



ABAC Adjudication Panel Determination No 204/20

Product: Vodka Cruiser – Guava
Company: CUB Premium Beverages
Media: Outdoor Advertising
Date of decision: 21 January 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor advertising by CUB Premium Beverages (“the Company”) for Vodka Cruiser – Guava (“the Product”). It arises from a complaint received on 21 December 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 21 December 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 obtained for content of the advertising (Approval Number 18988).

The Marketing and Placement

10. The complaint relates to the following advertisement for Vodka Cruiser – Guava located on the side of a building at 412-414 Oxford Street Paddington NSW, which is opposite Paddington Public School.



The Complaint

11. The complainant raised the following concerns about the advertising:

I pick up my nephew from the primary school directly across the road from this billboard, it can be seen from the front school gate clearly and it is advertising an alcoholic drink that looks like a red soft drink bottle. Not good for 10 year old's to see this from the school playground they play in each day. This has now been up for the last two weeks of school.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (b)(i) have Strong or Evident Appeal to Minors.
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules.

13. Part 4 of the ABAC Code provides that:

A breach of this Code that is reasonably unforeseeable by or outside the reasonable control of the Marketer or their agency will be classified as a no fault breach.

14. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) Likely to appeal strongly to Minors;
- (ii) Specifically targeted at Minors;
- (iii) Having particular attractiveness for a Minor beyond the general attractiveness it has for an Adult.
- (iv) Using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) Using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

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).

Company Response

15. The Company responded to the complaint by letter emailed on 8 January 2021. The principal points made by the Company were:

- CUB Premium Beverages, and our parent company Asahi Beverages, takes the responsible advertising of alcohol seriously. We are aware of the requirements of the ABAC Code (the **Code**) and our policy and practice ensures compliance with all relevant alcohol and marketing guidelines.
- Asahi Beverages is a member of the *International Alliance for Responsible Drinking*, and a signatory to the 'Action to accelerate reductions in underage drinking' commitment which is designed to protect minors from alcohol advertising.
- From the outset, we agree that the instance of the advertisement appearing at 412 – 414 Oxford Street, Paddington would be in breach of the Code with respect to Part 3 (b)(iv), considering its proximity to the Paddington Public School. This instance of advertising was not approved by CUB Premium Beverages, its placement has resulted from a serious error made by a media supplier, Showtime Marketing, contracted by our media buyer, OMD. We can confirm that upon receipt of the complaint we promptly directed the relevant agency to immediately remove this instance of advertising.
- However, as outlined below, we firmly reject any assertion that the contents of the advertisement breach the Code, including with respect to Part 3(b)(i).
- We set out below an answer to each of the questions raised in your letter of 21 December 2020.

Alcohol Advertising Pre-vetting Service Approval

- ABAC pre-vetting was sought under application number 49/19 and was granted under approval number 18988.
- The advertisement received pre-vetting approval, which followed extensive engagement with AAPS. This included collaborative discussions and resulting revisions to ensure that the advertisement does not have strong or evident appeal to minors, such as changes to the colour palate,

increasing the prominence of the words 'Vodka Cruiser' and the Vodka Cruiser logo and removal of certain features within the illustrated design.

Strong and Evident Appeal to Minors

- As mentioned above, in designing this advertisement, we have taken great care to ensure that the advertisement does not have strong or evident appeal to minors and is otherwise in compliance with the Code.
- There are no cues that would lead to the featured product being mistaken for a soft drink. The advertisement simply features a bottle of Vodka Cruiser Guava against an illustrated backdrop. The image of the Vodka Cruiser bottle is exactly as it appears in the market; the product has been in market for 20 years with very little change to its basic format. Over this period of 20 years, we are not aware of any instances of a Vodka Cruiser bottle being confused with a soft drink bottle.
- The word 'vodka' is prominently stated on the bottle shown in the advertisement no less than three times, in addition to a further reference to 'vodka' within the Vodka Cruiser logo in the bottom right-hand corner of the advertisement. The product label as shown also prominently states '4.6% ALC/VOL' and the advertisement includes a 'Please drink responsibly' statement.
- The product featured in the advertisement not only includes the word 'vodka' but the Cruiser brand is one that is immediately and easily identifiable as an alcohol brand. Vodka Cruiser is the number one Light RTD product in the market, representing over 50% of the sales in the Light Spirit Based Premix Market. Vodka Cruiser has 96% brand awareness with 18-24-year olds and 89% brand awareness across all age groups (based on TRA brand saliency measures), which makes it one of the most well-known alcohol brands in Australia. Vodka Cruiser also holds some of the most distinctive assets in the alcohol market.
- The red liquid is in keeping with the brightly-coloured liquid used across the Vodka Cruiser range. The Vodka Cruiser brand is synonymous with colour and, playing on this theme, the advertisement features the words 'Stay colourful'. We note that there are a number of other bright-coloured alcohol-based liquids in the market, and this feature is not exclusive to Vodka Cruiser.
- As such, in our view the advertising does not breach the Code by having strong and evident appeal to minors – and, specifically, the image of a bottle of Vodka Cruiser Guava would not reasonably be confused with a bottle of red soft drink which may appeal strongly to children.

Placement Rules

- We agree that the instance of the advertisement appearing at 412 – 414 Oxford Street, Paddington would be in breach of the Code with respect to Part 3 (b)(iv), considering its proximity to the Paddington Public School. This instance of advertising was not approved by CUB Premium Beverages, its placement has resulted from a serious error made by a media supplier, Showtime Marketing, contracted by our media buyer, OMD.
- As part of our commitment to responsible advertising and compliance with the Code, we work closely with our media agencies to ensure that they understand the requirements of the Code and confirm their commitment to it. In circumstances such as these, CUB Premium Beverages has no direct relationship with media suppliers, and we entrust this engagement process to our media agencies.
- The process for selecting locations for Out of Home advertising sits with our media agencies. In this instance, OMD have assured us that they appropriately briefed Showtime Marketing on the requirements of the Code and Showtime Marketing has accepted full responsibility. OMD has informed us that this particular site was booked simply as a result of human error. This is despite OMD implementing and following robust procedures to ensure that the sites proposed by Showtime Marketing were ABAC and OMA compliant, which OMD understands is a strict requirement from CUB Premium Beverages.
- As such, we were very surprised to see this complaint come through and we took immediate steps to ensure that this instance of the advertisement was removed, and that all other locations were confirmed as compliant. We are informed that the advertisement was removed from the site at 412 – 414 Oxford Street, Paddington within two hours of the complaint being communicated to Showtime Marketing via OMD.
- We are extremely disappointed with this error, and we are working through the process with our media agencies to ensure that a similar breach does not reoccur.
- CUB Premium Beverages is committed to ensuring our promotional and marketing material does not appeal to minors. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to our advertising.

The Panel's View

16. This determination concerns an outdoor advertisement for Vodka Cruiser located on Oxford Street in the Sydney suburb of Paddington. The complainant raises two concerns namely, the proximity of the advertisement to the Paddington Public School and the fact the product resembles a red soft drink and hence will appeal to minors. These concerns raise the ABAC Placement Rules and the ABAC content standards. Both aspects will be examined in turn.
17. The Placement Rules seek to limit the exposure of under 18-year olds to alcohol marketing. This is done by creating a series of stipulations about where alcohol advertising can be placed including a requirement that outdoor advertising not be located with 150 metres line of sight of a school. It is evident that this rule has been breached by the Oxford Street site and this point is accepted by the Company. The Company explains that it did not deliberately seek to place the ad at the Oxford Street site, but the placement occurred due to an error on part of its media supplier. Upon the complaint being received and the mistake realised, the ad was removed.
18. The ABAC content standards, in Part 3 (b)(i) provide that an alcohol marketing communication (which includes outdoor advertisements) must not have strong or evident appeal to minors. This standard might be breached if the marketing material:
 - targeted minors;
 - had a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionary or soft drinks.
19. Assessment of the consistency of a marketing communication with an ABAC standard is from the viewpoint of the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and opinions held commonly in a majority of the community is the benchmark.
20. The Company argues that the advertisement is consistent with the ABAC standard. It is contended:
 - that the image of the product would not be mistaken as a soft drink and simply features a bottle of the product which has been on the market for 20 years;
 - the ad identifies the product as being vodka and hence alcoholic and the brand is well recognised as being an alcohol beverage;

- while the beverage is red, this colour is consistent with the range of coloured products in the range; and
 - the ad was pre-vetted and adjusted to meet ABAC requirements.
21. It should be noted that the ABAC does not regulate physical beverages. This means that the characteristics of an alcohol beverage such as its alcohol to volume content, or its colour are not regulated by the ABAC Scheme. The ABAC regulates alcohol marketing communications and merely showing the colour of a beverage will not of itself be a breach of an ABAC standard.
22. The Panel does not believe the ad breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:
- the ad identifies the product being sold as an alcohol beverage through various cues such as the term vodka, the Company branding and the drink responsibly message;
 - the product would not likely be confused with a soft drink given the cues to its alcoholic nature and brand recognition;
 - the ad adopts mature and deep colours and patterns rather than bright eye-catching colours; and
 - taken as a whole, the imagery is adult and any appeal to minors would be incidental rather than strong or evident.
23. While the Company explained the breach of the Placement Rule occurred by mistake, no argument was made for a no-fault finding. It is noted that the Company was reviewing its processes with media agencies to ensure similar breaches did not reoccur.
24. The complaint is upheld in relation to Placement Rule 1 and dismissed in relation to the content of the advertisement.