

## ABAC Adjudication Panel Determination No. 116/17

**Product:** Vodka Cruiser  
**Company:** Asahi Premium Beverages  
**Media:** Digital  
**Complainant:** Ms Colless  
**Date of decision:** 21 December 2017  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Vodka Cruiser on YouTube by Asahi Premium Beverages (“the Company”) and arises from a complaint received on 21 November 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. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
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 21 November 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**

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage

marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval has been obtained for the content of Vodka Cruiser marketing communications placed on YouTube. Pre-vetting approval is not generally sought for the placement of a marketing communication and was not sought in this case.

### **The Placement**

10. Vodka Cruiser advertising was viewed by two adolescent girls aged 15 and 17 while accessing YouTube shows several times on 19 and 20 November.
11. The only show that the complainant could identify as accessed when the advertising was displayed included content posted by the model Karlie Kloss.

### **The Complaint**

12. The complainant is concerned that:
  - a) Vodka Cruiser is being advertised on YouTube before programming watched by young people.
  - b) The audience of YouTube content will be predominantly under 18 and shouldn't be exposed to alcohol advertising.

### **The ABAC Code**

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
14. Part 6 of the ABAC Code includes definitions including:

Placement Rules (in part) mean:

  - (ii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience
  - (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
  - (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

## The Company's Response

15. The Company responded to the complaint by letter dated 8 December 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) All material currently being distributed through the You Tube Channel by Vodka Cruiser (VCTV) has received ABAC Approval.
- c) Google's restricted advertising policy (inc. alcohol) extends and applies to all products and platforms which require users to be logged in and have declared their legal age in their user profile. As this is an alcohol brand, alcohol advertising policies automatically apply which means You Tube will not serve it to any user not logged in or not of declared legal age
- d) YouTube have reviewed, and DoubleClick's brand safety measures for this campaign were all implemented correctly and with good intention:
  - i. Targeting AU users 18+ based on only declared login data
  - ii. Excluded all sensitive categories (Adult (strong language and nudity), Derogatory, Downloads & Sharing, Weapons etc)
  - iii. Excluded an extensive brand safety keyword blacklist (ie children's cartoons)
  - iv. Applied the appropriate content labels (G, PG only). The content labels refer to exclusion settings which can be applied to You Tube Channels. These exclusion settings allow us to opt out of showing our ads alongside certain categories of websites and videos. The ratings are as per the table below. We excluded our advertising from G and PG related labels.

### Digital content labels

**DL-G:** Content suitable for general audiences

- Content suitable for families

**DL-PG:** Content suitable for most audiences with parental guidance

**DL-T:** Content suitable for teen and older audiences

**DL-MA:** Content suitable only for mature audiences

**Not yet labeled:** Content that has not been labeled

- e) It is possible that a minor could have seen the content, if they were using the profile of another logged-in user, or that their own profile details weren't accurate.
- f) Nielsen figures show that users under the age of 18 only comprise of 8% of You Tube's overall composition. Please note: Nielsen is the Internet Advertising Bureau's accredited measurement platform for all web data in Australia.
- g) Karli Kloss is a supermodel who is predominately known for her work as a Victoria Secret Model. In itself the Victoria Secret franchise certainly does not target itself to a minor audience. In reviewing the library of video content Karli Kloss has posted we do not believe these to be specifically created with minors in mind. Many of her latest videos are lifestyle focused, likewise, a number of which reference Victoria's Secret, which is certainly not relevant to a minor audience.
- h) Based on the information we have available to us, it would appear to be unlikely that the Vodka Cruiser ads in question ran against the "Klossy" channel between the 4th Oct - 29th Nov, due to both the use of the brand safety features included in the online purchasing system used by our agency, and the extensive Google advertising policies for restricted industries and advertisers. Based on our reviewing of our tracking platform, no impressions have run against Klossy content for this media buy between the 4th Oct to 29th Nov.
- i) We believe we have taken all appropriate measures to ensure that all Vodka Cruiser material and placement is in no way targeted at reaching minors through the You Tube Channel. We also believe that based on the data from the IAB's accredited measurement platform the YouTube channel does not target itself towards minors.

## **The Panel's View**

### **Introduction**

- 16. Social media platforms such as YouTube have transformed the way people consume information and access entertainment. As the pattern in the use of media has altered so too have the methods and avenues used by marketers to reach their intended audiences.
- 17. YouTube commenced as a video sharing website in February 2005. It grew rapidly and by December 2005 was receiving 8 million views a day and by July 2006, over 65,000 videos were being uploaded on the site each day. Views increased to 100 million per day by mid 2006 and the Company was shortly afterwards acquired by Google.
- 18. YouTube has continued to both grow in audience reach and its programming options. Individual YouTube channels became available and in 2015 a separate app known as YouTube Kids was launched. This year also saw an ad free premium service YouTube Red commence operations. By now YouTube

was the second most visited website in the world after reaching over 16 billion visitors each month.

19. The revenue stream for YouTube appears to be varied and complex but advertisers including alcohol brand owners advertise on YouTube. The different channels and controls and targeting of content offered by YouTube provide advertisers the opportunity to direct advertising material at particular audiences. It is the ability to target advertising on YouTube which is the backdrop of this complaint.
20. The ABAC scheme commenced in 1998 as a self regulatory initiative to provide standards of good practice which alcohol advertising was to satisfy. The scheme was devised before the digital revolution and assumed that marketing occurred through the traditional media of print, cinema, radio and television. While the scheme was extended to capture the internet in 2004, it has remained until very recently focussed on the content of alcohol marketing rather than the medium by which the marketing communication was conveyed.
21. In November 2017, the ABAC was revised to include placement of a marketing communication as well as the content of a marketing communication as a possible ground for a complaint. This revision of the Code reflects the ability, to some extent at least, to stream marketing conveyed by 'narrow cast' platforms such as social media towards particular age groups. If this is possible, then in policy terms, the Code seeks to keep alcohol marketing directed towards adults of legal drinking age and away from minors.
22. Given the new Rules have only recently been introduced, each Panel determination provides an opportunity to examine the interplay of the Placement Rules with particular media. Determination 115/117 deals with outdoor advertising. Determination 11/8/17 deals with cinema. This determination deals with YouTube.

### **The complaint**

23. The complaint is framed in general terms and states that the Company's marketing was accessed by a 15 and 17 year old watching programs on YouTube. The complainant's concern wasn't about the content of the alcohol advertising, but that it was seen on YouTube at all.
24. The complainant wasn't able to specifically identify the particular videos or programming that the advertising appeared with. The model Karli Kloss was recalled as being seen.

### **The Placement Rules**

25. In essence, the Placement Rules create a cascading and interlinked series of requirements which a marketer must satisfy in placing an alcohol marketing item in broadcast and digital locations and platforms. These requirements are:
  - Compliance with all applicable media specific codes regulating the placement of alcohol marketing;

- The use of available age restriction digital controls that permit the exclusion of under 18 year olds from the potential audience of the marketing communication;
  - If an age restriction control is not available on the digital or other media platform, then an alcohol marketing item may only be placed where the audience is reasonably expected to comprise at least 75% adults;
  - In addition to the availability of age restriction controls and the placement of a marketing item where the audience will likely be predominately adult, an alcohol marketing communication must not be placed with programs with content primarily aimed at under 18 year olds; and
  - Finally, a marketing communication must not be sent to a minor via electronic direct mail (noting this may occur if an incorrect date of birth has been entered).
26. The complainant's perception of YouTube was that the audience would be mostly minors. This perception is not accurate with data indicating the great majority of YouTube content is accessed by over 18 year olds. Data from Nielsen's Digital Content Measurement Tool that was supplied by the Company indicates 92% of the Australian YouTube audience is over 18 years old. Nielsen uses this tool to measure website traffic (including audience composition) and page engagement (for example time spent on site) across more than 32,000 websites and it is the official data commissioned by the Interactive Advertising Bureau in Australia. An internet search indicates that in the US the YouTube audience includes more under 18 year olds but still less than 20%.
27. That said, YouTube is a multi-layered platform and individual YouTube channels and content will be attractive to different audiences. Clearly some material will attract a higher proportion of younger viewers than other material just as some shows will be followed by more females than males and vice versa.
28. Placement Rules (ii) provides that available age restriction controls must be used to exclude minors from the audience. It is noted that some media platforms feature different age restrictions and/or age targeting options. The policy intent of the Rule is that to the extent possible the most effective available option to exclude minors from viewing an alcohol advertisement is to be selected by an alcohol marketer.
29. YouTube has a variety of age gating and age targeting mechanisms which are either implemented by YouTube itself or can be selected by a company seeking to place advertising. Alcohol advertising will only appear on an account being accessed by a user who has completed an age gate page and identified themselves as over 18 years of age. Once the age gate establishes the user is over 18, then the restricted material such as alcohol advertising can potentially be accessed.

30. The Company states in addition to reliance on the YouTube age gate, it also took measures to target the channels and videos that its marketing would be placed. These measures were:
- exclusion of sensitive categories of adult, derogatory, downloads and sharing, weapons;
  - exclusion of brand safety keywords i.e. children's cartoons; and
  - applied contents labels with a choice of excluding G and PG related labels.
31. It appears the G and PG labels related to content deemed (by a YouTube internal classification system) suitable for general audiences and suitable for most audiences with parental guidance. It is noted that the Company did not apply the label 'T' which is described as content suitable for teen and older audiences. Presumably in the cross over of teens over and under the legal drinking age (say 15-17 year olds) and teens aged 18 and 19, the Company is relying on the age gating mechanisms to have excluded under 18 year olds.
32. The complainant is unable to identify the actual content that was viewed by her daughters and it is not known if the two adolescents had used a YouTube account in their own names or were using say a family account which is in an adult's name and with date of birth details which nominate the user being over 18.
33. On the available information the Panel cannot hold that Placement Rule (ii) has been breached.
34. Irrespective of the availability and use of age restriction controls, Placement Rule (iv) requires that alcohol advertising must not be placed with programs or content primarily aimed at minors. The complainant acknowledges that her daughters may not have been watching 'kids shows' but argues that YouTube is primarily an under 18 platform and alcohol marketers would be best advised to avoid it altogether.
35. As noted, YouTube has a predominantly adult user demographic and can not be said to be primarily a platform assessed by minors. Certainly YouTube contains a huge amount of content and there is considerable content which could be said to be directed primarily at minors.
36. To assess if Placement Rule (iv) has been complied with requires the assessment of the actual program or content with which the alcohol advertisement was placed. It is straight forward in the case of a film screening at a cinema or when an advertisement is slotted into a TV show on free to air or subscription TV independently to identify the program. In the case of YouTube, the actual content will have to be identified and unfortunately this information is not known in this case.



## Conclusion

37. The complainant is clearly a person who takes an appropriate interest in supervising and providing guidance to her daughters in accessing media including online media. Quite understandably, the complainant does not believe it appropriate that alcohol advertising should be directed at adolescents and the experience of her daughters viewing alcohol advertising from the Company on YouTube has lead to the complaint.
38. The introduction of the Placement Rules into the ABAC means new standards are imposed on alcohol companies to properly direct alcohol marketing to adults. YouTube is one of the world's most popular websites and contains literally hundreds of millions of individual videos as well as channels and dedicated programming. The site has a predominantly adult audience but contains much material which is fairly said as primarily directed at under 18 year olds.
39. In this instance the actual content and programming that the alcohol advertising from the Company was placed with is unable to be identified. The Company has described the selection choices it made in placing its marketing on YouTube. Notwithstanding the Company's actions, its advertising was accessed by two minors being the daughters of the complainant. This could possibly have occurred if the content was on a device logged in to Google via an adult's account.
40. The Panel is not in a position to fully test the operation of the Placement Rules in this case due to the actual programming viewed on YouTube not being identified. Accordingly, on the available website information it seems the Placement Rules have been followed.
41. The complaint is dismissed.