our understanding that a logo on a sponsored team jersey is not within the remit of the ABAC Responsible Alcohol Marketing Code (the Code) particularly where the complaint only mentions the logo placement and not any specific marketing collateral. There are a number of past determinations that support this viewpoint including complaint reference 89/13. In addition, the now revised Code outlines in point 2 b v) that the code does not apply to sponsorship. The definition of sponsorship (contained within the Code) includes a logo on uniforms.
- (e) We don't believe that the VB logo on the player jerseys could be said to have a strong or evident appeal to minors as a result of the telecast of the match. Generally speaking sports programming has an adult audience. The adult TV audience for NRL across free to air and subscription TV throughout 2014, on average, was around the 89/90 per cent mark. In relation to the broadcast of the match in question (City versus Country match – Sunday 3 May 2015) 90 per cent of the viewing audience were adults. The VB logo itself will often be visible on the jersey during the broadcast of the match but doesn't contain any element that I believe could be said to specifically draw the attention of an underage person and hence show a strong or evident appeal to minors; more so when considered in the context of the viewing audience of the match and the sport more generally.

The Panel's View

- 16. The complaint concerns the placement of the Company's logo on Rugby League jerseys which then were viewed by the complainant on a television broadcast of a representative match. While the complaint described the logo as being on the Australian team jersey, this is not correct. The Australian team is currently sponsored by Holden and the logo of Holden is on the jersey. Played on the same weekend as the Australia v. New Zealand match was a NSW Country v. City game and the VB logo was on the Country team jersey. Possibly, the complainant has mistakenly identified the team, but the same issue arises irrespective of the team involved.
- 17. The Panel previously considered the issue of alcohol company sponsorship of sports and the placement of logos on jerseys in Determination 89/13 in the context of Carlton Draught branding on WAAFL uniforms. In that determination the Panel found that alcohol branding on sports uniforms as part of a

sponsorship agreement fell outside the scope of the ABAC Code as it was not 'alcohol advertising' within the meaning of that term in the ABAC.

18. In July 2014 the ABAC Scheme introduced the new ABAC Responsible Alcohol Marketing Code. The new Code provides clearer guidance on the marketing communications that fall within or outside the scope of the Code. Part 2b of the ABAC sets out areas excluded from the scope of the Code. Part 2b(v) refers to Sponsorship, which is defined in Part 5 as sponsorship agreements and includes '*the inclusion of a brand name and/or logo at an event venue or on uniforms of participants*'. The current complaint relates to the inclusion of the VB logo on uniforms of participants and therefore falls within Part 2b(v) and is outside the scope of the ABAC Code.
19. Further, the televising of live sports events permits the broadcast of alcohol advertising during the sports event. This means, a daytime broadcast of a Rugby League game which includes alcohol advertising is also not a breach of the relevant codes.
20. While the underlying point of the complaint about the appropriateness of alcohol companies sponsoring sports teams and events is a legitimate matter for sports associations, industry, the public, and government to consider, the ABAC is entirely clear that sponsorship itself is outside the scope of the Code. If an alcohol advertisement results as a consequence of a sponsorship arrangement, then this advertisement is subject to the ABAC standards, but the direct manifestation of the sponsorship through naming of a competition or logos on sports teams is not a part of the Code.
21. Accordingly the complaint is dismissed.