



ABAC Adjudication Panel Determination No. 24/16

Product: Carlton Dry
Company: Carlton & United Brewers
Media: Digital
Complainant: Confidential
Date of decision: 1 March 2016
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 Carlton Dry and arises from a complaint received 25 January 2016.
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 25 January 2016.
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 advertisement is a user generated image posted on the Carlton Dry Facebook page and subsequently re-posted on Facebook (31 October) and Instagram (22 January) by Carlton Dry.
11. The post features a photograph of a partially consumed stubby of Carlton Dry being held in front of a small kangaroo and the kangaroo's paws around the stubby.
12. Above the photograph the post is marked as sponsored and the Carlton Dry name and logo appear. Below the photograph the post is captioned "carltondry Kangabrew #SeizeTheDry".

The Complaint

13. The complainant is concerned that the advertisement encourages giving alcohol to animals, which is cruel and constitutes animal abuse. Further, the caption "Kangabrew" suggests the beer is made for kangaroos, which may also encourage people to give beer to other animals for a laugh.

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 2 February 2016. The principal points made by the Company were:
 - The complaint relates to a user generated image, which was posted on the Carlton Dry Facebook page and subsequently re-posted on Facebook (31 October 2015) and Instagram (22 January 2016) by Carlton Dry. The image depicts a person holding a bottle of beer near a kangaroo's head while the kangaroo's arms are outstretched. This is accompanied by the caption, 'Kangabrew'.
 - The image has been removed from the Carlton Dry Instagram and Facebook page.

- The image was sourced from user generated content sent in by a fan to the Carlton Dry Facebook page. The image was then re-posted to the Carlton Dry Instagram with the hashtag ‘SeizeTheDry’ and to Facebook.
- While the image was not taken by Carlton Dry, it was altered by its agency, New Beach Media before being re-posted. New Beach Media added the icons, ‘seized by Jordon’ and ‘18+ for people over the age of 18 only’.
- CUB has been, and will remain, vigilant in ensuring no image depicted on its social channel promotes alcohol misuse.

The Panel’s View

16. The complaint concerns a post on the company’s Instagram and Facebook pages, which features a bottle of the product being apparently handed to a kangaroo. The photograph is accompanied with the text “Kangabrew”.
17. The complainant contends that the posted message is irresponsible and could contribute to animal cruelty. In response, the company advises that the image has been removed from its Instagram and Facebook pages. It points out that the images were sourced from user generated content, but this content was acknowledged by the company through its media agency, which added a +18 drinking message to the image. The Company does not submit any arguments as to whether the posts are or are not in fact inconsistent with the Standards contained in the ABAC.
18. The relevant ABAC Standard is contained in section (a)(i), which states that a marketing communication must not show or encourage the misuse or abuse of alcohol. The issue for the Panel to determine is whether the image could be taken to be encouraging the misuse or abuse of alcohol.
19. In assessing if a Code Standard has been breached, the Panel is to examine the probable understanding of the marketing communication by a reasonable person taking its content as a whole. Reference to a “reasonable person” is drawn from the Australian common law system and means that the attitudes, opinions and values common in a majority of the community is to be the benchmark.
20. The Panel believes that the Instagram and Facebook post is inconsistent with the section (a) Standard. It is not appropriate to serve alcohol to an animal, and while the scene depicted is intended as humorous, the image may encourage inappropriate alcohol related behaviour and as such is inconsistent with the responsible use of alcohol as required by the ABAC Standard.
21. It is acknowledged that the image was posted by a viewer of the Company’s sites and not the Company itself. Nonetheless, the Company is responsible for the images that appear on its sites, irrespective of the source. Accordingly the complaint is upheld.