



## ABAC Adjudication Panel Determination No. 49/18

**Product:** Great Northern  
**Company:** Carlton & United Breweries  
**Media:** Television  
**Complainant:** Mr McKelleher  
**Date of decision:** 3 May 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 Great Northern beer (“the Company”) and arises from a complaint received 3 April 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 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 other codes as well as meeting the standards contained in the ABAC.
  3. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by Ad Standards, 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 Ad Standards 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 Ad Standards 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 3 April 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 (16109).

### **The Placement**

6. The complaint relates to an advertisement for Great Northern Beer apparently broadcast on Sunday April 1 on Channel Seven between 5:30 and 6pm during Sydney Weekender.

### **The Complaint**

7. The complainant objects to alcohol advertising at a time many children will be watching television and during family friendly programs.

### **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 16 April 2018. The principal points made by the Company were:

- a) Our media buyer (PHD) and Channel Seven have confirmed that no advertisements for Carlton & United Breweries aired at all during the program, whether paid or bonus media. A formal letter from the Group Sales Manager at Channel Seven confirms this advice. The letter sets out the actual spot list for all advertisements during the program (none of which are for Carlton & United Breweries, including Great Northern Brewing Co.) and confirms that Channel Seven have reconciled the spot list against the advertisements that actually aired during the program to ensure it is correct. Further Channel Seven have confirmed that no advertisements aired between the program and the Seven News which followed.
- b) While we cannot be sure, it is possible that the complainant or someone with the complainant changed channels during the ad break for the program and saw the advertisement in that way. For example, the complainant may have seen the advertisement during a different program, on a different channel during a spot permitted under the code and the Commercial Television Industry Code of Practice, such as during live sports airing at that time.
- c) For these reasons, and with respect to the complainant, we submit that there has been no breach of any parts of the Code including part 3(b)(iv) in relation to the complaint and we ask that ABAC dismiss the complaint on that basis.

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

- 11. The Commercial Television Industry Code of Practice (CTICP) governs the time slots at which alcohol advertisements are permitted to be broadcast on free to air television networks. The ABAC by way of Placement Rule 1 mandates that compliance with the CTICP is a requirement of the ABAC and hence a breach of the CTICP in relation to the broadcast of alcohol ads will also be a breach of the ABAC.
- 12. The Complainant contends that an advertisement for the alcohol product Great Northern Beer was aired during the program 'Sydney Weekender' on Channel Seven on Sunday 1 April 2018. This particular program is broadcast before the 6pm news, for thirty minutes, commencing at 5.30pm.
- 13. The CTICP designates the time slots in which an alcohol ad can be shown. The time of 5.30 pm to 6pm is not a designated time for the broadcast of an alcohol ad unless at that time a live sports event was being shown. The program 'Sydney Weekender' is a lifestyle themed program and is not a sports event. This means that if the Complainant is correct about the showing of an ad for the product during the 'Sydney Weekender' program, then the ABAC has been breached.

14. The Company's response to the complaint is that the Complainant is simply mistaken about the broadcast at the time stated in the complaint. The Company asserts no advertising for its Great Northern Beer or indeed any of its products were aired at this time on Channel Seven. The Company has also supplied a statement from a Mr Justin Kelly, Group Sales Manager for Channel Seven which confirms that no advertising for any alcohol product occurred during the 'Sydney Weekender' program. A full list of all ads shown during the 5.30pm to 6pm timeslot was supplied and this also indicated that no alcohol advertising occurred.
15. The evidence before the Panel supports the conclusion that the Complainant is mistaken about either seeing an alcohol ad at that time or an ad shown in conjunction with the Channel Seven program. Possibly the Complainant saw the ad at another time or the channel was changed. It is noted that Channel Nine broadcasts a Rugby League game at this same time and alcohol advertising could have been broadcast during that game consistent with both the CTICP and the ABAC placement rules.
16. The complaint is dismissed.