



ABAC Adjudication Panel Determination No. 139/18

Product: Cricketers Arms Beer
Company: Asahi
Media: Digital
Date of decision: 5 December 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 a Facebook post for Cricketer’s Arms beer by Asahi (“the Company”) and arises from a complaint received 15 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”) – 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 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 15 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.
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 not obtained for this marketing communication. The content was created by Cricket NSW pursuant to a sponsorship agreement in place between

Cricketers Arms and Cricket NSW, and was reposted by Cricketers Arms on its Facebook page.

The Marketing Communication

10. The complaint relates to a post by Cricket NSW shared by @cricketersarmsbeer. A screenshot of the post complained about is included following.



The Complaint

11. The complainant objects to the marketing as the post includes an image of a cricket player who is 19 years old.

The ABAC Code

12. Part 2(b) of the ABAC Code provides that the Code does NOT apply to:
 - (v) Sponsorship
13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent or

- they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted environment;

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

Age-Restricted Environment means:

- Licensed premises that do not permit entry by Minors; or
- A non alcohol-specific age-restricted digital platform (including, for example, a social media website or application) which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as being 18 years of age or over.

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

The Company's Response

15. The Company responded to the complaint by letter dated 23 November 2018. The principal points made by the Company were:

- a) Asahi Premium Beverages takes responsible advertising of alcohol seriously. As a signatory to the ABAC Scheme, we are aware of the Code requirements and our internal policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines.
- b) The advertisement does not breach Part 3(b)(iii) of the Code. The post falls within the 'age restricted environment' exception in Part 3(b)(iii) of the Code as:
 - Cricketers Arms has not provided any reward or remuneration to Jason Sangha. Jason Sangha has no association with the brand outside of playing for the NSW Blues which is a team that falls within the scope of the sponsorship agreement between Cricketers Arms and Cricket NSW.
 - The Cricketers Arms Facebook Page has the following age restrictions applied to all content posted: '*Page is alcohol related and is not shown to underage people*'. These settings are

consistent with the recommendations within ABAC's *Best Practice for Responsible Digital Alcohol Marketing* and ensure that posts are only shown to people who are over the age of 18 (based on their Facebook profile information). The post that appeared on Cricket NSW's Facebook page also had age restrictions in place to ensure that it was not shown to people under 18 years of age.

- c) Under the terms of a sponsorship agreement in place between Cricketers Arms and Cricket NSW, Cricketers Arms receives a range of sponsorship benefits in consideration for the payment of a sponsorship fee. Included in the sponsorship benefits is the use of the Cricketers Arms logo and name for the purpose of promoting the Cricketers Arms Player of the Match on Cricket NSW's Facebook account.
- d) We believe we have taken all appropriate measures to ensure that all Cricketers Arms material and placement is compliant with the Code.

The Panel's View

- 16. Jason Sangha is an Australian cricket player who is a member of the New South Wales team which competes in the domestic Sheffield Shield competition. The body which operates first class cricket in NSW including the team in the Sheffield Shield is Cricket NSW. Mr Sangha was born in September 1999 and hence is currently 19 years of age.
- 17. It appears that the Company has entered into a commercial arrangement with Cricket NSW to be one of the sponsors of the NSW team. In return for the sponsorship, Cricket NSW has agreed to associate its team with the Company's Cricketers Arms brand of beer. While the full nature of the arrangement has not been disclosed, the Company advised it includes the use of the Cricketers Arms logo and name by Cricket NSW on its Facebook Page to promote the 'Cricketers Arms Player of the Match' for each of the Sheffield Shield games played by NSW.
- 18. In the third round of the 2018/19 competition NSW played Tasmania. Mr Sangha scored a century in the game and was named the player of the match. In accordance with the sponsorship terms it seems that Cricket NSW on 8 November 2018 posted on its official Facebook Page a picture of Mr Sangha in conjunction with the Cricketers Arms logo. The accompanying text described him as Cricketers' Arms player of the match. It was noted that the post was a 'paid partnership'. The post also contained a link to the Facebook Page of the Company for its Cricketers Arms product.
- 19. The Company reposted the photograph and message onto its Facebook Page. It was this repost which came to the attention of the complainant who contends that because Mr Sangha is under the age of 25, his association with the product is in breach of the ABAC.
- 20. There are a couple of issues raised by the complaint. Firstly the ABAC scheme does not apply to sponsorship arrangements of a sports team by an alcohol company. This means the direct manifestation of the commercial relationship between Cricket NSW and the Company by way of the placement of the

Company's logo and brand name on the Cricket NSW Facebook Page is not subject to the Code standards including those relating to the age of persons depicted. Equally a player in a sponsored sports team who is under 25 is able, for instance, to wear a uniform upon which an alcohol company brand might appear.

21. The sponsorship exemption however does not apply to marketing by a company which references the existence of the sponsorship relationship. The Company did not contend that its reposting of the Cricket NSW post was captured by the sponsorship exemption. Rather the Company relied on the operation of Part 3 (b) (iii) to argue it has not acted contrary to the ABAC requirements.
22. This is the second issue raised by the complaint. The ABAC has a general rule that adults appearing in alcohol marketing communications must be aged at least 25 years. There are two qualifications to this rule. The first relates to the incidental image of a person under 25 in a wider scene. For instance a family shown in a restaurant with an alcohol product. Any person under 25 in such a scenario cannot be shown to be visually prominent. Clearly this qualification is not relevant here as the communication is based upon the prominent picture of Mr Sangha.
23. It is the second qualification to the 25 years old rule upon which the Company relies. This qualification provides a person under 25 can be shown if that person is 'not a paid model or actor' and the marketing communication has been placed within an 'Age Restricted Environment'.
24. An Age Restricted Environment is defined to mean a non alcohol- specific, age-restricted digital platform which requires users to register and login to use the platform including provision of their full date of birth and is able to hide alcohol related pages. The Company contends its Facebook Page meets these requirements. Further it is pointed out that the sponsorship relationship is with Cricket NSW and that Mr Sangha receives no payment from the Company.
25. The intent of this provision is that reliance can be given to a technological solution to stop under 18 year olds from seeing digital alcohol marketing which features a person like Mr Sangha who is under 25 years of age. Facebook does have age restriction controls which can be used on corporate sites such as the Cricketers Arms Page. This means if users under 18 have correctly entered their birth date when joining Facebook then they should not be able to access the Company's Page.
26. The desirability of alcohol sponsorship of sports is contested by some in the community. It is notable that another sponsor of Cricket NSW appears to be the NSW government in relation to its community campaign about having a 'Plan B' if a person intends to drink and not drive. Some might see an irony in the one sport having both an alcohol company sponsor and an anti drink driving sponsor. This however is a public policy issue for government and not the Panel with its defined role of applying the terms of the ABAC.
27. The Company has complied with the provisions of Part 3 (b) (iii) of the Code in placing its post in an age restricted environment and accordingly the complaint is dismissed.