



ABAC Adjudication Panel Determination No 207/20

Product: Carlton Zero
Company: Carlton & United Breweries
Media: Internet - YouTube
Date of decision: 14 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 advertising for Carlton Zero (the “Product”) by Carlton & United Breweries (the “Company”) on YouTube. It arises from a complaint received on 23 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 23 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 the content of the advertisement (Approval Number 19002).

The Marketing

10. The complaint relates to an advertisement for Carlton Zero seen on YouTube and described below.

The advertisement opens with a shot of people in what appears to be a bar, standing and talking. The camera focuses on one of the people who commences a narrative which progresses as follows:

Person: Recognise this face?
I've been in more ads than anyone else. And all I'm told to do is smile, sip and laugh a bit.



[Camera close-up of a bottle of Carlton Zero]

Person: 0.0 percent alcohol.
This changes everything!



[Footage of the person in the water, swimming backstroke and drinking from a bottle]

Person: I can swim.



[Footage of the person on a building site, using a jackhammer and drinking from a bottle]

Person: I can operate heavy machinery.



[Footage of person approaching a drag car and then drinking from a bottle]

Person: I can actually drive.



[Close-up of person sitting in the drag car]

Person: Onwards beer drinkers!



[Drag car reverses into a cloud of smoke]



[Static screen showing a picture of a bottle of Carlton Zero, with the words "Rewrite the Rules" superimposed]

Voice Over: Rewrite the rules.
Carlton Zero.



The Complaint

11. The complainant objects to the marketing as follows:
- Carlton Zero, a non-alcoholic brand extension of Carlton United is advertised as a way to drink beer while swimming backstroke, operating heavy machinery and drag racing.
 - The code applies to non-alcoholic brand extensions. Showing an individual drinking then participating in high risk activities is careless and a breach of the Code.

The ABAC Code

12. Part 2 of the ABAC provides that the Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
- Alcohol brand extensions to non-alcohol beverage products.
13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (d) show 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.
14. Definitions in Part 6 of the ABAC provide:
- Alcohol Beverage** means a beverage containing at least 0.5% alcohol by volume.

Company's Response

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

The Campaign

- Carlton Zero is a 0.0% alcohol beer. It is an important part of our portfolio and we market it on the basis that it is a product our consumers can enjoy on occasions when they would like to enjoy the taste of a classic Australian lager, without drinking alcohol.
- In the same vein as previous advertisements for Carlton Zero, this campaign is a light-hearted presentation of scenarios where it would be inappropriate for the advertisement's protagonist to consume alcohol, so he instead consumes Carlton Zero. The aim of using scenarios where alcohol consumption is clearly inappropriate is to demonstrate and highlight that the Carlton Zero is a non-alcoholic beverage.
- The ad begins with an actor who has been in many beer commercials lamenting the limited activities he can undertake when consuming alcohol. When he realises Carlton Zero is a non-alcoholic beer, his world opens up and he is able to engage in a series of increasingly more fanciful activities as the ad progresses.
- AAPS pre-vetting approval was sought under application number 412/20 and the creative team worked extensively with ABAC to ensure ABAC standards were met with respect to this advertisement and all elements of the campaign. Approval was granted on 23 November 2020 with approval number 19002.

Brand Extension to a Non-Alcohol Beverage

- Carlton Zero is a 'brand extension to a non-alcohol beverage product' within the scope of Part 2(a) of the ABAC and we have always intended for Carlton Zero to be marketed in accordance with the ABAC. We refer to ABAC Complaints 144/18, 146/18, 35/19 and 44/19, in which the Panel has consistently held that the following definitions are applicable:
 - The product is not an 'Alcohol Beverage' as defined in the Code as it has less than 0.5% alcohol by volume.

- The Code extends to marketing of alcohol brands by means of a 'brand extension to non-alcohol beverage products'.
- We agree. Given the clear positioning of the product within the 'Carlton' brand family, it is self-evidently appropriate for us to ensure that all Marketing Communications are consistent with the Code.

Alcohol and Safety

- Part 3(d) of the Code states:

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.

- Definitionally, Carlton Zero is not an Alcohol Beverage, as noted above this has been well established over the course of a number of complaints. At no point in this ad is the protagonist shown drinking an alcoholic beverage; the clear proposition of the ad and indeed of the entire Carlton Zero product is that some activities should not be undertaken in conjunction with alcohol.
- The complainant argues that "Carlton Zero, a non-alcoholic brand extension of Carlton United is advertised as a way to drink beer while swimming backstroke, operating heavy machinery and drag racing."
- We could not disagree more. The scenarios in the advertisement are self-evidently, if humorously, ones where it would not be appropriate to drink a beer, either before or during conduct of the activity. Similar to ABAC Complaint 44/19, we contend that "the very point of the ad is to give examples when you can't consume alcohol to highlight that Carlton Zero is not an alcohol beverage and as such it can be responsibly consumed in these circumstances, even if some examples are clearly fanciful."
- We note in the Panel's determination with respect to Complaint 44/19, the Panel concluded that
 - *A common-sense approach needs to be adopted when applying the standards and it would be a mildly perverse*

outcome to conclude that an ad which seeks to promote a non-alcoholic beverage as an alternative to an alcoholic beverage was struck down for promoting the irresponsible use of alcohol.

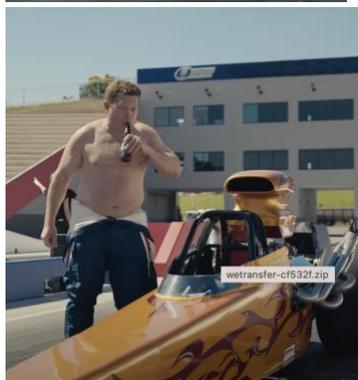
- *A reasonable person would not take the ad as promoting the use of alcohol in unsafe circumstances which is the policy aim of Part 3 (d) nor can the ad be fairly taken as promoting alcohol use more generally when it is seeking to increase awareness of a non-alcoholic beverage.*
- We submit that a similar conclusion should be reached with respect to the advertisement at hand. The only practical difference between the advertisements in Complaint 44/19 and this complaint 207/20 is the differing scenarios, but the premise is the same.
- We also note the complainant has clearly recognised the product is non-alcoholic, and that there is no prohibition on drinking a beverage that tastes like a beer before engaging in activities that require a high degree of alertness or physical coordination – as long as the product does not in fact contain alcohol.
- We have taken great care to ensure that it is very clear that the only beverage being consumed by the protagonist is the non-alcoholic Carlton Zero; in the establishing shot, the protagonist is clearly shown holding Carlton Zero in contrast to the other individuals:



- Consistent with the Panel's findings with respect to Heineken 0.0 between Determination 67/19 and 99/20, we have applied the principle of explicitly and clearly showing the 0.0% alcohol identifier at several points during the ad to remove any ambiguity. At 00:10 both the image and v/o emphasise 0.0% alcohol.



- In each of the scenarios, our beer man is very clearly holding a Carlton Zero; the distinctive black label is visible in each of the situations below:



- The 0.0% alcohol identifier is shown very clearly a final time, in the endframe:



- There is no room for any ambiguity; the message is clear that Carlton Zero is a non-alcoholic product, and that it is intended to be consumed when it may not be appropriate to consume alcohol. As such the advertisement cannot constitute a breach of Part 3(d) of the ABAC.
- CUB, and its parent entity Asahi Beverages, 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 to uphold community standards when it comes to our advertising.

The Panel's View

16. Non- alcoholic beers have been a part of the Australian beverage market for several decades, although sales have been small, and the marketing of the non-alcoholic products did not attract public criticism. This position has now changed. In late 2018, the Panel dealt with its first public complaints regarding the marketing of non-alcoholic beers and since that time several determinations have been made concerning Carlton Zero and a rival brand, Heineken 0.0. On each occasion the complaints have expressed a 'Trojan Horse' type of concern i.e. the actual beverage might be non-alcoholic, but behind this the real impact of the marketing sends inappropriate messages about alcohol use. This determination deals with similar concerns.
17. The complaint describes a video promoting Carlton Zero as a 'brand extension' of the Carlton alcohol brand. The complaint then goes on to argue that because the non-alcoholic beer and the Carlton brand is portrayed in the video being consumed in circumstances where the ABAC standards do not permit the portrayal of the consumption of an alcohol beverage - swimming, using a jackhammer, driving a motor vehicle - then the marketing as a brand extension,

must be inconsistent with the ABAC. The Panel is called upon to assess if this line of reasoning is sound.

18. The Panel has noted in previous determinations concerning Carlton Zero that:
 - the product is not an 'Alcohol Beverage' as defined by the Code as it less than 0.5% alcohol by volume;
 - however, the Code extends to marketing of alcohol brands by means of a 'brand extension to non-alcohol beverage products' and hence the marketing of Carlton Zero is a brand extension for ABAC purposes.
19. It has also been noted by the Panel that the application of the ABAC standards to marketing communications in the form of brand extensions is 'clunky' as the standards are clearly designed for alcohol beverages and sit awkwardly when applied to non-alcohol beverages or products. As a result, the Panel applies a common-sense and 'spirit and intent' approach to applying the Code in these cases. This flows from the 'reasonable person' benchmark which, Part 5 of the ABAC provides, the Panel uses in interpreting the Code. The test might be expressed as follows - would a reasonable person understand that the brand extension marketing communication is promoting alcohol use inconsistently with ABAC standards.
20. The video is premised on an 'everyman' character actor who explains that he has often appeared in beer advertisements. He then recognises he is now given a Carlton Zero, which because it is non-alcoholic, enables him to be seen doing activities which, as an actor in an alcohol beverage advertisement he would never be able to do - swimming, using heavy machinery, driving a dragster racing vehicle. The intent of the ad is clear - here are activities which cannot be combined with alcohol consumption, but which can be done consistently with consuming Carlton Zero.
21. The core question is whether a reasonable person would understand the video as suggesting that alcohol can be consumed in conjunction with the inherently dangerous activities shown. In the Panel's opinion the ad would not be understood in this way given:
 - the product is clearly identified as containing no alcohol and there is no prospect it will be confused with an alcohol beer in the Carlton range;
 - the premise of the ad is to contrast the circumstances when it is fine to consume a no alcohol beer, when it would not be responsible to consume an alcohol beverage; and

- a reasonable person would not interpret the ad as encouraging alcohol use with dangerous activities.

22. Accordingly, the complaint is dismissed.