



ABAC Adjudication Panel Determination No. 133/18

Product: Wild Yak Ale
Company: Carlton & United Breweries
Media: Outdoor
Date of decision: 26 November 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 outdoor marketing for Wild Yak Ale by Carlton & United Breweries (“the Company”) and arises from a complaint received 7 November 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 Code”) – 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 and Policies – which place 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 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 the 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 7 November 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 completed in this timeframe.

Pre-vetting Clearance

9. 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 (159/18).

The Marketing Communication

10. The complaint relates to the content of the following outdoor advertisement.



The Complaint

11. The complainant objects to the marketing finding it offensive as:
- It is sexually suggestive
 - Contains nudity
 - Objectifies the female body
 - Indicates that sex with a female person is the same as sex with a yak, or vice versa, thus degrading women
 - Promotes bestiality
 - The caption seems to indicate that the beer can offer a “wild” experience – a heightened reaction that seems to be more comparable with illicit drug taking

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage
 - (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

The Company’s Response

13. The Company responded to the complaint by letter dated 14 November 2018. The principal points made by the Company were:
- a) We reiterate our commitment to the ABAC Scheme and take our obligations to responsibly promote our products very seriously. We also note that we’ve

worked closely with AAPS in developing this advertisement to ensure that it fully complies with the ABAC Scheme.

- b) However, for the reasons set out below, and with respect to the complainant, we submit that there has been no breach by Carlton & United Breweries of Part 3 (c)(i) or (ii) of the Code.
- i. The advertisement does not depict a change in mood or environment. The wild yak has simply stepped into the water without his fur – his mood has not transitioned or elevated in any way. His facial expression and body language is stoic, akin to the other yaks depicted in the advertisement.
 - ii. The tagline 'it's a little wild' is a play on the name Wild Yak, and does not suggest that consumption of alcohol could lead to a 'wild' experience. The subject of this tagline is the flavour of the Wild Yak product and also the 'wild yak', who is the central and recurring motif of the brand. The tagline also has an even tone, is moderated by the descriptor '*a little*', and does not suggest a mood change. The advertising is playful and irreverent and would be reasonably interpreted by a consumer in that light.
 - iii. The advertisement also does not depict any form of 'success' or 'achievement'. The wild yak is depicted with a neutral gaze, facing away from the other three yaks in the scene. He is not engaging with any of the other yaks and is not enjoying any form of social or sexual success or achievement. There is nothing in his facial expression or body language that suggests he is having more fun or is more successful than the other yaks depicted in the advertisement.
 - iv. The advertisement also does not depict the consumption of alcohol. The wild yak is not depicted as having consumed any alcohol. The Wild Yak bottle is pictured at the forefront of the advertisement and out of the scene in which the activity is being depicted. Accordingly, alcohol is clearly not the cause or a contributor of any new mood or environment, or success or achievement.

The Panel's View

14. This determination considers an outdoor advertisement for Wild Yak beer. The complainant believes the ad is offensive due to perceived sexual connotations. In most respects the concerns expressed do not raise issues within the remit of the ABAC scheme but rather fall within the scope of the AANA Code of Ethics. The ABAC issue raised in the complaint is whether the ad is suggesting that the use of the alcohol product will lead to a 'wild' experience and change the mood or environment or contribute to sexual success.

15. The Company argues that the ad is consistent with ABAC standards. It is claimed the ad does not show a change in mood nor can the slogan be fairly interpreted as implying the product will result in sexual success.
16. In assessing if an ad is in breach of a Code standard the Panel is to adopt the standpoint of a reasonable person. This means the opinions, values and life experiences shared in a majority of the community is to be the benchmark as to how an ad is to be understood. A person who has a different interpretation is not 'unreasonable' but possibly their view on the ad would not be shared by most people.
17. The Panel does not believe the ad is in breach of the ABAC standard. In reaching this conclusion the Panel has noted:
 - no consumption of alcohol is depicted;
 - the ad is a play on the name 'wild yak' by showing a yak which has shed its coat to go swimming;
 - by contemporary standards the depiction of the near 'naked' yak is not particularly risqué; and
 - taken as a whole a reasonable person would not consider the ad is suggesting that its use would lead to sexual success or offensive behaviour.
18. Accordingly the complaint is dismissed.