



ABAC Adjudication Panel Determination No. 117/15

Product: VB
Company: Carlton & United Brewers
Media: Digital
Complainant: Mr Morcombe
Date of decision: 19 November 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 and arises from a complaint received 22 October 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.

The Complaint Timeline

7. The complaint was received on 22 October 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 complaint relates to a post by VB on its facebook page.
11. The image posted is of a backyard shed, the walls of which are constructed from VB cans. There are VB flags along the front of the shed and two VB posters on the door to the shed.
12. The post that accompanies the picture states “The hardest earned shed in Australia. This masterpiece was constructed from over 9,000 cans of the big cold beer. Diane and Howie Crocker, we salute you, and there’s a few slabs headed your way for your enormous effort.”

The Complaint

13. The complainant is concerned that the advertisement encourages alcoholism and drinking so much beer so as to make a shed out of empty beer cans.

The ABAC Code

14. Part 3 provides that a Marketing Communication must NOT:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;

The Company’s Response

15. The Company responded to the complaint by letter received 30 October 2015. The principal points made by the Company were:
 - The complaint relates to a Facebook post made by the Victoria Bitter (VB) Facebook page from a user-generated (fan of the page) image. The image depicts a backyard shed with a façade of old VB cans. The fan of the page originally posted the image to the VB page and was contacted by a CUB representative seeking permission for its reuse. Permission was subsequently granted.
 - CUB takes the promotion of responsible consumption very seriously. CUB promotes consumption of its products based on the Australian Guidelines to Reduce Health Risks from Drinking Alcohol. CUB ensures its social media pages are compliant with the ABAC standards and internal company policies. One way we do this is by training all marketing

employees and associated marketing agency employees on the ABAC standards, AANA Code of Ethics, and internal company policies as part of the induction process. We then complete annual refresher training, which is mandatory for all CUB marketing and agency employees to complete. We ensure all employees are aware that the standards and code of ethics apply to social media pages and content. CUB is diligent in monitoring user-generated content, including images, videos and comments. All social media pages are monitored twice a day to ensure content and comments are not offensive and do not encourage irresponsible consumption.

- VB's brand position is all about rewarding hard work and jobs done well. We take care in ensuring whenever a 'reward' is referenced it is always as the result of hard work completed prior to consumption, and that if the 'reward' is alcohol consumption it is depicted as moderate and safe. The VB Facebook page is an age-gated online community where hard work is often encouraged and celebrated in a light-hearted way.
- The image depicts a shed allegedly made out of over 9,000 cans. When considering the image and the accompanying written copy there is no statement or suggestion that the fan of the page consumed these cans in an irresponsible way, nor is irresponsible consumption encouraged or glorified. It is reasonable to assume that the fan of the page, along with family and friends, consumed the cans of VB over a number of years.
- The post, in a light hearted way recognises the fan of the page for building the 'hardest earned' shed in Australia. The copy relates to the amount of time required to collect and store the cans, in addition to the precision and skill involved in the shed's construction. It is recognition of ingenuity not recklessness.
- The gift of a couple of slabs of VB seeks to reward the aforementioned precision, skill, and ingenuity in keeping with the 'hard earned thirst' VB brand position.
- CUB has, and will remain, vigilant in ensuring it promotes a culture of responsible consumption. We do not believe this post encourages or depicts irresponsible consumption.

The Panel's View

16. The complaint concerns an entry on the VB Official Facebook page. The entry features a photograph of a backyard shed made largely of over 9,000 VB cans. The complainant takes the image and an accompanying post by the Company as encouragement to alcoholism and excessive consumption of the product.
17. One of the core ABAC Standards concerns the responsible consumption of alcohol. Section (a)(i) provides that a marketing communication for an alcohol beverage must not show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an alcohol beverage. Clearly if the complainant's interpretation of the entry was to be accepted, namely that the

owners of the shed had themselves, over a short period consumed over 9,000 cans of the product, this would be inconsistent with the Section (a) standard.

18. In response the Company contends that the Facebook entry is consistent with the Code requirements. The company argues that the post is light hearted and that the accumulation of over 9,000 cans would reasonably be assumed to result from the shed's owners together with friends and family members collecting cans over a number of years. Accordingly the company rejects that the entry would be taken as encouragement of excessive consumption.
19. In assessing whether a marketing communication is consistent with a Code Standard the Panel has regard to the probable understanding of the communication by a reasonable person taking the content of the communication as a whole. The reference to a 'reasonable person' is drawn from the Australian Common Law system and means that the beliefs, opinions and attitudes held in a majority of the community is the benchmark.
20. While the Panel acknowledges the concern expressed by the complainant it believes that the Facebook is not in breach of the Code Standard. In reaching this view the Panel has noted:
 - No actual depiction of alcohol consumption is shown.
 - A reasonable interpretation of the construction of the shed is that it was a novelty approach involving the accumulation of a large number of VB cans which would not have been acquired through the personal consumption of two people.
 - Quite likely the cans would have been acquired through a number of varied sources e.g. from local hotels, or recycling locations and not through the personal consumption of a small number of individuals given the time needed to acquire so many cans through personal consumption would be considerable.
21. While the Panel does not believe the entry to be in breach of the ABAC Standards the Company could have better framed the image through references to an explanation of how this sheer number of cans had been acquired. The complaint is dismissed.