



ABAC Adjudication Panel Determination No. 40/18

Product: VB
Company: Carlton & United Breweries
Media: Television
Complainant: Confidential
Date of decision: 29 March 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of a television advertisement for VB (“the Company”) and arises from a complaint received 9 March 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.
2. 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.
 3. 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.
 4. 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.
 5. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

3. The complaint was received on 9 March 2018.
4. 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 Clearance

5. 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 this marketing communication (16062).

The Placement

6. The complaint relates to an advertisement for VB broadcast at 12:26pm on Channel Ten in Brisbane during Dr Phil.

The Complaint

7. The complainant objects to alcohol advertising during the middle of the day.

The ABAC Code

8. Section 3(b) of the ABAC Code provides that a Marketing Communication must NOT:
 - (iv) be directed at Minors through a breach of any of the Placement Rules.
9. The definitions in Part 6 of the ABAC provide that 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

10. The Company responded to the complaint by letter dated 21 March 2018. The principal points made by the Company were:
 - a) The broadcast does not breach the ABAC Code as the Advertisement appeared in a permissible timeslot pursuant to the Commercial Television Industry Code of Practice (**TV Industry Code**) and is not otherwise a breach of the Placement Rules in the ABAC.
 - b) Under section 6.2.1 of the TV Industry Code a commercial for alcohol drinks may be broadcast at a number of times during the day as set out in the section, including during the M and MA15+ classification zones set out in section 2 as follows:
 - i. M Classification Zones: School Days (7:30pm to 6:00am and 12 noon to 3:00pm) and Weekends and School Holidays/Public Holidays (7:30pm to 6:00am), except between 5:00am and 6:00am, and 7:30pm and 8:30pm; and
 - ii. MA15+ Classification Zones (8:30pm to 5:00am on any day).
 - c) School Days are defined in the TV Industry Code as a weekday that is not during School Holidays and is not a Public Holiday. The Education Queensland website confirms that 9 March 2018 was a normal school day. Therefore, placement of the Advertisement on that day at 12:26pm in Brisbane is not a breach of the TV Industry Code as it aired in a permitted timeslot (12 noon to 3:00pm) and so not a breach of the ABAC for that reason.
 - d) Further, the 'Dr Phil' program is not in any way aimed at or enjoyable for minors, being a United States talk show dealing with adult topics, and so the placement of the Advertisement during 'Dr Phil' does not otherwise breach of the Placement Rules in the ABAC.
 - e) For the reasons set out above, and again with respect to the complainant, we submit that the Advertisement does not breach any parts of the ABAC including part 3(b)(iv) and we ask that ABAC dismiss the Complaint on that basis.

The Panel's View

11. The complainant is concerned about alcohol being advertised during the middle of the day, in this case at 12.26pm during Dr Phil on Channel Ten.
12. This is a placement concern and relates to the requirement in the ABAC Code that alcohol advertisements must be placed consistently with the Commercial

Television Industry Code of Practice (CTICP). The CTICP provides that alcohol advertisements can be broadcast only during specified times which are:

- in the “M” and “MA15+” classification zones except between 5.00 am and 6.00 am and 7.30 pm and 8.30 pm;
 - with a sports program on a weekend or public holiday; and
 - with the broadcast of a live sporting event.
13. The Dr Phil show was broadcast during a week day. The ‘M’ classification zone on a weekday comprises 7.30 pm to 6.00 am and 12 noon to 3.00 pm. The Dr Phil program was broadcast in the “M” zone and hence Placement Rule (i) is complied with.
 14. The complaint did not argue that the Dr Phil program had content that was primarily directed towards minors. Further the audience reach of the program is predominately adult. This means no other Placement Rule is breached.
 15. Accordingly, the complaint is dismissed.