



ABAC Adjudication Panel Determination No. 77/18

Product: Jacobs Creek Double Barrel
Company: Pernod Ricard Winemakers
Media: Television
Complainant: Ms Dibb
Date of decision: 10 August 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the content and placement of a Jacobs Creek Double Barrel television advertisement during Masterchef at 8.53pm on Sunday, 15 July 2018 by Pernod Ricard Winemakers (“the Company”) and arises from a complaint received on 16 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 16 July 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 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 of the marketing communication (15826).

Placement of the Marketing Communication

10. The complainant refers to the broadcast of an advertisement for Jacobs Creek Double Barrel during Masterchef on Channel 10 at 8.53pm on Sunday 15 July 2018.

The Complaint

11. The complainant is concerned that the advertisement aired at 8.53pm in conjunction with the program Masterchef and may have been viewed and influenced many children. It was also pointed out that a drink responsibly message superimposed on the advertisement was in too small font to be meaningful.

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 3 August 2018. The principal points made by the Company were:
 - a) Pernod Ricard Winemakers Pty Ltd (**Pernod Ricard Winemakers**) is a signatory to the Alcohol Beverages Advertising (and Packaging) Scheme (**ABAC**) and takes compliance with the ABAC Responsible Alcohol Marketing Code (the **Code**) very seriously. We are committed to the

responsible marketing of our products and endeavour to abide by the Code as well as 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 complaint is said to relate to a television commercial that aired on Channel Ten in Perth on Sunday 15 July at 8.53pm. Although the complainant does not identify the alcohol brand that was the subject of the commercial, we believe the complainant is referring to a television commercial for Jacob's Creek Double Barrel (the **Advertisement**) which aired on this television station in Perth at this time. The Advertisement aired during a commercial break for the television program MasterChef Australia Series 10.
- c) The placement of the Advertisement did not breach the Commercial Television Industry Code of Practice (**CTICP**) as the Advertisement appeared in a timeslot permitted by the CTICP. Section 6.2.1 of the CTICP provides that commercials for alcoholic drinks may 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.
- d) The "M" and "MA15+" classification zones are set out in section 2 of the CTICP:
- M Classification Zone: from 7.30pm to 6.00am and from 12 noon to 3.00pm on School Days, and from 7.30pm to 6.00am on Weekends, School Holidays and Public Holidays; and
 - MA15+ Classification Zones: between 8.30pm and 5.00am on any day.
- e) As the Advertisement was broadcast on a Sunday at 8.53pm, it was broadcast at a time commercials for Alcohol Beverages are permitted to be broadcast on commercial television in accordance with the CTICP.
- f) Pernod Ricard Winemakers sought audience composition data for MasterChef Australia from our media agency prior to booking the Advertisement to air to ensure that the audience at that time was reasonably expected to comprise at least 75% adults, as required by the Code. We were provided with audience data for the primetime broadcast of MasterChef Australia series which aired in the previous year, 2017, which showed that:

- an average of 11% of the audience across all primetime broadcasts of MasterChef Australia was aged under 18; and
 - an average of 11% of the audience across primetime broadcasts of MasterChef Australia episodes on Sunday nights was aged under 18.
- g) This was the most accurate, up to date and reliable audience composition data available before the commercial was booked by our media agency. We considered it reasonable to expect that the audience composition for MasterChef Australia in 2018, including for Sunday night broadcasts, would be the same or similar to that for the program in 2017.
- h) Network TEN has now provided us with composition data for their audience in Perth at 8.53pm on 15 July 2018, when the Advertisement aired. This data shows that only 7% of the audience was under the age of 18 (source: OzTAM, Perth Capital City, 8.53pm-8.54pm, Overnight). This demonstrates that not only was the audience reasonably expected to comprise at least 75% adults at the time the commercial was booked to air (expected to be 89% adult), the data confirms that the audience did in fact comprise at least 75% adults (comprising 93% adults). As such, the placement of this advertisement complies with this Code requirement.
- i) The program and content in which the Advertisement was placed was not primarily aimed at minors. The Advertisement aired during a commercial break for MasterChef Australia Series 10. MasterChef Australia is not a program that is aimed at minors nor does it contain content that is aimed at minors. It is a reality television program broadcast on Network TEN in which home cooks compete in a series of challenges judged by culinary experts and guest chefs. At the end of the series, one home cook is crowned the winner of MasterChef Australia. Home cooking and culinary endeavours are themes that are relevant to adults, not minors.
- j) Network TEN tell us that the key demographic for MasterChef Australia is 25 to 54 year olds; this was one of the factors that led us to booking the Advertisement to air during the commercial break for this program. In addition, all of the contestants and judges featured in the program are adults and, as noted above, the vast majority of viewers of the program are adult.
- k) The particular episode of MasterChef Australia that was broadcast at the time the Advertisement aired did not contain content primarily aimed at minors. It consisted of seven remaining contestants arriving at the MasterChef Australia kitchen to undertake cooking challenges to remain in the competition, including an invention cooking test which featured a guest judge, a chef aged in his 40s.
- l) In conclusion, it is our view that the placement of the Advertisement the subject of the complaint complies with the Part 3 (b)(iv) of the Code.

m) In addition to the responses above, we wish to reiterate that Pernod Ricard Winemakers is committed to the responsible marketing of its products. We included the following in the Advertisement, which is above and beyond what is required by the Code:

- the line “This film should not be viewed by or shared with anyone under the legal drinking age” at the beginning of the Advertisement (which was clearly visible, as the complainant specifically refers to this line in their complaint); and
- the logo for DrinkWise and a responsible drinking message in the form of “Enjoy Jacob’s Creek Responsibly” at the end of the Advertisement.

The Panel’s View

15. This determination concerns the airing of an advertisement for the product in conjunction with the long running television program Masterchef. The complainant does not object to the content of the ad as such but rather believes it is inappropriate for the ad to be aired at 8.53pm when children may be watching. Further a concern is expressed about a drink responsibly message superimposed on the ad which is argued to be so small as to be meaningless.
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 with an exemption in relation to sports programs that is not relevant in this case. The ad was broadcast after 8.30pm at 8.53pm which is consistent with the CTICP requirements 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. In deciding to place the advertisement the Company relied upon data that showed that the audience composition for Masterchef averaged across prime time broadcasts in 2017 and also Sunday night broadcasts was 11% minors. In fact, the audience of the program at the time the Jacobs Creek ad was aired on 15 July was 7% under 18s. 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. The Masterchef program is an example of the reality TV genre and is currently in its 10th year on Australian TV having premiered in 2009. The basic concept is that contestants from various walks of life are asked to prepare elaborate meals in a set time in a studio kitchen. The meals are then judged with contestants gradually eliminated over the weeks as each series progresses. The program has proven popular with audiences with the series generally rating in the top 10 most popular Free to Air programs.
25. The program would be popular across age groups and would have some appeal to under 18 year olds. It is noted that there were two spin off series in 2010 and 2011 which featured children as contestants although the ratings for these programs indicated it was not able to sustain the same level of popularity and this version of the show has not been continued. The Panel does not believe the program could be fairly said to be primarily aimed at minors and its appeal is likely to be much stronger with adults than children. Accordingly Rule 4 has not been breached.
26. Finally the complainant raised the adequacy of 'drink responsibly' messages superimposed on the ad. The ABAC does not require the showing of messages of this kind and hence there is no requirement as to matters such as font size. While

it may be considered best practice to use drink responsibly messages with alcohol ads, as there is no Code requirement to this effect there can be no breach related to concerns about the sufficiency of any message a marketer might voluntarily choose to include with an ad.

27. Accordingly the complaint is dismissed.