



ABAC Adjudication Panel Determination No. 91-93/17

Product: Vodka Cruiser
Company: Asahi Premium Beverages
Media: Digital
Complainant: Cancer Council Victoria
Date of decision: 24 July 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 the Vodka Cruiser Facebook page for Asahi Premium Beverages (“the Company”) and arises from three complaints received on 7 July 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 7 July 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 complaints relate to three posts by Vodka Cruiser on Facebook. The following posts are referenced in the complaints:
 - a) A post on February 14 with the caption [microphone and notes] “I’ve been missing your strawberry kisses... “ [image of pink lips]. Below the caption is a short video on a loop that shows a woman from below her eyes puckering her lips which are painted with dark pink lipstick as she holds a bottle of Vodka Cruiser Ripe Strawberry in one hand. She is then shown extending her arm so she is holding the bottle in front of her body and it becomes the focus of the shot.
 - b) A post on 31 March with the caption “Me: This year I’ll buy one case of Blueberry. Inner me: Stockup like there’s gonna be a goddamn apocalypse. You know the drill – run in-store to a SipnSave, Bottlemart or 9/11 Bottleshop before they run out! [three blue hearts]”. Below the caption is an image of two bottles of blue coloured Vodka Cruiser, one partially obscured by a black cloth.
 - c) A post on 7 April with the caption “[microphone and notes] “My Pom Pom brings all the boys to the yard...” [microphone and notes]. Head into a Liquorland or First Choice Liquor store NOW to secure a piece of Vodka Cruiser history! [smiling emoji] Hurry, Pom Pom is available until stocks last. Guaranteed to get you matches [laughing emoji].” Below the caption is a photo of a phone open to the ‘tinder’ app with a photo of a woman from below the chin to the waist holding in front of her with her arm extended a bottle of Vodka Cruiser Pom Pom and below the photo the name ‘Alison 26’.

The Complaint

11. The complainant is concerned that:
 - a) The first post on 14 February is a breach of clause 3(c)(ii) of the ABAC Code as the caption and video directly imply that the consumption of Strawberry Vodka Cruiser is a cause of or contributor to sexual success.
 - b) The second post on 31 March as a breach of clause 3(a)(i) of the ABAC Code, as it implies that despite the subject stating that he or she will buy just one case of Blueberry Vodka Cruisers this year, his or her real desire is to buy an extremely excessive quantity of the product. The post, therefore, directly implies or encourages the excessive consumption of an Alcohol Beverage, and consumption inconsistent with the Australian Alcohol Guidelines in breach of clause 3(a)(i) of the Code.

- c) The third post on 7 April is a clear breach of clause 3(c)(ii) of the ABAC Code, as the words in the caption, “My Pom Pom brings all the boys to the yard...”, and “Guaranteed to get you matches”, combined with the Tinder profile showing the woman holding a Vodka Cruiser, directly imply the presence of an alcoholic beverage as a cause of or contributing to sexual success. The caption is a play on the lyrics “My milkshake brings all the boys to the yard” of the song ‘Milkshake’ by Kelis, in which the word “milkshake” is intended to allude to the woman’s sex appeal.

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;
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

The Company’s Response

- 13. The Company responded to the complaint by letter dated 18 July 2017. The principal points made by the Company were:
 - a) The post dated 31 March does not imply or encourage excessive consumption of alcohol. The post references stocking up on Limited Edition VC Blueberry before it sells out. It is a call to action letting consumers know that this flavour was ‘limited edition’, meaning it was produced as a job lot and would only be available in stores for a short time. The post does not encourage excessive consumption, or contain any indirect implication about consumption of the product. It simply encourages consumers to purchase stock that was only going to be in limited supply. We believe that it is fair to assume that a reasonable person could ‘stock up’ on a limited edition flavour for future and responsible consumption (when the product is no longer available).
 - b) The post dated 14 February does not show (directly or indirectly) that the consumption of alcohol is the cause or contributor to the achievement of sexual success. The post of a girl with red lipstick holding strawberry Vodka Cruiser with the caption “I’ve been missing your strawberry kisses” directly refers to her missing Strawberry Vodka Cruiser (the product). We consider that a reasonable person would understand the reference to kisses in this context, as a reference to ‘kissing the lip of the bottle’ of the Strawberry Vodka Cruiser product. Even if the line ‘I’ve been missing your Strawberry kisses’ was interpreted as kissing a person, the post does not imply that consumption of the product would lead to getting kissed.

- c) On a closer review following receipt of this complaint, it is acknowledged that the post dated 7 April could be interpreted to indirectly imply that the consumption of alcohol is the cause or contributor to the achievement of sexual success. Accordingly, it has been removed from the Vodka Cruiser Facebook page.

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 Facebook. Three Facebook posts have been identified by the complainant as arguably inconsistent with the ABAC Responsible Alcohol Marketing Code.
15. There are two ABAC standards which are relevant to the complaint, and these standards require that marketing communications not:
 - (i) encourage excessive consumption of alcohol;
 - (ii) show the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.
16. In assessing if a marketing communication is in breach of an ABAC standard, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person, taking the contents of the marketing communication as a whole.
17. The post dated 14 February features a woman with a strawberry flavoured bottle of the product. The complainant contends the post implies that the product is a cause or contributor to sexual success. The Panel does not believe the post to be in breach of the ABAC standard. The reference to 'missing your strawberry kisses' would likely to be taken to be a play on the flavour of the product and not an implication that the product leads to sexual success.
18. The post dated 31 March features text indicating an internal debate as to whether a person will purchase one or multiple cases of the blueberry flavoured product. The complainant contends this encourages excessive consumption. The Company contends the post relates to the limited time this particular product will be available.
19. The Panel does not believe the post breaches the relevant standard given:
 - There is a clear distinction between a call to purchase a product and the manner a purchased product might be consumed;
 - Alcohol by its nature has a reasonably long shelf life and it is not uncommon to purchase alcohol products in multiples such as a case of wine or a carton of beer.

- Alcohol products purchased in multiples can be subsequently consumed by multiple people or a single person over a prolonged period;
 - The post promotes the purchase of the product and does not go to its pattern of consumption; and
 - A reasonable person would not interpret the post as encouragement to binge drinking or rapid consumption.
20. The post dated 7 April is a mock Tinder account and features a woman with a bottle of the product with the caption 'guaranteed to get you matches'. The complainant argues that the post implies that the use of the product will lead to the achievement of sexual success. The Company concedes that upon review, the post could be interpreted as argued by the complainant and as a result the post has been removed.
21. The Panel believes the post is in breach of the relevant standard. In reaching this view, the Panel has noted:
- Tinder is an online dating site;
 - A 'match' relates to a person selecting another Tinder member as a possible partner for a date; and
 - The combination of the phrase 'guaranteed to get you matches' and the image with the product would be reasonably taken as suggesting the product will contribute to the achievement of social or sexual success.
22. Accordingly, the complaint is upheld in part.