



ABAC Adjudication Panel Determination No 25/21

Product: Thirsty Camel Bottleshops
Company: Thirsty Camel - WA
Media: Radio
Date of decision: 8 April 2021
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 radio advertising for Thirsty Camel Bottleshops (“the Product”) by Thirsty Camel – WA (“the Company”). It arises from a complaint received on 25 February 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:
 - (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 25 February 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 not obtained for the content or placement of the advertising.

The Placement

10. The complaint refers to an advertisement for Thirsty Camel Bottleshops, which the complainant believed was broadcast on Triple M but appears to have been broadcast on 96fm Perth.

The Complaint

11. The complainant is concerned about the radio advertisement as it was broadcast in a timeslot likely to be heard by children.

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 ABAC 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 email on 17 March 2021. The principal points made by the Company were:
- Our commercials are targeted at adults driving home from work, the purpose is solely for convenient drive thru shopping on their way home, impulse purchasing as an example.
 - The Advertising Agency checked their instructions for the advertisement, and it ran on 96fm Perth (not Triple M, as advised by the complainant).
 - Target audience 25 – 54 year olds hence the drivetime placement.
 - Spot placement is aimed at targeting adults to purchase via drive thru bottleshops on way home from work, why would we target minors who cannot purchase alcohol?
 - We are not responsible for the stations content or programming, we simply purchase airtime at these specific times to target adults in drivetime.
 - Given we are targeting adults, it is obvious we are purchasing airtime on a radio station that broadcasts adult content.
 - Data provided by 96fm (and included below) shows that 92% of their drivetime audience is aged 18 years or above.

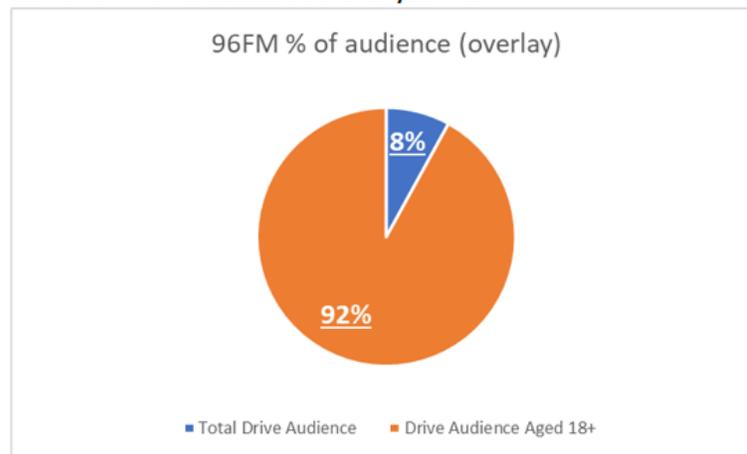
Standard eRAM Report : Thirsty Camel
 Period : Metro(1:2021)
 Data Types : Cume Reach (People 18+)
 Data Source : Metro Radio
 Day Part Set File : 4pm-7pm Monday - Friday
 Markets : Perth

96FM Audience Summary

Demographic	Station	Cume Reach	% Audience
Total Drive Audience	96FM	171,000	100%
Audience Aged 18+	96FM	158,000	92%

SOURCE: GFK Survey 1 2021, Monday - Friday, 4pm-7pm, 96FM

92% of 96FM's Drive audience is over 18 years old



The Panel's View

15. This determination arises from a complaint about the broadcast of an ad for the alcohol retailer Thirsty Camel on Perth FM radio. The complainant believed the ad was heard on the station Triple M at about 4:40pm on 25 February 2021 however the Company advises it had no advertising on Triple M at this time, but it did have an ad broadcast on the rival FM station 96fm. The Panel has proceeded on the basis that the ad identified by the complainant was aired on 96fm.
16. The complainant was concerned about the ad using inappropriate language at a time that the ad would likely be heard by children. The issue of language in advertising falls within the ambit of the AANA Code of Ethics administered by Ad Standards and not the ABAC Scheme. This is because the concern arises irrespective of the product being marketed and is not related to the portrayal of the use of alcohol as such i.e. the complainant would be concerned if the same language was used in promoting a soft drink or motor car. The ABAC issue raised

by the complaint is whether the alcohol ad was properly directed towards a predominantly adult audience and not towards minors.

17. The obligations on the targeting of alcohol marketing are contained in the ABAC Placement Rules. The relevant rules for the broadcast of an alcohol ad over radio require:
 - that the ad only be placed where the audience is reasonably likely to comprise at least 75% adults; and
 - the ad must not be placed with programs or content primarily aimed at minors.
18. The 1pm to 5pm weekday slot on 96fm is presented by Russell Clarke. Mr Clarke is a longstanding radio professional. The afternoon format of 96fm combines music with chat and interviews. The nature of the content is not aimed at under 18 year olds and this is reinforced by ratings data which indicates that the audience of the Russell Clarke slot is more than 90% adult. The Company advises that it is endeavouring to target 25 to 54 year olds with its radio advertising and this appears to be confirmed by the ratings for an advertisement broadcast at 4:40pm on a Thursday. Accordingly, the Panel concludes that the Placement Rules have not been breached by the advertisement.
19. The complaint is dismissed.