



ABAC Adjudication Panel Determination No. 112/15

Product: Pure Blonde
Company: Carlton & United Breweries
Media: Digital
Complainant: Confidential
Date of decision: 15 October 2015
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a digital advertisement for Pure Blonde beer by Carlton & United Breweries (“the Company”) and arises from a complaint received 29 September 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 29 September 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 obtained for this marketing communication [14423].

The Marketing Communication

10. The advertisement comprises four separate pop up banner advertisements that appear on the news.com.au homepage.
11. The first advertisement appears at the top of the page to the right of the news.com.au logo and is in landscape format. It has a message in large capitalised text in the middle of the advertisement "Now 50% less calories than wine ml*". The first four words are in bolder text. A disclaimer in small print underneath the message states "**Based on average calorie content of the leading 100 wine SKUs in Australia. IRI-Aztec wine data, MAT 31/01/15". On the left side of the message is an image of the lower half of a stubby of Pure Blonde beer. To the right of the message is the 18+ logo with small print "For people over the age of 18 only".
12. The second advertisement appears on the right side of the page and is similar to the first advertisement but is in portrait format. It has a message in large capitalised text on the top right of the advertisement "Now 50% less calories than wine ml*". The first four words are in bolder text. To the right of the message is the 18+ logo with small print "For people over the age of 18 only". Below the message is an image of a stubby of Pure Blonde beer. A disclaimer in small print underneath the image of the product states "**Based on average calorie content of the leading 100 wine SKUs in Australia. IRI-Aztec wine data, MAT 31/01/15".
13. The third advertisement appears in the body of the page. It has a message in large capitalised text in the middle of the advertisement "Now 80% less carbs than regular beer". The first four words are in bolder text. On the left side of the message is an image of a stubby of Pure Blonde beer. In the top right corner of the advertisement is the 18+ logo with small print "For people over the age of 18 only".
14. The fourth advertisement appears on the left side of the page. It is similar to the third advertisement and has a message in large capitalised text on the top right side of the advertisement "Now 80% less carbs than regular beer". The first four words are in bolder text. Below the message is an image of a stubby of Pure Blonde beer. In the top left corner of the advertisement is the 18+ logo with small print "For people over the age of 18 only".
15. It seems the positioning of the ads varies at different times.

The Complaint

16. The complainant objects to the marketing for the following reasons:

- a) It is on a mainstream website which school children would go to follow the daily news due to school tasks;
- b) The marketing takes up about 60% of the page before you even scroll down;
- c) There are 5 ads you can see, again without scrolling;
- d) The over 18+ information is very hard to read; and
- e) Its almost like they are selling a health drink.

The ABAC Code

17. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

The Company's Response

18. The Company responded to the complaint by letter dated 9 October 2015. The principal points made by the Company were:
 - a) The complaint relates to a Pure Blonde Ultra Low Carb digital advertisement on the homepage of news.com.au. The advertisement is part of an advertising campaign to increase consumer awareness of the revised Pure Blonde beverage, which includes fewer carbohydrates and lower calorie content than the original product.
 - b) News.com.au was chosen as a highly targeted outlet for consumers 18 years and over. I feel it is important to note the news.com.au audience breakdown, specifically the split between its audience under and over 18 years old. Please see these figures outlined below:
 - People aged 2 to 17, unique audience 65,000 (1.7%)
 - People aged 18 years and over, unique audience 3,818,000 (98.3%)
 - c) All creative developed for Pure Blonde Ultra Low Carb has been about ensuring consumers are aware of the lower carbohydrate and lower calorie option within the beer category. The claims made such as 'now 80% less carbs than regular beer' and 'now 50% less calories than wine per ml are factual and position the beverage firmly within the alcohol category, not the broader beverage category. By calling out the evidenced-based lower calorie and carbohydrate content of the drink it does not identify itself as a health drink, nor does it imply that the

audience could consume it for potential net health benefits. The claims are limited to permissible nutritional content claims that comply with the requirements of Food Standards New Zealand Australia. We feel it is important consumers make informed choices when it comes to alcohol consumption, which is enabled by clear and factual communication of the nutritional properties and alcohol content.

- d) CUB has been, and will remain, vigilant in ensuring lower calorie, carbohydrate, and alcohol content beverages are not seen to be promoted as a 'health drink'.

The Panel's View

19. The complaint concerns a series of banner advertisements which the Company has placed on the news.com.au website. The website is within the News Corporation stable of media outlets and contains a combination of news, entertainment, sport and lifestyle articles.
20. The complainant is concerned about a range of issues related to the advertising which can be summarised as follows:
 - The accessibility of the advertising to school age children.
 - The number and size of the advertising on the home page of the website.
 - The relatively small print used to identify the product as being suitable for over 18 year olds.
 - The implication that the product is a 'health drink' from the messaging about its calorie and carbohydrate levels.
21. As is explained in paragraph 3, the ABAC can be described as a 'content' rather than a 'placement' code. This means that the ABAC establishes a set of Standards which alcohol marketing must satisfy irrespective of the medium or the location of the marketing. In other words, an ad will not breach the Code simply because it can be viewed by under 18 year olds but equally an ad which in its content is strongly appealing to under 18 year olds won't be saved because its audience is predominantly over 18 years old.
22. In this case, the Company states the audience of the website is overwhelmingly over 18 but in any event the Panel does not believe the content of the ads would have strong or evident appeal to under 18 year olds.
23. The next two issues raised by the complainant about the number and size of the ads and the print font used to state the product is for over 18 year olds do not raise ABAC Standards. The Code does not endeavour to place restrictions on the number of times an ad might be placed on a website or any other medium. Further, the Code does not require that 'drink responsibly' messages be contained in alcohol advertising, although the messages are reasonably common and can be considered good practice. Accordingly, while the

complainant makes fair points on these two issues, the Panel can only apply the Code as it is written and neither of these two concerns raised by the complainant are breaches of the ABAC.

24. The complainant's last point concerning the advertising implying that the product is 'almost a health drink' does directly raise a Code Standard. Section (c)(iv) provides that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit. If the ads could be fairly interpreted as implying the product is a health drink, then this standard would be breached.
25. In response the Company argues that its marketing of the product has been about ensuring consumers are aware of the product's lower carbohydrate and calorie level compared to regular beer and wine. It is stated that this information is factual, but in emphasising this attribute, no claim is being made that the product is a health drink nor should it be consumed for a potential net health benefit.
26. The Panel does not believe the Section 3 (c)(iv) Standard has been breached. The advertising is not suggesting that the product has a therapeutic benefit in that its consumption is beneficial for a person's health or wellbeing. The claim about its calories or carbohydrate levels are comparative to other alcohol products and endeavour to distinguish the product from other alcohol drinks. This is a different thing than implying that the product is good for you.
27. The complaint is dismissed.