



ABAC Adjudication Panel Determination No. 75/18

Product: Johnnie Walker
Company: Diageo
Media: Television
Complainant: Ms Ayre
Date of decision: 6 August 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 a Johnnie Walker television advertisement during an AFL match broadcast at 8pm on 7 July 2018 by Diageo (“the Company”) and arises from a complaint received on 9 July 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 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 the other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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.
 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 29 July 2018.
8. The Panel endeavours 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 was obtained for the content but not placement of the marketing communication (16218).

Placement of the Marketing Communication

10. The complainant refers to the broadcast of an advertisement for Johnnie Walker during an AFL match on Channel 7 at 8pm.

The Complaint

11. The complainant is concerned that an 8pm time slot is too early for alcohol advertising and that many children will be viewing the match.

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:

- (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

14. The Company responded to the complaint by letter dated 20 July 2018. The principal points made by the Company were:
 - a) The advertisement is for Johnnie Walker and its content is based on a story of a mature age student who decides to leave his Computer Science bachelor degree to pursue his passion for art as a living. The storyline follows him as he takes a series of steps toward this goal, from pitching his art to several galleries, to collaborating with a designer who turns his artwork into a design for women's apparel. The story finishes at the launch party of

this new line of women's clothing and then sees the scenes told in reverse bringing the story all the way back to the beginning and his first step. The content of this advertisement is speaking to a 25-45 year old audience and serves to inspire the audience to feel more comfortable about their progress journey, and not get overwhelmed by an end goal but focus on the small steps along the way.

- b) The placement of the advertisement on Channel 7 at 8pm on Saturday 7 July in Melbourne with AFL coverage does not breach the Commercial Television Industry Code of Practice. Under 6.2.1 of the Code of Practice a commercial for alcoholic drinks can be broadcast as an accompaniment to a Sports Program on a Weekend or a Public Holiday.
- c) Saturday night Network Seven broadcasts of the AFL have an audience profile of a minimum 75% above the legal purchase age. Average audience composition data calculated across 2018 season dates 24 March to 7 July 2018 for AFL coverage at around 8pm on Saturday nights are:
 - Average 5 Cap City Metro audience 18+ @ 20.000 hours – 91%
 - Average Melbourne Metro audience 18+ @ 20.000 hours – 91%
- d) The average share of viewing for 18+ audiences across the April – July 2018 AFL season for Thursday through Sunday is 92%. This means that 92% of viewers are 18+ on average across all broadcast timeslots. While there is appeal to some minors in AFL, it is not strong or evident beyond the general population and not a program primarily aimed at minors.
- e) Diageo takes the placement of its advertisements very seriously when it comes to ensuring advertisements are only placed where 75% of the audience is above the legal purchase age. The placement complies with the rules set in place for TV advertising.

The Panel's View

Introduction

15. The complainant is concerned that an alcohol ad broadcast during AFL coverage at 8pm on a Saturday night will be viewed by children and does not believe the audience would be >75% adults.
16. The ABAC Placement Rules lay down requirements for the placement of alcohol marketing through various mediums such as outdoor advertising, print platforms, traditional electronic media such as television and radio, as well as digital media. The three rules which are relevant to alcohol advertising during a television broadcast are:
 - a) Rule 1 – which provides that television advertising must comply with the Commercial Television Industry Code of Practice (CTICP);

- b) Rule 3 – which provides that a marketing communication may only be placed where the audience is reasonably expected to comprise at least 75% adults; and
- c) Rule 4 – which provides that a Marketing Communication must not be placed with programs or content primarily aimed at Minors
17. The CTICP limits when alcohol advertising can be broadcast to after 8.30 pm however an exemption to this is advertising in conjunction with sports programs on weekends and public holidays. AFL football match coverage on a Saturday evening falls within this exemption and hence Rule 1 has not been breached.
18. Rule 3 provides if there are no age restriction controls available to exclude minors (such controls exist with social media platforms such as Facebook and YouTube) then alcohol advertising can only be placed where at least 75% of the audience is reasonably expected to be adult. Free to air television has no age restriction controls on who may view it and hence the 75% adult audience requirement is applicable.
19. The question of the audience composition of a program with which an alcohol advertisement is placed is essentially an issue of fact. It is necessary to assess available data on the audience and draw a conclusion.
20. Audience composition data on free to air television is generally available due to the ratings system. Data provided shows that the audience composition for AFL coverage at 8pm on a Saturday night averages at 91% adults both nationally and also in Melbourne where the complainant was viewing the broadcast. It is slightly higher at 92% across all broadcast times. Accordingly, Rule 3 has not been breached.
21. Rule 4 provides that irrespective of the expected audience of a program, an alcohol advertisement must not be placed with a program or content primarily aimed at minors.
22. 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 target audience is adult; and
 - The use of language.
23. In assessing if a program is primarily aimed at minors, the Panel is to have regard to the probable understanding of the program by a reasonable person. This means

that the values, attitudes and life experience commonly shared in a majority of the community is to be the benchmark.

24. While AFL is a popular Australian sport followed across the country and popular in all age groups, the Panel does not believe a broadcast of AFL game can be characterised as being primarily aimed at minors. Under 18 year olds will watch AFL (a much smaller broadcast audience than over 18 years old) but AFL on television has a general appeal and tending towards an older focus as opposed to being primarily aimed at under 18 year olds.
25. Accordingly, the complaint is dismissed.