



ABAC Adjudication Panel Determination No. 4/20

Product: Canadian Club
Company: Beam Suntory
Media: Television
Date of decision: 9 January 2020
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 placement of advertisements for Canadian Club by Beam Suntory (“the Company”) with the television broadcast of the 2019 Boxing Day Cricket Test Match on Channel 7 between 3 and 5pm and arises from a complaint received on 2 January 2020.
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 2 January 2020.
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 determined within this timeframe.

Pre-vetting

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 advertisement (16835).

The Placement

10. Advertisement for Canadian Club was seen by the complainant during Channel 7 broadcasts of the cricket Boxing Day Test match.

The Complaint

11. The complainant is concerned that the majority of the ads in the child friendly time slot they watched were for Canadian Club. Her son's cricket coach tells him to watch at least ten minutes of cricket to see new techniques and watching ten minutes would expose him to three Canadian Club ads. The complainant believes the promotion of alcohol during sporting events should be minimized and the frequency of the ad was excessive.

The ABAC Code

12. 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.

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

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

The Company's Response

14. Beam Suntory responded to the complaint by email dated 9 January 2020. The principal points made by Beam Suntory were:

- a) Beam Suntory takes its adherence to the ABAC code seriously and believe we have acted in accordance with the alcohol marketing codes as per the ACMA broadcasting guidelines (<https://www.acma.gov.au/ads-alcohol-tobacco-or-therapeutic-goods>) as well as gaining AAPS approval for the advertising (please find Approval 16835 attached for both the 30 & 15").
- b) We can confirm that all Canadian Club TV spots have adhered to the Commercial Television Industry Code of Practice for alcohol advertisers. Within the guideline's alcohol advertisers can run commercials during sporting programs on public holidays and weekends from 6pm Friday as per commercial classification and placement restrictions. I've summarised the total number spots that aired across the Boxing Day Test matches vs % of spots that ran between 3-5pm.
- c) *Canadian Club 30/15 Sec Spots*

Channel 7: Boxing Day Test 26th - 29th Dec (4 days)			
Market	Total Spots	# Spots aired between 3pm-5pm only	Dates aired across 3-5pm
Syd	20	6	26/12 (Public Holiday), 28/12 (Sat) and 29/12 (Sun)
Mel	15	7	26/12 (Public Holiday), 28/12 (Sat) and 29/12 (Sun)
Bri	16	0	
Ade	13	3	28/12 (Sat) and 29/12 (Sun)
Per	14	0	

- d) Please see the below table detailing the cricket audience data for between 3-5pm against Children aged 0-17 and Total People. Please note the 30th December didn't broadcast any cricket as the Test concluded on Day 4.

Channel 7: Test Cricket 2019	Time Range 3pm - 5pm							
	26th Dec		27th Dec		28th Dec		29th Dec	
Audience	000's	% TTL	000's	% TTL	000's	% TTL	000's	% TTL
P0-17	66,000	8%	63,000	8%	49,000	7%	56,000	8%
Total PPL	821,000	100%	793,000	100%	701,000	100%	731,000	100%

Source: OzTAM (Metro + Subscription) Avg Audience, 1500-1700. Data Overnight. Dates 26th Dec – 29th Dec 2019

- e) Boxing Day Test Cricket is not considered a program that is principally directed to children. Within the guidelines Canadian Club TVCs are permitted to run in Live Sport in this case the Test Cricket on Boxing Day (i.e. during a Sports program on a public holiday and weekends). Live sport is not a children's program and the viewing audience as illustrated above comprises more than 90% of the total viewing audience as above P18+. We do not broadcast in Children's (C) or Pre-school (P) classified programs at any time in the breaks immediately before or after C or P classified programs or outside the specific guidelines as part of the code.

The Panel's View

15. The Boxing Day test cricket match is an iconic event in Australia's annual sporting calendar. The game is broadcast live on free to air television. The complaint concerns the broadcast of multiple ads for Canadian Club during the game at times which the complainant believes means many children will be exposed to alcohol advertising.
16. The ABAC consists both of content standards for alcohol marketing as well as placement rules for marketing. The content standards relate to the messages and images within alcohol marketing items irrespective of the medium the marketing is carried and when and where the marketing might be seen. The Placement Rules have the aim to the extent possible to direct alcohol marketing towards adults and away from minors.
17. In this case the issue raised is not about the content of the television ads, but the time of day the ads were shown, the sheer number of the ads and their broadcast with test cricket. These concerns raise Placement Rules 1, 3 and 4.
18. Placement Rule 1 provides that alcohol ads on free to air television must only be broadcast at times consistent with the stipulations within the Commercial Television Industry Code of Practice. This code does generally place time of day restrictions on the broadcast of alcohol ads, but the code expressly permits the broadcast of alcohol ads in conjunction with live sports events such as test cricket. This means Placement Rule 1 has not been breached by the Canadian Club ads being shown during the day with the cricket.
19. Placement Rule 3 provides that an alcohol ad may only be placed where the audience is reasonably expected to comprise at least 75% adults. The audience of test cricket shown on television is known because of the ratings system. The data gathered and published about the Boxing Day test shows that it was watched overwhelmingly by adults with under 18 year olds only reaching 8% of the viewing audience. This data is consistent with past ratings for test cricket which reveals that it is a sport followed by generally an older audience. Hence this Placement Rule has not been breached.
20. Placement Rule 4 provides that irrespective of the actual audience, an alcohol ad cannot be placed with programs or content primarily aimed at minors. Cricket is a national sport followed across age groups. As the complainant explains, her son was asked by his cricket coach to watch some of the game to help with his development in playing the sport. But it can't be said that television broadcasts

of cricket generally and test cricket in particular is primarily aimed at minors. The broadcasts aim to attract adult viewers, and this is confirmed by the ratings data.

21. Finally, it should be noted that while there is some regulation as to the balance between advertising and substantive content shown on free to air television, there is no 'quota' or other prescription on the number of alcohol ads that might be shown over a given period.
22. The placement of the advertisement does not breach the ABAC Code.