



ABAC Adjudication Panel Determination No. 13/20

Product: Vodka Cruiser
Company: Asahi Premium Beverages
Media: Outdoor
Date of decision: 10 March 2020
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 Vodka Cruiser by Asahi Premium Beverages (“the Company”) and arises from a complaint received 30 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 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 30 January 2020.
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 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 this marketing communication (17823).

The Marketing Communication

10. The complaint relates to an outdoor advertisement that was seen on an electronic billboard at Kings Cross and Martin Place train stations on 30 January 2020.



The Complaint

11. The complainant objects to the marketing as the poster would appeal to and is obviously targeting children due to:
 - the theme, visuals (cartoony and colourful look, two extremely happy teenage boys with large smiles, lightning bolts, headphones, music symbols, Minecraft block letters etc) and simple language (“Stay Colourful”); and
 - image of the raspberry flavoured product which looks like a red fizzy drink.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(i) have Strong or Evident Appeal to Minors;
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
 - (b)(iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:

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

13. Part 6 of the ABAC Code provides:

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

14. The Company responded to the complaint by letter dated 10 February 2020. The principal points made by the Company were:

- a) Asahi Premium Beverages Pty Ltd (**APB**) takes the responsible advertising of alcohol seriously. We are aware of the requirements of the ABAC Code (the **Code**) and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines. The Advertisement received pre-vetting approval from ABAC (Approval No. 17823). In addition, APB's parent company is a member of the *International Alliance for Responsible Drinking*, and a signatory to the 'Action to accelerate reductions in underage drinking' commitment which is designed to protect minors from alcohol advertising.
- b) The Advertisement is part of a broader 'Stay Colourful' campaign for the Vodka Cruiser brand. Substantial consideration has been given to individual components and the overall composition of imagery within the Advertisement to ensure that it aligns with the requirements of the Code, including in relation to ensuring that the Advertisement does not have strong or evident appeal to minors. The lettering (3D and cubic in design) within the Advertisement was created by a designer specifically for the Vodka Cruiser brand. The font does not bear a resemblance to the Minecraft font, as far as we can determine, and we do not understand the complainant's reference to Minecraft in this regard. In terms of the face featured within the Advertisement, particular care was given to ensure that the character presented as being over 25 years old. We refer to our answer at question 2 below for further detail on this. The other individual components within the Advertisement feature a microphone, microphone jack, music notes and lighting. In our view, each of these elements does not have particular or strong appeal to minors. Each of these elements

come together to form an intricate street art piece, which has been designed to appeal to an adult audience. We note that “Please Drink Responsibly” is featured in a contrasting colour, ensuring that it is legible and stands out within the artwork.

- c) From a design perspective, significant thought and consideration has been applied to the appearance of the character featured in the Advertisement. The character is a fictitious person. However, the artist has taken inspiration from several different references, each of which were from people who looked over the age of 25. To further ensure the character appeared over the age of 25, we made several adjustments to the initial design after consultation with ABAC, including stylizing the colour, adding wrinkles, facial hair, reducing the plumpness of cheeks and darkening teeth.
- d) Throughout the development of this ‘Stay Colourful’ campaign, including the Advertisement, we worked collaboratively with ABAC to ensure compliance with the Code. We believe we have taken all appropriate measures to ensure that the Advertisement meets the requirements of the Code and we reject the complainant’s assertion that the Advertisement is in breach of the Code.

The Panel’s View

15. The Company is promoting its Vodka Cruiser product line via a marketing campaign called 'Stay Colourful'. The campaign has several elements which feature street art or 'neo graffiti' style murals and posters. One execution in the campaign is an advertisement placed on electronic billboards located at the Kings Cross and Martin Place railway stations in Sydney. It is this outdoor advertisement which has drawn the complaint.
16. The complainant believes the advertisement is targeting children. It is argued the graphics of the billboard advertisement has themes and uses visual elements which will appeal strongly to minors. Further it is contended that two depictions of a male face within the artwork of the advertisement would be that of a teenager. The ABAC provides advertising must not have strong or evident appeal to minors nor depict an adult who is under the age of 25.
17. The Code provides that Marketing might have strong or evident appeal to minors if it:
 - specifically targets minors;
 - has an attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with a confectionary or soft drink.
18. The test as to whether a marketing communication is compliant with an ABAC standard is based on the probable understanding of the marketing item by a reasonable person. This means that the Panel is to endeavour to stand in the shoes of a member of the community who has had life experiences and has values and opinions likely to be common in a majority of the community. Sometimes reasonable

minds will differ as to the probable understanding of a marketing item and the Panel must adopt what it thinks to be the most probable understanding rather than a possible understanding.

19. In essence, the complainant believes the poster is targeting children because of a combination of the themes (music and Minecraft like lettering), depiction of 'two extremely happy teenage boys', simple language and the depiction of the product itself which is argued to resemble a 'red fizzy drink.'
20. The Company contends the poster does not target or strongly appeal to minors and points out:
 - the two male images have features which establish they are at least 25 years of age;
 - the font used for the word 'cruisers' was designed for the campaign and does not resemble the font for the Minecraft computer game; and
 - the visual elements which reference 'music notes and lighting' come together to form an intricate street art piece designed to appeal to an adult audience.
21. The Panel believes this is a difficult case to assess. It can be accepted that the Company has not sought to deliberately 'target children' as contended by the complainant but the test to be applied is not the intention of the marketer but the probable understanding of the marketing communication by a reasonable person. In terms of specific points raised, the Panel:
 - does not believe the male face shown is a teenager but does have older features, which means the image is probably going to be seen as an adult of 25 years or older as required by Part 3 (b) (iii) of the Code; and
 - the font used is not the same as used in the Minecraft game.
22. The question then is the overall impact of the marketing communication and its probable appeal to minors. The poster does appear to take its inspiration from street art which emerged in New York in the late 1960's and overtime has become a worldwide movement. In Australia street art features particularly in the laneways of Melbourne and in Sydney suburbs such as Newtown and Redfern. Initially street art was subversive as it was illegal and often had political themes which challenged institutional power. More recently street art has been co-opted and commercialised and the Company's poster might be taken as example of the commercialisation of street art thematics.
23. The marketing is colourful and eye-catching. The point raised by the complainant about the depiction of the product itself looking like a 'red fizzy drink' should be recognised. The product is brightly coloured and given it is packaged in a clear glass bottle has a potential to be confused with a soft drink if not portrayed in a mature way with appropriate context. The product does identify itself as being an alcohol beverage and the issue with the poster is not so much that it would be mistaken as promoting a soft drink but whether the red colour of the drink within the colour palette of the advertisement as a whole adds to its appeal to minors.

24. On balance, the Panel believes the marketing does breach the Part 3 (b) standard. In reaching this conclusion the Panel noted:
- the music thematics of the poster is likely to resonate far more strongly with a younger rather than older audience;
 - the poster uses bright and contrasting colours and the tagline in bubble lettering “Stay Colourful” which is likely to appeal to younger audiences;
 - while the street art inspiration has broad appeal, the music theme and graphics makes the appeal stronger towards a younger audience; and
 - overall the advertisement would have evident appeal to teenagers beyond the appeal it has generally.
25. It is acknowledged that the Company acted properly in using the ABAC pre vetting service and as advised in the Company's response to the complaint, made adjustments to endeavour to comply with the standard. That said the Panel upholds the complaint.