



ABAC Adjudication Panel Determination No 31/21

Product: Actual Vodka Seltzer
Company: Asahi Beverages
Media: TV - Free to Air
Date of decision: 13 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”) arises from a complaint received on 10 March 2021. The complaint concerns free to air television advertising for Actual Vodka Seltzer (“the Product”) by Asahi Beverages (“the Company”).
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

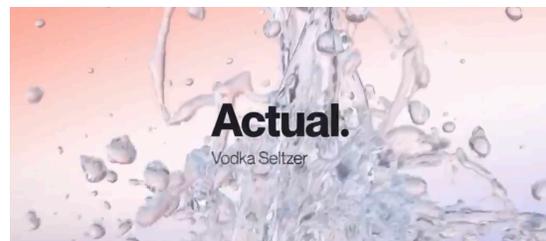
7. The complaint was received on 10 March 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 (Approval Number 18819) was obtained for the marketing.

The Marketing

10. This determination relates to a television commercial for Actual Vodka Seltzer. The advertisement is accompanied by the song Sunday Best by Surfaces. It commences with two streams of liquid combining and then swirling around first one, then two cans of Actual Vodka Seltzer. Each principal scene is superimposed with various words, as shown in the screenshots below.



The Complaint

11. The complainant has the following concerns about the television advertising:

- *The drinks advertised look like soft drinks.*
- *Marketing at young teens.*

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 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.

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a 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.

The Company's Response

14. The Company responded to the complaint by letter emailed on 29 March 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The advertisement was submitted under AAPS Application 484/20 and was approved on 15 October 2020 with approval number 18819.

Responsibility toward Minors – Strong or Evident Appeal

- We are cognisant that hard seltzers are a relatively new category in the Australian market, and hence we have taken great care to ensure that it is very clear the product is alcoholic. The word 'vodka' is visually prominent on both the cans and the supers indicating the beverage ingredients, appearing on screen for approximately 13 seconds in the span of the 15-second advertisement. It is very clear that neither the product nor the advertisement is meant to create any confusion with a soft drink.
- Specifically, the advertisement features stylised splashes of seltzer, supers indicating the beverage ingredients and product taglines, and the cans themselves. The colour palette is a muted pastel gradient, in keeping with the simple pastel cans themselves, and the advertisement is set to the song *Sunday Best* by Surfaces.
- The supers read as follows:
 - *Sparkling Water. Vodka.*
 - *Actual. Vodka Seltzer*
 - *Good is Simple.*
 - *Less than 70 calories.*
 - *Actual. Vodka Seltzer*
 - *Available in Pure and Lime.*
- The flavours described – 'sparkling water' and 'lime' – are mature, and the very simple, clean design of both the ad and cans is intended to appeal to adult aesthetic preferences.

Responsibility toward Minors – Placement

- Without specific details from the complainant as the time they saw the advertisement, we have provided at Appendix 1 national TV logs for the full period of wc 14/02 to wc 07/03 inclusive. All spots aired on the Seven Network.
- Nationally across all Seven channels, there are over 2000 individual instances across this time period, however we can confirm that all of these spots ran during alcohol permitted hours, including 12.00 pm – 3.00 pm weekdays. Filtering specifically by aired daytime instances, I can confirm that Actual advertisements aired during two live motorsports broadcasts, and otherwise aired during the following daytime programs:

<i>90210</i>	<i>Doomsday Preppers</i>	<i>Murdoch Mysteries</i>
<i>A Football Life</i>	<i>Dreamhouse</i>	<i>Pawn Stars</i>
<i>Andrew Denton's Interview</i>	<i>Escape to the Country</i>	<i>Perfect Boss</i>
<i>Autopsy USA</i>	<i>First Dates Australia</i>	<i>Property Ladder UK</i>
<i>Ax Men</i>	<i>Frankie Drake Mysteries</i>	<i>Ramsay's Hotel Hell</i>
<i>Bancroft</i>	<i>Fugitive at 17</i>	<i>Ramsay's Kitchen Nightmares</i>
<i>Billion Dollar Wreck</i>	<i>Gold Coast Medical</i>	<i>Ride Along</i>
<i>Blindspot</i>	<i>Gold Fever</i>	<i>Round Oz Ride</i>
<i>Border Security</i>	<i>Graveyard Carz</i>	<i>Storage Wars</i>
<i>Bridezillas</i>	<i>Great Outdoors</i>	<i>The Resident</i>
<i>Brit Cops</i>	<i>Hell's Kitchen USA</i>	<i>Twilight Saga: Breaking Dawn</i>
<i>Buccaneers and Bones</i>	<i>House of Wellness</i>	<i>Ultimate Tag</i>
<i>Cold Feet</i>	<i>Jonathan Creek</i>	<i>Wildlife Heroes</i>
<i>Criminal Confessions</i>	<i>Life Sentence</i>	<i>World's Most Amazing Videos</i>
<i>Dead at 17</i>	<i>Maddoff</i>	
<i>Deception</i>	<i>Million Dollar Minute</i>	

- Channel Seven and our logs have confirmed that, the advertisement was broadcast in a manner consistent with Section 6.2 and Section 2 of the Commercial Television Code of Practice, that is, in the M and MA15+ classification zones set out in Section 2, except between 5.00 am and 6.00 am, and 7.30 pm and 8.30 pm.
- With 46 separate programs listed above, it is not possible to provide reliable, up-to-date age of audience composition data for the programs during which the advertisements were shown. Should the Panel request more information on a specific program, we will be happy to provide it, but we note that the general tenor of the programs listed above is mature and unlikely to appeal to audiences under the age of 18.

- Again, we note that Actual advertisements aired during the permitted hours of 12.00 pm to 3.00 pm, and of the 46 programs listed above, we note that the content is mature and unlikely to appeal to audiences under the age of 18.
- It is possible that the complainant saw the advertisement on digital television. The Seven Network has confirmed that they have run all digital impressions against a P18+ audience. This does mean some spots may have aired during daytime hours, although they would only have been served to P18+ viewers.
- 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. Actual Vodka is one of the over 30 alcoholic seltzers which have come into the Australian market in the last couple of years. The Company is marketing the product via a range of channels including advertisements on free to air linear television. This determination concerns a television advertisement which shows two streams of liquid (one sparkling water and the other vodka) combining to create cans of the product. The concern expressed by the complainant is that the cans look like soft drinks and are being marketed to young teens.
16. A core standard of good alcohol marketing practice is that alcohol ads do not have strong or evident appeal to under 18 year olds. This standard might be breached if:
 - it specifically targets minors;
 - it has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and
 - it uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
17. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community is to be the benchmark. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their understanding would not be shared by most people.

18. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - illusion of a smooth transition from non-alcoholic to alcoholic beverages;
 - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
19. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element which shapes how a reasonable person will understand the item.
20. Product packaging can give rise to strong appeal to minors if it creates confusion with confectionary or a soft drink. Confusion with a soft drink might occur if:
- the packaging fails to clearly identify the product as an alcohol beverage through use of an alcohol term like beer, ale, vodka, style of wine etc or reliance is made of more subtle alcohol references or terms understood by regular adult drinkers but less likely to be understood by minors e.g., IPA, NEIPA;
 - the packaging has a visual design that resembles a soft drink, such as the display of fruit images, bright block colours and the use of a font style or iconography found typically on soft drinks or fruit juices;
 - the use of terms commonly associated with a soft drink or fruit juice e.g., orange, lemon, blueberry, pop, smash etc; and
 - the type of physical package used and whether this is like that used by soft drinks or fruit juices e.g., prima style juice box.
21. The Company contends the ad is consistent with the ABAC standards. It is argued that the ad clearly establishes the product is alcoholic, and that the style of the ad

inclusive of the choice of background music is mature and appealing to adults far more than to minors.

22. The Panel does not believe the ad breaches the Part 3(b)(i) standard. In reaching this conclusion the Panel noted:
- the ad establishes the product is vodka based through a combination of the branding on the product can shown in the ad, the prominent use of the superimposed term 'vodka' displayed during the ad and the overall messaging that the product is a new type of alcohol beverage;
 - the product's branding, inclusive of the type and size of can, does not resemble popular soft drinks likely to be recognised by minors;
 - the overall tone of the ad is mature; and
 - while the product is presented in an attractive manner any appeal to minors is considered incidental and is not strong or evident.
23. For completeness the Panel requested that the Company advise the nature of the programs with which the ads were broadcast to assess if the ad was shown with programs likely to have a high number of viewers under the age of 18. The detail of the programming is provided in the Company's response in Paragraph 14. The complainant did not indicate when the ad was seen or with which programs. There appears to have been no evident breach of the ABAC Placement Rules.
24. The complaint is dismissed.