



ABAC Adjudication Panel Determination No 199/21

Product: VB Beer
Company: Carlton & United Breweries
Media: Instagram Post
Date of decision: 30 August 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 an Instagram post for VB by Carlton & United Breweries (“the Company”). It arises from a complaint received on 16 August 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 16 August 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 Instagram posts

The Marketing

10. The complaint concerns the following Instagram post:



1,480 likes

victoriabitter @thechatslovebeer ❤️

Credit: @charlotterickett

[View all 13 comments](#)

20 November 2020

The Complaint

11. The complainant objects to the marketing communications as follows:

- *The advert contains a person to the best of my knowledge at first appearance is 16.*
- *Upon viewing this image a reasonable person can be forgiven for perceiving this person to be under 18.*
- *Upon viewing this model's Instagram profile which is linked to the offending advertisement, a reasonable person could be forgiven for perceiving this 'model' is 24 years old, as the numerals 24 are listed in her 'bio'. If you take into consideration this is standard practice for people under the age of 25 on Instagram listing their age, simply as numerals in their 'bio'. This listing of the 'bio' also corresponds with her youthful facial features.*
- *I am so deeply offended this could encourage people under the age of 18 to take up drinking.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural setting (for example, a family socialising responsible) and where there is no implication they will consume or serve alcohol.
- (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.

The Company's Response

13. The Company responded to the complaint by letter emailed on 25 August 2021. Its principal comments were:

Alcohol Advertising Pre-vetting Service Approval

- The Instagram post referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service approval.

Responsibility toward Minors

- It is our longstanding practice to confirm with all creators of user-generated content (UGC) that they are happy to be featured on the VB Instagram page and that they are over the age of 18. Unfortunately, the person in our in-house social media team who reposted this image has left the business and we are unable to access their records to confirm this procedure was followed in this specific instance.
- However, I am quite confident that the process would have been followed and the user's age verified. Regardless, the user states in her own bio that she is 24, and under Part 3 (b)(iii) of the Code it is permissible to depict an Adult who is under 25 years of age and appears to be an Adult if they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment.
- The person is quite clearly an adult. The tone of the complaint is somewhat offensive to both Asahi Beverages and to the VB fan pictured, however, to engage with the question posed, the individual is quite clearly relatively tall for an adult, let alone a minor.
- The height of a VB slab is just over 170 mm. The pallet is stacked with 8 cases, which the individual is evidently sitting on, and she appears taller than the display. This indicates her sitting height is likely somewhere in excess of 1360mm (170mm x 8). Architects and designers appear to use a standard of 1280mm from the top of the head to the floor for the height of the average seated woman (and 1340mm for the average seated man). Her stature, posture and body shape are also indicative of an adult, and her attire of a band shirt, high waisted jeans, Doc Martens boots and a ponytail are popular choices for many women aged 18-49.
- Finally, it is mystifying to me that the complainant was capable of clicking through to the individual's Instagram page to see that she says she is 24, but not of noting the sheer variety of posts in which she is pictured holding alcoholic drinks in licensed venues – an unlikely activity for a minor to be engaged in.

- The person shown is not a paid model or actor. Victoria Bitter has no commercial or contractual partnership with this individual. Her post was selected as featured UGC because it fits the VB aesthetic.
- I can confirm that the VB Instagram channel is age-gated and was also at the time this content was shared.
- Carlton & United Breweries 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

14. This determination relates to a post on the Victoria Bitter Instagram account with an image of a person sitting on a pallet of VB cartons. The complainant is concerned that the post shows an image of a person who is under the age of 25, and has the appearance of someone who may be under 18 years old.
15. The relevant ABAC standards in Part 3 provide that an alcohol marketing communication must not depict:
 - a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation and where there is no implication they will consume or serve alcohol ((b)(ii)).
 - a visually prominent adult under 25 years of age unless the person shown is not a paid model or actor and the marketing communication in which they are shown has been placed within an age restricted environment ((b)(iii)).
16. The Company advises that the post was 'user generated content' which means the post was created by a follower of the Company's Instagram account and added to the Company's account. This action by the Company converts what was third party content and outside the scope of the ABAC into content which is a marketing communication for ABAC purposes and required to meet ABAC standards.
17. It is not entirely certain how old the woman featured in the post is, however, it seems clear the woman is over 18 and possibly is 24 years old. The complainant contends the woman appears to be very youthful and the intent of the post is to market VB to minors. The Company strenuously refutes that it had any such intention and submits the woman is evidently an adult and that its Instagram account is an 'age restricted environment' as defined in the Code.

18. An account on a social media platform such as Instagram will fall within the definition of an age restricted environment if it:
 - requires users to register and login to use the platform inclusive of supplying a full date of birth and
 - the platform enables any alcohol related pages to be hidden from users of the platform under the age of 18.
19. Instagram meets these specifications. It should also be noted that age restriction capabilities of Instagram (and other major platforms such as Facebook) also preclude reposts and shares of material from an alcohol company's account to be seen by under 18-year-olds.
20. The post of itself is reasonably unexceptional. The Panel does not believe its messaging would be strongly appealing to minors. The post is user generated content for which the creator has not be paid. Accordingly, the requirements of the exception to Part 3 (b)(iii) have been satisfied.
21. The complaint is dismissed.