



ABAC Adjudication Panel Determination No. 41/20

Product: Wild Turkey
Company: Campari
Media: Television
Date of decision: 18 May 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 Wild Turkey by Campari (“the Company”) with the television broadcast of ‘Britains Got Talent’ on 7Plus and arises from a complaint received on 30 April 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 30 April 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.

The Placement

10. Advertisement for Wild Turkey was seen by the complainant during a 7Plus broadcast of 'Britain's Got Talent' from 3pm on 20 April 2020.

The Complaint

11. The complainant is concerned that while watching Britain's Got Talent, a family show, Wild Turkey Bourbon alcohol ads came on every single ad break and sometimes two of the same advertisement in a row and it was shown over 20 times during the programme. During this time of lockdown and isolation this shows a complete lack of responsibility to those who are vulnerable.

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. Campari responded to the complaint by letter dated 13 May 2020. The principal points made were:

- a) Campari has in place strict compliance processes, including internal legal approval to ensure compliance with all relevant laws, regulations and industry codes. Furthermore, all Marketing Communications (as defined in the ABAC Code) are submitted for Pre-vetting approval. In addition, Campari is a responsible marketer committed to upholding the spirit and intent of the ABAC Code. Campari provides frequent training to its sales and marketing teams, as well as external agency teams on all legal, regulatory codes and Campari policy requirements. It takes its responsibility in this regard very seriously and is proactive in ensuring strict compliance with all of these requirements.
- b) In addition, Campari mandates, through its contractual arrangements with external agencies it engages that all advertising must comply with ABAC requirements. Campari does not consider the Complaint to constitute a breach of the ABAC Code, and in particular, a breach of Part 3(b)(iv).
- c) 7Plus meets the definition of Digital Marketing as set out in the Best Practice for Responsible Digital Alcohol Marketing Guidelines issued by ABAC. It is described on the Seven West Media website as a digital video on demand and live streaming platform. The Commercial Television Industry Code of Practice does not apply to this platform. It is mandatory to register on the 7Plus network through major devices, including Apple TV, Telstra TV, Fetch, Chromecast, etc. Registering with 7Plus requires a user to provide a name, email address and year of birth to access any 7Plus content for live streaming or broadcast video on demand. It is unknown through which device the complainant accessed the content and what age was provided by the complainant at the time of registration. After having made enquiries, as far as we are aware, there is no possibility of restricting alcohol ads to registered users of 7Plus aged 18 and over.
- d) The placement of the advertisement in question complies with the placement rules in the ABAC Code and Best Practice for Responsible Digital Alcohol Marketing Guidelines. The advertisement was scheduled during a digital program where over 75% of the audience was reasonably expected to be of legal purchase age.
- e) The first three episodes of the series aired on Channel 7 between 7:30 pm and 9:00 pm on 22 April, 29 April and 6 May 2020. From the data currently available at 12 May 2020, these episodes had an average Metro 5 (mainland) capital city audience of all ages of 532,624, with an average of 484,117 of these viewers being 18 years of age or over (approximately 91%).

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|----------------------|---|-------------------------|---------------|--------|--------|---------|----------------|
| Standard eTAM Report | New File* | | | | | | |
| Period | 19/04/2020 - 9/05/2020 | | | | | | |
| Data Types | Projection age (P 0-17), Projection (CH 5-17), Projection (Total People) | | | | | | |
| Options | With Guests, Viewing > 1mins C, Consolidated 7 (Last Consolidated 4/05/2020), All Minutes | | | | | | |
| Data Source | Metro 5 City Panel plus Subscription | | | | | | |
| Markets | Metro 5 Cap City, Sydney, Melbourne, Brisbane, Adelaide, Perth | | | | | | |
| Projection | | | | | | | |
| | | | | P 0-17 | | CH 5-17 | Total People |
| BRITAIN'S GOT TALENT | 19:32:45 - 21:02:54 | 22/4/20 | 49,379 | 8% | 38,882 | 6% | 601,008 |
| BRITAIN'S GOT TALENT | 19:32:45 - 21:02:54 | 29/4/20 | 47,741 | 10% | 34,928 | 7% | 467,182 |
| BRITAIN'S GOT TALENT | 19:32:45 - 21:02:54 | 6/5/20 | 48,400 | 9% | 36,560 | 7% | 529,681 |
| | | | | P 0-17 | | CH 5-17 | Total People |
| BRITAIN'S GOT TALENT | 19:32:45 - 21:02:54 | Average 3 episodes 2020 | 48,507 | 9% | 36,808 | 7% | 532,624 |

- f) Britain's Got Talent' is not primarily aimed at minors. It has a Parental Guidance (PG) classification, signifying, "Not recommended for viewing by people under 15 without guidance from parents, teachers or guardians", as it may contain "content that children find confusing or upsetting".
- g) The complainant lodged the Complaint on 30 April 2020, at which time only the first two episodes of 'Britain's Got Talent' would have been available for viewing. It is not clear from the Complaint which episode the complainant viewed. At 12 May 2020, the advertisements shown during the 22 April and 29 April episodes of 'Britain's Got Talent' include advertisements for the Commonwealth Bank, Apple and a couple of other programs available for streaming on 7 Plus with at a minimum, a PG classification rating, as well as advertisements for 'Grey's Anatomy', 'Shipwrecked', 'The Resident' and 'The Good Doctor', all of which have an M classification rating. These advertisements are not aimed at minors.
- h) Furthermore, had the advertisement been shown during a free to air episode of 'Britain's Got Talent', it could have been screened during the final half hour of the program, after 8:30pm, pursuant to the Commercial Television Industry Code of Practice. The fact that the free to air program finishes at 9:00pm is consistent with the suggestion that this program is not aimed at minors.
- i) In the event that, despite the information above, ABAC considers that Campari has breached the placement rules in the ABAC Code (which Campari denies), Campari relies on the 'No fault' defence. A breach of the ABAC Code was reasonably unforeseeable by and outside the reasonable control of Campari and the agency it engaged. As noted above, Campari requires the agencies it engages to comply with the ABAC Code, including the placement rules. In this case, the agency engaged by Campari, engaged another business (the "**Booking Agency**") to book the advertisement scheduling and also conveyed the requirement to comply with the ABAC Code to the Booking Agency.
- j) As a measure to ensure that no inappropriate content is advertised to minors, the Booking Agency completely excludes from the inventory it

books, programming which carries children-targeted classifications, unless specifically requested by clients and appropriate to do so. Such a request was not made in this case.

- k) Finally, Campari has been advised by the Booking Agency that it is unlikely that the advertisement in question played 20 times during the program as alleged by the Complainant, given an average of 3-5 advertising slots within the hour long episode and measures which are in place to minimise advertisements running back to back.
- l) For the reasons outlined above, together with Campari's dedication to responsible marketing, upholding the spirit and intent of the ABAC Code and its robust compliance approval processes, it does not believe the Complaint constitutes a breach of the ABAC Code, and specifically Part 3(b)(iv) of the Code.

The Panel's View

- 15. Britain's Got Talent is a television talent competition which is part of a global franchise created by Simon Cowell. The show premiered in the United Kingdom in 2007 and is currently broadcast in Australia by the Seven Network. In Australia the show is broadcast both on the primary free to air Channel 7 but also on the related digital on demand channel 7Plus. This determination concerns an episode of the program seen by the complainant on 7Plus on 20 April 2020 at 3pm.
- 16. The complainant was disturbed by the screening of ads for the product Wild Turkey Bourbon during Britain's Got Talent. The concern was not about the actual content of the ads but was about the sheer volume of the advertising and that the program is a family show. Presumably the complainant contends alcohol advertising should not be shown with a program likely to be watched by children or vulnerable adults. That this occurred during the current pandemic and the requirement that people stay at home is argued by the complainant to be an aggravating factor.
- 17. The ABAC consists of standards going to the content of alcohol marketing and a number of rules going to where alcohol ads can be placed. The Placement Rules in part provide:
 - all codes regulating the placement of alcohol marketing communications such as the Commercial Television Industry Code of Practice must be complied with (Rule 1);
 - where there are no available age restriction controls (such as free to air and on demand TV), alcohol ads can only be placed where the audience is reasonably expected to comprise at least 75% adults (Rule 3); and
 - irrespective of the actual audience, an alcohol ad must not be placed with programs primarily aimed at minors (Rule 4).
- 18. The 7 Network is bound by the Commercial Television Industry Code of Practice (CTICP). While CTICP does place time of day restrictions on when alcohol ads can be shown, these restrictions apply only to the primary free to air Channel 7 and not to the on demand digital channels such as 7Plus. There is no time of day

restriction on when an alcohol ad might be accessed via the on demand digital services and this means that Rule 1 was not breached by the complainant viewing alcohol ads on 7Plus at 3pm.

19. The second requirement to be tested is the expected audience breakdown of Britain's Got Talent. The ratings system for television provides a reliable basis to assess the expected audience of a program. The Company has supplied ratings achieved by the program and this indicates that Britain's Got Talent has an overwhelmingly adult audience slightly in excess of 90%. It is reasonable to conclude that the audience of the program from 7Plus would be comfortably within the 75% adult requirement contained in Placement Rule 3.
20. The third requirement goes to an assessment as to the whether Britain's Got Talent can be said to be primarily aimed at minors (under 18 year olds). The complainant believed the program to be a 'family show' while the Company argued that the audience figures for the show together with other indicators established the show was not directed toward under 18 year olds as its primary appeal.
21. The concept of the program is that largely non-professional performers compete through various rounds and a final winner is selected from viewer's votes and those of a panel of judges. While the show would have appeal across age groups and might be described as 'family' as opposed to an 'adults only' targeted program, it would not be reasonable to conclude that the show is primarily aimed at under 18 year olds. Its target audience would be adults rather than children although it could be expected children will watch the show. Certainly, the ratings data indicate the show attracts far more adult viewers than minors.
22. The other, and to some extent more pressing, concern of the complainant was the volume of alcohol advertising interlaced with the program. While this is a legitimate viewpoint for the complainant to hold, the ABAC has no standard which goes to the quantity of alcohol marketing that might be broadcast within a particular timeframe. Issues of the balance of advertising as opposed to program content are regulated by the Federal Government and do not fall within the ambit of the ABAC.
23. As the complaint breaches no requirement of the ABAC it is dismissed.