



ABAC Adjudication Panel Determination No. 102/17

Product: Carlton Draught
Company: Carlton & United Brewers
Media: In stadium announcement/digital app
Complainant: Ms Leveleky
Date of decision: 9 November 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 an in-stadium/digital app promotion for Carlton Draught which is produced by Carlton & United Brewers (“the Company”) and arises from a complaint received 18 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 18 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 not been determined within this timeframe due to the unavailability of the Chief Adjudicator.

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 an in-stadium announcement and promotional material at the MCG on 8 and 15 September promoting a Carlton Draught competition that occurred during three quarter time of two AFL finals.
11. Promotional material at the stadium prior to three quarter time included:
 - A 30 second video clip:
 - beginning with an aerial view of the MCG stadium and surrounds with music and a voiceover “This finals series at the MCG”.
 - Screen changes to the text, “\$25 Case”, images of pipes in the shape of a trophy containing the Carlton Draught Brewery Fresh logo and the text “Freshly Brewed for Finals”, 24 cans of Carlton Draught Brewery Fresh and the Liquorland and first Choice liquor logos accompanied by the voiceover “Carlton Draught, Liquorland and first Choice liquor in Victoria are giving away 1,000 vouchers for \$25 case of fresh finals cans”.
 - Screen changes to a mobile phone with the Shazam app as the voiceover continues “You’re going to need Shazam on your phone, be over the age of 18, and be ready at 3 quarter time to get involved”.
 - Screen changes to a can of Carlton Draught Brewery Fresh and two boxes with instructions to “Download on the App Store” and “get it on Google Play” as the voiceover continues “Go to the App Store or Google Play now to download the app and when the siren sounds at 3 quarter time”.
 - Screen changes to a mobile phone with the Shazam app as the voiceover continues “open Shazam on your phone, watch the big screen and be ready to go”.
 - Screen changes back to images of pipes in the shape of a trophy containing the Carlton Draught Brewery Fresh logo and the text “Freshly Brewed for Finals”, 24 cans of Carlton Draught Brewery Fresh and the “18+ For people over the age of 18 only” logo accompanied by the voiceover “for the Carlton Draught Fresh Shout”.
 - Short video clip on a screen with a small 18+ logo and the text “Something Big Is Brewing”. The words are shattered by a can of

Carlton Draught Brewery Fresh appearing on the screen, followed by the words “Open Shazam at 3 Qtr time”.

- The text “Shazam Now” and the Carlton Draught logo scrolling across a screen.
- Short video clip on a screen in several formats and locations with a can of Carlton Draught Brewery Fresh a small 18+ logo and the text “Something Big Is Brewing”, followed by the following groups of text scrolling on and off the screen “Download Shazam Now [Shazam logo]”, “Phones Ready 3 Qtr time [Shazam logo]” and “Carlton Draught”.

12. At 3 quarter time there was an in stadium announcement:

Now's the time to open Shazam and get ready for the Carlton Draught Fresh shout.

When instructed hit the Shazam button – The first 1000 people 18+ to fill the virtual pot glass will receive a voucher for a \$25 case of Fresh Finals cans through Liquorland and First Choice in Victoria.

13. Following the announcement a 90 second video clip was shown:

- Accompanied to music with a strong drum beat the following words and images flashed on the screen in fast succession:
 - “Its time to”
 - “Shazam”
 - “Shazam Now”
 - 24 cans of Carlton Draught
 - “For Carlton Draught”
 - “Shazam”
 - “Now”
 - “Launch”
 - Two mobile phones with the Shazam app open
 - 24 cans of Carlton Draught
 - “For Finals Fresh”
 - “Carlton Draught”
 - “Shazam”

- “Now”
 - Mobile phone with the Shazam app open
 - “For”
 - “Carlton Draught Brewery Fresh”
 - 24 cans of Carlton Draught
 - “Carlton Draught Brewery Fresh”
 - ”Shazam”
 - “Now”
 - 24 cans of Carlton Draught
 - “Carlton Draught Brewery Fresh”
 - ”Get”
 - “Ready”
 - “Now”
 - “For”
 - “Carlton Draught Brewery Fresh”
- A voiceover commences with “OK everyone [mobile phone with Shazam app open appears on screen] hit the Shazam button now and hold your phone to the big screen [can of Carlton Draught appears on screen]. I’m going to pour you a fresh Carlton Draught [sound of can opening] straight to your phone [image of a glass with Carlton Draught logo on a mobile phone being filled with beer] the first 1,000 people to fill the virtual pot on their phone will get a voucher..”
 - Screen changes to the text, “\$25 Case”, images of pipes in the shape of a trophy containing the Carlton Draught Brewery Fresh logo and the text “Freshly Brewed for Finals”, 24 cans of Carlton Draught Brewery Fresh and the Liquorland and first Choice liquor logos as the voiceover continues “..for a \$25 case of fresh finals cans redeemable through Liquorland and First Choice Liquor stores in Victoria”.
 - The voiceover continues with the words spoken appearing on the screen as text and images “You heard right, we’re going to giveaway, 1,000 \$25 cases of Carlton Draught fresh finals cans in Victoria”.
 - The screen changes to a hand opening a can of Carlton Draught as the voiceover says “Are you ready” and the screen changes to “Shazam Now For Carlton Draught Brewery Fresh”.

- We see beer being poured from a can as the voiceover says “I’m starting the pour”.
- Screen changes back to images of pipes in the shape of a trophy containing the Carlton Draught Brewery Fresh logo and the text “Freshly Brewed for Finals”, 24 cans of Carlton Draught Brewery Fresh and the “18+ For people over the age of 18 only”, Liquorland and first Choice liquor logos accompanied by the voiceover “For those of you fast enough you’ll be able to redeem that voucher at your local Liquorland and first Choice Liquor store in Victoria”.

The Complaint

14. The complainant is concerned that:
- The announcement would have fun, game and winning elements that would appeal to minors in the audience and encourage minors to directly interact with the brand.
 - There is no restriction on minors participating in the promotion.
 - There was no drink responsibly message.

The ABAC Code

15. 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
16. Part 2 (b)(v) of the ABAC Code provides that The Code does NOT apply to Sponsorship.

17. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors;

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.

Minor means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

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).

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.

The Company's Response

18. The Company responded to the complaint on 3 October 2017. The principal points made by the Company are:

- The complaint relates to a promotion conducted by Carlton & United Breweries (CUB) in partnership with customer Coles, through First Choice and Liquorland outlets. The promotion is known as the "Fresh

Shout” and is one element of a broader campaign. All promotional elements in the campaign were based on the special batches of Carlton Draught cans that CUB produced for Liquorland and First Choice in Victoria during the AFL Finals in September 2017. Batches of freshly brewed Carlton Draught, known as “Fresh Cans For Finals” were canned at CUB’s Abbotsford Brewery each week of September, labelled with their brewing date, then delivered to Liquorland and First Choice stores in Victoria within days so that consumers could purchase the freshest Carlton Draught cans available. The “Fresh Shout” element of the campaign was an activation run at the MCG during the AFL Finals Series. At the three quarter time break, consumers were encouraged to participate in a Fresh Shout promotion, whereby they could claim a voucher for a \$25 case of fresh Carlton Draught cans which they could then redeem at a Liquorland or First Choice outlet in Victoria. The promotion was advertised to consumers at the MCG prior to three quarter time to drive awareness, but was not promoted more broadly.

- Pre-game: A video is shown on the big screen, and branding appears on LED signage around the ground. The voiceover on the video gives details about the promotion, including that the promotion is only available to those over 18, that the ‘prize’ is a voucher for a \$25 case of Carlton Draught cans available from the particular retailers, and that downloading the Shazam app on a smartphone is required to be able to participate. The voiceover tells viewers to be ready at three quarter time to enter. The visual uses retailer logos, Shazam logo and Carlton Draught branding used across the broader campaign.
- Pre-game: At the same time as the above, promotional material was also shown on various screens around the stadium (for example, in bars).
- Quarter time: The same video as above was shown again.
- Three quarter time: The MC at the ground announces as follows: Now's the time to open Shazam and get ready for the Carlton Draught Fresh Shout. When instructed hit the Shazam button – The first 1000 people 18+ to fill the virtual pot glass will receive a voucher for a \$25 case of Fresh Finals cans through Liquorland and First Choice in Victoria.
- Also three quarter time: At the end of the MC announcement, a different video is shown on the big screen. This video prompts viewers to get ready with Shazam, in preparedness for entering the promotion. To enter, viewers need to open their Shazam app, use the recording function of the app, enter their age, and then (once they have passed the age gate) wait for a pot glass to be filled with beer. Note that the user could not even see the pot glass filling with beer without first successfully completing the age gate page.
- Once the pot glass has filled with beer, the user is asked to complete a form with their contact details. The first 1000 people to complete these steps (including the age gate and the details form) receive an

email which links them to the redemption mechanic for their \$25 voucher for Carlton Draught cans at Liquorland or First Choice in Victoria.

- On all pieces of material used in this promotion, a prominent 18+ logo is used. CUB applies an Alcohol Responsibility Message (ARM logo) to every Marketing Communication it releases to the market – either an 18+ logo, or a ‘don’t drink and drive’ logo. On promotions, where of course only those over 18 are permitted to enter, we use the 18+ logo in order to promote responsible consumption (by discouraging underage consumption), and also to reinforce that the promotion is strictly only available to those over 18.
- None of the elements of the promotion have Strong or Evident Appeal to Minors. We submit that the visuals, voiceover and music used in the activation do not have Strong or Evident Appeal to Minors. These elements do not have a particular attractiveness for a Minor beyond general attractiveness for an Adult, and do not have any particular appeal to Minors. No imagery or animations are used aside from text and images of beer with Carlton Draught theme colours and Shazam logos (Shazam being the entry mechanic for the promotion). The promotion was certainly not specifically targeted at minors, and was not shown at an event dominated by minors in attendance or appeal. We understand that Minors do attend sporting events, and we are cognisant of this when developing marketing material to be shown at sporting events, however we do not believe that sporting events hold particular appeal for Minors over and above their appeal to the general population.
- Using the Shazam app as a mechanism for entry also does not have Strong or Evident Appeal to Minors. An app was used as the entry mechanic to make sure that the average football game attendee (an adult) could easily enter the promotion, given the prevalence of smartphones and apps amongst the general population. The use of Shazam made sense as a quick and practical conduit between advertising a discounted product via the Public Address and Audio Visual systems at the MCG, and providing users with a voucher to be downloaded to their phones. The use of the Shazam app has a practical application; it was not chosen because it may appeal to any particular group. In terms of demographic, Shazam does not require users to enter an age when downloading the app for the first time. Adding a date of birth is voluntary. According to data sourced directly from Shazam, 97% of Shazam users who do enter their age are over 18.
- The engaging visuals and upbeat music used in the three quarter time address again had a practical purpose. People attending the football usually use the breaks in play to leave their seat and visit concession stands etc. For the promotion to be effective, we needed to be able to appeal to those consumers who might otherwise be preoccupied. The best way for the promotion to be attention grabbing would be to accompany it with up-beat audio and eye catching

visuals. Again, these elements were not chosen due to having a particular appeal to any group of people, and in fact do not have any such appeal to minors. They were chosen due to their attention grabbing nature; an essential element of any promotion that wishes to cut through in a crowd environment. The music was also selected to serve a functional purpose, It needed to come clearly through the sound system so that the Shazam app could recognise the advertisement and trigger the next phase of the user journey.

- Calling out the urgency of the promotion was again an instructional piece. The promotion was only active for 60 seconds, so in order for consumers to claim their voucher, they needed to act quickly. If these sorts of call-outs were omitted from the piece, consumers could potentially be misled into thinking the promotion was not time-sensitive. Like any race or time-sensitive promotion, the call-out to act quickly does not have a particular appeal to minors.
- Incorporating “fun, game and winning elements” does not have Strong or Evident Appeal to Minors. Adults can, and do, enter promotional competitions – we know this through our experience of running hundreds of promotional competitions every year across our beer and cider brands, none of which minors are permitted to enter. Simply because this promotion involved a “game” aspect does not mean that it has Strong or Evident Appeal to Minors.
- The mechanic of filling the glass of beer is not particularly interactive. There is simply an animation of a beer glass filling up once the user has successfully ‘Shazamed’ the song that is playing. This animation is intended to signify a successful reading of the Shazam trigger by the phone. There is no interactive element outside of this. As with other elements of the campaign noted above, the inclusion of the animation into the Shazam experience has a practical benefit.
- As shown in the artwork assets that accompanied this submission, the ‘18+ only’ callout was prominent throughout. Consumers could not have been misled into thinking that the promotion was open to all ages given the prominence of the callout, and the frequency with which it appears. We have provided further detail on this aspect below.
- As is standard policy for all CUB promos, no one under the age of 18 is able to enter. CUB takes a number of steps to make sure this age requirement is adhered to. This was also true for the Fresh Shout campaign. In order to maintain the integrity of the promotion, and limit entry to those over 18, CUB took the following steps:
 - CUB’s standard ARM logo ‘18+ only’ was clearly visible on various advertising pieces throughout the activation in accordance with internal guidelines, as well as “18 plus” being called out by the MC.

- Access to the vouchers was restricted by an age gate, meaning only those who were 18 or over were actually able to enter the promotion.
- Access to the product itself is subject to the strict liquor licensing and responsible service standards upheld by Liquorland and First Choice outlets. CUB did not provide winners with alcohol product; rather we provided a voucher that needed to be redeemed in a Liquorland or First Choice outlet. No alcohol would be provided to consumers without them first having their age verified by Liquorland or First Choice staff. CUB took all possible steps to make sure vouchers were only redeemable for people over the age of 18.
- 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

19. This complaint concerns a promotional activity for Carlton Draught conducted by the Company during a game in the 2017 AFL final series. The activity was interactive and enabled participants attending the football game to enter into a competition to win a case (24 cans) of the product.
20. The concern of the complainant centres upon the appeal of the promotional activity to under 18-year-olds at the stadium. It is argued that the activity would be seen as a game and fun and as such would encourage minors to directly interact with the product and brand. It was also asserted the promotion was not restricted in a way minors could not participate and no 'drink responsibly' message was displayed during the promotion.
21. The promotional activity is fully described in paragraphs 11 to 13. In short, the activity was promoted via the large video screens at the stadium with an accompanying voice-over providing instructions as to how the competition was to be conducted. The activity invited (adult) spectators to register on the app Shazam and then use the app to enter the competition to win the prize. Access to the Company's competition site was via Shazam and activated by music played at the stadium at the commencement of the three-quarter time break in the AFL fixture.
22. To participate in the activity and to be an actual contestant, a person needed:
 - An Internet capable mobile device;
 - To download the Shazam app;
 - 'Hold your phone to the big screen' while the activity was occurring;

- Access a Company competition gateway which required the participant to enter their date of birth;
 - Watch a video played on the participant's mobile device;
 - Enter personal details including an email address and telephone number into the competition site; and
 - If successful, redeem a voucher forwarded by the Company to a winner by way of an email.
23. The ABAC provides that an alcohol marketing communication must not have a strong or evident appeal to minors. The type of promotional activity used by the company at the AFL game is within the scope of a marketing communication for ABAC purposes, which expressly incorporates brand advertising, competitions and digital communications.
24. A marketing communication can be said to have strong or evident appeal to a minor if:
- It is likely to appeal strongly to minors;
 - It is specifically targeted at minors;
 - Has a particular attractiveness to a minor beyond the general attractiveness it has to an adult; or
 - Uses imagery, designs, motifs, animation, or cartoon characters that are likely to strongly appeal to minors.
25. The Company contends that its promotional activity is consistent with the ABAC standard. It argues:
- The promotion made clear that the competition was only open to persons aged 18 and over;
 - The visuals, voice-over and music used in the activity did not have strong or evident appeal to minors or a particular attractiveness beyond a general attractiveness it has to adults;
 - Shazam was a practical conduit to run the competition and the app is of general application; and
 - The 'game' element of the promotion is common to competitions and does not have a particular or evident appeal to under 18 year olds.
26. In assessing if an ABAC standard has been complied with, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person taking the content of the marketing item as a whole. The reference to a reasonable person is drawn from the Australian Common Law system and means that the attitudes, opinions and sensibilities of the majority of the community are to be the benchmark.

27. The promotional activity is an interactive rather than purely passive form of marketing. Passive marketing such as a television advertisement endeavours to capture the attention of the audience and communicate a message, but does so without the active participation of the audience. Marketing through the use of a competition can be described as an active form of marketing. It invites individual members of the audience to respond to the opportunity to secure a prize and engage with the brand owner in a direct way as opposed to being a passive recipient of a message.
28. While marketers using competitions to promote products is a longstanding technique, the use of the capability afforded by smart devices to run a competition is more recent. The Shazam app debuted in 2008, and enabled users to identify music. It has proven to be a hugely popular app for use on smart devices and by 2014, the owners of the app reported 100 million monthly active users with the app loaded on more than 500 million devices worldwide.
29. It is reasonable to assume that a sizeable proportion of the spectators attending the AFL finals had the app on their phones and were able to potentially take part in the competition. Further, the activity was run in a way which gave spectators ample time to load the app if interested in doing so and take part in the competition.
30. Shazam can be accessed without the user needing to navigate any age gating restrictions. In other words, under 18 year olds attending the football game with a smart phone could have either had the app on their phone or downloaded the app prior to the competition commencing.
31. The competition itself did require a potential contestant to enter a date of birth. This step occurred when the competition was commencing and when the music broadcast over the stadium's loud speaker system activated Shazam and took the participant to the competition page. The Company's intent was to restrict participation in the competition to over 18 year olds. Of course, someone under the age of 18 could still participate in the competition by entering an incorrect date of birth, which indicated they were older than they actually were.
32. Even if an under 18 year old had participated in the competition and was a 'winner', to redeem the prize required taking an emailed voucher to a liquor retailer. Retailers are obliged by law not to sell alcohol to under 18 year olds and it is unlikely a minor could redeem their prize, at least personally.
33. Accordingly, the complainant's contention that the promotion placed no restrictions on a minor participating in the competition is not correct.
34. The real question for the Panel is not the workings of the competition as such, but the appeal of the promotional activity to under 18 year olds. The Panel does not believe the promotion can be said to strongly or evidently appeal to minors. In reaching this view, the Panel noted:
 - The use of Shazam is very common across users of all age groups and is not particularly centred on use by under 18 year olds;
 - The information provided about the competition both visually and verbally clearly described that participation was to be for persons 18 years and over;

- The activity was not akin to a video game in that a participant was unable to control or shape a storyline or game play with other competitors;
 - The competition itself did not have elements such as references to celebrities or concepts which could fairly be said to be directed to younger people or would be regarded as strongly appealing to younger people;
 - The interactive nature of the activity is part and parcel of smart phone capability and is not unusual or would not of itself be viewed as evidently appealing to minors;
 - The images displayed on the stadium screen of pictures of the product and a can of beer being poured are not visually exciting or contain elements which can be fairly said are strongly appealing to minors; and
 - Taken as a whole, the promotional activity is not regarded as strongly or evidently appealing to under 18 year olds.
35. Finally, although a 'drink responsibly' message can be considered good practice, the Code does not require that such a message be contained in alcohol marketing and a failure to include this message is not a Code breach.
36. While the Panel does not believe this particular promotional activity was a breach of the ABAC standard, it is recognised that marketers should be mindful that interactive marketing which adopts techniques akin to video games have the potential to be strongly appealing to minors. Consideration should be had of matters such as :
- whether the interactive activity involves 'gaming' characteristics such as taking control of a character or applying skill to the success of the 'contest' e.g. controlling the speed or accuracy of a required action; and
 - whether the activity creates or could create a response from the audience which becomes engaging and attractive to minors.
37. Accordingly, the complaint is dismissed.