



ABAC Adjudication Panel Determination No. 96/20

Product: Canadian Club Whisky
Company: Beam Suntory
Media: Television
Date of decision: 27 July 2020
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 the placement of advertisements for Canadian Club Whisky by Beam Suntory (“the Company”) on Channel 7 during Big Brother and arises from a complaint received on 7 July 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 7 July 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 advertisements (18161).

The Placement

10. Advertisements for Canadian Club Whisky were seen by the complainant during a Channel 7 broadcast of Big Brother.

The Complaint

11. The complainant is concerned that advertisements for an alcohol beverage were aired during a television show targeting minors.

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 13 July 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 guideline, ABAC, as well as gaining AAPS approval for the advertising.

- b) Within broadcasting guidelines alcohol advertisers can run commercials between 8.30pm and 5am on any day. The spot list that outlines all Big Brother placement and the actual time of transmission shows that all broadcasts were in accordance with alcohol advertising rules.
- c) I can also confirm our marketing communication adheres to responsible placement towards minors and does not breach programs or content that is primarily directed at minors. We also meet the criteria that the viewing audience of the program must comprise of at least 75% adults 18+ in which Big Brother complies at 86% (Source: OzTAM Metro Panel, 6th July 2020).

The Panel's View

15. This determination concerns the placement of alcohol advertising with a broadcast of an episode of the reality TV program 'Big Brother' by the Seven Network on 6 July 2020. While the actual advertisements were for the product Canadian Club, the concern of the complainant was not with the particular alcohol brand or the messaging of the advertisements as such, but that any alcohol ads screened with a show argued to be targeting children and young people.
16. Big Brother is an early pioneer within the stable of reality TV shows. The Australian version of the show first aired on Network Ten in 2001 and over the years has been screened on the Nine Network and now has been rebooted on the Seven Network in 2020. The format of the show places contestants known as housemates into a specially constructed house isolated from the outside world, with the housemates recorded on a 24-hour basis. The housemates compete in various challenges and are all eventually voted out of the house until a winner emerges.
17. The nature of the complaint raises the ABAC Placement Rules. The rules have the policy aim that to the extent possible alcohol marketing will be directed towards adults and away from minors (under 18 year olds). For a broadcast medium such as free to air television there are three relevant rules, namely:
 - placement must comply with media specific industry codes, relevantly, the Commercial television Industry Code of Practice (Rule 1);
 - a marketing communication may only be placed where the audience is reasonably expected to comprise at least 75% adults (Rule 3); and
 - a marketing communication must not be placed with programs or content primarily aimed at minors (Rule 4).
18. The Commercial Television Industry Code of Practice (CTICP) permits alcohol advertising between 8:30pm and 5am. The Company has supplied broadcast data for Canadian Club Whisky advertisements during Big Brother between 7 June and 7 July 2020 which shows that no advertisements were broadcast prior to 8:49pm consistent with the CTICP and Placement Rule 1.

19. Assessing the reasonably expected audience for broadcasts on free to air television can be based on the ratings system used for TV. This data provides audience age breakdowns for various media markets. The data for 6 July 2020 shows that Big Brother attracted an 86% adult audience and accordingly the 75% benchmark required by Placement Rule 3 has been satisfied.
20. The issue then turns on whether Big Brother is 'content primarily aimed at minors'. Some factors to be weighed in assessing this question include:
 - the actual audience of the program;
 - the subject matter of the program and whether the subject matter has themes likely to predominately appeal to children or adolescents;
 - the use of familiar children's characters or the use of children and adolescents within the program;
 - the storyline and whether the complexity of the plot suggests its target audience is adult; and
 - the use of language and the presence of adult themes such as violence and the portrayal of sexuality.
21. The Panel does not believe that Big Brother is a show primarily aimed at under 18 year olds. The show would have some appeal to some minors, but its thematics are adult in nature as are the conversations and interactions between housemates. All of the housemates are adults and are generally aged from late 20's to late 30's. The nomination challenges in which the housemates compete generally have adult themes. Taken as a whole, it is clear the show is aimed at an adult audience and this is reinforced by the actual audience which the show attracts which is predominately adult. Hence Placement Rule 4 has not been breached
22. Accordingly, the complaint is dismissed.