

ABAC Adjudication Panel Determination No. 133/20

Product: Victoria Bitter
Company: Carlton & United Breweries
Media: Digital (Instagram)
Date of decision: 14 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 Instagram marketing for Victoria Bitter by Carlton & United Breweries (“the Company”) and arises from a complaint received 1 September 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 1 September 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 not obtained for this marketing communication.

The Marketing Communication

10. The complaint relates to the following Instagram post of 7 May 2020 on the Victoria Bitter Instagram account.



The Complaint

11. The complainant believes the post features a person under the age of 25 years old in breach of ABAC requirements on the age of persons depicted in alcohol marketing communications.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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:
- Adult** means a person who is of legal purchase age in Australia.

Age-Restricted Environment means:

- licensed premises that do not permit entry by Minors; or
- a non alcohol-specific age-restricted digital platform (including, for example, a social media website or application) which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as being 18 years of age or over.

The Company's Response

14. The Company responded to the complaint by letter dated 10 September 2020. The principal points made by the Company were:
- a) The image is a repost of a piece of user-generated content created by VB fan @vbtayay, who is depicted sitting in her backyard drinking a VB while wearing an array of VB merchandise.
 - b) This post does not breach Part 3(b)(iii) of the Code. The Instagram user @vbtayay is not a paid model or actor, and her content has been reposted solely within the age-restricted environment of the VB Instagram account. This content is permitted under Part 3(b)(iii) of the Code. In particular:
 - The Instagram user depicted in the post would appear to be under the age of 25, although we note this can really only be determined from an extensive search of her social media account.
 - The Instagram account @vbtayay is in no way affiliated with VB. @vbtayay has not been compensated, either by way of payment or gifts, for the repost of her content on the VB page.
 - The VB Instagram account is age restricted.
 - c) 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 in our depiction of our products.

The Panel's View

15. Victoria Bitter (VB) is one of Australia's best-known beer brands and can trace its origins back to 1854. The product has enduring popularity with a wide range of consumers including a fan who goes by the social media handle of @vbtayay. It seems @vbtayay is a creation of a Ms Tayla Adams with both @vbtayay and Ms Adams maintaining accounts on various social media platforms. This determination concerns a repost on the Company's Instagram account of a post made on the Instagram account of @vbtayay.
16. The post shows @vbtayay pictured in a backyard sitting on a chair while consuming a can of VB and using a carton of VB as a footrest. The complainant has deduced from other Instagram posts that @vbtayay (aka Ms Adams) is aged under 25 years

old and it is contended that this makes the Company's Instagram post in breach of ABAC standards. Part 3 (b) (iii) of the Code provides that an alcohol marketing communication (which includes social media posts) must not depict an adult who is under 25. There is however an exception to the 25 age threshold, namely the depiction of an adult (i.e. someone aged 18 or over) who is not a paid model or actor and the depiction occurs within an 'Age Restricted Environment'.

17. The Company responds to the complaint by advising:
 - the Instagram post was originally user generated content which has been reposted;
 - the woman shown in the post (Ms Adams/@vbtaytay) has not been paid by the Company;
 - while the Company is not certain of Ms Adams age, she is an adult; and
 - the Company's Instagram account is an Age Restricted Environment within the meaning of the term for the purposes of the ABAC.
18. The ABAC defines an Age Restricted Environment as including a non-alcohol specific, age restricted digital platform which:
 - requires users to register and login to use the platform including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol related pages and content such that they are not visible other than to a user who has registered on the platform as being 18 years of age or over.
19. Instagram as a platform falls within the potential application of an age restricted environment, and the Company has age restricted its Instagram account. This means the repost of the content created by @vbtaytay/Ms Adams on the Company's Instagram account is not in breach of the ABAC standard even if it is accepted the woman in the post is aged under 25 years.
20. Finally, for completeness, it should be noted that the creation of posts featuring VB by Ms Adams and/or @vbtaytay is not an alcohol marketing communication to which the ABAC applies. Ms Adams is a private individual and not an alcohol industry participant. There is no evidence before the Panel that the references to VB made on the @vbtaytay Instagram account has been generated by the Company through engagement with Ms Adams as a social influencer i.e. the Company has not paid Ms Adams nor supplied her with product in the hope she will create content referencing VB.
21. The complaint is dismissed.