



ABAC Adjudication Panel Determination No 162/21

Product: Carlton Draught
Company: Carlton & United Breweries (Asahi Beverages)
Media: TV – Free to Air
Date of decision: 19 July 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 7 June 2021 and concerns the placement of Carlton Draught (the Product) during The Front Bar by Carlton & United Breweries (“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 7 June 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 marketing.

The Placement

10. This determination relates to the placement of the Product on The Front Bar, which is currently broadcast weekly by Channel 7 on Wednesday or Thursday at 8:30pm in Melbourne, Adelaide and Perth, and 11:00pm in Sydney and Brisbane (free-to-air).

The Complaint

11. The complainant has the following concerns about the marketing:
 - *Footy show commentators drinking beer while talking about football.*
 - *My grandkids watch this show.*

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 Response

14. The Company responded to the complaint by letter emailed on 16 June 2021. The principal points made by the Company were:
- Alcohol advertising pre-vetting service approval was not obtained. CUB has an integrated broadcast partnership with the Front Bar, featuring Carlton Draught-branded segments as well as promotional material such as bar mats, kegs / tanks, and beer. ABAC Decisions 78/17 and 99/17 have previously considered this unique arrangement.
 - The program is broadcast live; Carlton Draught does not have final approval of scripts, although we do offer pre-broadcast guidance with respect to ABAC compliance.
 - The Front Bar airs on channel Seven after 8:30pm weekly on a Wednesday / Thursday night. Of the audience that watch Front Bar, 95% are aged over the age of 18 (based on average of all 2021 episodes aired to date).
 - The Front Bar is not primarily aimed at Minors and does not have content primarily aimed at Minors. The program is a light-hearted live AFL panel discussion show that is clearly sponsored by Carlton Draught. For reference, I include the list of topics from episode 12, which aired on 3 June immediately before this complaint was received.
 - Midseason draft
 - COVID update on where games will be played over the coming weeks
 - Adelaide CHO on not touching the football
 - Fans at the footy attempting to keep the match ball
 - Jack Riewoldt's impressive mark

- Push and shove in the Carlton vs Swans match
 - Dermott Brereton's unofficial footy rules
 - Amusing Dermott Brereton moments
 - Supporting pubs
 - Sam Pang's shirts
 - Discussion of Eddie McGuire
 - MND fundraising
 - Russell Howcroft commentary on MND and Melbourne's performance
 - Nathan Jones describing his time at Melbourne as often 'shit'
 - Dustin Martin's Bonds ads
 - Anthony Koutafides souvlaki ads
 - Guest interview takes place at the Carlton Draught-branded bar: guest is Derek Kickett discussing his career (1989-96)
 - 'Rewrite the Rules' segment – use of the torpedo goal
 - Round 12 match preview
 - Mick's multi segment sponsored by Sportsbet
 - Interview with Nicky Winmar discussing racism in AFL
- The topics of discussion are clearly designed to interest and entertain adult football fans with a deep knowledge of the game. The humour is adult in tone, as indicated by the program's M rating, and 8.30 timeslot. The discussion is frequently focused on historical incidents that would be remembered by adult footy fans, and the hosts Sam Pang, Mick Molloy and Andy Maher are clearly middle aged.
 - 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 is the third determination concerning a sports themed live to air program broadcast on the Seven Network entitled 'The Front Bar'. The show adopts a format where the regular presenters chat with guests on a set which resembles a bar in a hotel. The participants talk about AFL in generally a lighthearted manner. The program is 'sponsored' by the Company. For this financial support the Company's product – Carlton Draught – is shown as being served in the 'bar' and the participants are on occasions depicted consuming the product. The set features other product branding such as logos on beer glasses and on beer mats.
16. The Panel has previously found that the placement of the Company's product and branding within the show is an example of the marketing technique known as

product placement and this technique is a marketing communication to which the ABAC standards apply.

17. This is the first time a complaint has raised a concern that the Carlton Draught product placement during The Front Bar is viewed by minors. 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 toward 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.
18. 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. The CTICP permits the broadcast of alcohol advertisements after 8:30pm and The Front Bar is broadcast at 8:30pm or 11:30pm. Accordingly, Rule 1 has not been breached.
19. Rule 2 is not applicable to this complaint, as there are no age restriction controls available to exclude minors from viewing free to air television broadcasts.
20. In these circumstances, Rules 3 and 4 come into play - namely is the expected audience of The Front Bar at least 75% adult and is the program primarily aimed at minors?
21. It is possible to gauge the likely audience of television audiences through the ratings system. Data supplied by the Company showed an average adult audience of 95% for The Front Bar during the 2021 season. This means Placement Rule 3 has not been breached.
22. 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 program is not aimed primarily at minors. The program is a live panel discussion of AFL, which is a sport with broad appeal across all age groups rather than appeal aimed primarily at minors, the hosts are all middle aged, the program has a mature look and feel, and the humour is adult in tone.
23. The complaint is dismissed.