



ABAC Adjudication Panel Determination No 213/21

Products: Alcohol
Companies: Thirsty Camel - WA
Media: Radio - Broadcast
Date of decision: 13 October 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns radio advertising by Thirsty Camel – WA (the Company). It arises from a complaint received on 6 September 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 6 September 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 complaints were 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 communications.

The Marketing Communication

10. The complaint relates to advertising on Perth radio station, 6PR. The advertisements commence with a greeting from 'the camel', who, after telling a joke, relays the prices of various alcoholic beverages. The Company has advised that it produces a new advertisement with a different joke each week and has provided a sample of four advertisements with the following jokes:

Identifier	Opening Joke
Teddy Bear	Q: Why did the teddy bear say no to dessert? A: Because it was stuffed.
Volcano	Q: What did one volcano say to the other volcano? A: I lava you.
Teacher	Q: Why did the school teacher close her eyes? A: Because she couldn't control her pupils.
Baker	Q: Why do bakers work so hard? A: Because they knead the dough.

The Complaint

11. The complainant objects to the marketing as follows:
 - *They use jokes suitable or aimed at children at the beginning of their ads selling alcohol.*
 - *The jokes they use attract the attention of children who would then focus more on the ad and the promotion of alcohol consumption.*

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.

13. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal to strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minors 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 Response

14. The Company responded to the complaint by email on 23 September 2021. The principal points made by the Company were:
 - Thirsty Camel has been consistent in its approach to targeting only adults with the Thirsty Camel brand, this is evident by the fact that approximately 70% of the commercial features the brand and not alcohol, further the station

as listed in the complaint is 6PR (talk back) with a majority audience being people 50+. Children don't listen to 6PR.

- Any paid advertising spots are placed in drivetime, with the majority of spots airing after 5pm, again with no intention to target children.
- The humour in the Thirsty Camel radio commercials is designed to get a giggle from our adult audience. It has never and will never be written or created to target children. From a common sense business point of view it's adults that buy our product not children, consequently it would be, from a sales perspective, ridiculous to target a demographic who cannot purchase the product.
- Given thousands of people hear our commercials there is bound to be the odd person who has their own personal slant on our advertising, but any suggestion from a single individual that our purpose is to create advertising to target sales from children is simply ludicrous and fully rejected.
- Thirsty Camel on 6PR run one commercial (including one joke) per week.

The Panel's View

15. The complaint relates to radio advertisements for the alcohol retailer Thirsty Camel aired on the Perth based 6PR. Each of the ads adopts the same format namely:
 - the ad commences with a grunting noise that is quickly followed by a male narrator who says 'Giddy, this is the camel'. The narration (by the camel) then moves to a short simple 'dad joke';
 - the camel laughs and explains his own joke and then presents product information;
 - the ad ends with the camel saying- 'when ya on the go, just tap and go with the camel, thirsty camel bottle shops' and finally the same grunting noise with which the ad opened is heard; and
 - the ad is accompanied by jaunty music.

16. The complainant believes that the jokes at the start of each advertisement appeal to and attract the attention of minors who would then focus more on the ad and the alcohol promotion.
17. The ABAC provides in Part 3 (b) that an alcohol marketing communication must not have strong or evident appeal to minors. This standard might be breached if the marketing:
 - is likely to appeal strongly to minors;
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
18. 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 are 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.
19. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics of marketing communications which have previously been found to be inconsistent with the Code with respect to appeal to minors, and which may be present within a radio advertisement include:
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - the 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.
20. It should be noted that 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 that shapes how a reasonable person will understand the item.
21. The Company argues that the marketing does not have a strong appeal to minors. It is contended that the marketing is directed to adults, is placed on a radio station with content primarily aimed at adults, and that it would not be a profitable business decision to target their advertising towards minors who are not legally able to purchase and consume its product.
22. It can be accepted that the Company (nor its marketing agency) had no intention to create ads that would appeal strongly to minors. Further 6PR has a news/talkback format and is not a radio station that has a youth focus. That said, the intention of the marketer is not the test, but rather how the marketing would be probably understood by a reasonable person.
23. The ads are consistent with the larrikin style of the Thirsty Camel brand. The ads are also in the so-called 'daggy dad' range. That is, the jokes are cringe-worthy and very predictable. Because of the jokes, the ads have friendly resonance, but the Panel does not believe they would have strong or evident appeal to minors. In reaching this conclusion the Panel noted:
- the ad would appeal most strongly to the potential teller of the joke- i.e. a middle-aged man;
 - the pace of the ad and its background music is mature and not of a style likely to attract the attention of minors;
 - while the jokes are simple and understandable to a child, this needs to be assessed against the overall messaging of the ad which provides price

information about alcohol products that is not likely to be strongly appealing to minors;

- the alcohol products are not given attributes considered likely to encourage underage drinking; and
- overall, the appeal to minors is likely to be incidental rather than strong or evident.

24. The complaint is dismissed.