



ABAC Adjudication Panel Determination No. 88/17

Product: Vodka Cruiser
Company: Asahi Premium Beverages
Media: Digital
Complainant: Cancer Council Victoria
Date of decision: 22 June 2017
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 digital advertising on Instagram for Vodka Cruiser (“the Company”) and arises from a complaint received 6 June 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 6 June 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 was 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 these marketing communications.

The Marketing Communication

10. The complaint relates to posts by Vodka Cruiser on Instagram. The vodkacruiser page includes the text “Vodka Cruiser The squad’s vodka of choice. 18+ to follow. Enjoy responsibly”. The following posts from 4 October 2016 are referenced in the complaint:
 - a) An image of cut fruit in a hollowed out watermelon surrounded by 4 small bottles of Vodka Cruiser on a table scattered with bright confetti with the caption “Keep your party fresh”.
 - b) An image of two small bottles of Vodka Cruiser and two disposable cameras wrapped in a gold ribbon tied in a bow on a table scattered with bright confetti with the caption “Create fun memories and never forget a moment by leaving disposable cameras around the room at your next party”.
 - c) An image of a pink towel on a lawn covered with a pink visor, pink notebook, striped pink pencils or straws and two pink and white polka dot paper cups with ice and a small bottle of Watermelon Vodka Cruiser in each. The caption is “TGIP Thank God it’s Pink [flower emoji]”.
 - d) Five small bottles of different flavoured Vodka Cruiser in among balloons with the caption “Keep things festive and colourful by filling up balloons with water then freezing them! Its way cheaper than ice, and it’ll impress your party guests [smiling emoji].”
 - e) A hand holding a paper heart card coloured in with texta and edged in silver stickers with the text “V is for ~~Valentine~~ Vodka” hand written in purple texta in the middle of the card. The table underneath has heart shaped confetti scattered and 3 textas.
 - f) A red icebucket with ice, 3 small bottles of Vodka Cruiser and glowsticks with the caption “Chuck glowsticks into the esky at your next house party to save everyone dipping their hands in and fishing around in the dark! [star emoji]”.
 - g) Five small bottles of different flavoured Vodka Cruiser lying on a table scattered with bright confetti with the caption “ATTENTION: DIETARY-CHALLENGED DRINKERS. We’ve been tested and are hyped to announce we’re 100% gluten-free!”

The Complaint

11. The complainant is concerned that:

- a) A post includes an image of a young female model with glitter stars under her eyes with the caption “How to cover your dark eye circles the morning after” implying the girl is recovering from an alcohol binge the night before, ie a direct implication of excessive consumption of alcohol in breach of ABAC clause 3(a)(i). The image also uses a child model, presented in a childish fashion with star shaped glitter under her eyes which targets young girls in breach of ABAC Clause 3(b). While the Instagram bio states ‘18+ to follow’, there is nothing to prevent under 18s from doing so.
- b) Other Vodka Cruiser Instagram posts also appear to be directed to children by including images of settings resembling children’s parties including bottles of the product among colourful confetti, pink Vodka Cruiser with pink polka dot cups and striped pink straws typically used at children’s parties and a cut out paper heart, coloured in by hand with coloured pencils and hearts in the background.
- c) These images are intended to target minors which is contrary to prevailing community standards on health and safety in breach of the AANA Code for Advertising and Marketing to Children clause 2.12.
- d) We believe the post breaches clause 2.6 of the AANA Code for Ethics, as it is contrary to Prevailing Community Standards on health and safety. The post is an alcohol promotion that we believe is intended to target minors, and that would have strong appeal to minors. As noted above, the post uses a child model who appears to be a young teenager, and is presented in a childish fashion with star-shaped glitter under her eyes, in order to promote an alcohol product. Other Vodka Cruiser posts also appear to be directed to children, as described above. Children and young people are highly susceptible to alcohol advertising messages and to harm from drinking. Research has consistently found that young people’s exposure to alcohol advertising increases the likelihood that they will start drinking, or drink more frequently and heavily if they already drink. National Health and Medical Research Council 2009 guidelines set out the following risks of alcohol to young people:
- Initiation of alcohol use at a young age may increase the likelihood of negative physical and mental health conditions, social problems and alcohol dependence.
 - The brain is more sensitive to damage from alcohol in childhood and adolescence as it is still developing, leading to learning difficulties, memory problems and reduced performance on attention-based testing.
 - Drinking contributes to the three leading causes of death among adolescents — unintentional injuries, homicide and suicide — along with risk taking behaviour, unsafe sex choices, non-consensual sexual behaviour, and alcoholic overdose.

The NHMRC recommends that for minors “not drinking alcohol is the safest option.”

For these reasons, we believe it is contrary to Prevailing Community Standards on health and safety for minors to be targeted by, or depicted in, alcohol advertising. In addition, the caption of the post, “How to cover your dark eye circles the morning after” combined with the image of the girl with glitter under her eyes directly implies that the girl is recovering from an alcohol binge the night before. We believe this implication is also contrary to Prevailing Community Standards on health and safety, particularly given the very young appearance of the model.

The ABAC Code

12. Part 3 of the ABAC Code 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;
 - (b)(i) have Strong or Evident Appeal to Minors;
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol; or
 - (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - A they are not visually prominent; or
 - B they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted environment.

Definition in Part 5 of the ABAC provides:

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

13. The Company responded to the complaint by letter dated 15 June 2017. The principal points made by the Company were:

- a) Asahi Premium Beverages takes responsible advertising of alcohol seriously. We are aware of the Content Code requirements and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines. Our commitment to compliance with the ABAC code is demonstrated by our recent joining as a signatory.
- b) We acknowledge that the glitter eye Instagram post highlighted in the complaint does breach Part 3 (a)(i) of the Code by indirectly implying excessive consumption of alcohol and consequently was removed immediately from the Vodka Cruiser Instagram page. Upon launch of the VC Instagram page, a selection of the top performing Facebook posts were selected to be re-posted on the Instagram platform. These posts did not go through our current approvals process due to them being a re-post of previously published content. The complaint relates to one of these posts (originally posted on the VC Facebook page in April 2015). At the time of posting:
 - a. The Instagram page had no followers so the post would not have organically appeared in anyone's newsfeed.
 - b. There was no media spend put behind the post so it hasn't been pushed into anyone's newsfeed.

The re-posting of this image is an oversight on our behalf. Back in 2015 when this post was originally published our understanding and compliance to the ABAC Code was not to the same standard as it is today. We have also come a long way over the past 12-18 months with updated policies and procedures reflecting our commitment to comply with the Code and such a post would not be approved today.

- c) In relation to strong or evident appeal to minors:
 - a. Young female with star shaped glitter underneath her eyes: We disagree that this post has strong or evident appeal to minors as make up, face decals and face jewels are commonly used by 18-24 year olds at music festivals and events and as such this content has broad appeal to a wide audience.
 - b. Bottles of Vodka Cruiser amongst colourful confetti, including one that also include a disposable camera: We disagree that this post has strong or evident appeal to minors as confetti is a decorative item used commonly for celebrations (engagements and weddings) and milestone birthday functions (18th and 21st), disposable cameras are

also commonplace at such events so that guests can capture moments throughout the night and as such this content is targeted towards 18-35 year olds and has broad appeal to a wide audience.

- c. Bottles of Vodka Cruiser in an ice bucket with glow sticks: We disagree that this post has strong or evident appeal to minors. Ice buckets with decorative items (whether it be glow sticks or balloons) are commonplace at adult entertaining events and celebrations, this content is targeted towards 18-35 year olds and has broad appeal to a wide audience.
 - d. Bottles of Vodka Cruiser with ice filled balloons: We disagree that this post has strong or evident appeal to minors. Ice buckets with decorative items (whether it be glow sticks or balloons) are commonplace at adult entertaining events and celebrations, this content is targeted towards 18-35 year olds and has broad appeal to a wide audience.
 - e. Pink Vodka Cruiser with pink polka dot paper cups and striped pink straws: We disagree that this post has strong or evident appeal to minors as the items used are those commonly used for picnics, kitchen teas and milestone birthday functions (18th and 21st) and as such are targeted towards 18-35 year olds and has broad appeal to a wide audience.
 - f. A cut out paper heart decorated with V is for Vodka: We disagree that this content has strong or evident appeal to minors as the items detailed are commonly used for 'craftanoons' (a very popular craze amongst 18-35 year olds) and as such has broad appeal to a wide audience.
 - g. Our Vodka Cruiser target consumer is 18-24 years of age and as such our content has broad appeal to that age demographic and is in line with their current life stage and behaviors. Our target audience of 18-24 is legal drinking age and it is OK to be targeting adults with our advertising so long as we do not promote under-age drinking or excessive consumption. Our target audience is also predominantly female and as such we use 'female' cues, such as colours and designs that appeal to this target audience.
- d) We acknowledge that the Instagram post highlighted in the complaint does breach Part 3 (b)(ii) or (iii) as the model used looks under 25 years of age. As such we have taken steps to remove the post from Instagram to ensure compliance with ABAC regulations.
- e) Upon launch of the VC Instagram page, a selection of the top performing Facebook posts were selected to be re-posted on the Instagram platform. These post did not go through our current approvals process due to them being a re-post of previously published content. The

complaint relates to one of these posts (originally posted on the VC Facebook page in April 2015). At the time of posting:

- a. The Instagram page had no followers so the post would not have organically appeared in anyone's newsfeed.
- b. There was no media spend put behind the post so it hasn't been pushed into anyone's newsfeed.

The re-posting of this image is an oversight on our behalf. Back in 2015 when this post was originally published our understanding and compliance to the ABAC code was not to the same standard as it is today. We have also come a long way over the past 12-18 months with updated policies and procedures reflecting our commitment to comply with the Code and such a post would not be approved today.

The Panel's View

14. Asahi are the producers of the Vodka Cruiser range of pre-mixed alcohol products. The Company has promoted its products via the social media platform Instagram. A number of the Instagram posts have been identified by the complainant as arguably inconsistent with both the ABAC and the AANA Code for advertising to children.
15. This determination goes only to the standards contained in the ABAC. The question of the consistency of the identified posts with the AANA Code will be assessed by the Advertising Standards Board.
16. There are three ABAC standards which are relevant to the complaint, and these standards require that marketing communications not:
 - (i) encourage excessive consumption of alcohol;
 - (ii) depict a person who is or appears to be a minor (under 18) or an adult who is under the age of 25; and
 - (iii) have strong or evident appeal to minors (irrespective of the question of the age of persons depicted in alcohol marketing communication).
17. The complainant contends that one post features a young woman who appears to be under the age of 18 and certainly under the age of 25. Further, it is argued that this same post is accompanied by text, which implies that the young woman is recovering from an alcohol binge the night before.
18. The complainant goes on to argue that other posts will have strong or evident appeal to children by placing the product in settings resembling a children's party.
19. For its part, the Company advises that upon receiving the complaint, it reviewed the Instagram posts and accepts that the post featuring the young woman is inconsistent with ABAC Standards 3(a)(i) and 3(b)(ii) or 3(b)(iii). It is argued that the other posts do not breach the Standards.

20. In assessing if the Standards are breached, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person taking the content of the communication as a whole.
21. The Panel believes the post featuring the young woman with the glitter on her face is in breach of ABAC Standards 3(a)(i) and 3(b). In reaching this conclusion the Panel noted:
- the model appears to be under the age of 25 in breach of Section (3)(b)(iii);
 - the message 'How to cover your dark eye circles the morning after' could reasonably be taken in the context of a digital site for an alcohol product to be referring to a night after the use of alcohol;
 - the message in conjunction with the image of the young woman could be reasonably interpreted as implying excessive alcohol consumption had occurred the night before requiring the application of the glitter to cover the dark circles caused by alcohol consumption; and
 - taken as a whole, the post implicitly encourages excessive consumption in breach of Section 3(a)(i) of the ABAC
22. The other group of posts display the product in party settings e.g. in a tub with ice and glow sticks, on a bench top surrounded by glitter, with coloured balloons filled with frozen water, on a bench top with glitter and disposable cameras. Each of the posts has accompanying text referring to the holding of a party. The other posts feature a picnic scene and handmade valentine card.
23. Section (3)(b) of the ABAC provides that an alcohol marketing communication must not have strong or evident appeal to minors. This Standard may be breached if the marketing item could be said to:
- specifically target minors;
 - have a particular attractiveness for minors beyond the general attractiveness it has for adults; or
 - be using imagery, designs, motifs that are likely to appeal strongly to minors.
24. The 'party' posts do create bright visual scenes and the use of images of balloons and glitter as well as glow sticks could be associated with a children's party. The accompanying text refers to using props such as the frozen balloons and glow sticks as a means to impress party guests.
25. On balance, the Panel believes this series of posts are inconsistent with the Section 3(b) Standard and can be reasonably taken as having strong or evident appeal to children.
26. Further, the posts which depict the valentine card and the picnic also use images and props which could reasonably be said to have strong appeal to

children such as colouring in pencils, glitter and pink polk-a-dot cups. These posts, particularly in the context of the posts as a whole, are also in breach of Section 3(b) standard.

27. It is noted that the Company has recently joined the ABAC scheme and that the Company recognises that the posts were developed in a period when its 'understanding and compliance to the ABAC Code was not to the same standards as it is today'.
28. Accordingly the complaint is upheld.