



ABAC Adjudication Panel Determination No. 130/20

Product: Victoria Bitter
Company: Carlton & United Breweries
Media: Digital (Instagram)
Date of decision: 15 September 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 a digital advertisement for Victoria Bitter by Carlton & United Breweries (“the Company”) and arises from a complaint received 31 August 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 31 August 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 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 not obtained for this marketing communication.

The Marketing Communication

- The complaint relates to the following Instagram post of 12 May 2020 on the Victoria Bitter Instagram account.



The Complaint

- The complainant objects to the marketing as the post shows someone drinking with roller skates on, where roller-skating is an activity that requires a high degree of alertness and physical co-ordination and should not be paired with drinking.

The ABAC Code

- Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

- The Company responded to the complaint by letter dated 10 September 2020. The principal points made by this company were:
 - The image is a repost of a piece of user-generated content created by Melbourne-born, London-based digital artist Tiana. VB has no formal

relationship with the artist beyond appreciating her artistic style as applied to the depiction of our product.

- This is an extreme reach on the part of the complainant to suggest that VB is any way encouraging the irresponsible use of its product via the reposting of a piece of digital artwork.
- We object to the complainant’s characterisation on the following grounds:
 - **‘Reasonable person’ test.** We note Clause 5 of the ABAC provides that *“Compliance of a Marketing Communication with the Code is to be assessed in terms of the probable understanding of the Marketing Communication by a reasonable person to whom the material is likely to be communicated.”*
 - We do not believe that a ‘reasonable person’ would consider this material offensive or in breach of the Code. In fact, we find it utterly bizarre that someone would extrapolate an encouragement of dangerous behaviour from an illustrated image composed of two legs with feet in rollerskates and a hand holding a can of Victoria Bitter. We are confident in our audience’s common sense, and in their ability to see that reposting an artistically attractive depiction of our product, combined with a reference to a currently popular activity, does not constitute our endorsement of undertaking the two activities concurrently.
 - **No contextual basis for interpretation of consumption before or during activity.** Even if we allow the assumption that VB’s Instagram followers lack the common sense to interpret artistic licence, the figure is clearly seated. They are not consuming the beverage ‘while’ rollerskating, and although the complainant appears to have interpreted the image as possibly depicting consumption prior to rollerskating, there are in fact no contextual clues in the image to support that interpretation. Similarly, the post copy “They see me rollin 🎵” is a very clear reference to the popular Chamillionaire song *Ridin’*, again, a reference that we are confident is well understood by our audience and would in no way be taken as an endorsement of concurrent rollerskating and VB consumption.
 - **Rollerskating as dangerous activity.** VB is not endorsing the practice of rollerskating while drinking, however we would encourage the Panel to take into account the popularity of roller disco parties when determining if rollerskating is really as dangerous or unsafe an activity as the complainant suggests. Examples include:
 - Moon Dog Craft Brewery’s 2018 [Sunday Funday Roller Disco](#)
 - A 2020 [Roller Disco Brunch](#) event advertising pizza and mimosas
 - [Collingwood Underground Roller Disco](#), which features an onsite bar
- CUB is committed to ensuring our promotional and marketing material, and that of our associated entities such as Victoria Bitter, does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation, and also for

our marketing material to uphold community standards when it comes to depicting acceptable behaviour involving alcohol. While we appreciate the complainant's close monitoring of our advertising, we submit that in this instance they have missed the mark when it comes to their interpretation of the Code and of general public attitudes.

The Panel's View

14. This determination concerns an Instagram post from the Company. The post is a drawing created by a digital artist 'Tiana'. Tiana's website indicates she is an artist originally from Melbourne who now resides in London and who is 'interested in fashion, interior design, cartoons, anything colourful and who enjoys all types of art'. Tiana maintains a range of social media channels on which her art is posted, and the image reposted by the Company was first added to Tiana's Instagram account on 11 May 2020.
15. The drawing shows a woman apparently seated with one hand holding an opened can of VB between her legs. The woman is wearing a pair of roller-skates. The Instagram post from Tiana is accompanied by text which explains 'this drawing was inspired by my roller skating VB drinking mate @moifrance'. When reposted on the Company's Instagram account a short text message accompanies the image which states- 'They see me rollin 🎵'. The complainant believes the post is irresponsible as it shows someone drinking with roller skates on, where rolling-skating is a dangerous activity.
16. Part 3 (d) of the ABAC provides that an alcohol marketing communication must not show (including by direct implication) the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination. Assessment as to whether the standard has been complied with is from the probable understanding of the marketing item by a reasonable person taking the content of the marketing as a whole.
17. The Company contends the Instagram post is consistent with the ABAC standard. It is argued:
 - a reasonable person would not consider the post as encouraging dangerous behaviour but would be seen as an 'artistically attractive depiction of our product combined with a reference to a currently popular activity';
 - there are no 'contextual clues' to support an interpretation that alcohol consumption 'while' roller-skating is being depicted;
 - the text message would be 'well understood' as a reference to the popular song 'Ridin' by the singer Chamillionaire; and
 - consideration should be given as to whether roller-skating is an unsafe or dangerous activity.
18. Roller-Skating first emerged in the late 1700's with the first public roller rink opening in London in 1857. The activity has had various periods of popularity and decline during the 20th century (e.g. roller discos of the 1970's) with recent media reports showing an increase in interest during the COVID-19 pandemic fuelled in part by videos of the activity attracting a strong following on the social media platform TikTok. Like all physical activities and sports, there is an element of risk in roller-skating. While detailed injury statistics have not been identified, a 2016/17

report by the Australian Institute of Health and Welfare showed a hospitalisation rate for roller sports (roller-skating, inline skating, and skateboarding) of 1,175 per 100,000 participants which is only marginally less than the rate for the contact sports of rugby union and rugby league of 1,180 per 100,000 participants.

19. The song 'Ridin' was released by the American rapper Chamillionaire in 2006 and its chorus lyrics commence with 'They see me rollin'. The song deals with police racial profiling and was very successful in the USA but only reached a peak of 24 on the Australian charts. While fans of Chamillionaire and rap music might readily take the mention in the Company's post as referencing the lyrics of the song, it may be an overstatement to say the reference would be 'well understood' by a wider Australian audience.
20. Drawing this together the Panel concludes on balance that the post does breach the Part 3 (d) standard. While the post is unlikely to be understood as a positive call to action to drink alcohol and use roller-skates, it does show a person with an open can of VB which raises a direct implication of consumption. This consumption is directly linked to roller-skating through the person wearing the skates and the text reference to 'rollin'. Further it can be reasonably assumed that consumption is to be occurring either during or before skating, as the skates are fully laced. Finally, roller-skating is an activity which, to be performed safely, requires a high degree of co-ordination as demonstrated by the hospitalisation rate of injured skaters. Accordingly, the terms of the prohibition as contained in the standard are met.
21. The Complaint is upheld.