



ABAC Adjudication Panel Determination No. 119/18

Product: Mercury Cider
Company: Carlton & United Breweries
Media: Television
Date of decision: 17 October 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 placement of a Mercury Cider television advertisement at approximately 11.15am on 29 September 2018 by Carlton & United Breweries (“the Company”) and arises from a complaint received on 2 October 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 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.
 5. 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.
 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 2 October 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 of the marketing communication.

Placement of the Marketing Communication

10. The complainant refers to the broadcast of an advertisement for Mercury Cider on Channel 7 on Saturday 29 September at approximately 11.15am.

The Complaint

11. The complainant is concerned that 11.15am is a completely inappropriate time to be advertising alcoholic beverages.

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 letters dated 5 and 11 October 2018. The principal points made by the Company were:
 - a) We reiterate our commitment to the ABAC Scheme and our support of the introduction of the Placement Rules. We appreciate the importance of monitoring the placement of alcohol advertising and take our obligations to responsibly promote our products very seriously.

- b) However, for the reasons set out below, and with respect to the complainant, we submit that there has been no breach by CUB of the Code:
- The placement of the TVC complies with the Commercial Television Industry Code of Practice (**CTICP**) as it was shown during the AFL Grand Final live-to-air sporting broadcast. Section 6.2.1 of the CTICP permits the broadcast of a TVC for an alcoholic drink during the broadcast of a live sporting event, as well as a sports program on a weekend.
 - The placement of the TVC therefore does not breach Part 3(b)(iv) placement rule (i) of the Code by directing the marketing communication at minors through a breach of the CTICP.
- c) The advertisement did not breach Part 3(b)(iv) placement rule (iii) because 91.1% of the audience for the program during which the advertisement was shown are aged over 18.
- d) The AFL Grand Final live broadcast is not primarily aimed at minors in breach of Part 3(b)(iv) placement rule (iv) for the reasons set out in paragraph 24 of ABAC Panel Determination No. 75/18:

*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.*

- e) For the reasons set out above, we respectfully submit that the complaint should be dismissed on the basis that there has been no breach by CUB of any parts of the Code.

The Panel's View

15. The complainant is concerned that 11.15am on a Saturday morning is an inappropriate time to be advertising alcoholic beverages. The complainant refers to the advertisement being placed on Channel Seven on Saturday 29 September at 11:15am. The advertisement was placed during Seven's coverage of the 2018 AFL Grand Final which commenced at 9AM AEST on Saturday 29th of September, and concluded at approximately 8PM AEST. The Grand Final match commenced at 2pm that day.
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 grand final pre-game coverage on a Saturday morning 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 the program in question was 91.1% adults. 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. The Panel has previously considered the question of whether AFL coverage is primarily aimed at minors in Determination 75/18 and found that:
- 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.*
23. Accordingly, the complaint is dismissed.