



ABAC Adjudication Panel Determination Nos 181 & 182/21

Product: VB
Company: Carlton and United Breweries
Media: TV
Date of decision: 12 August 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 a television commercial for VB by Carlton and United Breweries (“the Company”). It arises from two complaints, both from the same complainant, which were received on 19 July 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 19 July 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 content of the advertising (Approval Numbers 18344 and 19398).

The Marketing

10. The complaint concerns a television commercial for VB, which the complainant advised they saw on 10 Peach (free-to-air) at 2:26pm, 2:40 pm and 2:45pm on or before 19 July 2021.

The complainant did not describe the VB advertisement they saw. The company has advised that it could be either (or both) of:

- The VB Solar Exchange advertisement described in ABAC Determination No 158/21 at the following link:

<http://www.abac.org.au/wp-content/uploads/2021/06/158-21-Determination-VB-23-6-21.pdf>

- The VB Solar advertisement described in ABAC Determination No 153/21 at the following link:

<http://www.abac.org.au/wp-content/uploads/2020/11/153-20-Determination-VB-24-November-2020.pdf>

The Complaint

11. The complainant has the following concerns about the marketing:
 - *This targets minors.*
 - *Advertising beer to minors.*

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.
- (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).

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 5 August 2021. Its principal comments were:

The advertisements that may have been seen

- It is possible the complainant has seen the 15" version of the [VB Solar Exchange asset](#), which was the subject of Complaint 158/21. This ran on free-to-air television during the specified period.
- It is also possible the complainant has seen the [VB Solar asset](#), which has also been addressed in Complaint 153/20.

Alcohol Advertising Pre-vetting Service Approval

- Pre-vetting approval of the Solar Exchange asset was granted on 21 April 2021 with approval number 19516.
- Pre-vetting approval of the VB Solar asset was granted on 18 April 2020 with approval number 18344.

Strong or Evident Appeal to Minors

- The television advertisement most likely to have been seen by the complainant does not breach Part 3 (b)(i) of the Code by having Strong or Evident Appeal to Minors.
- The advertisement promoting VB Solar Exchange details a promotion whereby signed-up participants can exchange excess solar energy for beer. Instead of 'selling' excess solar energy back to the grid and receiving a credit

on their power bill, participants access a current feed-in tariff of 10.2c/kWh, with every \$30 of solar energy traded back to VB equating to one slab containing 24 x 375ml bottles or cans. Deliveries are made quarterly, and to take delivery of the beer participants must show ID and be 18+.

- This is self-evidently an adult-focused advertisement and promotion, as possession of solar panels and an energy billing account is required for participation.
- The VB Solar asset was created to celebrate the fact that VB is brewed with 100 per cent offset solar electricity. The ad encourages us to consider, *“The next time the sun is making you hot, just remember that it’s also making you a cold one.”* The iconic VB theme plays over a series of construction images shot at the Karadoc Solar Farm outside Mildura. Carlton & United Breweries has a 12-year Power Purchase Agreement in place with Karadoc, enabling more than a hundred million litres of Victoria Bitter to be brewed with solar electricity.
- Once again, the subject matter is inherently adult, as the advertisement invites viewers to consider the difficulty of performing manual labour outside on a hot day.

Placement Rules

Free-to-air television

- The advertisement was not shown on 10 Peach free-to-air television at or around the times specified by the complainant.
- We can confirm that the advertisement aired in Melbourne, Sydney and Brisbane in the week preceding 19 July, however the earliest instance of the advertisement aired at 20:47:50 on 13 July, in Melbourne.
- We do not believe that the complainant has seen the program on free-to-air television, however we note that the times specified are within the M Classification zone of 12 noon to 3:00 pm on a school day, as required by the Commercial Television Industry Code of Practice.
- Indicatively, programs airing on 10 Peach on or around the times specified in the complaint include adult-focused sitcoms such as *Seinfeld*, *Big Bang Theory*, *Mom* and *Five Bedrooms*.

Live-streaming or catch-up

- It is possible that the program was seen via live streaming or using catch-up functionality.
- Asahi Beverages purchases BVOD advertising instances through our programmatic partner Adobe. Adobe provides the capability to access video inventory across a range of environments; 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.
- We apply 18+ targeting instructions to Adobe, ensuring our advertisements are shown to people who have positively identified they are over the age of 18 and are logged into their accounts.
- Network 10 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.
- If ABAC receives further detail from the complainant with respect to the date, their location or the program during which the complainant saw the advertisements, we would be pleased to provide to more concrete viewership data.
- 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 content and placement of our advertising.

The Panel's View

15. The complainant in this case is concerned that advertisements for VB seen on 10 Peach (free-to-air) at 2:26pm, 2:40 pm and 2:45pm on or before 19 July 2021 (date of the complaint) are targeting and advertising to minors. The complaint raises two issues, whether the ad was broadcast consistently with the ABAC Placement Rules and whether the ad itself has strong or evident appeal to minors. The Panel will consider each of these issues in turn.
16. ABAC Placement Rule 1 requires compliance with relevant media industry codes. The applicable code is the Commercial Television Industry Code of Practice (CTICP) and in short this means that alcohol advertising cannot be shown with programs broadcast over linear free to air television prior to 8:30 pm, although can be shown on school days between 12 and 3pm or during live sport or weekend sporting programmes. The complainant has provided times, but not the

specific date on which the advertisements were viewed or the programmes with which they were viewed and no response was received to requests for clarification.

17. The Company has confirmed that the advertisements aired on free to air television in Melbourne, Sydney and Brisbane in the week preceding 19 July, however the earliest instance of the advertisements aired at 8:47pm on 13 July, in Melbourne. Even if the ads had been shown at those times, without clarification from the complainant as to the date on which they were seen, it is not possible to assess whether there has been a breach of the CTICP as we do not know whether they were seen on a weekday or weekend, or school day or during school holidays. If they were seen on a school day there would be no breach of the CTICP.
18. It is possible that the complainant who watched the show 'live' was in fact served with the alcohol ad by accessing a broadcast 'live streamed' over 10Play, as this enables the 10 Network to insert digital ads which are different from those broadcast over linear TV. The CTICP does not apply to digital broadcasts, however, other placement rules do apply.
19. Placement Rule 2 requires that alcohol marketers use available age restriction controls provided by a media platform to exclude minors from a viewing audience. There are no age restriction controls on linear free to air TV broadcasts, but digital transmissions via 10Play do have an age restriction capacity. This arises because to access 10Play an account must be opened, and the account holder provides a date of birth. With this information, both the 10 Network and alcohol marketers can exclude account holders aged under 18 years old from being served alcohol ads. The Company has confirmed that it applied age restriction criteria to its ads and that Network 10 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.
20. The Panel is unable to assess the complaint against Placement Rules 3 and 4, that prevent alcohol ads being shown with content that has an audience of less than 75% adults or is primarily aimed at minors as the complainant has not provided details of the programmes during which they saw the ad.
21. The Panel has also considered whether the content of two VB ads would have strong or evident appeal to minors. It was not possible to identify from the complaints the exact ads that the complainant viewed, however the Company has advised that it could have been either the VB Solar Exchange or VB Solar ads. One ad shows a VB Solar Exchange delivery driver delivering a carton of VB to a man walking out of a house with solar panels. The accompanying voice over narration explains that homeowners can exchange their solar energy for the product. The second includes a series of construction images shot at the Karadoc

Solar Farm outside Mildura. In style and messaging, the ads follow the longstanding positioning of the VB brand of a “hard earned thirst needs a cold beer” but picks up the contemporary issue of responding to climate change. The Panel believes that the ads have an overall mature look and feel and would not have strong or evident appeal to minors.

22. The complaints are dismissed.