



## ABAC Adjudication Panel Determination No. 64/18

**Product:** Wild Turkey  
**Company:** Campari Australia  
**Media:** Television  
**Complainant:** Confidential  
**Date of decision:** 8 June 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 a television advertisement for Wild Turkey by Campari Australia (“the Company”) and arises from a complaint received 18 May 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 the Ad Standards Community Panel 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 18 May 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 completed in this timeframe.

## **Pre-vetting Clearance**

5. The quasi-regulatory system for alcohol beverage marketing features independent examination 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.

## **The Marketing Communication**

6. The complaint relates to a television advertisement for Wild Turkey seen on Foxtel TV Hits Channel at 6:38pm on 17 May during NCIS.
7. The advertisement opens with the actor, Matthew McConaughey walking away from a monument or building that is illuminated in white then red with fireworks going off in the background with a song playing in the background. We then see a side cropped view of the actor and can see that he is carrying a bottle of Wild Turkey bourbon down a street.
8. We see the streetscape around the actor with vintage cars, a nightclub and pedestrians as the voiceover says "We didn't set out to make a hit". As he passes a female pedestrian on her mobile phone she looks at the actor and then looks down as the actor watches her walk away and smiles and the voiceover continues "We just sang our song".
9. We then see the actor smiling as he arrives at an outdoor location where another man (the musician, Davie) is sitting and singing the song that has been playing in the background through the advertisement. The actor pours two glasses of the product as the voiceover says "Real Bourbon No apologies". The two men are seated in front of a fire pit and clink glasses as the other man continues to sing and the actor taps his fingers and the voiceover and super say "Wild Turkey It'll Find You".

## **The Complaint**

10. The complainant is concerned that the advertisement was shown during family dinner time in between CSI Miami and NCIS Los Angeles while children are watching. Also that it was a super sexy and cool advertisement that made drinking look aspirational.

## **The ABAC Code**

11. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - (b)(iv) be directed at Minors through a breach of any of the Placement Rules;
12. 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.

13. The Australian Subscription Television Code of Practice provides:

6.1 (a) ..... Licensees must ensure advertisements promoting goods or services defined in the:

- Weight Management Code of Practice;
- Therapeutic Goods Advertising Code; and
- Alcohol Beverages Advertising Code,

comply with those Codes.

6.5 The Licensee must take into account the intellectual and emotional maturity of the intended audience of the channel when scheduling advertisements in the following categories:

- Advertising of Alcoholic Beverages
- ....

## **The Company's Response**

14. The Company responded to the complaint by letter dated 31 May 2018. The principal points made by the Company are:

- Campari has in place strict compliance processes, with all advertising materials requiring internal legal and regulatory approval to ensure compliance with all relevant laws, regulations and industry codes. All Marketing Communications (as defined in ABAC) are submitted for AAPS approval. Campari is a responsible marketer committed to upholding the

spirit and intent of the ABAC Code and provides frequent training to its sales and marketing teams, as well as external agency teams on all legal and regulatory codes and Campari policy requirements. It takes its responsibility in this regard very seriously and is proactive in ensuring strict compliance with all of these requirements.

- Campari requires all of its media agencies to comply with the ABAC Code through its contractual arrangements with agencies. In addition, Campari's standard Agency Briefing Statement requires all agencies to comply with the mandatory statements contained within the brief that include ABAC placement requirements. This was used for the placement of the Wild Turkey advertisements.
- The placement of the advertisement complies with the Subscription Broadcast Television Code of Practice (ASTRA Code), in particular clause 6.5 of the ASTRA Code, requiring all subscription television broadcasters to consider the intellectual and emotional maturity of the intended audience regarding the scheduling of advertising of alcoholic beverages.
- Foxtel has confirmed that it considered the abovementioned provision of the code as well as Campari placement requirements when placing the relevant advertisement. The advertisement was aired at 6.38pm during the evening and alongside programming content that was rated M for a mature audience. Given the content of the program is clearly classified as M for mature audiences, together with the time of day the placement was made, Campari does not consider the program to be primarily aimed at minors.
- Based on current data issued by Metro 5 City Panel for the period 1 May to 21 May 2018, the average audience of NCIS is comprised of 94% viewers aged 18 years of age or older.
- The television advertisement depicts Matthew McConaughey, a recognisable actor, walking through the streets of a town where there is a general jovial and celebratory mood. The imagery of the bottle of Wild Turkey product is minimal and incidental in nature during the actor's walk through the town and at no time is the presence of alcohol featured heavily.
- The consumption of alcohol is not depicted until the final stages of the advertisement when the actor joins his friend to sing some songs. This sequencing was considered thoughtfully to ensure that alcohol is not a dominating feature of the commercial or perceived as contributing to any sense of achievement or social success.
- During a number of frames of the television commercial, the wording, "NEVER COMPROMISE DRINK RESPONSIBLY" can clearly be seen at the bottom of the advertisement.

- At one stage during the advertisement, the actor is recognised by a passing pedestrian on the footpath and they exchange smiles. This is not due to the presence of alcohol but rather due to the fact that the actor is a recognisable Hollywood star.
- Towards the end of the advertisement the actor meets his friend, opens the bottle and pours two measures of Wild Turkey bourbon. They start singing together and are enjoying the moment of being in each other's company. Both the wording of the song lyrics and the voiceover relate to the fact that Wild Turkey is committed to making real Kentucky Bourbon in its own traditional and authentic manner rather than following trends. It relates to the premium nature and quality of the product as opposed to the alcohol itself being a pre-requisite to social success.
- Campari does not believe the complaint constitutes a breach of the ABAC Code.

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

15. Matthew McConaughey is an Academy award winning actor. The advertisement follows Mr McConaughey as he walks down a lively street and then sits at the waterside with the musician Davie. The complaint raises two concerns about the advertisement, namely the time of day it was broadcast and the content of the ad and its aspirational message.
16. The advertisement was aired on Foxtel at 6.38pm and in conjunction with the crime show NCIS. The complainant argues that this is a family viewing time and is unsuitable for alcohol advertising.
17. Unlike free to air television the code of practice applying to subscription television – the Australian Subscription Television Code of Practice (ASTRA) – does not prescribe particular time zones when it is contended alcohol advertising is appropriate to be broadcast. Rather the ASTRA Code has a more general guideline which requires that the intellectual and emotional maturity of the intended audience be taken into account when scheduling alcohol advertisements.
18. The ASTRA Code also provides that advertisements promoting alcohol comply with the ABAC. The ABAC for its part, in placement rule 1, requires compliance with codes regulating the placement of alcohol marketing. This means the ABAC incorporates the relevant provisions of the ASTRA Code and the ASTRA Code requires compliance with the ABAC standards.
19. The net effect of the somewhat circular cross references between the two codes would appear to be as follows:
  - There is no time of day restrictions as to when an alcohol advertisement might be broadcast on a Foxtel channel;

- An advertisement can not be shown with programming having a likely audience of more than 25% under 18 year olds; and
  - The content of the program with which the advertisement is shown must not be primarily aimed at minors nor can the program have intellectual and emotional attraction inappropriate for the airing of an alcohol ad.
20. This means that the broadcast of the ad at 6.38pm is not a breach of either code. The question then turns to the audience of NCIS on Foxtel and whether the program can be regarded as primarily aimed at minors.
21. On the advice supplied by the company, the public ratings for the program show that its audience was overwhelmingly adult, with in excess of 90% of viewers being over 18. Further the themes and subject matter of NCIS could not be regarded as primarily directed at minors.
22. Accordingly, the Panel does not believe the ABAC placement rules have been breached.
23. The complainant also raised a concern about the content of the advertisement arguing that it made drinking look like an aspiration. Section 3(c)(ii) of the ABAC provides that an alcohol ad must not show the presence of an alcohol beverage as a cause of or contributing to the achievement of personal or social success.
24. The Company argues that the ad is consistent with this standard. It is contended that Mr McConnaughey is a well known actor and the interactions with him depicted in the ad reflect this fact and are not influenced by the presence of the product.
25. The Panel does not believe the advertisement breaches the Code standard. In reaching this view the Panel has noted:
- Consumption of the product is moderate and occurs in the final scenes of the ad;
  - The lively street scene cannot be said to be caused or contributed by the presence of the product;
  - The interaction between Mr McConnaughey and the woman in the street shows both characters as confident and happy and this mood is not caused by the product
  - Taken as a whole the ad is attractive and appealing but does not attribute this to the product as a cause but rather the advertisement aims to associate the product with an already established attractive scenario.
26. Accordingly, the complaint is dismissed.