



ABAC Adjudication Panel Determination No. 11/18

Product: Victoria Bitter
Company: Carlton & United Breweries
Media: Digital
Complainant: Confidential
Date of decision: 9 March 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 Victoria Bitter by Carlton & United Breweries (“the Company”) on Instagram and arises from a complaint received on 30 January 2018.
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 30 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.

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

The Placement

10. A Victoria Bitter advertisement appeared in the complainant's 15 year old daughter's newsfeed.

The Complaint

11. The complainant believes that it is inappropriate for minors to receive alcohol advertisements in their Instagram newsfeeds and this must have occurred due to VB electing to reach minors.

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:

- (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)

The Company's Response

14. The Company responded to the complaint by letter dated 9 February 2018. The principal points made by the Company were:
 - a) Facebook Business Manager, the program used by businesses to publish advertising material to Facebook and Instagram, allows the uploader to specify a target age range for the advertising material. As Instagram has not always required users to enter a date of birth on sign-up, any profile without a date of birth attached is automatically excluded from seeing advertising targeted at users who are 18+, such as alcohol advertising. All advertising material published on Instagram by CUB is targeted at users

over the age of 18. In this instance, the advertisement was targeted at 18-54 year olds. Annexure 1 is a screenshot from Facebook Business Manager providing evidence of this. CUB is rigorous about using age restriction controls whenever they are available. This has been the case since before the introduction of the Placement Rules in the ABAC. Given this approach, it is unclear to us how the advertisement in question was served to a user under the age of 18. The only possible explanation is a technical error at the fault of Instagram. Our media agency, which manages the placement of Instagram ads for us, has confirmed that the ad in question reached 0 users between the age of 13-17 (Instagram being a platform for users 13+). Annexure 2 is a screenshot showing evidence of this. The incorrect placement did not register on Facebook Business Manager as having reached a user under the age of 18. This further reinforces the assumption that the cause of the breach was an error that occurred somewhere in Instagram's back-end. CUB only targets advertisements at users over the age of 18 when age restriction controls are available.

No Fault Breach

- b) Given CUB took all available steps to ensure the advertisement was only served to Instagram users who are over 18, the placement of the advertisement on a minor's Instagram account cannot be attributed to CUB or any of its agents. CUB is investigating the appearance of the advertisement to a minor, with support from Instagram and our agency, as we are keen to understand any possible breakdown in the age restriction controls on which we rely. We are doing everything possible to ensure that these circumstances do not occur in the future.
- c) In the meantime, we are comfortable continuing to advertise on Instagram, given that even outside the age-restriction controls available, the overall Instagram audience comfortably satisfies Placement Rule (iii) regarding percentage of Adult audience (based on reliable, up-to-date data). Reliable data shows that Instagram has approximately nine million monthly active users (see <https://www.socialmedianews.com.au/social-media-statistics-australia-january-2018/>). Using the planning tool utilised by CUB to separate Instagram as a platform and 18+ as a criteria, the reach is estimated at 8.2 million users. Therefore, minors represent approximately 9.1% of Instagram's monthly users.

The Panel's View

- 15. This complaint concerns the placement of an advertisement for the product on the social media digital platform Instagram. The advertisement was accessed by the complainant's 15-year-old daughter on an Instagram account which the complainant explained was in her daughter's name and created with her daughter's correct date of birth.
- 16. The ABAC contains both standards going to content of alcohol marketing and, since November 2017, rules which go to where marketing items can be placed in various media including digital platforms. The complaint does not raise an issue about the content of the VB advertisement but is solely expressing a

concern that the advertisement found its way on a 15-year-old's Instagram feed.

17. There is a common position between both the complainant and the Company that the advertisement should not appear on the Instagram account of a 15-year-old. The ABAC Placement Rule (ii) provides that if a media platform on which an advertisement appears has age restriction controls available, the marketer must use those age restriction controls to exclude minors from the audience. Instagram has age restriction controls for companies posting alcohol advertisements.
18. Pulling this together, the advertisement should not have appeared on the complainant's daughter's Instagram feed. Accordingly, it is understandable and appropriate that the complainant has raised the issue and her concern is clearly genuine and well-placed. The question is how did the advertisement come to be on the 15-year-old's Instagram account.
19. The Company submits that it utilised the age restriction controls that were available to it in placing its advertising on Instagram. It provided evidence of its instructions to this end, and advice from its advertising agency that the advertisement reached no users in the 13 to 17 year age group based on data provided by the 'Facebook Business Manager'. The Company concludes the breakdown occurred due to 'a technical error at the fault of Instagram'.
20. Age restriction controls are of course only effective if a social media user has accurately entered their date of birth when either establishing their account or creating an account on a related site. For Instagram, the parent and related site is Facebook. Equally, it is not uncommon for a child to access digital sites from an adult's computer or mobile device with accounts created by their parents with the adult using their date of birth. In this case however, the complainant confirmed the correct date of her daughter had been entered by seeking to access the Company's main web page and being refused access on the basis of age. This certainly indicates that the complainant's daughter's correct age had been entered in creating the Instagram account.
21. The Panel endeavoured to obtain further information from Instagram as to how a 15-year-old with an account could have been sent an alcohol advertisement. As at the date of this determination, no adequate explanation has been received.
22. The Panel believes that the complaint is valid and that the Placement Rule has been breached. Further, based on the Company's material, it does seem that the Company did not seek to have its advertising accessed by under 18-year-olds and that it had given proper instructions to use the available age restriction controls on Instagram. This gives rise to a conclusion that a no fault breach has occurred.
23. Accordingly the complaint is upheld and a finding of a no fault breach is made. A finding of no fault breach does not in any way detract from the legitimacy of the complaint or the need to take steps to rectify the breach. Rather it is a recognition that the breach occurred notwithstanding the reasonable actions taken by the advertiser to meet the ABAC requirements.