



ABAC Adjudication Panel Determination No. 78/17

Product: Carlton Draught
Company: Carlton & United Brewers
Media: “Front Bar” Television Programme
Complainant: Confidential
Date of decision: 15 May 2017
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 placement within a television programme on Channel 7 “Front Bar” of Carlton Draught which is produced by Carlton & United Brewers (“the Company”) and arises from a complaint received 31 March 2017.
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 31 March 2017.
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 with 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 refers to a television programme, "Front Bar" that was broadcast on Thursday 30 March and depicted the presenters and their guests consuming glasses of Carlton Draught:

<https://au.tv.yahoo.com/plus7/the-front-bar/-/watch/34866617/the-front-bar-thu-30-mar-season-17-episode-2/>

11. The programme features three presenters, Andy Maher, Mick Molloy and Sam Pang and two former AFL football players as guests. The programme is a light hearted panel discussion on AFL football, including AFL highlights.
12. The programme is shown as being sponsored by Carlton Draught. There is a Carlton Draught keg in the background, various Carlton draught signage in the studio and each presenter and guest has a glass of Carlton Draught beer in front of them throughout the programme. Each presenter and one of the guests is shown sipping the beer on occasion.

The Complaint

13. The complainant is concerned that the programme synonymises football discussion with alcohol consumption.

The ABAC Code

14. Part 2(a) of the ABAC Code provides that The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
 - brand advertising (including trade advertising)
 - competitions
 - digital communications (including in mobile and social media and user generated content)
 - product names and packaging
 - advertorials
 - alcohol brand extensions to non-alcohol beverage products
 - point of sale materials

- retailer advertising
 - Marketing Collateral
15. Part 2 (b)(v) of the ABAC Code provides that The Code does NOT apply to Sponsorship.
16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming;
17. Definitions in Part 5 of the ABAC provide:

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile or social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

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 brand merchandise).

The Company's Response

18. The Company responded to the complaint on 13 April 2017. The principal points made by the Company are:
- In summary:
 - The complaint relates to a television program broadcast on the Seven Network on Thursday evenings, called "The Front Bar".
 - CUB is not the producer of The Front Bar and does not have any control over the format or the content of the program.
 - Rather, CUB is a sponsor of The Front Bar. Product placement is one of the benefits provided to CUB as a sponsor.

- CUB's view is that the product placement on The Front Bar falls within the Sponsorships exception set out in the Code.
- CUB understands that product placement itself, depending on execution, may also fall outside the Panel's purview, as per the Midori product placement determination in 2011 (discussed below).
- Even if the Panel's view is that this product placement does fall within the scope of ABAC, we believe that it does not breach the Code (neither section 3(a)(i) in relation to responsible portrayal, nor section 3(d) in relation to safety).
- Background and context The complaint relates to a television program broadcast on the Seven Network on Thursday evenings, called "The Front Bar". The Front Bar is a light entertainment panel show relating to Australian Rules football (AFL) produced by a production company engaged by the Seven Network. Carlton & United Breweries (CUB) is a sponsor of The Front Bar. The show is set in a pub environment, and as part of its sponsorship, CUB is provided with particular benefits relating to the Carlton Draught brand, including product placement.
- 2017 is the third season of The Front Bar. This year, the show is being broadcast live on Channel Seven straight after AFL games on Thursday nights, or if there is no game, it is to be shown as part of Seven's normal programming at approximately 9.00pm or 9.30pm. As noted above, CUB is a sponsor of the program. The arrangement between the Seven Network and CUB is that in return for a sponsorship fee, CUB is provided with particular benefits. CUB is not directly involved in the production of the program in terms of the overall content. Final say on all elements within the program including product placement is with Seven and the Executive Producer and not with CUB.
- We refer to ABAC Determination No. 85/11, in relation to product placement by spirits brand Midori. In that Determination, the ABAC Complaints Panel helpfully reviewed and considered various global positions on product placement as a marketing technique, particularly regarding whether product placement falls within the scope of an "alcohol beverage advertisement" for ABAC purposes. The Panel noted that "the intention of the ABAC scheme is to cover "advertising" and not all types of activity which are designed to market and promote alcohol products and brands. While the Panel approaches its task with a "spirit and intent" outlook, it cannot unilaterally extend the coverage of the scheme to reach activity which the clear design and parameters of the ABAC scheme do not capture. The Panel believes that product placement within a music video clip is not "Alcohol Beverage Advertising" within the scope of the ABAC." Further, the Panel quoted a passage from submissions to the British Department of Culture, Media and Sport, which noted that "product placement raises particular issues not associated with other forms of marketing. In particular, it does not necessarily allow a company the same degree of control over

messaging as do other forms of marketing.” This is the case with The Front Bar, as CUB exercises little to no control over the production and final execution.

- The product placement of Carlton Draught in The Front Bar forms part of the broader pub setting of the show. While it is different to a music video, the principles noted in the Midori determination are certainly relevant. Although Carlton Draught receives other branded elements in addition to the product placement, the primary purpose of The Front Bar is to discuss AFL in a light-hearted manner in a pub environment. CUB is not the exclusive sponsor of The Front Bar. Other sponsors have and are planned to be included in the program. It is not an “advertisement” in itself for Carlton Draught.
- There is no specific requirement for The Front Bar talent to consume any particular amount of product, and CUB has no control over the actions of the talent during the filming of The Front Bar. The Seven Network has agreed to ensure that any product the talent consumes throughout the program is consumed responsibly and in moderation. Final set design, layout and broadcast are determined by Seven Network at its studios. CUB is cognisant of the unique challenges that television and product placement bring to the ABAC landscape, as outlined above. Although our view is that CUB is merely a sponsor of Front Bar (refer below), we always take whatever steps we can to make sure that any material involving our product is marketed in a responsible manner in accordance with ABAC, even when we have little control over how this is executed. Even when we are not technically required to comply with the Code, we try to make sure all material that involves our brands or products is consistent with the overall intent and spirit of the Code. In this instance, even though we do not control the final output of the program, we have taken the following steps to ensure that the talent and producers are aware of the environment in which we operate:
 - We conducted training for all talent, presenters and editorial producers on the principles and spirit of ABAC, so that they can consider those issues when developing content and presenting.
 - We have an opportunity to provide comment on run sheets and scripts for each weekly show in advance, and identify any potential responsible marketing issues prior to filming or broadcast.
 - We provide feedback on an as-needs basis on branding elements, including consumption of the product.
- Our view is that CUB’s sponsorship of The Front Bar does fall within the Sponsorship exception set out in Part 2 (b)(v) of the Code, and so does not need to be considered by the Panel. Part 5 of the Code defines Sponsorship as below: “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)." Given that The Front Bar is focused on recapping, reviewing and discussing AFL, it should be considered a sporting or cultural property or activity. It is important to note that CUB's sponsorship of The Front Bar is separate and in addition to CUB's sponsorship of the AFL. Although The Front Bar is based on the AFL competition, and depending on the game and broadcast schedule, may be integrated into AFL broadcasts, CUB's involvement with The Front Bar is a separate sponsorship of a Seven Network property.

- The program was not pre-vetted. We do not consider it to be "Alcohol Beverage Advertising" by CUB. Further, given the program is broadcast live, it would not be possible to have the program itself pre-vetted. As CUB is not the producer or owner of the show, we have no ability to submit for pre-vetting, or ability to require Seven to do so.
- The placement of Carlton Draught in The Front Bar does not breach Section 3(a)(ii) of the Code. The presenters consume the product in a responsible manner, in small sips. From our knowledge and review of the program, very little product is actually consumed by the talent - it would be highly unlikely that any of the talent would consume more than one schooner of product across the entire 45 - 60 minute filming of the program. Drinking beer live on television while discussing sport is not irresponsible behaviour, and does not encourage irresponsible behaviour. Drinking beer in a responsible manner while watching or discussing sport is part of Australia's sporting and social culture.
- The placement of Carlton Draught in The Front Bar does not breach Section 3(d) of the Code. Presenting live television is not activity that 'requires a high degree of alertness or physical coordination' under the Code. Our understanding is that live television presenting would not be classed as such an activity within the spirit of the Code – it is far removed from the activities targeted by the Code (such as operating a vehicle or swimming). Furthermore, as mentioned above, very little product is actually consumed by the talent.
- It seems that the complainant is concerned that the act of consuming beer while discussing sport creates an association between alcohol and sport; the complaint notes that the product placement "synonymises football discussion with alcohol consumption". Sponsorship of sports and sporting properties, including sports television programming, is a topic that generates much discussion. We note the Panel's previous comments, which have been repeated in various forms across many determinations: "the underlying question raised by the complaint is the role that alcohol companies should or should not play in sports sponsorship and this is a matter for government and not the Panel."
- CUB is committed to ensuring its promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly

and in moderation. In these circumstances, even where CUB has very little input into the content and editorial of the program in question, and does not control the execution of CUB branding or product placement, we have still taken all steps possible to ensure that our products are promoted in a way that is compliant with the rules, principles and spirit of the Code.

The Panel's View

Introduction

19. The marketing of alcohol products takes a variety of forms with the current complaint raising the issue about the television program 'The Front Bar'. The Front Bar falls within the suite of both Free-to-Air and Pay television programs which focus upon the sport of AFL. The show is a live broadcast on the Seven Network on a Thursday evening commencing between 9 and 9:30PM, generally following the conclusion of an AFL fixture played that evening.
20. The set for the show is fitted out to resemble a hotel bar with the presenters and guests sitting at the bar with the viewer having the vantage point that the bar attendant might have. The presenters and guests discuss AFL 'over a beer' with each participant having a glass of beer in front of them.
21. The program is 'sponsored' by the Company. The sponsorship results in the placement of the Company's product – Carlton Draught – as the beer which the program's participants are shown consuming. There are other references to the product in the props used on the set, such as the placement of the product logo on the beer glasses and on the beer mats.
22. The complaint raises a concern about the program in that it synonymises football discussion with alcohol consumption. The Company responds to this concern with three arguments, namely:
 - that the alcohol marketing within the show is via a product placement which is not a marketing communication for the purposes of the ABAC;
 - that the product placement occurs because it is a benefit flowing from the Company's 'sponsorship' of the show and the ABAC does not apply to sponsorships; and
 - in any event, the depiction of alcohol in the show is consistent with the ABAC Standards.

Is a product placement a marketing communication for the purposes of the ABAC?

23. The Company argues that the Panel has previously considered the question of whether a product placement is within the scope of the ABAC and has decided that a product placement is not 'advertising' that is captured by the ABAC Scheme. The Company cited Panel Determination 85/11 as the prior decision which supported this argument.

24. Determination 85/11 concerned the ABAC as it was in 2011. On 1 July 2014, the current version of the Code came into effect and replaced the earlier version. The current Code has been expanded from applying ABAC Standards only to alcohol beverage advertising to the wider concept of an alcohol beverage marketing communication.
25. The Panel has considered the issue of product placements within the operation of the current Code. In Determination No. 81/14, the Panel concluded that the 2014 version of the Code has expanded the range of marketing techniques within the scope of the Scheme. In particular, a product placement was a form of marketing within the intended scope of a 'marketing communication' and hence is capable of being subject to the Code Standards. A similar conclusion was recently confirmed in Determination 77/17.
26. Accordingly, the use of product placements within the program is within the scope of the ABAC Scheme. The Company explains that it does not have editorial or creative control over the program. This, however, does not mean that the Company has no responsibility for the manner in which its product is portrayed and in fact the Company outlines both training and feedback opportunities given to it to monitor and shape how the product is used on the program. This means that the Company has a reasonable measure of control over how its product and brand is portrayed within the program.

Is the program a sponsorship to which the ABAC does not apply?

27. The second argument advanced by the Company is that its product and brand feature in the program because of a 'sponsorship' and hence the Code Standards do not apply. Section 2(b) of the ABAC provides a list of matters to which the Code does not apply. 2(b)(v) is 'sponsorship'.
28. The term sponsorship is defined to mean 'any agreement involving 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'. The issue is whether the Company's arrangements with the Seven Network and the producers of the program fall within the notion of a 'sponsorship' for ABAC purposes.
29. The earlier version of the ABAC did not expressly deal with sponsorships. The 2014 revision of the Code, in effect, adopted a series of Panel decisions which had concluded that a sponsorship arrangement was not 'advertising' and hence was not within the scope of the Code provisions. Previous Panel decisions have mostly canvassed sponsorship of sports teams and sporting competitions. This is the first occasion that it has been argued that a sponsorship could also include the commercial arrangement resulting in products and their branding being featured in a television program such as The Front Bar.
30. The argument advanced by the Company is that given The Front Bar is focused on recapping, reviewing and discussing AFL, it should be considered a sporting or cultural property event or activity. The Company points out that it is a sponsor of the AFL i.e. it provides financial support to the Football League, but its relationship with Seven Network in relation to the television program is a separate relationship.

31. The Panel does not believe that the commercial relationship the Company has with Seven Network to have its products featured within The Front Bar program is a sponsorship within the scope of section 2(b)(v) of the Code. Rather, the Panel concludes that the relationship is that of a product placement arrangement and this arrangement is not clothed as a 'sponsorship' simply because the context of the program has a sporting theme.
32. It is accepted that the television program is not itself alcohol marketing, but the program contains marketing from the Company in the form of product placement. As stated earlier, this product placement is in turn a 'marketing communication; for ABAC purposes.

Is the depiction of the product consistent with the Code Standards?

33. The complainant is concerned that the program synonymises football discussion with alcohol consumption. The Company argues that the display of product branding and the moderate consumption depicted on the program is consistent with relevant Code Standards.
34. In essence, the complaint is based upon a concern that alcohol and sport should not be associated in a way which suggests it is normal or commonplace to watch and discuss sport while drinking. There is a legitimate public debate on the appropriate role alcohol marketing should be permitted to hold in relation to sports. This issue is however one for public health advocates, sports associations, industry representations and the public to have with government. The Panel's role is far more limited and that is to assess alcohol marketing against the Standards contained in the Code.
35. There is no ABAC Standard which suggests that alcohol and sport cannot be associated. Nor is there any prohibition on alcohol marketing implying that alcohol use is normal behavior. Rather, the Code Standards require that alcohol marketing not encourage excessive or irresponsible alcohol use or show alcohol use in conjunction with activities such as sport which require a high degree of physical coordination and alertness to be carried out safely.
36. The Panel does not believe the program depicted either alcohol use or the branding of the product inconsistently with the Code Standards. Alcohol use shown was moderate with a single glass of the product apparently partially consumed over the length of the show by some participants. Equally, a seated conversation about sports cannot be said to be an activity which for safety reasons requires a high degree of physical co-ordination. Therefore, sections (a) and (d) of the Code have not been breached.
37. Accordingly the complaint is dismissed.