



ABAC Adjudication Panel Determination No. 144 & 146/18

Product: Carlton Zero
Company: Carlton & United Breweries
Media: Outdoor & Packaging
Date of decision: 13 December 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 Carlton Zero outdoor advertisement and packaging by Carlton & United Breweries (“the Company”) and arises from complaints received on 23 and 27 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 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 23 and 27 November 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 but not placement of the bus marketing communication but not the packaging.

The Marketing Communications

Packaging

10. The first complainant refers to the attached packaging of Carlton Zero that refers to 0.0 standard drinks and contains a warning that the beverage is for over 18 only.



Outdoor Advertisement

11. The second complainant refers to the following outdoor advertisement.



The Complaint

12. The first complainant raises the following concerns:

- a) The packaging states that the product is 0.0 standard drinks but contains a warning that the beverage is for over 18s only querying the reason for including the standard drinks and over 18 warning if the product contains no alcohol.
 - b) The labeling clearly indicates the beverage is so closely referred to as alcohol so as to include standard drink and over 18 logos noting this is either on the packaging for no reason as it isn't a controlled beverage or it should be restricted to being sold in liquor stores.
 - c) Being packaged as it is it should not be eligible to be sold in the general section of supermarkets.
 - d) Packaging is misleading and minors could be open to liquor fines if it is mistaken for an alcohol beverage.
 - e) Is generally just repulsed by the idea of this product, but even more disturbed by the selling of the product where underage can access it freely and start them on the path of alcohol dependence.
13. The second complainant notes that describing a beer product as having 0% alcohol content is appealing to minors as it is legal to drink the product and results in minors buying more of the company's products when they are of legal drinking age which is exploiting children for money.

The ABAC Code

14. Part 2 of the ABAC Code provides:
- (a) The Code applies to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
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 - Alcohol brand extensions to non-alcohol beverage products
15. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.
 - (b)(i) have Strong or Evident Appeal to Minors;
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules
16. Part 6 of the ABAC Code includes definitions including:
- Alcohol Beverage** means a beverage containing at least 0.5% alcohol by volume

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

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Response

17. The Company responded to the complaint by letter dated ? December 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. 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 (**CUB**) of Parts 3(b)(i) or (iv) of the Code.
 - b) Although Carlton Zero is a non-alcoholic beverage and is legally permitted to be sold to minors, CUB has decided to market and promote the product as if it were an 'alcoholic' beverage in full compliance with the ABAC Scheme. The advertising for Carlton Zero is in no way targeted at minors, nor does it feature any talent under the age of 25 or breach the Placement Rules.

- c) CUB is committed to the long-term and sustainable reduction of harmful drinking by providing additional choices such as no or low alcohol beer. The introduction of Carlton Zero as a standalone brand creates more options for beer drinkers who enjoy the taste of beer to drink moderately and responsibly.
- d) Carlton Zero is a non-alcoholic beverage that minors can legally consume. It has approximately 0.0% alcohol content (less than orange juice, and only 10% of the alcohol in Bundaberg Ginger Beer) and is therefore a non-alcoholic soft drink in accordance with the Food Standards Code. Non-alcoholic beer is also a well-established category in a number of large markets, including the US, Canada, Brazil, Germany, the UK and Belgium. The international experience is that non-alcoholic beer has not been misused to encourage minors to take up the consumption of alcoholic beer.
- e) Nevertheless, the packaging and advertising for Carlton Zero do not strongly appeal to minors. The product is positioned as a beverage for adults who enjoy the taste of beer. It is not used to groom children to normalise alcohol consumption and there are no elements of the packaging or advertising that strongly appeal to minors. The packaging and advertising feature a minimalistic black design with the Carlton Zero logo. The product is described as a “brewed adult beverage” to make it clear that the intended target audience does not include minors. The advertising additionally features the line “Rule 1: it’s now possible to make a great tasting 0.0% alcohol beer” with an image of the bottle and a schooner of beer. This advertising appeals to beer drinkers who enjoy the taste of beer and would be open to a no or low alcohol option. There is no call-out or design element that can be said to have a strong appeal to minors.
- f) The placement of Carlton Zero on supermarket shelves does not breach the Placement Rules. There are no applicable media industry codes or media platform age restriction controls. Non-alcoholic beers and wines (such as the Coopers non-alcoholic beer) are already legally sold in Australian supermarkets. Supermarkets are not primarily aimed at minors and the majority of shoppers at supermarkets are aged over 18. Additionally, Carlton Zero is typically placed on the highest shelves in the beverage aisle at supermarkets, out of reach of children.
- g) We note that one of the complaints references the “For people over the age of 18 only” Alcohol Responsible Marketing logo, which was erroneously placed on the bottom of the case, as part of the CUB packaging template. Given that Carlton Zero is not an alcoholic beverage and minors are legally permitted to consume the product, we have updated the Carlton Zero packaging to say “Recommended for people over the age of 18”. The updated packaging is estimated to be in stores by early 2019.

The Panel’s View

Introduction

- 18. The Company has released a new product onto the Australian beverages market. The product is branded as Carlton Zero and is described as a non-alcoholic beer.

The product has drawn the concern of two complainants. The first complainant came across the product in a supermarket and raises a number of issues about the product's packaging and its presence within the supermarket. The second complainant saw an ad for the product on a public bus. Both complaints argue that the product and its marketing will encourage alcohol use amongst minors.

19. The Company explains that non-alcohol content beverages, which nonetheless have taste and other properties similar to alcoholic beverages, are an established beverage type in Australia and internationally. Other products in this brand category such as non-alcoholic wine and other 'beer' types are sold in supermarkets. While the market for this beverage type has been small in Australia, it is apparently more popular in other nations and presumably the Company sees a larger market for this type in Australia in the future.
20. The starting point for this determination is the scope of the ABAC scheme and what the scheme does and does not capture. The ABAC does not regulate the type of beverages that can be lawfully sold in Australia. The regulation of foodstuffs including beverages for public consumption is regulated by government. This means the question as to whether the product can be lawfully sold and hence marketed at all is not one for the Panel.
21. The ABAC scheme is about the regulation of the marketing of alcohol beverages. The Code defines an 'alcohol beverage' as a beverage containing at least 0.5% alcohol by volume. This product has 0.0% alcohol content and is therefore not an alcohol beverage for ABAC purposes. If this was the end point, then the Panel would have no jurisdiction to make a decision on the complaints.
22. The ABAC recognises that the marketing of alcohol brands extends beyond the direct promotion of alcohol products. Brand promotion can occur in a number of ways and hence the Code captures alcohol brand extensions to non-alcohol products. The Carlton brand name is one of the best known beer brands in Australia. The product in this case is produced by CUB and is branded as Carlton Zero. The product is described as a beer. This means while the product itself is not an 'alcohol beverage', its marketing is a brand extension for ABAC purposes and hence the marketing of the product needs to occur consistently with ABAC requirements.
23. In any event the Company doesn't contest that the ABAC standards apply to its marketing of Carlton Zero. It states it 'has decided to market and promote the product as if were an 'alcoholic' beverage in full compliance with the ABAC scheme.'
24. Drawing this together:
 - Approval for foodstuffs including beverages to be available for sale and consumption rests with government.
 - The ABAC does not go to the desirability or otherwise of particular beverage products being on the market with the scheme confined to how alcohol beverages are marketed.
 - Carlton Zero is not an alcohol beverage as defined within the ABAC due to it having less than 0.5% alcohol by volume.

- However the product's marketing falls within the concept of a 'brand extension' and the marketing of the product is subject to ABAC requirements.

Does the marketing breach the ABAC standards?

25. The underlying concern from both complainants is essentially that a non-alcoholic beer will normalise alcohol consumption by young people and 'start them on a path of alcohol dependence' (first complaint) or 'results in minors buying more of the product when they are of legal drinking age' (second complaint). As mentioned, the ABAC and hence the Panel is not given a role to assess if products should be on the market or not. State Liquor licensing regimes to some extent empower government authorities to remove products from the market, for instance if an alcohol product could be confused with a soft drink. Decisions of this kind are not within the remit of the ABAC.
26. The ABAC contains both standards about the content of alcohol marketing and rules which go to the placement of alcohol marketing. Both the content standards and Placement Rules are raised by the nature of the complaints.
27. Part 3 (b) of the Code provides that an alcohol communication must not have strong or evident appeal to children. This might be breached for instance if the marketing item has appeal to minors beyond the appeal it has to a general audience or if the marketing uses imagery or designs likely to appeal strongly or create confusion with a soft drink.
28. The Company argues that the product is being directed toward adult beer drinkers. It is contended the use of a minimalist black design and the description of the product as 'brewed adult beverage' make it clear it is for adults and not minors. Further the image of the beer on the bus further reinforces the marketing intention towards adult beer drinkers.
29. The Panel does not believe the either the product package nor the ad on the bus can be said to be strongly appealing to minors. The package is reasonably consistent with alcohol packaging more broadly and does not contain elements which are particularly eye catching or engaging for minors. Further the ad on the bus goes to the taste of the product and its alcohol content. This cannot be said to be strongly appealing to minors.
30. The first complainant identifies the availability of the product in a general supermarket as opposed to a dedicated liquor retail store as a concern. It is acknowledged that there is some tension between the Company's statements that it has chosen to market the product as if it was an alcohol beverage and its availability within the unrestricted areas of a supermarket. If the product was in fact an alcohol beverage it would in some States only be able to be sold in a licensed retailer or in other States in a specific section of a general store. It would follow that if the product was being sold as if it was an alcoholic beer, then it would not be placed in the general aisles of a supermarket.
31. That said, the ABAC Placement Rules do not place restrictions on the location products are available for purchase. Rather the rules go to the mediums by which marketing communications are conveyed. So the Code adopts time of day restrictions on the broadcast of alcohol ads on free to air televisions and requires

that age restrictions controls be used when available on digital platforms like Facebook and the like. As mentioned, State Liquor Licensing regimes go to the regulation of the point of sale of alcohol products. Accordingly there is no breach of the ABAC requirements by the product being available for purchase from a supermarket.

32. The complaints are dismissed.