



ABAC Adjudication Panel Determination No. 164/20

Product: Carlton Dry and Wolf Blass Wines
Companies: Carlton United Breweries and Treasury Wine Estates
Media: TV – Free to Air
Date of decision: 1 December 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) concerns television advertising for Carlton Dry and Wolf Blass Wines (“the Products”) by Carlton United Breweries and Treasury Wine Estates (“the Companies”) and arises from a complaint received on 9 November 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:
 - I. 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;

II. 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 9 November 2020.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a 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. ABAC pre-vetting approval was not obtained for this marketing.

The Marketing Communication

10. The complainant has referred to television advertisements being shown for the Products at 7:15am during Sunrise breakfast television. ABAC has not been able to identify these advertisements.

The Complaint

11. The complainant has objected to television advertisements for alcohol being aired at 7:15am during Sunrise breakfast television as:
 - It is the wrong time of the day to advertise these products; and
 - There were no warnings about the dangers of alcohol to your health.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (iv) be directed at Minors through a breach of any of the Placement Rules.
13. Part 6 of the ABAC Code provides:

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 Placement Policy).

- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (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.

Responses from the Companies

14. ABAC has contacted the Companies and Channel 7 in relation to this complaint. Their responses are provided below.

Treasury Wine Estates (TWE)

The TWE Assistant Brand Manager has confirmed the following by emails on 12 November 2020 and 25 November 2020:

- a) From both a media and public relations perspective TWE had no product placements or advertising scheduled with Sunrise
- b) TWE does not have any free to air TV buys as part of their media plan.

Carlton United Breweries (CUB)

The CUB Director, Corporate Affairs, has confirmed the following by emails on 12 November 2020 and 25 November 2020:

- a) There is no arrangement between Sunrise and Carlton Dry for any product placement or promotion;
- b) No ads for Carlton Dry have aired during Sunrise; and
- c) CUB's media monitors have not noted any news mentions of Carlton Dry in the last three months.

Channel 7

Channel 7's Head of Commercial Inventory confirmed by email on 24 November 2020 that:

- a) They have searched the 7 Perth 1 - 8 November 2020 schedule;

- b) TWE weren't on air; and
- c) CUB were on air, but none of their ads were aired during Sunrise.

The Panel's View

15. On 9 November 2020, the ABAC Scheme was forwarded a complaint regarding the broadcast on breakfast television of ads for two products namely Carlton Dry and Wolf Blass wine. The concern expressed was that it was inappropriate to screen alcohol ads at 7:15 am with the Channel 7 "Sunrise" program. A complaint of this nature enlivens the ABAC Placement Rules.
16. Placement Rule 1 in effect provides that for alcohol advertising on free to air television, the time-of-day restrictions contained in the Commercial Television Industry Code of Practice (CTICP) must be complied with. This means it would be a breach of the ABAC if in fact an alcohol ad screened at 7:15am with the Sunrise program. Inquiries made with each Company and Channel 7 however indicate that no alcohol ads have been broadcast at this time.
17. The ABAC Complaints Administrator reached out to the complainant to seek further information but no response was received. In these circumstances the complaint must be dismissed as no grounds to base a breach finding can be established.