



ABAC Adjudication Panel Determination No. 99/17

Product: Carlton Draught
Company: Carlton & United Brewers
Media: “Front Bar” Television Programme
Complainant: Confidential
Date of decision: 17 October 2017
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

- 1 This determination by the ABAC Adjudication Panel (“the Panel”) concerns placement within a television program on Channel 7 “Front Bar” of Carlton Draught which is produced by Carlton & United Brewers (“the Company”) and arises from a complaint received 7 September 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 7 September 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 program, "Front Bar" that was broadcast on Wednesday 6 September and depicted the presenters and their guests consuming glasses of Carlton Draught.
- 11 The program features three presenters, Andy Maher, Mick Molloy and Sam Pang and two former AFL football players as guests. The program is a light hearted panel discussion on AFL football, including AFL highlights.
- 12 The program 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 program. The presenters and guests are shown sipping the beer on occasion and one of the guests is shown refilling his glass from the Carlton Draught bar tap next to him.

The Complaint

- 13 The complainant is concerned that the program shows alcohol (drug) consumption.

The ABAC Code

- 14 Section 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

- 15 The Company responded to the complaint on 22 September 2017. The principal points made by the Company are:
 - (a) In summary our position is as follows:
 - The complaint relates to a television program broadcast on the Seven Network on Thursday evenings, called "The Front Bar".
 - The ABAC Panel has previously considered a complaint in relation to "The Front Bar" program, albeit a different episode (reference number 78/17, determination date 15 May 2017). The Panel dismissed the complaint in that instance.
 - 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. We understand that the Panel has determined that CUB's sponsorship of "The Front Bar" does fall under the remit of ABAC, ultimately it is still a sponsorship arrangement in practical terms.
 - "The Front Bar" episode that is the subject of the current complaint does not breach section 3(a)(i) of the Code in relation to excessive or rapid

consumption, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Health Guidelines. The episode also does not breach section 3(a)(ii) of the Code in relation to irresponsible or offensive behaviour.

- (b) 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 with a start time of between 8.30pm and 9.30pm, running for approximately 45 minutes to an hour. 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.
- (c) As noted in our response to the previous complaint in relation to “The Front Bar”, CUB is cognisant of the unique challenges that television and product placement bring to the ABAC landscape. Although CUB is not a producer of the program, we still take all possible steps to make sure that any material involving our product is marketed in a responsible manner in accordance with ABAC. This has continued with even more vigilance since the Panel’s finding that “The Front Bar” is a ‘marketing communication’ for ABAC purposes. 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 prior to the commencement of the season for all key talent (being the 3 main regular presenters) and editorial producers on the principles and spirit of ABAC, so that they can consider those issues when developing and presenting content.
 - We ensure that Seven Network and the producers of “The Front Bar” work together to conduct on-the-spot training for guests on the show, who vary week to week.
 - 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.
 - We insist on ABAC compliance as a condition of our sponsorship agreement.
- (d) We note that two of the specific notes in your questions, which we have addressed below, relate to comments or behaviour of guests on the program.

“The Front Bar” is hosted by the same three hosts each week (subject to change every now and then due to availability), and each episode also generally features two guests. The guests vary week to week, much like any panel program. Guests tend to be ex-football players, most often from the 80s, 90s and 2000s, and football personalities. The dialogue between the key presenters and the guests tends to revolve around anecdotes from the ‘good old days’ of football, and life as a footballer during the relevant period. Confirmation of the guests is provided when we receive run sheets for the particular episode, generally a day or two prior to the live broadcast. We check that each guest is over 25 years of age, that they have not been involved in any alcohol-related incidents, and that they are a suitable guest to feature on a live broadcast sponsored by CUB. At the beginning of the season, we, along with Seven Network and our media partner agency, developed a list of approved potential guests, and a much shorter list of unsuitable identities, to help guide guest selection week-to-week.

- (e) Once guests are confirmed, they are briefed by the production company on all aspects of the show, including compliance with CUB’s obligations as a sponsor of the program. One particular producer is responsible for conducting this briefing. The briefing notes that the guest:
- should avoid any mention or anecdote that involves excessive use of alcohol;
 - should not say anything that could be seen to encourage the excessive or irresponsible use of alcohol; and
 - may sip from the beer that will be put in front of them, as the hosts do, but only in a moderate and responsible way.
- (f) The guests in this specific episode were Tony Jewell (aged 73, played in the VFL between 1964 and 1970 for the Richmond Football Club, and coached various clubs between 1979 and 1987) and Scott Cummings (aged 43, played for several clubs in the AFL between 1994 and 2002, and has appeared on “The Front Bar” previously).
- (g) CUB’s involvement in the episode referred to in ABAC Complaint 99/17 was the same as its involvement in the episode referred to in ABAC Complaint 78/17. We have added some clarification of this involvement above. To confirm, product placement of Carlton Draught is an element of CUB’s sponsorship arrangement with Seven Network, however CUB does not have any level of control over execution during broadcast. CUB is not the producer of the program. Final set design, layout and broadcast are determined by Seven Network at its studios.
- (h) The program does not breach sections 3(a)(i), 3(a)(ii), or any other section of the Code.
- The act of panelists drinking alcohol live on television does not breach the Code. This matter was considered by the Panel in its determination for ABAC Complaint 78/17, where the Panel concluded that it “does not believe the program depicted either alcohol use or the branding of the product inconsistently with the Code Standards”. The episode the subject of ABAC

Complaint 99/17 does not depict alcohol consumption any differently than the episode previously considered by the Panel. Drinking beer live on television while discussing sport is not irresponsible behaviour and does not encourage irresponsible behaviour.

- Product placement of Carlton Draught is included as part of CUB's sponsorship of "The Front Bar". There is no specific requirement for the 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. The presenters and guests across all episodes consume the product in a responsible manner, in small sips. From our knowledge and review of the program over the course of each episode and the season as a whole, very little product is actually consumed by the talent. Specifically in relation to the guest away from the desk (which we take to mean the guest behind the bar, Scott Cummings), it is impossible to tell across the entirety of the episode precisely how much beer he consumes, as he is on camera so infrequently. When this guest does appear on screen, it is only for a few seconds at a time. In our review of the program, it does not appear that the guest is ever shown actually drinking the beer at all. Across the entirety of the episode, there is nothing that implies irresponsible or excessive consumption by the guest or any of the panellists. A reasonable viewer watching this episode would not consider that the guest has consumed an excessive amount of alcohol or consumed alcohol in a rapid or irresponsible manner.
- Ultimately the glasses of beer are stage props, and serve a similar purpose to the other branded props in the set. Having glasses of beer on the bar acts as a vehicle to elevate Carlton Draught branding on screen. CUB's preference from a brand perspective is that the glasses be close to full, and producers on set top up the glasses for this reason, as a full glass of beer forms part of the iconic Carlton Draught brand imagery. As there is a fully functioning draught beer system featured as part of the set, the reasonable implication of the varying levels of beer in each glass throughout the program is that the glasses are being refreshed from that draught system during breaks, without necessarily being fully consumed.
- Noting our comments above regarding the briefing process for guests on the program, Seven Network has confirmed that Tony Jewell and Scott Cummings were appropriately briefed (Scott Cummings had also been briefed before previous appearances). It is important to contextualise the anecdote in which the word "pissed" was used. We have set out the transcript of that segment below. Tony Jewell was the coach of the Richmond Football Club at the time of the anecdote. For reference, this begins at 57:01 of the episode.

Andy Maher: Hey Jewelly, they tell a story about you, going into 1980, the year that you with that flag, I don't know whether it was your first pre-season training session but it was a three and a half hour session, there was running, it was a 40 degree day, you absolutely pulverised them and to this day Richmond players still say it was the toughest session any player's ever seen at Richmond. And you didn't let them have a drink of water. Is that true?

Tony Jewell: Yeah, yeah, and there was one bloke called Colin Waterson. We were doing a hundred hundreds and he started to get the wobbles.

*Mick Molloy: He started to get the wobbles because he's soft! *laughter from audience**

Tony Jewell: And I said to him, what's wrong with you? And he said 'ughhh' and I went back to the fitness bloke and said, I think he's pissed! I think he's been on the drink.

*Mick Molloy: But he wasn't, he was dehydrated! Tony Jewell: Well he finished up in hospital! Sam Pang: With a stroke, so it was fine! *laughter from audience**

After this point a host asks Mr Jewell an unrelated new question, and a new anecdote starts. As can be seen from this transcript, Mr Jewell's reference to someone being 'pissed' was not stating that the person had consumed an excessive amount of alcohol, or consumed alcohol irresponsibly. The person in the anecdote was disorientated from a punishing physical workout. In the context of the anecdote, use of the word 'pissed' cannot be seen to encourage or depict excessive or irresponsible consumption of alcohol. In fact, after Mr Jewell uses the word 'pissed', the main hosts steer the conversation (by making jokes) to make it clear that in fact no one in the anecdote was actually consuming any alcohol at all. They then swiftly move on to the next question.

- In relation to clips shown, of a melee during the football finals in 1980, when Mr Jewell, the panel's guest, was the coach of Richmond. This anecdote begins at 58:05. Essentially, the anecdote centres around Mr Jewell and the opposition coach in the particular game engaging with each other during the quarter time break. The story has interest for the audience because it would be unheard of for such an interaction to occur in modern AFL. The incident discussed and featured does not involve alcohol in any respect. No reference to alcohol is made when the panel and guests discuss the incident. Further, the way the story is treated by the hosts is not to condone violence; they display disbelief that neither coach received a fine or suspension over the incident, and acknowledge that this would not be acceptable behaviour in the current era. The overall message is that violent behaviour is not acceptable, on the football field or otherwise.
- The clip of a barman carrying 29 steins of beer (0:56) is shown as part of a segment which strings together various humorous clips, where the hosts joke about the content of the clips and make comparisons to real-life upcoming sporting events. This specific clip shows a man carrying 29 steins of beer all at once; a world record attempt in a competition of "Barman of the Year" held outside of Australia. No alcohol is consumed in the clip, and it is clear that no one person is going to consume all the steins of beer, or in fact any beer. The clear focus is on the carrying or serving of the beer (given the competition is "Barman of the Year") and there is no implication the barman or others in the clip would consume alcohol irresponsibly, in excess, or in fact, at all. Even if this was a real service situation and not a staged contest, the 29 beers could be being served to 29 different people.

- (i) 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 editorial control over the program or the execution of 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

- 16 This is the second determination concerning a sports themed live to air program broadcast on the Seven Network entitled "The Front bar". The show adopts a format where the regular presenters chat with guests on a set which resembles a bar in a hotel. The participants talk about AFL in generally a lighthearted manner.
- 17 The program is 'sponsored' by the Company. For this financial support the Company's product – Carlton Draught – is shown as being served in the 'bar' and the participants are on occasions depicted consuming the product. The set features other product branding such as logos on beer glasses and on beer mats.
- 18 In Determination 78/17 the Panel made some findings which are equally applicable to this complaint, namely:
- The placement of the Company's product and branding within the program is an example of the marketing technique known as product placement and this technique is a marketing communication to which the ABAC standards apply; and
 - The commercial arrangements between the Company and the producers of the program do not fall within the meaning of a 'sponsorship' for the purposes of section 2(b) of the Code, which means the marketing is not exempted from having to comply with the ABAC standards.
- 19 The program is live to air and hence each program is unique. This means that while each program follows a standard format and the placement of the Company's product and branding is replicated on each episode, there will be unique characteristics in each edition of the program. For instance, it is possible that there will be different:
- depictions of the amount and pace of the consumption of the product; and
 - dialogue between the presenters and the guests which could potentially go to the portrayal of alcohol use.
- 20 For these reasons, each edition of the program needs to be assessed individually depending on the nature of a complaint received about an individual program. Possibly a complaint might go to the program generally and not raise an issue specific to a particular episode, but more likely a complaint will be contextualised by the dialogue or the use of the product in that particular edition of the program.

21 The Panel has reviewed the edition of the program which aired on 6 September 2017. The Panel does not believe the ABAC standards have been breached during this episode. In reaching this conclusion the Panel has noted:

- The depiction of actual alcohol consumption is moderate;
- The discussion about a player's physical condition resembling being "Pissed" is contextualised and does not condone nor encourage excessive alcohol use;
- The brief scene showing a competition of holding multiple beer steins is also contextualised and would not be interpreted as encouraging excessive consumption;
- It is not contrary to an ABAC standard to associate alcohol with a discussion of sports; and
- Taken as a whole a reasonable person would not interpret the program's depictions and references to alcohol use as encouraging immoderate or irresponsible alcohol consumption.

22 Accordingly the complaint is dismissed.