



ABAC Adjudication Panel Determination No 2/21

Products: Carlton Zero and Stella Artois
Company: Asahi Beverages
Media: TV – On Demand
Date of decision: 12 February 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns advertisements for Carlton Zero and Stella Artois (“the Products”) by Asahi Beverages (“the Company”) during Young Sheldon and Dance Moms. It arises from a complaint received on 4 January 2021.
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:
 - 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;
 - 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 4 January 2021.
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 advertising – Carlton Zero (Approval Number 19002) and Stella Artois (Approval number 18588).

The Placement

10. The complaint refers to advertisements for Carlton Zero and Stella Artois seen while watching on-demand television, specifically during Young Sheldon and Dance Moms on 9Now.

The Complaint

11. The complainant is concerned about the advertising as follows:
 - *The ads are for alcoholic beverages or a non-alcoholic version of an alcoholic beverage and this is shown during daytime hours in programming that is widely watched by children. These ads encourage drinking to an audience who are still young and impressionable. Furthermore, the ads are playing over and over and over again - they are extremely annoying, and it is very obvious that the advertising companies are trying to get around standards by either not specifying what Stella is, or by advertising a non-alcoholic beer and saying its ok to drink it all day. Advertising beer to children is not appropriate.*

The ABAC Code

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

13. Part 6 of the Code provides that:

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.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

The Company's Response

14. The Company responded to the complaint by letter emailed on 20 January 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The advertising received Alcohol Advertising Pre-vetting Service Approval:
 - Carlton Zero - approval number 19002.
 - Stella Artois - approval number 18588.

Responsibility Toward Minors

- 9Now has age restriction controls that are capable of excluding minors from viewing alcohol marketing communications. This is consistent with the placement rules, specifically clause (ii):

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

- We have stringent controls in place that ensure our advertisements are only shown to people over the age of 18 on 9Now.
- CUB purchases BVOD advertising instances through our programmatic partner Adobe. Adobe provides the capability to access video inventory across a range of environments; CUB and Asahi use Adobe services to access inventory with the major TV networks' catch-up/streaming services in desktop/mobile/tablet environments or via connected TV.
- The sign-up process for BVOD services requires users to state their year of birth in order to prevent age-restricted content from being accessed by minors. We apply 18+ targeting instructions to Adobe, ensuring our advertisements are only shown to people who have positively identified they are over the age of 18 and are logged into their accounts.
- The networks have confirmed to CUB that they also apply 18+ targeting at their end, and do not allow alcohol advertising to be shown to minors or within programs featuring content primarily aimed at minors.
- Clause (iii) of the placement rules states:

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).
- Notwithstanding our advertisements are only served to logged-in 18+ accounts, I have attached online audience composition data from 9Now that shows 18+ audience share for *Dance Moms* at 87%, and for *Young Sheldon* at 91%.

• DEMO MINUTES BREAKDOWN JAN 1 2020				
	<i>Dance Moms</i>		<i>Young Sheldon</i>	
<i>F</i>	254,533	67%	97,186	53%
<i>M</i>	76,745	20%	67,863	37%
<i>Under 18</i>	50,945	13%	16,873	9%
<i>18-24</i>	65,655	17%	17,854	10%
<i>25-39</i>	103,848	27%	54,362	30%
<i>40-54</i>	105,311	28%	55,241	30%
<i>55-64</i>	30,936	8%	21,832	12%
<i>65+</i>	25,526	7%	15,760	9%

Source: OzTAM VOD VPM, *Dance Moms* Seasons 1-7, *Young Sheldon* Seasons 1-3, 01/01/2021, metric minutes, duration 15+mins, includes coviewing on connected tv devices

- Clause (iv) of the placement rules states:

A Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- ‘Primarily’ would imply that the program was created specifically with Minors in mind. Consistent with Clause (iii) of the definition of Strong or Evident Appeal to Minors, ‘primarily aimed at Minors’ would suggest that the program has a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult.
- This condition is not met by the programs, which are designed for primarily consumption by an adult audience, although that may not preclude some parents from allowing their children to watch them in a supervised manner.
- Both programs are rated PG, indicating that the primary audience is not Minors as per the [Classification Board definition](#): “PG-rated content is not recommended for viewing by people under the age of 15 without guidance from parents, teachers or guardians.”
- *Dance Moms* is a reality TV show program that is focused on “Mothers [who] urge their daughters to perform in the world of competitive dance” as per the description offered by the [US Lifetime network](#), which creates and distributes the program. Although the program does feature young dancers between the ages of 6-15, the clear appeal of the program is the competitive and petty nature of the mothers, as is often the case in reality TV shows.
- A variety of [news stories](#) and [op-eds](#) support the interpretation that the intended focus of the program is poorly behaved adults, as opposed to young dancers. Further, [sites aimed at assisting parents with determining whether programs are suitable](#) for younger viewers suggest that “This isn’t a show for kids, and there’s very little of substance it offers to older viewers, but it’s riddled with controversy and explosive personalities, so there’s no denying its entertainment value.”
- *Young Sheldon* is similar insofar as although it features a young protagonist, the program is clearly aimed at adults. *Young Sheldon* is a spin-off prequel of a more clearly adult-focused sitcom, *The Big Bang Theory*, and is described by the Nine Network in its press release announcing its acquisition of the program thusly:

In the premiere episode we meet nine-year-old Sheldon and his family for the first time. It isn’t easy growing up in East Texas when you are a once-in-a-generation mind capable of advanced mathematics – and science isn’t always helpful in a land where church and football are king.

And while the vulnerable, gifted and somewhat naïve Sheldon deals with the world, his very normal family must find a way to deal with him.

- The program’s focus is on family dynamics, and has been [described as](#) “in the vein of Malcolm in the Middle” – another program that depicts complicated family dynamics to an adult audience.
- Asahi Beverages is committed to ensuring our promotional and marketing material 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 the placement and content of our advertising.

The Panel’s View

15. This determination concerns two advertisements accessed by the complainant via the Broadcast Video on Demand (BVOD) service 9Now and seen in conjunction with the programs Dance Moms and Young Sheldon. One advertisement was for the alcoholic beer Stella Artois and the other was for the non-alcoholic beer Carlton Zero. While the complainant found both ads annoying and shown repeatedly, the primary concern about the marketing is that it was seen at a time of day and with programs which would attract a large audience of children. It is this aspect, rather than the messaging within the ads, which the complainant believes to be highly irresponsible.
16. Before turning to the relevant ABAC provisions, a few points raised by the complainant should be explained. Firstly, the ABAC does not regulate the frequency of alcohol advertising. The Australian Communications and Media Authority (ACMA) oversees media in Australia including both free to air linear television and the various other transmission platforms such as digital channels including 9Now. Within the scope of regulation administered by ACMA are some requirements about the proportion of broadcast programming to the permitted amounts of advertising. There are more stipulations relating to free to air TV than there is to the subsidiary digital channels, but in any event, there are no rules relating the frequency of alcohol advertising specifically, as opposed to advertising as a whole.
17. Secondly, the ABAC regulates the marketing of alcohol beverages by alcohol producers, distributors, and retailers. An 'alcohol beverage' for the purposes of the ABAC Scheme and consistent with the definition applied by Food Standards Australia New Zealand, means a beverage containing at least 0.5% alcohol by volume. Carlton Zero contains no alcohol and hence is not an alcohol beverage. The reason the ABAC captures the marketing of Carlton Zero is because the branding of the product is considered a 'brand extension' for the primary Carlton alcohol brand.
18. The issue raised by the complaint brings into play the ABAC Placement Rules. The Rules have the policy objective that alcohol marketing should be directed towards adults and to the extent possible away from minors. The relevant rules, given the complaint, are:

- all applicable media industry bodies codes are to be complied with - Rule 1;
 - available age restriction controls to exclude minors are to be used - Rule 2;
 - if there are no age restriction controls, then an alcohol ad can only be placed where the audience is reasonably expected to comprise at least 75% adults - Rule 3;
 - an alcohol ad cannot be placed with programs or content primarily aimed at minors - Rule 4.
19. The complainant explains that the programs and advertising were accessed via 9Now. This platform was launched in January 2016 and replaced an earlier 'catch-up' TV service 9Jumpin. 9Now permits a logged in viewer to watch live streamed TV from the primary Channel 9 as well as the related digital channels 9Gem, 9Go, 9Life and 9Rush. The platform also allows the consumer to access a range of programs 'on demand'. To access 9Now, a consumer will need an internet connected device e.g., iPhone or a smart TV etc and to open an account. The age of the account owner is required information in opening an account.
20. The Company advised that it placed the ads for the two products through 'our programmatic partner Adobe - to access inventory across a range of environments'. Translating this from marketing jargon into understandable English - this means that the Company did not consciously select 9Now or Young Sheldon or Dance Moms as the platform and programs with which its ads would be shown. Rather it sought to have the ads placed across a range of different media platforms e.g. BVOD, YouTube, Facebook Live etc, to target an audience meeting characteristics in age, gender, location and other factors.
21. The Company instructions given to its programmatic partner were to have the ads served only to account holders over the age of 18. Further, it is contended that the 9 Network apply 18 plus targeting so that alcohol ads are not shown with programs primarily aimed at minors. So, does this mean the Placement Rules have been complied with?
22. Rule 1 in effect imports into the ABAC the requirements of the Commercial Television Industry Code of Practice (CTICP). This is the code which restricts the time-of-day alcohol ads can be shown on free to air television. 9Now as a platform does not fall within the CTICP and no time-of-day restrictions are placed on alcohol advertising accessed via that platform. Accordingly, Rule 1 has not been breached even if the ads were seen with programs accessed at times which would not be permitted if the same program was being broadcast on linear free to air TV.
23. Rule 2 requires age restriction controls to exclude minors to be used. Although the complaint did not provide precise details, it is presumed the programs were being seen by the complainant and their children over a smart TV or maybe a tablet such as

an iPad. To be served the alcohol ads, the 9Now account being used must have been held in the name of an adult. This means age restriction controls were used, but it is common for a household to have co-viewing between an adult account holder and children.

24. In these circumstances, Rules 3 and 4 come into play - namely is the expected audience of Dance Moms and Young Sheldon at least 75% adult and are the programs primarily aimed at minors? Dance Moms is a US reality show based on young girls attending the Abby Lee Dance Studio. While the backdrop of the show is the girls learning dance routines which are then put into practice at various dance competitions, the focus of the program is the dynamics between the mothers of the girls and domineering teacher Abby Lee Miller.
25. Young Sheldon is a spin off from the hugely successful US comedy series The Big Bang Theory. The show depicts the central character of the Big Bang Theory, the brilliant but nerdy and socially awkward Dr Sheldon Cooper, as a child protege. The Company argues placing alcohol advertising with both shows is consistent with the Placement Rules 3 and 4 respectively.
26. It is possible to gauge the likely audience of television audiences through the ratings system. Data supplied by the Company showed an adult audience of Dance Moms at 87% and Young Sheldon at 91%. This means Placement Rule 3 has not been breached.
27. Rule 4 applies irrespective of the actual audience drawn by a program or content and requires that alcohol advertising not be placed with programs primarily aimed at minors. In this regard the Panel believes the programs are not aimed primarily at minors although the fact both programs feature children certainly means the shows would have evident appeal to children and adolescents. Young Sheldon aims to draw on the following of the Big Bang Theory and young Sheldon is old beyond his years in intellectual terms. The show tackles adult themes as well as themes of growing up. It has appeal across age groups, but it is not aimed primarily at minors like a Play School or children's cartoons etc. Dance Moms also has a broad appeal, but it is a reality show directed at adults.
28. The complaint is dismissed.