



ABAC Adjudication Panel Determination No 225/21

Product: Peroni Beer
Company: Carlton & United Breweries
Media: Free-to-air TV
Date of decision: 1 November 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns free to air TV advertising for Peroni Beer (“the Product”) by Carlton & United Breweries (“the Company”). It arises from a complaint received on 17 September 2021, alleging that the television advertisement was seen on Channel 9 and affiliated channels (“the Channels”) from 5:00pm onwards, specifically during Who Wants to be a Millionaire? (or Millionaire Hot Seat) and the News.
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 meet 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 17 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 an 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 marketing communication (Approval Number 19993).

The Marketing Placement

10. The complaint relates to free to air TV advertising for Peroni Beer on Channel 9 and affiliated channels ("the Channels") from 5:00pm onwards, specifically during *Who Wants to be a Millionaire?* (or *Millionaire Hot Seat*) and the News.

The Complaint

11. The complainant objects to the marketing as follows:
 - *[The advertisement is shown on free-to-air television] - Channel 9 and affiliated channels - every single ad break from 5pm onwards every day, during Who Wants to be a Millionaire?, the News and other programs.*
 - *Alcohol advertising is not allowed during this time slot, the advert is on every single ad break, it's being thrown in our faces every 5 minutes.*

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 18 October 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communication referred to in the complaint received Alcohol Advertising Pre-vetting Service Approval. The advertisement was submitted under AAPS Application 540/21 and was approved on 24 August 2021 with approval number 19993.

Placement Rules

- The advertisement was not shown by Channel 9 and affiliated channels on free-to-air television during the week before the complaint was submitted to Ad Standards on 16 September 2021.
- In the week commencing 12/9 the advertisement aired on free-to-air television, however all instances were with Channels 7 and 10 and their respective affiliated channels. No instances of the advertisement aired on the Nine Network in w/c 12/9.
- Although the advertisement was not shown by Channel 9, I can confirm that all instances aired on Channels 7, 10 and their respective affiliated channels were in compliance with the Commercial Television Industry Code of Practice. All broadcast instances occur within the MA15+ classification zone 20:30-05:00 and the M classification zone 12:00-15:00 on School Days.
- Again, notwithstanding the advertisement was not shown by Channel 9, I can confirm that none of the free-to-air programs during which the advertisement was broadcast are primarily aimed at minors, not do they contain content primarily aimed at minors. Please refer to the table below.

2 Broke Girls	MARRYING MILLIONS
2 FAST 2 FURIOUS	MESSAGE IN A BOTTLE
48 Hours	Mom
A Touch Of Frost	Motorsport: 2021 MotoGP
Actual Program	NCIS
Air Crash Investigations	NCIS: Los Angeles
Assassins	NCIS: New Orleans
AUSSIE SALVAGE SQUAD	RAMSAY'S KITCHEN NIGHTMARES US

Australian Gangster	Reel Action
Australian Survivor	SAS Australia
BEOWULF	Seal Team
Best Of The Sydney Comedy Festival	Seatbelt Psychic
Blue Bloods	Seinfeld
BoJack Horseman	Shallow Hal
Bull	She's The Man
Catfish: The TV Show	Teen Mom
Charmed	The Big Bang Theory
Cooped Up	The Bling Ring
Crazy Ex-Girlfriend	The Cheap Seats
Crimson Tide	The Conners
CSI: Crime Scene Investigation	The Doctors
DATE NIGHT	The Graham Norton Show
Dating #NoFilter	The Help
Dirty Harry	The Late Late Show With James Corden
Dr. Phil	The Late Show with Stephen Colbert
ENEMY OF THE STATE	The Latest: Seven News
Entertainment Tonight	The Masked Singer Australia
ERASER	The Montreal Comedy Festival
Escape to the Country	The Neighborhood
Farm to Fork	The Office
FBI: Most Wanted	The Project
Friends	The Rookie
Get Hard	The Sunday Project
Gogglebox Australia	The Unicorn
Hannah's Law	The Voice
Have You Been Paying Attention?	The Wrong House
Hawaii Five-O	Tosh.0
Homicide With Ron Iddles	Total Wipeout UK
I Fish	TOWERING INFERNO
JAG	Walker Texas Ranger
Just Tattoo Of Us	Yes Man
Law & Order: Special Victims Unit	

- With over 80 programs listed it is unfeasible to provide Oztam data on the age of audience of the free to air linear broadcast of the program(s) during which the advertisement was broadcast, however if the Panel requires further detail on any of the programs I am happy to oblige.

- It is likely that the complainant has seen the advertisement in the course of live-streaming or viewing catch-up TV. I can confirm that we have controls in place that ensure our advertisements are only shown to people over the age of 18 on Channel 9 and affiliated channels.
- The following provides audience data for Who Wants to be a Millionaire? (or Millionaire Hot Seat) and the News.

Network data on age of logged in users

	9NEWS 1 JULY - 10 OCT 21 DEMO	HOT SEAT 1 JULY - 11 OCT 21 DEMO
U18	6%	6%
18-24	7%	7%
25-39	27%	27%
40-54	33%	31%
55-64	15%	17%
65+	11%	31%

Source: OzTAM Live VPM, 9News, 1/7/21 – 10/10/21, Hot Seat, 1/7/21 – 11/10/21, metric; minutes, includes coviewing on connected tv devices

VPM data for age of audience (this data is collected by Oztam for all BVOD programs and supplied to the television networks)

	9NEWS	HOT SEAT
U18	2%	1%
18-24	13%	10%
25-34	21%	19%
35-49	34%	34%
50+	30%	35%

Source: Nine Network

Oztam data on the age of audience of the free to air linear broadcast

	9NEWS 1 JULY - 14 OCT 21 DEMO	HOT SEAT 1 JULY - 14 OCT 21 DEMO
P 0-17	5%	4%
P 18-24	3%	1%

P 25-34	5%	4%
P 35-49	17%	14%
P 50-64	29%	24%
P 65+	41%	54%

Data source: Metro 5 City Panel plus Subscription, 9News, 1/7/21 – 14/10/21, Hot Seat, 1/7/21 – 14/10/21, metric; minutes

- Who Wants to be a Millionaire? (or Millionaire Hot Seat) and the News are not programs or content primarily aimed at Minors. One program is a general knowledge quiz show format, and the other is the nightly news bulletin. Neither of these programs are aimed at minors.
- CUB purchases BVOD advertising instances through our programmatic partner Adobe. Adobe provides the capability to access video inventory across a range of environments; CUB uses 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.
- We have also confirmed with Channel 9 that all Peroni activity running is only served to logged in users who have confirmed they are over the age of 18.
- 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

15. The complainant in this case is concerned that advertisements for Peroni beer were seen on Channel 9 and affiliated channels (free-to-air) from 5 pm onwards, specifically during Millionaire Hot Set and the News. The complaint raises the issue as to whether the ad has been directed at Minors through a breach of the Placement Rules.

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 8:30pm, although can be shown on school days between 12 and 3pm or during live sport or weekend sporting programmes.
17. The Company has confirmed that in the week commencing 12 September 2021, the advertisement aired on free-to-air television, however on Channels 7 and 10 and their respective affiliated channels, and not on Channel 9 as submitted by the complainant.
18. The Company has further confirmed that although the advertisement was not shown by Channel 9, the airing of the advertisement on Channels 7, 10 and their respective affiliated channels complied with the Commercial Television Industry Code of Practice, with all broadcast instances occurring within the MA15+ classification zone 20:30-05:00 and the M classification zone 12:00-15:00 on School Days.
19. 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 9Now, as this enables the 9 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.
20. 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 9Now do have an age restriction capacity. This arises because to access 9Now an account must be opened, and the account holder provides a date of birth. With this information, both the 9 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 Channel 9 have confirmed to CUB that all Peroni activity running is only served to logged in users who have confirmed they are over the age of 18.
21. The complainant has specifically advised that the ads were seen during Who Wants to be a Millionaire? (or Millionaire Hot Seat) and the News. Placement Rules 3 and 4 go to the reasonably expected audience and the nature of the program with which the alcohol ad was placed. Rule 3 provides that an alcohol ad may only be placed where the audience is reasonably expected to comprise at least 75% adults. It is possible to assess the audience of TV programs through the

ratings system and the Company has supplied ratings data. This data reveals that the audience for both Millionaire Hot Seat and the News over both linear free to air TV and accessed 'on demand' on 9Now meets the 75% adult benchmark.

22. Rule 4 provides an alcohol ad must not be placed with programs or content primarily aimed at minors. 'Primarily aimed' means the program must be more than being of interest to minors or even that the program has evident appeal to minors. It means that the program has minors as its primary focus. This can be assessed by considering factors such as:
- the subject matter of the program and whether the subject matter has themes likely to predominately appeal to children or adolescents;
 - the use of familiar children's characters or the use of children and adolescents within the program;
 - the storyline and whether the complexity of the plot suggests its target audience is adult;
 - the use of language and the presence of adult themes such as violence and the portrayal of sexuality; and
 - the actual audience of the program.
23. The Panel does not believe that Millionaire Hot Seat and the News are primarily aimed at Minors.
24. Drawing all this together, there has not been a breach of the ABAC Placement Rules given:
- the ads were not broadcast on Channel 9 and affiliated channels on free-to-air television;
 - the age restriction controls available on the 9Now BVOD platform were utilised to exclude account holders who are minors from being served with alcohol ads;
 - the audience for Millionaire Hot Seat and the News did not exceed 6% under 18 which is within the 75% adult requirement of the Placement Rules; and
 - Neither Millionaire Hot Seat nor the News can be said to be primarily aimed at minors.