



ABAC Adjudication Panel Determination No. 14-15/18

Products: Canadian Club, Jacobs Creek & Liquorland
Companies: Beam Global, Pernod Ricard Winemakers & Coles Liquor
Media: In Stadium/Television
Complainant: Ms Rasenberger
Date of decision: 14 March 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of advertisements for Canadian Club, Jacobs Creek and Liquorland by Beam Global, Pernod Ricard Winemakers and Coles Liquor (“the Companies”) during the broadcast of the Australian Open Tennis 2018 and arises from two complaints from the same complainant received on 2 February 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 complaints were received on 2 February 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 complaints were 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 some 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 Canadian Club, Jacob's Creek and Liquorland were seen by the complainant during the Australian Open Tennis broadcast.

The Complaints

11. The complainant is concerned that children are viewing alcohol advertising in conjunction with sporting events specifically the 2018 Australian Open. The complaint argues that exposure to alcohol advertising is promoting a culture of alcohol use and this leads to a range of problems in the community.

The ABAC Code

12. Part 2b of the ABAC Code provides that the Code does not apply to:
 - (v) Sponsorship.
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 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

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 branded merchandise).

The Companies Responses

15. Beam Global responded to the complaint by emails dated 6-9 February 2018. The principal points made by the Company were:

- a) The complaint has made general statements in relation to alcohol advertising over summer. Beam Suntory is a supporter of and complies to the ABAC Responsible Alcohol Marketing Code for all marketing inclusive of Canadian Club advertising over summer.
- b) All Canadian Club advertising within Australia Open broadcast was AAPS approved.
- c) All our placements adhere to the rules set out in the Commercial Television Industry Code of Practice. In a nutshell these are:
 - i. Alcohol ads can be placed in any and all programming S-S post 8.30pm – both sport and general entertainment programmes.
 - ii. Alcohol ads can also be placed in live sport telecasts – except M-F during school holidays when ads in live sport can only appear post 8.30pm.
 - iii. Alcohol ads can appear in live sport anytime at weekends and public holidays even if they are during school holiday periods.

We work to these guidelines when we are planning a TV buy and selecting our spot placement. In addition, the TV networks 'code' all alcohol TVC's and their systems will not allow alcohol ads to be transmitted outside of the programmes/times outlined above. So while the complainant might be concerned about the placement of our ads, and the visibility to children, we have operated strictly within the industry guidelines.

- d) The actual aggregate numbers for all of CC's spots (source: OzTam & MOVE).

Big Bash	Total Impressions	72,629,227	
	P18+	65,146,522	89.7%
	P 0 -17	7,482,703	10.3%
Australian Open TV	Total Impressions	23,174,929	
	P18+	21,752,250	93.9%
	P 0 -17	1,422,679	6.1%
Australian Open OOH	Total Impressions	2,775,100	
	P18+	2,652,230	95.6%
	P 14-17	122,800	4.4%

16. Pernod Ricard Winemakers responded to the complaint by letter dated 14 February 2018. The principal points made by the Company were:

- a) Pernod Ricard Winemakers is a signatory to the ABAC and takes compliance with the ABAC Code very seriously. We are committed to the responsible marketing of our products and therefore we not only endeavour to abide by the Code, but also other applicable advertising codes and laws. As a member of the global Pernod Ricard Group, we are also committed to the responsible marketing and consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.
- b) The complainant states: "When watching the Australian Open there were numerous times when advertisements from Canadian Club were aired as well as Liquorland and Jacobs Creek." While the precise advertisement/s the subject of the complaint is unclear, we believe the complainant may be referring to marketing for Jacob's Creek which was displayed within the Melbourne Park precinct during the 2018 Australian Open Tennis Tournament (the Australian Open) pursuant to a sponsorship arrangement between Pernod Ricard Winemakers, Tennis Australia Limited and Melbourne & Olympic Parks Trust.
- c) In numerous past determinations the Panel has commented that the sponsorship by alcohol companies of Australian sports is a public policy issue that is a matter for the Government and not the Panel to determine. The Panel has previously determined that the terms of a sponsorship agreement between an alcohol company and a third party such as a sports team cannot be described as advertising and as such subject to ABAC. While the Panel has noted that it is possible that an alcohol advertisement is created as result of a sponsorship arrangement, the Panel has on several occasions commented that matters such as naming rights and the placement of logos are a direct manifestation of the sponsoring arrangement and cannot be fairly characterised as advertising, such that the Panel is unable to take a substantive view on

the matter in terms of the provisions of the Code. In light of the Panel's previous determinations on the topic of sponsorship arrangements in sports, we are of the view that the placement of the Jacob's Creek logo on on-court signage at Australian Open tennis matches (detailed in section 1(a) below) does not fall under the remit of the Code, even if broadcast in television coverage.

- d) Pernod Ricard Winemakers did not pay for commercial television advertisements of Jacob's Creek to be aired during the Australian Open. Under its sponsorship arrangement of the Australian Open, Pernod Ricard Winemakers did arrange for the following Jacob's Creek marketing to be placed within the Melbourne Park precinct during the Australian Open:
- a. the Jacob's Creek logo was placed on-court during tennis matches (two grand stand signs on centre court, one A-Frame on centre court and centre court runner signage featuring the Jacob's Creek logo) which would have been seen by individuals in attendance in the arena and also those viewing the television broadcast of the Australian Open given the television coverage of the event and the proximity of the on-court signage to the tennis court; and
 - b. other marketing within the Melbourne Park precinct which was not purposefully broadcast on television by Pernod Ricard Winemakers but which may have been incidentally shown in television coverage of the Australian Open (for example, in cutaways from a tennis match or television commentaries filmed within the Melbourne Park precinct):
 - a Jacob's Creek Wine Bar located near Garden Square (refer to Annexure A for location within precinct);
 - a Jacob's Creek Le Petit Rose Bar located at Grand Slam Oval which including branded chairs and umbrellas (refer to Annexure A for location within precinct);
 - a Jacob's Creek Frose Bar located at Grand Slam Oval which included branded chairs and umbrellas (refer to Annexure A for location within precinct);
 - a 30 second video shown on screens within Melbourne Park precinct and posters advertising Jacob's Creek bar locations to promote a competition "Win a Trip for 4 to the Barossa" which featured the Jacob's Creek logo along with the DrinkWise logo and responsible drinking message; and
 - on Wednesday 17 January 2018 (Jacob's Creek Sponsor Day), additional Jacob's Creek logos appeared on screens and in other locations within the Melbourne Park precinct.
 - e) The placement of the Jacob's Creek logo on on-court signage during the Australian open were not submitted for AAPS review as we believe, based on previous ABAC determinations on the subject, that such

placement falls within the definition of Sponsorship and so the Code does not apply. As the remainder of the marketing which may be subject of the complaint (being marketing and branded bars for Jacob's Creek within Melbourne Park which may have aired in television coverage of the Australian Open) appeared within a private venue which could only be accessed by individuals who purchased a ticket to the Australian Open and which was not publicly accessible, we do not believe this marketing constituted outdoor advertising or any other category of media that is required to be submitted to the AAPS for approval in accordance with ABAC's Rules and Procedures.

- f) No, we do not believe that Jacob's Creek logos and marketing such as by way of branded bars within the Melbourne Park precinct during the Australian Open was directed at minors. We comment on each of the Placement Rules below:
- a. Placement Rule (i): In all respects the advertisements complied with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies. The marketing for Jacob's Creek was placed within a venue that was only accessible by individuals who purchased a ticket; as such, marketing was not located within a 150 metre sight line of a primary or secondary school, in compliance with the Outdoor Media Association Alcohol Guidelines. The Television Industry Code of Practice does not apply to Pernod Ricard Winemakers' marketing of Jacob's Creek During the Australian Open. Pernod Ricard Winemakers did not pay or provide other valuable consideration to a Licensee to advertise Jacob's Creek during the Australian Open, and so did not place a Commercial for an Alcoholic Beverage as these terms are defined in section 6.2 of the Commercial Television Industry Code of Practice.
 - b. Placement Rule (ii): Age restriction controls were not available within the venue. For any television coverage which showed Jacob's Creek marketing within the venue, age restriction controls were not available.
 - c. Placement Rule (iii) We are informed by Tennis Australia that audience composition data for both television broadcasts and patrons at this year's Australian Open is not currently available. We have been informed by Tennis Australia that for the 2017 Australian Open Tennis Tournament:
 - 1% of patrons sampled during on-site research were aged under 18 years; and
 - the average age of patrons at the tournament and television viewers was 44.6 years.
 - d. Placement Rule (iv): We we are of the view that Australian Open tennis matches are not content primarily aimed at minors based on a variety of factors, including:

- While tennis is a sport played by Australians of all ages, televised tennis matches such as the Australian Open have a predominantly adult audience and are more popular with older Australians. Roy Morgan data shows that only 20.2% of 14-17 year-olds and 21.8% of 18-24 year-olds watch the Australian Open on television, compared to 36.3% of 50 to 64 year-olds and 46.3% of 65+ year olds (source: Roy Morgan Finding No. 7108, Roy Morgan Single Source (Australia), October 2015-September 2016. Base: Australians 14+). In an article about these findings on its website titled 'Australian Open tennis viewers a different breed to Aussies who play tennis' published on 21 January 2017 (available at <https://roymorgan.com>), Roy Morgan states:
 - “The Australian Open is particularly popular among people aged 50 or older...”;
 - “In contrast, younger Aussies show a distinct lack of interest in watching the Australian Open on TV, especially 14-17 year-olds [sic] and 18-24 year-olds [sic]”; and
 - “..with over four of every 10 Australian Open viewers being 50 or older, it is clear that watching and playing tennis are not as strongly correlated as one might expect. This high proportion of mature viewers also has implications for advertisers and sponsors of the event, particularly brands aiming to reach an older audience”;
 - the audience and attendee composition data for the 2017 Australian Open Tennis Tournament set out above confirms that the television audience and attendees of the Australian Open are predominantly adult which logically suggests the content is not primarily aimed at or appealing to minors;
 - Australian Open tennis matches do not contain features that would have a strong appeal to minors: the matches are often quite long, commentary is not typically lively or animated and the televised largely coverage focuses on the court and the match being played, with no features such as animation, music that would appear to minors, etc; and
 - the Jacob’s Creek logo itself (which is black and white and in a simple design) which appeared on-court and would have visible during the televised broadcast of the Australian Open does not contain any elements which could be said to specifically draw the attention of a minor and hence be aimed at or appealing to minors.
- e. Placement Rule (v): The advertisements the subject of the complaint did not relate to electronic direct mail.

- g) In conclusion, it is our view that the content and placement of any Jacob's Creek marketing within the Melbourne Park precinct which may have been seen by viewers of the televised broadcast of the Australian Open complies with the Code.
17. Coles Liquor responded to the complaint by letter dated 15 February 2018. The principal points made by the Company were:
- a) As you will be aware, Liquorland has been a signatory to the Alcohol Beverages Advertising Code (ABAC) since 2013. Liquorland takes its alcohol advertising obligations very seriously and is committed to industry best practice. Liquorland has demonstrated a long-standing commitment to the responsible service, supply and promotion of alcohol. We maintain robust internal compliance processes in relation to liquor advertising and have a strong culture of compliance training embedded throughout the business to ensure our teams have the necessary skills to successfully navigate this heavily regulated environment. Liquorland is also a key contributor to DrinkWise, an independent, not-for-profit organisation whose "primary focus is to help bring about a healthier and safer drinking culture in Australia".
 - b) There were a total of sixteen Liquorland television commercials aired during the Australian Open. The advertisements ran for fifteen seconds each and featured adults (25+years) enjoying a variety of occasions in which alcohol was advertised. Pre-vetting approval was obtained for all sixteen Liquorland television commercials aired during the Australian Open. The ABAC approval number is 16046.
 - c) The Liquorland television commercials do not breach Part 3 (b)(iv) of the Code by directing the marketing at minors by a breach of the placement rules. The placement of the television commercials during the broadcast of the Australian Open also does not breach the Commercial Television Industry Code of Practice (CTICP). Section 6.2.1 (b) and (c) of the CTICP states, "A Commercial for Alcoholic Drinks may be broadcast at any of the following times: as an accompaniment to a Sports Program on a Weekend or Public Holiday; and as an accompaniment to the broadcast of a Live Sporting event broadcast simultaneously across more than one license area". As the advertisements were broadcast during a Live Sporting event, it is not in breach of section 6.2.1 of the Code. Our media agency, OMD, has a full understanding of the ABAC including the placement rules. As a result, prior to booking any television spots for alcohol advertising, OMD adheres to the liquor restrictions as outlined in the CTICP. This process was followed for all the Liquorland advertisements that were broadcast during the Australian Open. Additionally, the Channel 7 network is also aware of the placement rules and strictly follows the CTICP to ensure an alcohol advertisement is not aired during a prohibited time zone.
 - d) Up-to-date audience data provided to us by OMD indicates that the Australian Open has a demographic age range 25-54 years. The composition of the audience that watches the Australian Open is made up

of 94% of individuals 18+ years for the metropolitan area. Further information is provided in the table below:

Demographic	000s	%
Total people	592,356	100%
People 0-17	35,809	6%
People 18+	556,547	94%

- e) The Australian Open has broad appeal across various age groups however the event itself is not primarily aimed at minors as supported by the composition data. In summary, it is Liquorland's position that the television commercials cited by this complaint do not breach any section of the ABAC or any other advertising code.
- f) Liquorland takes its advertising responsibilities very seriously and has a strong compliance track record in this regard. We also have a number of internal and external processes against which any proposed advertisement is considered.

The Panel's View

Introduction

- 18. The ABAC is primarily concerned with the content of alcohol marketing communications rather than where the communication might have been located. The key exception to this general proposition relates to section 3(b) (iv) of the Code, which provides that a marketing communication must not be directed at minors through a breach of any of the Placement Rules.
- 19. In this case, the complainant is concerned that alcohol advertisements were shown during the Australian Open tennis broadcast. The complaint brings into focus Placement Rules (i), (iii) and (iv) which will be addressed in turn. It is noted the complaint does not contend that the content of any specific advertisement was problematic as such. Rather it is argued that any alcohol advertising is undesirable when shown with sport that will be seen by minors.
- 20. In large measure the complainant is raising a public policy argument that alcohol advertising should be either prohibited or at least not broadcast with sports events. This is a valid policy debate but is beyond the scope of the Panel to decide. It is a question for governments and parliaments to decide if alcohol marketing should be prohibited outright or specific measures taken such as stopping alcohol companies sponsoring sports teams and advertising during sports competitions. The Panel has a much more limited role and that is to determine if a particular alcohol marketing communications' content and placement is consistent with the requirements contained in the ABAC.

Placement Rules

21. Placement Rule (i) requires that all codes regulating the placement of alcohol marketing published by media industry bodies be complied with. The two codes to be considered are the Outdoor Media Association alcohol guidelines and the Commercial Television Industry Code of Practice (CTICP).
22. The Outdoor Media guidelines specify that an outdoor alcohol installation such as a billboard cannot be located within 150 metres of a school. There was outdoor advertising on the grounds of the Melbourne Park Tennis Centre. This advertising was not within 150 metres of a school.
23. The Australian Open is broadcast on free to air television and hence the CTICP applies. This Code provides that alcohol advertising is not to be broadcast before 8.30 pm unless shown in conjunction with live sports events. It is evident from the material provided by the three Companies that the terms of the CTICP have been complied with.
24. Placement Rule (iii) requires that alcohol advertising may only be placed on television (which has no age restriction controls as exist with digital media such as Facebook) where the audience is reasonably expected to comprise at least 75% adults. The audience composition of television programs can reasonably be ascertained because of the ratings system.
25. The publicly available data and the information supplied by the Companies show that the audience for the Australian Open is predominantly adult and is in excess of the 75% adult benchmark.
26. Placement Rule (iv) provides irrespective of audience numbers, an alcohol advertisement must not be placed with programs or content primarily aimed at minors.
27. This rule requires the Panel to form a judgement about the nature of the program content and its intended primary audience. In making this assessment a number of factors can be considered including (but not limited to):
 - The actual audience composition of the program;
 - The subject matter of the program and whether the subject matter has themes likely to predominantly appeal to children or adolescents;
 - The use of techniques such as familiar children characters or the use of children and adolescents within the program;
 - The storyline of the program and whether the complexity of the plot suggests its targeted audience is adult; and
 - The use of language.

28. It should be noted that 'primarily aimed at minors' is a more narrowly framed test than 'strongly or evidently' appealing to minors which the ABAC applies in assessing the content of alcohol marketing. In other words, a program could be strongly or evidently appealing to minors but not be regarded as 'primarily aimed' at minors.
29. In assessing if a program is primarily aimed at minors, the Panel is to have regards to the probable understanding of the program by a reasonable person. This means that values, attitudes and life experience commonly shared in a majority of the community is to be the benchmark.
30. While tennis can fairly be said to be an Australian national sport meaning it is played and followed across the country and is popular in all age groups, the Panel does not believe a broadcast of the Australian Open can be characterised as being primarily aimed at minors. Under 18 year olds will watch tennis (a much smaller broadcast audience than over 18 year old) but tennis on television has a general appeal and tending towards an older focus as opposed to being primarily aimed at under 18 year olds.
31. Accordingly, the complaints are dismissed.