



## ABAC Adjudication Panel Determination No. 2/18

**Product:** Carlton  
**Company:** Carlton & United Brewers  
**Media:** Television  
**Complainant:** Confidential  
**Date of decision:** 6 February 2018  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Jeanne Strachan  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Carlton by Carlton & United Brewers (“the Company”) on Channel 8 on 23 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 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 2 January 2018.
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 was obtained for the content of the advertisements but is

not generally sought for the placement of a marketing communication and was not sought in this case.

### **The Placement**

10. Advertisements for Carlton were seen by the complainant on Channel 8 on 23 December 2017.

### **The Complaint**

11. The complainant is concerned that the advertisement is crude and offensive and was broadcast when children and young adults are watching.

### **The ABAC Code**

12. 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.
13. Part 6 of the ABAC Code includes definitions including:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (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**

14. The Company responded to the complaint by letter dated 30 January 2018. The principal points made by the Company were:
  - a) It is unclear from the complaint what the content of the advertisement actually is, aside from "Carlton" as the brand and "Core message promoted centred on the word "mothershucker"". Based on a review of

the advertisements currently being shown on television networks across CUB brands, we have deduced that the complainant must be referring to a particular Carlton Dry television advertisement referred to as 'The Shug', which centres on a joke about two people greeting each other and combining a hug and a handshake, and uses the invented term 'mother-shuggers' as part of that joke. Your correspondence has indicated that the Panel will only consider issues of placement, with reference to the Placement Rules in the Code, and will not consider the content of the advertisement. We have therefore only addressed issues of placement in this response.

- b) The complaint is vague about the time at which the complainant saw the advertisement, and does not provide any detail about what content the advertisement appeared in. The complaint simply states that the advertisement was viewed '*today*' (presumably Saturday 23 December as that is the date the complaint was made). The complaint states that the advertisement aired on Channel 8, which we understand to be a channel of the Nine Network in Queensland. We understand from correspondence with you that the complainant is located in Queensland. Having narrowed down what advertisement the complainant must be referring to, we have made extensive enquiries with our media agency partners and our commercial television network partners, to confirm the placement of that advertisement on commercial television.
- c) Our media agency purchased two 'spots' for Carlton Dry advertisements in the week commencing 17 December 2017 (including Saturday 23 December 2017), which both followed our brief to comply with both the Commercial Television Industry Code of Practice (**CTICP**) and the ABAC Placement Rules. These advertisements were shown on the weekend during live sports coverage (Test match cricket), the content of which is not primarily aimed at minors. We refer to the Panel's comments and decision in ABAC Adjudication Panel Determination No. 121/17 (XXXX television advertisement) which concludes that broadcasting alcohol advertisements during cricket coverage in compliance with the CTICP does not breach the ABAC. In conducting enquiries to determine the exact broadcast schedule for Carlton Dry for 23 December 2017, it has come to our attention that the Nine Network granted CUB some hundreds of 'bonus spots' without informing CUB. Only after multiple enquiries to the network was CUB able to understand the actual broadcast information for its advertisements, and as such the placement of these bonus spots was outside of CUB's control. While all of those spots complied with the CTICP in relation to time of broadcast, the placements may not have occurred had CUB representatives been provided the opportunity to review the spot list to ensure compliance with the Placement Rules. These 'bonus' placements were unforeseeable by CUB.
- d) When the ABAC was amended to include the Placement Rules, we conducted extensive training of our internal media team and with our media agency to ensure compliance regarding the placement of our advertisements. We only book spots or buy advertising in compliance with both the ABAC and CTICP. We check spot lists provided to us by the commercial television networks to ensure that all placement is compliant.

The commercial television networks are aware of the Placement Rules. As a company, CUB takes all reasonable steps to ensure that our media partners have full understanding of the ABAC including the Placement Rules. This process was followed on this occasion, with the only Carlton Dry spots purchased by CUB and formally booked in that week being compliant with both Codes. However, without the knowledge of CUB or its media agencies, a commercial network published Carlton Dry advertisements many times across multiple channels in additional spots, some of which are not those which CUB would have purchased or approved had it known the publication was planned. As it is unclear when or in which content the complainant saw the advertisement, we have not gone into detail in this response about the multiple places and times the advertisement appeared. Ultimately if there is any chance a placement of a Carlton Dry advertisement on channels of the Nine Network on 23 December 2017 breached the Placement Rules, this cannot have been the fault of CUB or its media agencies, as the proper briefings were given, the appropriate controls are in place with regard to purchasing spots, and neither CUB or its agencies knew about the additional bonus spots until multiple enquiries to the network were made in the process of responding to this complaint.

- e) Having conducted these investigations into network process, we have scheduled urgent additional briefings with the relevant network to ensure that the Placement Rules are well understood and that the network has appropriate checks and balances in place to avoid potential breaches in future.

### **The Panel's View**

15. On 23 December 2017, the complainant viewed a television advertisement for Carlton Dry on a subsidiary channel of the Nine Network. The complainant found the advertisement offensive in its content and was also concerned that it was broadcast at a time that children would be watching.
16. The principal concern of the complaint was about the advertisement being offensive by belittling the status of mothers. It seems the advertisement is one in the series of Carlton Dry's 'Underthink' campaign. This campaign features a fanciful 'think tank' where a group of project managers come up with ideas to simplify life. One of the advertisements use the expression 'mother shuggers'. This is a play on a well-known obscene swearword.
17. This aspect of the complaint however does not raise an issue under the ABAC. Rather concerns about advertising being offensive are considered by the Advertising Standards Board under the terms of the AANA Code of Ethics. The complainant, however, goes on to express a concern about the advertisement being viewed by children and it is this aspect of the complaint that does raise an ABAC issue in relation to the Placement Rules.
18. The Placement Rules were introduced into the ABAC from 1 November 2017 and have the policy aim that alcohol marketing should be directed towards adults and not minors (under 18 year olds). For advertisements broadcast over free to air television, there are three relevant Placement Rules, namely:

- The placement of the advertisement needs to have been done consistently with the requirements of the Commercial Television Industry Code of Practice (Placement Rule One);
  - The advertisement may only be placed where the audience is reasonably expected to comprise at least 75% adults (Placement Rule Three); and
  - The advertisement must not be placed with programs or content primarily aimed at minors (Placement Rule Four).
19. The complainant does not identify which program the advertisement was seen with. The Company explains that during 23 December, the Nine Network aired the advertisements during scheduled slots with programs approved by the Company. In addition, other slots in other programs were also provided for the advertisement. This was because the Company was apparently granted 'bonus spots' beyond those which it had paid for.
20. The Company advises that all advertisements were broadcast consistently with the Commercial Television Industry Code of Practice. This means the advertisements were either broadcast after 8:30 PM or in conjunction with a live sports events. Beyond this however, it is not possible to assess Placement Rules Three and Four as it is unknown with which program the complainant viewed the advertisement.
21. The Company concedes that it was not until making enquiries following the complaint that it was aware of the bonus spots. The Company goes on to state that it would not have chosen some of the programs with which the advertisement was shown if it had been aware in advance that additional advertising was going to become available. It is claimed that a tightening of the process is now being pursued with the Nine Network.
22. Drawing this together, the outcome is as follows:
- The principal concern raised by the complainant about the use of the expression 'mother shugger' does not enliven the ABAC, but rather will be considered by the Advertising Standards Board;
  - The concern about children viewing the advertisement is an ABAC issue, however, without more information as to which programs the advertisement was shown with and seen by the complainant, it is impossible to assess the issue further; and
  - The complaint has however triggered a new process within the Company about the scheduling of its advertisements when so-called bonus spots are granted by a television network.
23. In light of all the circumstances, the Panel is unable to assess the consistency of the placement of the advertisement with Placement Rule Three and Four and accordingly the complaint is dismissed.