



ABAC Adjudication Panel Determination No. 124/18

Product: Coopers Dry
Company: Coopers Brewery
Media: Radio
Date of decision: 16 November 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the content and placement of a series of advertisements for Coopers (“the Company”) on the Nova radio station and arises from a complaint received on 16 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 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.
 4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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 October 2018.
8. The Panel endeavoured 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 these marketing communications (16611 & 16684).

The Marketing Communications

10. Advertisements for Coopers Dry were heard by the complainant from early morning on the Nova radio station.

Radio ad 1

11. Voice mimicking Donald Trump: Hello I am your beer, I am a great beer, a huge beer, a beer for winners. Believe me, I'm not a lightweight beer at all. I'm a tremendous beer, amazing. You know, a bunch of very bad people have said that I'm not a great beer. They're wrong, fake news.
12. A narrator interjects with "Uugh, time to hit the refresh button". There is the sound of a button being pressed and a splash and we hear in the background in the first voice "I'm going to tweet about this". The narrator continues "Much better. Introducing Coopers Dry, a refreshing change from the beer you're drinking now. [sound of a drink being poured into a glass] Hit refresh, the all new Coopers Dry."

Radio ad 2

13. Voice mimicking a well-known National Tiles radio ad: Hello I'm your beer, that's right I'm your beer, whether you're at the beach, the pub, by the pool. Look no further, because, I'm your beer. Yes, ladies and gentleman I'm the best beer you'll find anywhere in Australia and this summer there's only one beer and that beer is me.
14. A narrator interjects with "Uugh, time to hit the refresh button". There is the sound of a button being pressed and a splash and we hear in the background in the first voice "Goodbye". The narrator continues "That's better. Introducing Coopers Dry, a refreshing change from the beer you're drinking now. [sound of a drink being poured into a glass] Hit refresh, with all new Coopers Dry."

Radio ad 3

15. Voice mimicking Pauline Hanson: Hello I'm your beer, as your beer I will represent you at all social gatherings and meetings with friends. I believe in one beer, one party and what a party we'll have, because I am the beer for all Australians.
16. A narrator interjects with "Uugh, time to hit the refresh button". There is the sound of a button being pressed and a splash and we hear in the background in the first voice "Please explain". The narrator continues "That's better. Introducing Coopers Dry, a refreshing change from the beer you're drinking now. [sound of a drink being poured into a glass] Hit refresh, with all new Coopers Dry."

Radio ad 4

17. Narrator: Sometimes things don't quite go as planned.

18. Character voice: So, the wedding is going perfectly until...."I Eric, take you Tracey [sound of upset crowd] I mean Jane I mean Jane" yeah I said the wrong name".
19. Narrator: Somedays we just wish we could hit the refresh button [sound of a button being pressed and a splash].
20. Character voice with upbeat music in the background: "I Eric, take you Jane [applause] to have and to hold".
21. Narrator: For a refreshing low carb beer with a great taste, hit the refresh button and pick up a Coopers Dry and drink responsibly.

Radio ad 5

22. Narrator: Sometimes things don't quite go as planned.
23. Character voice: So, I'm venting to my work place about the boss...."You're joking, whose decision was that?" When my workmate's face drops [sound of a man clearing his throat]. The boss was right behind me.
24. Narrator: Somedays we just wish we could hit the refresh button [sound of a button being pressed and a splash].
25. Character voice with upbeat music in the background: So, I'm chatting to my workmate right "How about those exciting changes coming up" when the boss pops up behind me and gives me a high five [whooping sound].
26. Narrator: For a refreshing low carb beer with a great taste, hit the refresh button and pick up a Coopers Dry and drink responsibly.

The Complaint

27. The complainant argues that all alcohol advertising is irresponsible given the levels of alcoholism in Australia. It is contended advertising should not occur on radio in the morning and that the advertisements are associating beer with something cool and healthy.

The ABAC Code

28. 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.
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
 - (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.

(c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

29. Part 6 of the ABAC Code includes definitions including:

Placement Rules (in part) 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

30. The Company responded to the complaint by letter dated 26 October 2018. The principal points made by the Company were:

- a) The objective of Coopers "Hit Refresh" campaign is to promote Coopers Dry, a dry, low-carb lager launched in September 2018. While dry/low-carb beers comprise 15% of the total Australian beer market there are relatively few brands offering this style of beer. With specially selected yeast, producing an intriguing flavour of low malt sweetness and modest bitterness Coopers Dry is a refreshing alternative.
- b) Each of the advertisements that comprise the 'Hit Refresh' campaign integrates the theme of a 'refreshing alternative', tying together both the nature of the lager that 'refreshes' and is 'refreshing' meaning welcome or stimulating because something is new or different' and 'serving to refresh or reinvigorate', to describe the consumer's opportunity to change their existing brand and experience Coopers dry/low carb beer. The taglines "*hit the refresh button*", "*a refreshing low carb beer*" and "*a refreshing change from the beer you're drinking now*" which appear across the five advertisements reinforce this messaging.
- c) The premise of the first three radio advertisements is that the characters (Donald Trump, Frank Walker and Pauline Hanson soundalikes) represent

the dry/low carb beer the consumer is currently drinking. The characters were chosen based on the distinctiveness of their voices and the listener's general understanding of the kinds of things they say. The characters are simply an analogy for the beer the consumer is drinking now. The consumer knows exactly what they are going to get with their current beer, so they might be ready to "hit the refresh button" and try a new dry/low carb beer such as Coopers Dry. Each of the three ads is intended to be a tongue in cheek, humorous way of looking at the 'character of beer', while playing on the refreshing nature of Coopers Dry. The goal was to create a cut through approach in radio that could capture the attention of adults who are familiar with these identifiable individuals, but take them by surprise, therefore resulting in higher engagement with the campaign and the message to try the new Coopers Dry.

- d) The premise of the final two ads is that life doesn't always go to plan, and it would be nice to be able to "*hit the refresh button*" and have a do-over and do things differently. The wedding and office scenarios were chosen for their relatability to adult consumers generally. Akin to the 'moments like these you need MINTIES campaign for Allen's Minties, the two advertisements are meant to pick up on the 'refresh' theme as a tongue in cheek, humorous way to compare the desire to 'do-over' the consumer's choice of dry/low carb beer. The word play also captures the refreshing nature of the beer and the message to try the new Coopers Dry.
- e) We do not consider that the Coopers Dry radio advertisements appearing on Nova are "directed at Minors", or as alleged by the complainant that the advertisements "*breach the Placement Rules*". In our view a reasonable person to whom the advertisement is likely to be communicated would understand that the advertisements are for beer, and therefore directed at adults, for the following reasons:
 - i. The Coopers brand is familiar as the largest Australian owned brewery and Coopers is well-known for its brew ales, stout, lagers, light and low carb beers; and
 - ii. The word 'beer' is emphasised 2-6 times throughout each of the advertisements in the 'Hit Refresh' campaign, which further distinguishes the product as a beer and not a product intended for minors.
- f) We disagree that the advertisements would appeal to minors given the characters and scenarios depicted within the advertisements. In our view, minors would not connect with the advertisements or the references behind the advertisements. This is because topics such as 'politics', 'tiling', 'workplace dialogue' and 'wedding vows' are not generally relevant and do not generally appeal to minors. The advertisements do not use cartoon voices, children's characters or jingles that would appeal to minors. Furthermore, the advertisements immediately reveal that they pertain to beer e.g. "*Hello I am your beer*", clearly indicating that they are directed at adult consumers only.

- g) There are no general restrictions concerning the placement of alcohol advertisements on commercial radio. References to alcohol within the Commercial Radio Code of Practice appear in Part 1 at CI 9.15 which prohibits any association between gambling and alcohol, and in Part 2 at CI 2.1.13(a) which states that a broadcaster must not air a program that presents the misuse of alcohol as being desirable. None of the Coopers' advertisements incorporate gambling or the misuse of alcohol, consequently the campaign does not breach these sections of the *Commercial Radio Code of Practice*.
- h) Restrictions apply to the placement of alcohol advertisements on television, including periods when advertisements for alcohol beverages may be broadcast. NOVA has advised us that it is their internal policy to adhere to the advertising restrictions contained within the Commercial Television Industry Code of Practice for any alcohol advertising placed on their networks.
- i) NOVA's programming practice is to allow the placement of alcohol advertisements in certain time slots outside of Breakfast only. Having regard to the demographics of the relevant time slot, NOVA may place alcohol advertisements during the Mid-Dawn time slot, however alcohol advertisements are predominantly booked in prime-time slots during the Afternoon, Drive and Evening spots. NOVA implements this policy to accord with prevailing community standards as required by the AANA Code of Ethics and to avoid advertisements being placed where children/minors may be more likely to be listening (i.e. at Breakfast from 6am-9am).
- j) Following receipt of the complaint, enquiries were also made with NOVA in respect of the television and radio codes, and they have advised that in their view the advertisements comply with the *Commercial Radio Code of Practice* as it does not contain any specific rules around the timing/placement of alcohol ads on commercial radio.
- k) NOVA Entertainment is a leading Australian radio network that targets an audience over 40. NOVA promotes itself as the #1 station for people aged 25-54, it is not a network that supports programming primarily aimed at minors. Survey #6 2018 released by GfK Media Research on 4 October 2018 supports NOVA's claims in respect of its market share and demographic.
- l) Coopers paid media advertising is targeted at the 18-54 demographic [and is booked for radio placements on NOVA during Afternoon, Drive and Evening spot lists only. NOVA has advised us that the audience at the time any Coopers' advertisement is aired is always comprised of at least 75% of listeners over the age of 18. With respect to the complainant's assertion that Coopers' "*alcohol is advertised [sic] from early morning*", as stated above, NOVA does not run alcohol advertising during their Breakfast show. Morning spots (advertising available after 8:30am) are only available on weekends. As Coopers does not book any alcohol placements during Breakfast or Saturday/Sunday mornings, if a Cooper's advertisement is broadcast between midnight and Dawn/Mid-Dawn or given a morning spot

on a weekend, this represents a bonus spot placed at the station's discretion.

- m) The campaign activity log provided by NOVA shows that during the period commencing 10 October and ending 22 October 2018, the only Coopers' advertisements broadcast in the morning (before 12.00pm) were:

Saturday 13 October

5:04am Nova 106.9 Brisbane
9:39am, 10:38am, 11.39am Nova 100 Melbourne

Sunday 14 October

9:31am smoothFM 91.5 Melbourne
9:32am, 10:37am, 11.38am Nova 106.9 Brisbane
9:34am, 9:58am, 10:38am Nova 91.9 Adelaide
9:39am, 10:38am, 11:40am on Nova 100 Melbourne
9:56am, 10:39am, 11:58am on Nova 96.9 Sydney
10:57am, 11:17am, 11:56am on Nova 93.7 Perth

Monday 15 October

5:52am Nova 106.9 Brisbane

Thursday 18 October

5:14am smoothFM 91.5 Melbourne

Sunday 21 October

9:18am Nova 93.7 Perth
9:34am, 10:37am, 11:38am Nova 91.9 Adelaide
9:37am, 10:37am, 11:38am on Nova 96.9 Sydney
10:29am on smoothFM 95.3 Sydney

The bonus spots above reflect NOVA's programming practice. NOVA has confirmed that between 5:00am and 8:59am 77.5% of NOVA listeners in Sydney, Melbourne, Brisbane, Adelaide and Perth are over 18, and between 9:00am and 11.59am this jumps to 89.8% of listeners over 18.

- n) The concept behind the 'Hit Refresh' campaign is change, and that is the consistent message connecting each of the five advertisements within the campaign: that Coopers Dry represents a 'refreshing alternative' or 'change' to the consumers current dry/low carb beer of choice.
- o) The first three ads do not suggest that the consumption or presence of Coopers Dry will contribute to a change in mood or environment or cause or contribute to the achievement of success. They merely employ satire (transferring the identifiable characteristics of a well-known individual onto a beer) to emphasise the benefits of change and the refreshing nature of Coopers Dry. The campaign does not promote excessive consumption or an amount of alcohol that might suggest it would cause a change to the mood or success of the consumer. The aim is to look at the 'character of beer' in a humorous way.

- p) In a similar manner the final two advertisements, 'The Boss' and 'The Wedding', employ a humorous, unenviable situation to emphasise the benefits of doing something differently. The concept of choice is clearly a choice between dry/low carb beer and not a suggestion that choosing Coopers Dry will improve the consumer's mood/environment or contribute to their success. Each advertisement plays on the dual meanings of 'refresh' as something that is welcome because it is new or different, and equally serves to reinvigorate or refresh, i.e. a beverage. At face value the audience of these two advertisements would understand and appreciate that drinking a can of beer cannot turn back time, and this is an additional humorous component of these advertisements. As above, the campaign does not promote excessive drinking or an amount of alcohol that might suggest a change in mood or success in the consumer. This is supported by the closing message to consumers to 'drink responsibly'.
- q) The campaign introduces Coopers Dry as a 'refreshing alternative' to the consumer's current dry/low carb beer choice. The use of the terms 'refresh' and 'refreshing' are not intended (and in our view do not) suggest that the consumption of Coopers Dry offers a therapeutic benefit to the consumer. To the contrary the use of those words is based on their ordinary meaning, which could be used to describe the consumption of any cold beverage.
- r) We do not believe that the advertisements breach any provision of the ABAC. If, the Panel disagree we believe that any such breach should be classified as a "no fault breach" as the content was pre-vetted by AAPS and placement was booked and deemed compliant by NOVA, so a breach was reasonably unforeseeable and outside the reasonable control of Coopers.
- s) We note there has only been one complaint about the advertisements and the public response to the advertisements has been overwhelmingly positive. We regret if any listeners were offended by the advertisement and would like to take this opportunity to assure the Panel and the listeners that this was never our intention and that we take our responsibilities regarding responsible alcohol consumption seriously.

The Panel's View

- 31. The principal argument advanced by the complainant is that all alcohol marketing in Australia should be prohibited on the grounds of the harm caused by its use. While this is a valid view to express the ABAC operates on the basis that alcohol is a lawfully available product which can and is marketed. To prohibit alcohol marketing would require Government to take a legislative decision, and this is well beyond the role of the Panel. This means that this decision relates only to the concerns expressed about the specific radio ads which prompted the complaint.
- 32. As a result the determination deals with two issues. Firstly, is the placement of the advertising on radio consistent with the obligations contained in the ABAC Placement Rules. Secondly is the content of the advertisements consistent with the ABAC content standards for alcohol marketing. Each of these issues will be dealt with in turn.

Commercial Radio and Placement Rule (i)

33. Placement Rule (i) requires that an alcohol advertisement comply with codes regulating the placement of alcohol marketing that have been published by Australian Media Industry bodies. Commercial Radio Australia has published Codes of Practice and Guidelines which apply to commercial radio networks such as Nova. These radio codes have been registered with the national regulator of broadcast media, the Australian Communications and Media Authority (ACMA).
34. The radio codes of practice only deal with alcohol in two brief ways. Code 1, which deals with programs unsuitable for broadcast provides that a radio station must not broadcast a program (which includes advertising) which in all of the circumstances presents the misuse of alcoholic liquor as desirable. Code 10 deals the promotion of gambling provides that a commercial relating to betting or gambling must not associate gambling with alcohol.
35. The radio codes do not otherwise deal with the broadcast of alcohol advertising or endeavor to restrict the time of day during which an alcohol advertisement might be broadcast. It seems Nova adopts its own internal guidelines as to when alcohol ads will be broadcast and in large measure these guidelines aim to avoid times when minors are more likely to form a larger part of the audience. The complainant did not detail the precise time of day when the ad was heard only that it was in the morning. In any event, given there is no media industry code restricting broadcasts in the morning, Placement Rule (i) has not been breached.

Placement Rules (iii) and (iv)

36. Placement Rule (iii) provides that if no age restriction controls are available to exclude minors from the potential audience of an alcohol marketing item, then it may only be placed where the audience is reasonably expected to comprise at least 75% adults. This rule requires the Panel to assess available audience composition data and draw an objective conclusion.
37. Based on the available information, the adult audience of the Nova morning program at the times the advertisements were broadcast was above 75%. This means that Placement Rule (iii) has not been breached.
38. Placement Rule (iv) provides that an alcohol advertisement must not be placed with programs or content primarily aimed at minors. The complainant did not identify the time the advertisement was heard or the program with which it was broadcast. Without this detail it is not possible to fully assess the placement rule requirement although it seems that Nova programs are aimed at demographics older than 18 and below. On this basis it does not seem likely that Placement Rule (iv) has been breached.

Content Standards

39. It was not clear which ad or ads the complainant actually heard of the 5 in the series being broadcast for the Company. The ads are of two types. The first three parody well known voices such as Donald Trump and in a comedic way seek to contrast the Coopers product with a consumers current choice of beer. The final

two ads adopt a slightly different style and present an embarrassing situation as an example of a desire to 'hit the reset button' to avoid the embarrassment as the means to promote the Coopers product as an alternative to a current beer choice.

40. The complainant was concerned the ads made beer out to be cool or healthy. The ABAC provides alcohol marketing cannot suggest alcohol provides a therapeutic benefit. Further an ad cannot suggest that alcohol use is a cause of the achievement of success or contributes to a significant change in mood.
41. The Panel does not believe the ads breach these standards. While the product is low calorie compared to other products, there is no claim made or to be reasonably implied that positive health benefits will result from use of the product. Further while the final two ads do portray a scenario of avoiding an embarrassing situation, it is clearly established this is a fantasy caused by hitting the wished for reset button and not caused by the presence or use of the alcohol product.
42. Accordingly the complaint is dismissed.