



ABAC Adjudication Panel Determination No. 130/17

Product: Strongbow Cider
Company: Carlton & United Brewers
Media: Digital
Complainant: Ms Lim
Date of decision: 10 January 2018
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 Facebook post for Strongbow Cider by Carlton & United Brewers (“the Company”) and arises from a complaint received 22 December 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 marketing 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 the 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 22 December 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 within this timeframe.
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 the marketing communication.

The Marketing Communication

10. The Facebook post by Strongbow Australia on 20 December includes an image of Strongbow cider being poured into a champagne glass with the caption, 'Move over eggnog, there's a new Christmas beverage on the block. Simply rim some champagne glasses with some cinnamon sugar, add a dash of ginger syrup and fill with Strongbow Sweet Apple cider. Tastes like Christmas.'

The Complaint

11. The complainant is concerned that she was targeted by the ad because she is currently pregnant. It is argued that Facebook knows Ms Lim is pregnant as the majority of advertising on Ms Lim's feed is related to pregnancy and babies. She believes that Facebook and Strongbow have elected to send her the ad knowing that she is pregnant and that alcohol is harmful in pregnancy. She believes it would have been very easy for them to have elected not to include women known to be pregnant in their marketing.

The ABAC Code

12. 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

13. The Company responded to the complaint by letter dated 8 January 2018. The principal points made by the Company were:
 - It is unclear from the complaint what the content of the advertisement actually is, aside from "Encourages drinking cider for Christmas". Based on buying of Facebook advertising space in the relevant period, we believe the complaint concerns the post below. This content was posted on the Strongbow Australia Facebook Page Timeline, and presumably appeared in the complainant's Facebook feed as a sponsored post.
 - Firstly, CUB does not target pregnant women with alcohol advertising. In fact CUB is committed to ensuring our consumers are informed about the medical risks of consuming alcohol while pregnant. We use a logo on all consumer unit packaging (bottles and cans) to indicate that our products shouldn't be consumed by pregnant women. We are also a founder and leading funder of DrinkWise, which actively runs education campaigns warning women not to drink while pregnant and providing information to consumers to better understand the facts about alcohol consumption.
 - Secondly, it would be impossible for CUB to target pregnant women with alcohol advertising in this context. There is no definitive data point which

would allow us to target (or exclude) pregnant women. The targeting options in Facebook for advertising are titled 'Interests' and are based on the kind of content that people engage with on the platform. CUB categorically does not target any 'Interests' related to babies or pregnancy. Further, there is nothing about the content of this post or any Strongbow advertisement that could be perceived as appealing particularly to pregnant women – there is no reference to pregnancy in the post. As noted above, CUB invests in warnings against drinking alcohol while pregnant.



Strongbow Australia

20 December 2017 at 16:40 · 🌟

Move over eggnog, there's a new Christmas beverage on the block. Simply rim some champagne glasses with some cinnamon sugar, add a dash of ginger syrup and fill with Strongbow Sweet Apple cider. Tastes like Christmas.



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The Panel's View

14. This complaint is based on the contention of the complainant that the Company may be seeking to target pregnant women to market their product. Clearly if this was the case, it would amount to highly irresponsible behavior as it is a well

established medical fact that alcohol consumption poses risks to a developing fetus.

15. The basis of the complainant's concern is that an advertisement for the Company's Strongbow Cider appeared on the complainant's Facebook timeline. It was noticed by the complainant that since she was pregnant the types of unsolicited advertising appearing on her Facebook page reflected products that may be of interest to an expecting mother. With this in mind, the complainant questioned why an alcohol advertisement would appear.
16. The Company strongly refutes any suggestion that it would deliberately seek to market its products to pregnant women. It states that it seeks to inform consumers of the risks of consuming alcohol while pregnant and financially supports education campaigns to disseminate this message. Further the Company contends that the data analytic systems which enable advertisers to direct messaging towards particular consumer segments are not so refined to allow targeting to pregnant women. Also the Company does not select Facebook 'interests' related to babies or pregnancy.
17. Until recently the ABAC was a solely content based Code of Practice. This meant that the standards in the Code went to the messaging conveyed by an alcohol marketing communication and did not go to where the communication might be found. In November 2017 this was altered when the ABAC was revised to include Placement Rules but these rules went to the placement of advertising in media which might have a significant audience of under 18 year olds. The Placement Rules don't purport to restrict the location of alcohol advertising so that it's not viewed by other groups such as pregnant women.
18. The content of the Facebook post shows a bottle of the product being poured into a glass. The advertisement has a Christmas theme. It could not be fairly said that the content of the post is encouraging pregnant women to consume alcohol as a specific target group.
19. So how did the Company's post come to appear on the complainant's Facebook timeline? Most likely the complainant's profile established that she is over the age of 18. This means there is a potential for alcohol advertising to appear on the complainant's Facebook page. More recently the complainant may have visited pages or opened links which indicate an interest in baby related issues. This could explain why advertisers in these related fields have selected 'interests' which might see products appear on the complainant's page. It seems however that the system doesn't then cross reference so that products such as alcohol are positively excluded based on the search history of a Facebook user.
20. In any event, while the complaint raises issues that should be monitored as data analysis of individual's digital histories become increasingly nuanced, as it stands the appearance of the Company's post on the complainant's Facebook page is not a breach of the ABAC content standards nor of the Placement Rules.
21. Accordingly, the complaint is dismissed.