



ABAC Adjudication Panel Determination No. 35/19

Product: Carlton Zero
Company: Carlton & United Breweries
Media: Television
Date of decision: 3 June 2019
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 a Carlton Zero television advertisement by Carlton & United Breweries (“the Company”) and arises from a complaint received on 13 May 2019.
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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 13 May 2019.
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.

The Marketing Communication

10. The 15 second television advertisement opens in an office where a man is seated at his desk with a sandwich and a can of Cola in front of him. He says to a second man who is about to sit down next to him “What’s for lunch?”. The second man says “Chicken salad and a Carlton Zero” as he sits down. The first man pours his

Cola into a glass and part way through sugar pours out of the can and into the glass and the glass breaks the desk with its weight. The two men and other office workers look on alarmed.

11. The scene blurs into the background and a bottle and glass of Carlton Zero is in the foreground as the two men clink bottles of Carlton Zero and take a sip from the bottle and a voiceover and superimposed text states "Ten times less sugar than a regular soft drink Carlton Zero 100% Beer 0% Alcohol". The camera refocuses on the man with the Cola who has now tasted Carlton Zero as he looks at the bottle with a surprised expression.

The Complaint

12. The complainant raises the following concerns:
 - a) An alcohol brand is marketed as a light lunch drink.
 - b) Carlton Zero is compared to a soft drink, stating it has less calories than an average soft drink and could be easily misinterpreted as a soft drink.

The ABAC Code

13. Part 2 (a) of the ABAC Code provides that 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:
 - Alcohol brand extensions to non-alcohol beverage products
14. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(i) have Strong or Evident Appeal to Minors
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation
15. Part 6 of the ABAC Code includes definitions including:

Alcohol Beverage means a beverage containing at least 0.5% alcohol by volume.

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

16. The Company responded to the complaint by letter dated 27 May 2019. The principal points made by the Company were:
- a) The advertisement features two people sitting at a table that looks like a casual office lunch setting. One person is drinking a cola-style drink with lunch food, and the other is drinking Carlton Zero. The two people discuss their food and drink choices. When the cola is poured into a glass, sugar comes out of the can in an unrealistic and dramatic way to show viewers that the drink contains a lot of sugar. The overarching message of the advertisement being that Carlton Zero has ten times less sugar than a regular soft drink. Wording appears on the screen stating this, as well as "Carlton Zero. 100% beer. 0.0% alcohol".
 - b) We submit that the intention of this advertisement is to give consumers more information – not to engage in advertising which can be misinterpreted or seen as misleading. Carlton Zero is a non-alcoholic beverage, and we have created it for the specific purpose of expanding the number of occasions that people can enjoy the taste of beer, without the alcohol, and without having to resort to sweet and sugary soft drinks. Carlton Zero is an important part of our portfolio and our efforts to provide opportunities for people to moderate their drinking, and to empower adult consumers with information and choices.
 - c) The product is not an Alcohol Beverage as it contains less than 0.5% alcohol by volume. We have chosen to market this product under the Carlton brand, as a signal to beer drinkers who are choosing to moderate their alcohol consumption that this product will appeal to their palates. But the product is definitionally not an Alcohol Beverage under the ABAC.
 - d) We do not consider Carlton Zero to be a soft drink, and we do not refer to it as such in the relevant advertisement. CUB is a beer company, and Carlton Zero is a non-alcoholic beer, that also happens to be relatively low in sugar as compared to other non-alcoholic beverages, such as 'soft drinks', on the market. The advertisement does not imply that Carlton Zero is a soft drink. Even if Carlton Zero were considered to be a soft drink by some stretched implication from this advertisement, we reject the assumption that soft drinks have greater appeal to children as compared to their general appeal to adults.
 - e) Examining part 3(b)(i) of the Code, which states, *A Marketing Communication must NOT have Strong or Evident Appeal to Minors*, where 'Strong or Evident Appeal' is defined as:
 - (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.*
- f) Laying aside our fundamental disagreement with the validity of the assertion that we are 'creating confusion with a soft drink' when advertising a non-alcoholic beverage, the advertisement could in no way be seen to possess 'Strong or Evident Appeal to Minors'. Stepping through the definition:
- i. The setting is clearly an office, the colours are muted; the actors are over the age of 25; no specific soft drinks that might hold appeal to children are named or shown; and the dialogue is a very adult conversation about beverages that contain less sugar. The advertisement is clearly targeted at adults looking to enjoy an alcohol-free beverage at lunch, without necessarily drinking a sweet sugary soft drink.
 - ii. As per (i) and (ii) above, the content and tone of the advertisement makes it very clear that the target audience is adults.
 - iii. The advertisement contains no imagery, designs, motifs, animations or cartoon characters associated with beverages advertised to children. While Carlton Zero is not an alcoholic beverage, we market it in accordance with the ABAC, which we know applies to non-alcoholic extensions of alcohol brands. We have no intention of marketing this product to children. We know that non-alcoholic beers are not products that appeal to children, either in Australia or overseas where non-alcoholic beer is a much larger market. Carlton Zero was launched to expand the number of occasions that adults can enjoy a great tasting beer, without the alcohol, and as an alternative to sugary soft drinks.
 - iv. The product is not intended for use by minors, as outlined in (iv) above. We note that the use of the Carlton brand is intended as a signal to – existing, adult – beer drinkers that this a product that will appeal to them, unlike their previous experiences with non-alcoholic beer.
- g) There is no implication of therapeutic benefit in the advertisement. The advertisement is making a statement of fact – Carlton Zero contains ten times less sugar than a regular soft drink. This is measured against the market leading full-sugar soft drink in Australia. This is a comparative claim allowed by the Food Code Australia New Zealand and based on scientific fact. The marketing technique of comparing the nutritional content of one product to another is common and has been used by CUB for many years.
- h) There is no suggestion of Carlton Zero being a 'healthy choice'; the message is that Carlton Zero is an option for consumers looking for a non-alcoholic beverage that isn't necessarily sweet. A salad is a common office lunch

choice and should not be read as an implied health claim.

- i) CUB is committed to ensuring its promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation. It is in service of promoting responsible consumption and moderation that we have developed and launched Carlton Zero. Despite Carlton Zero not being an Alcohol Beverage under the Code, we have taken all steps possible to ensure that it, like all our products, is promoted in a way that is compliant with the rules, principles and spirit of the Code.

The Panel's View

17. Carlton Zero is a non-alcoholic beer which was released into the Australian market in August 2018 by CUB, one of the nation's largest and longest standing alcohol producers. On announcing the product, the Company on its website provided some background to the intended market niche of the product and stated 'Even though Carlton Zero is a non-alcoholic beverage it will be marketed only to adults in strict accordance with the ABAC.'
18. This determination is the second time that the Panel has considered marketing communications promoting the product (see Determination 144&146/18). As was the case in the previous determination, the current complaint reflects a consumer grappling with the product being a 'beer' but not having any alcohol content and how this defining feature should be communicated to the public. In this case, the complainant is concerned by the product being compared with a soft drink and implicitly being confused with a soft drink.
19. In its previous determination the Panel made findings which are equally applicable in this case namely:
 - the product is not an 'Alcohol Beverage' as defined in the Code as it has less than 0.5% alcohol by volume,
 - however, the Code extends to marketing of alcohol brands by means of a 'brand extension to non-alcohol beverage products' and hence the marketing of Carlton Zero is to be taken as marketing of the 'Carlton' alcohol brand for ABAC purposes.
20. The Company accepts that it's Carlton Zero marketing is to meet the ABAC standards even though the product is not an alcohol beverage. Hence, the TV ad considered in this determination was submitted to the ABAC pre-vetting service before it was broadcast as if it was an alcohol beverage. That said, it is fair to say the ABAC standards which obviously deal with responsible marketing of alcohol beverages are to some extent clunky when applied to a brand extension in the form of a non-alcohol beverage.
21. The complaint draws out an example of clunkiness. The Code states that alcohol marketing must not have strong or evident appeal to minors. One way this standard could be breached is if a marketing communication uses imagery, designs, motifs that create confusion with confectionary or soft drink. And this is a point the complainant makes by saying the product 'could be easily misinterpreted as a soft drink'.

22. When the Panel has breached marketing against this standard previously it has been when alcohol products appear to be soft drinks (see for instance Determination 82/18 and Determination 68/18). The Code does not define 'soft drink' but a common sense view is that it is a sweet often carbonated drink that does not contain alcohol. So 'soft' is contrasted with 'hard' which is a drink that does contain alcohol. In this understanding, Carlton Zero is a 'soft drink' as it contains no alcohol.
23. The Panel applies a common sense and non-legalistic approach to interpreting the Code which is informed by the spirit and intent of the ABAC Scheme. Further, the assessment of the breach of a Code standard is to be from the standpoint of the probable understanding of the marketing communication by a reasonable person. This means the attitudes, values and life experiences common in a majority of the community is to be the benchmark.
24. The message the Company states it was seeking with the ad was to provide beer drinkers with the advantages of choosing Carlton Zero compared to a 'soft drink'. The principal advantage is the lower sugar content of the CUB product. It is argued the ad would not strongly appeal to minors nor does it make any claims as to the product offering a therapeutic benefit.
25. The Panel does not believe the ad is breach of the ABAC standards. The ad is set in an office where two male workmates are sitting down at a communal table to have lunch. The ad compares the sugar content of the product with a soft drink cola through the graphic of the cola filling a glass with sugar and cracking the table. It is not considered that this adult setting depicting a work lunch either in theme nor presentation has elements likely to attract the strong attention or engagement of under 18 year olds. Nor is comparing the sugar content of drinks a claim that the product is providing a therapeutic benefit.
26. The tension regarding the product being interpreted as a soft drink arises from the strapline - 'ten times less sugar than a regular soft drink'. This can be interpreted as saying both the products are soft drinks and the CUB product has much less sugar than the 'regular' soft drink. The ABAC definition of 'strong and evident appeal to minors' refers to 'confusion with a soft drink' as part of an example of how the standard might be breached. Even if a viewer took the ad as saying the product is a 'non regular' soft drink, the ad taken as a whole is not creating a message which can be fairly said to be appealing to minors, which is the point of the ABAC standard.
27. Accordingly the complaint is dismissed.