



ABAC Adjudication Panel Determination No 219/21

Product: VB
Company: Carlton & United Breweries
Media: TV – Free to Air
Date of decision: 15 October 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 a television advertisement for VB (“the Product”) by Carlton & United Breweries (“the Company”). It arises from a complaint received on 13 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:
 - 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 13 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 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 marketing communication (Approval Number 20044).

The Marketing

10. The complaint concerns a television advertisement for VB, which can be viewed at the following link:

<https://youtu.be/hH1MECzLhsw>

The following provides a description of the advertisement:

[The VB theme music plays throughout]

[Footage of people playing football followed by black and white footage of people bowling]

Voice Over (VO): Right now, you can't get it goaling. You can't get it bowling.



[Footage of people at a wedding, where VB is being served, followed by a rodeo clown being chased by a cow]

VO: You can't get it taking a vow. Or chasing a cow.



[Black and white footage of people standing and sitting around a table, with bottles of VB]



VO: A hard earned thirst comes from being all over town.

[Footage of people in cricket uniform drinking VB, and also a close-up of a person drinking VB]



VO: Not from being in lockdown.

[Footage of a live music concert, followed by footage of people rowing a boat.]



VO: So, if you'd like to get back to leading a band. Or lending a hand.

[Footage of two happy people drinking VB]



VO: Roll up your sleeves and get the jab.

[Footage of a person in a medical setting. A medical professional applies a green band-aid to their arm]



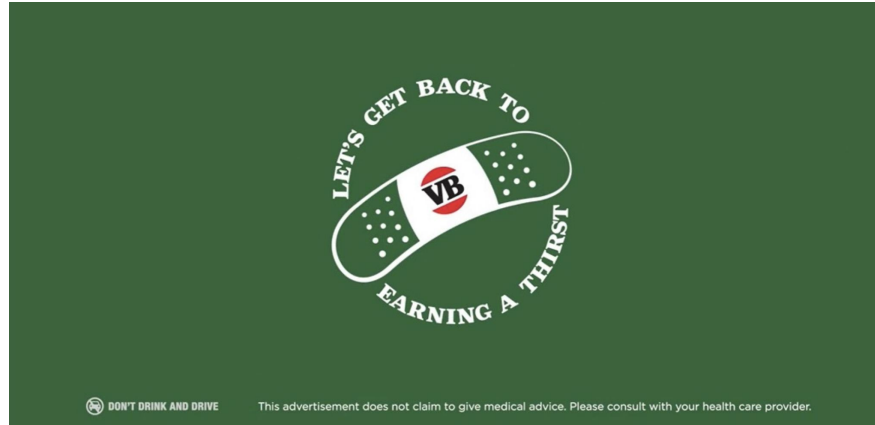
The person looks at the camera and says:

“A matter of fact, I’ve got mine now.”

The advertisement concludes with a VB branded band-aid, circled by the words "Let's Get Back to Earning a Thirst".

The following words are shown at the bottom of the screen:

"Don't Drink & Drive" and "This advertisement does not claim to give medical advice. Please consult with your health care provider."



The Complaint

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

- *The organisation Asahi Beverages is using the Covid Pandemic to promote its products, in this case Victoria Bitter Beer.*
- *A beer company is taking on the role of a doctor by promoting to the general public a medical procedure or treatment that has only preliminary approval by the TGA. No company should be promoting any medical treatment on a community level as not everyone is able to take the treatment for various reasons including medical. Any medical treatment is in confidence between a doctor and patient.*
- *It's ironic that a beer company that sells alcohol is preaching anything medical given the effects of alcohol in communities.*

The ABAC Code

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

- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.

The Company's Response

13. The Company responded to the complaint by letter emailed on 23 September 2021. Its principal comments were:

Alcohol Advertising Pre-vetting Service Approval

- The marketing communication referred to in the complaint received Alcohol Advertising Pre-vetting Service Approval. Approval was sought under application number 652/21; the advertisement was approved on 7 September 2021, with approval number 20044.

Responsible portrayal of Alcohol Beverages

- VB wholeheartedly encourages eligible Australians to get vaccinated, so that we can all get back to catching up with mates, supporting hospitality and other local businesses, travelling, and doing all the other things we're unable to do right now.
- Our advertisement is very clear on the point that we are not scientists or health experts. We rely on the experts, including the Therapeutic Goods Administration (TGA), and encourage anyone who wants to learn more about the vaccines to speak to their GP.
- To this end, the final frame of our advertisement includes the statement:

“This advertisement does not claim to give medical advice. Please consult with your health care provider.”
- Additionally, to ensure that we are encouraging responsible and informed behaviour, our advertisement is compliant with the Therapeutic Goods (Restricted Representations – COVID-19 Vaccines) Permission (No. 3) 2021.
- As per the Permission, the advertisement does not contain:
 - Any reference to the trade name, sponsor name or active ingredient or any other information that would identify the vaccine (e.g. Pfizer or AstraZeneca)
 - Any statement, or implication comparing different COVID-19 vaccines
 - Statements to the effect that COVID-19 vaccines cannot cause harm or have no side effects

- Any statement regarding COVID-19 vaccines that is false or misleading.
- We do not make any offer of a reward with our advertisement; however, we have also ensured the advertisement has complied with the additional conditions associated with rewards, including that the advertisement:
 - Contains a statement to the effect that the vaccination must be undertaken on the advice of a health practitioner
 - Does not encourage excessive or rapid consumption of alcohol or have a strong or evident appeal to minors.
- 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. As of the date of this determination, NSW, Victoria and the ACT are in various stages of lockdown as a result of government restrictions implemented to contain the COVID-19 pandemic. The rest of Australia has in place border restrictions that in large measure have stopped the free movement of residents of the three lockdown jurisdictions to other States and the Northern Territory. It is the common position of the Commonwealth, State and Territory governments that the best and indeed only way that relative freedom of movement and social/economic activity will be restored in all of Australia is that the vast majority of the population is vaccinated against the Covid virus.
15. It is against this backdrop that some very prominent Australian businesses have publicly joined governments and public health groups in urging people to become vaccinated. The Company 'wholeheartedly encourages eligible Australians to get vaccinated' and to this end has created a television ad based on its well recognised VB 'hard earned thirst' themed marketing to promote vaccination. It is this ad which has attracted the complaint.
16. The complainant takes a negative view of the ad. It is argued:
 - the Company is using the pandemic to promote its products;
 - it is irresponsible for the Company to be advocating any medical treatment on a community level when treatment advice is a matter for a doctor and a patient; and

- given the effects of alcohol on the community, a beer producer should not be 'preaching anything medical'.
17. The Company refutes the ad breaches any ABAC standard nor is it in anyway irresponsible. It is contended that the ad does not give independent health advice but merely reflects public health advice on the desirability of vaccination. It is stated the ad is compliant with requirements issued by the Therapeutic Goods Authority (TGA). Finally, it is noted that the ad contains a statement that the ad does not claim to give medical advice.
 18. Understandably, the ABAC standards aren't designed to really cover an issue of this nature. The most applicable standard in Part 3 (a) provides that an alcohol ad must not encourage irresponsible or offensive behaviour that is related to alcohol consumption or the presence of alcohol. If the ad would be understood to be promoting irresponsible medical choices, then it would breach the ABAC.
 19. Assessment of the consistency of an ad with a Code standard is from the standpoint of the probable understanding of the ad by a reasonable person. This means the values, perspectives and life experiences found commonly in the community is the benchmark.
 20. The Panel believes that a reasonable person would be highly supportive of the Covid vaccination program. Further, that advertising and other promotional activity by private businesses to encourage vaccine take-up would be supported. This is even accepting that businesses have a direct commercial interest in widespread vaccination by the population underpinning a resumption in economic activity.
 21. In relation to alcohol specifically, the TGA has issued a 'permission' which permits alcohol products to be provided to a person who has been fully or partially vaccinated against the covid virus. This permission requires an advertisement not to encourage excessive consumption or to have strong or evident appeal to minors. In other words, the TGA has expressly permitted a marketing campaign which gives alcohol as a reward or inducement to getting vaccinated, provided the marketing does not encourage irresponsible alcohol use.
 22. The Company's ad is consistent with ABAC standards. It does not promote excessive consumption and the messaging is clearly adult in tone and would not be regarded as strongly appealing to minors. The Company has met the TGA requirements and a reasonable person would not consider the promotion of vaccinations as irresponsible.
 23. The complaint is dismissed.