



ABAC Adjudication Panel Determination No 263/21

Product: VB
Company: Carlton & United Breweries
Media: Social Media
Date of decision: 11 December 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 Facebook and Instagram marketing for VB (“the Product”) by Carlton & United Breweries (“the Company”). It arises from a complaint received on 15 November 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 the 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 15 November 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.

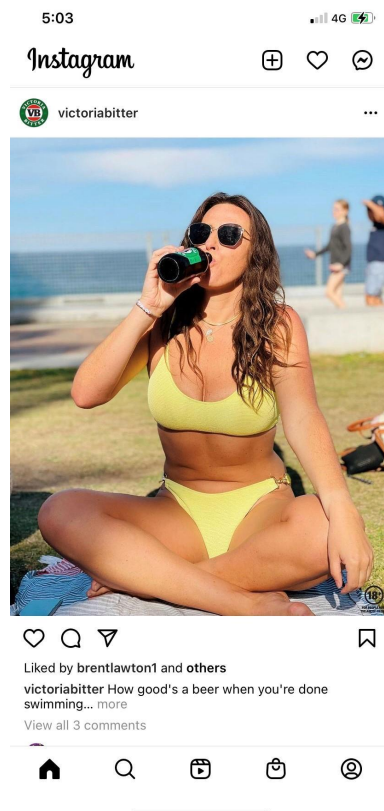
Pre-vetting Clearance

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 not obtained for the content of the advertising.

The Marketing

10. The complaint refers to the following social media posts:

Post 1



Post 2



The Complaint

11. The complainant is concerned about the outdoor billboard as follows:
 - *This is a clear breach of standard 3(d) of the ABAC Code by showing girls drinking alcoholic beer in their swimwear when it is possible they will go swimming afterwards.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company's Response

13. The Company responded to the complaint by letter emailed on 19 November 2021. The principal points made by the Company were:
 - The marketing communications referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service approval.
 - The marketing does not breach Part 3(d) of the Code. Both images feature young women in bathing attire enjoying a VB on the beach. The fact they have concluded any water-based activities is clearly referenced in the caption copy, as per below:
 - Post 1, Instagram: How good's a beer when you're done swimming...
 - Post 2, Facebook: Nothing like a cold longneck on the beach after you're finished swimming.
 - A reasonable person would consider the image and caption in conjunction. The caption explicitly references the conclusion of any swimming activity, and there is no possible way to interpret these posts in their totality as containing a possibility that the individuals will go swimming after consuming their beverages.
 - 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 concerns two social media posts for VB beer. Both feature people at the beach, wearing swimwear and drinking VB. The text accompanying the first post reads '*How good's a beer when you're done swimming...*' while the second reads '*Nothing like a cold longneck on the beach after you're finished swimming*'.
15. The complainant believes the advertisement is irresponsible. It is argued that alcohol should not be promoted on the basis of its consumption occurring before possibly swimming. Part 3 (d) of the ABAC provides that an alcohol marketing communication (which includes social media posts) must not show or directly imply the consumption of an alcohol beverage before or during any activity that for safety reasons requires a high degree of alertness or physical coordination. The question is whether the social media marketing communications breach this standard.
16. The Company argues the ad is consistent with the standard. It is submitted:
 - a reasonable person would consider the image and caption in conjunction;
 - the caption explicitly references the conclusion of any swimming activity; and
 - there is no possible way to interpret these posts in their totality as containing a possibility that the individuals will go swimming after consuming their beverages.
17. Promoting an alcohol product using beach or ocean scenes is not prohibited by ABAC standards, but the standard contained in Part 3 (d) does impose some reasonably straightforward obligations when there are beach or ocean depictions of alcohol products namely:
 - do not show or imply that alcohol is being consumed during the use of the water e.g., swimming or wading in the ocean; and
 - do not create a scene where it can be reasonably implied that a person will consume alcohol and then go into the ocean.
18. For example, a person can be shown drinking alcohol on a beach or the foreshore if it is clear the person is not going to go into the water. This might be because the person is fully clothed, or the time of day establishes that any swimming would have finished for the day.
19. The assessment of a marketing communication with an ABAC standard is from the probable understanding of the marketing item by a reasonable person taking its content as a whole. The 'reasonable person' test means that if a marketing

communication could be interpreted in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the marketing message.

20. The Panel believes that the Part 3 (d) standard is not breached. Each post would be understood through a combination of the photograph and the accompanying text. Taken as a whole, the posts establish that alcohol consumption is occurring after swimming. Accordingly, the messaging is consistent with the ABAC standard.
21. The complaint is dismissed.