



ABAC Adjudication Panel Determination No. 97/17

Product: Carlton Draught
Company: Carlton & United Brewers
Media: Television
Complainant: Mr Elvery
Date of decision: 6 September 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 a television advertisement for Carlton Draught by Carlton & United Brewers (“the Company”) and arises from a complaint received 9 August 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 9 August 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 obtained for this marketing communication.

The Marketing Communication

10. The complaint refers to a television advertisement broadcast on free to air television. It opens with a man in playing uniform bouncing and kicking a football on an empty football field with the Carlton Draught logo and the message "Jason Gambold 'Local Legend' North Wangaratta Football Netball Club" and the voiceover says "What makes a Carlton Draught local legend". We then see a head and shoulder shot of Jason Gambold in the changerooms with uniforms and trophies behind him as the voiceover continues "In Jason's case it's standing by his club through some challenging years".
11. We then see Jason in his uniform kicking the football with another player as we hear a voiceover in Jason Gambold's voice "What's kept me going out at North Wanga is my close mates that I've battled through those 10, 15 years with. We all just stick together as a family club.
12. In the next scene we see Mr Gambold in casual clothing removing a can of Carlton Draught from an esky and then standing at a table with 4 men and 2 women each holding/sipping from a can of Carlton Draught as the voiceover resumes "From racking up 200 games to rebuilding the club, Jason has always been there for his mates. That's why Carlton Draught is rewarding him with \$1,000 for his beloved North Wangaratta Football Netball Club."
13. In the final scene we see the empty football field at sunset with the Carlton Draught logo and "Victorian Born & Bred since 1864" and "Don't Drink and Drive" superimposed as the voiceover concludes "Carlton Draught Victorian born and bred since 1864".

The Complaint

14. The complainant is concerned that the ad shows football players around a table drinking Carlton Draught while it is explained that Carlton Draught are giving the club money in circumstances where alcohol is a major problem in football clubs.

The ABAC Code

15. 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;

The Company's Response

16. The Company responded to the complaint on 17 August 2017. The principal points made by the Company are:
- The complaint relates to a particular television spot produced by Seven Affiliates (regional television network) for Carlton Draught, as part of a series known as "Local Legends". Seven Affiliates, as CUB's media partner, has selected a number of 'local legends' at regional football clubs throughout Victoria to feature in the campaign. Each 'local legend' received \$1000 as a donation made directly to their football club. The series includes five separate advertisements, each focused on a different town, football club and individual 'local legend'. The advertisement that is the subject of this complaint centres on the North Wangaratta Football Netball Club. Our media agency has confirmed that the specific advertisement that the complainant would have viewed is the Wangaratta version, based on our media buy in the region. We have provided a copy of the specific advertisement separately to ABAC by email.
 - We liaised with our media partners on this campaign to ensure that the 'local legends' were suitable for ABAC purposes, and more broadly, reputational purposes. CUB ensured that each individual that was selected agreed to particular terms and conditions as part of their acceptance of the donation. These terms included undergoing a police check and agreement to behave in accordance with CUB's Responsible Marketing principles and policies, which of course are in line with ABAC rules. Donations were made directly to the football clubs, with the individual receiving it on their club's behalf. CUB also mandated that the donations not be used for initiatives in junior or children's football programs. We understand the donations are mostly being used for football equipment upgrades, put towards renovations, for club events or as a contribution to general fundraising for club operations.
 - The advertisement viewed by the complainant features Jason Gambold of the North Wangaratta Football Netball Club. It features Jason having a kick of the football at the club grounds, with a voiceover about what the football club has done for Jason and his friends and family. The advertisement finishes with Jason and other football club members sharing some cans of Carlton Draught from a cooler. They are consuming one can each, in a moderate and responsible fashion. It is clear that no further football or other physical activities are to take place. The cooler contains some additional cans of Carlton Draught, but no more than one additional can per person, meaning that there is no implication that any person featured will consume more than two cans.
 - Section 3(a)(ii) provides that a Marketing Communication must not show or encourage irresponsible or offensive behaviour related to the consumption or presence of an Alcohol Beverage. Drinking beer at a football club with friends does not constitute irresponsible or offensive behaviour, nor does it encourage that type of behaviour. Drinking

beer in a responsible manner while watching or discussing sport is part of Australia's sporting and social culture.

- CUB and Carlton Draught sponsor many regional football leagues across Victoria and Australia, as well as the Australian Football League more broadly. The theme of the Local Legends campaign and program is based on the benefit that these clubs and their members provide to regional communities. CUB is proudly supportive (both in principle and financially) of this culture and community impact. There is no reason why beer, when consumed in a responsible manner by adults, should not form a part of that positive and inclusive culture. We also 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, we have 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

17. The complainant has raised a concern about a television advertisement for Carlton Draught beer. The advertisement features a stalwart of a local AFL club and shows the main character and others involved in the club consuming the product. The complainant points out that alcohol related misbehavior and harm is a major problem in football clubs and hence it is irresponsible to promote the product in this way.
18. The Company explains the advertisement is one in a series entitled 'local legends' which feature a local AFL club and the people behind the club. It is argued that the advertisement meets the requirements of the ABAC and that careful checking was conducted to ensure that the people featured in the advertisements enjoyed good reputations.
19. The ABAC sets out a number of standards that alcohol marketing is to satisfy. These standards go to the responsible portrayal of alcohol use and the effects of alcohol. The Code does not go to issues of a wider public policy such as whether alcohol should be marketed at all or whether marketing should never place alcohol in association with a sport or cultural activity.
20. This means that it is not the Panel's role to assess if the concept of the current 'local legends' campaign should be allowed on public policy grounds. Rather, the Panel is confined to assessing if the advertisement can be said to be encouraging excessive consumption of alcohol or irresponsible or excessive related to alcohol use. The wider question of public policy is an issue ultimately for the Government

21. In this case the advertisement depicts moderate consumption by the club members in a quiet setting around a table at the club grounds. There is no implication that anyone has been affected by alcohol use or that excessive alcohol use will occur. Nor is there any reasonable implication that the persons shown drinking will participate in an activity that requires physical co-ordination for safety reasons such as playing football after consuming the product.
22. Accordingly, the complaint is dismissed.