



ABAC Adjudication Panel Determination No 2/22

Product: Woodstock Bourbon & Cola
Company: Carlton & United Breweries
Media: Television
Date of decision: 27 January 2022
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 Woodstock Bourbon & Cola (“the Product”) by Carlton & United Breweries (“the Company”). It arises from a complaint received on 10 January 2022.
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 10 January 2022.
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 a television advertisement for the Product, which can be viewed at the following link:

<https://www.youtube.com/watch?v=Bnug1Y2Oj2Y&t=5s>

11. The following is a brief description of the advertisement:

The ad is set in a stereotypical suburban backyard, with the two main people featured singing a song to the tune of "Escape" (The Piña Colada Song) by Rupert Holmes.



The advertisement commences with Person 1 (P1) driving a ride-on mower, with Person 2 (P2) sitting in an attached sidecar, holding a garden rake. P1 is wearing a t-shirt with the word "Woody" on the front, and P2 is wearing a t-shirt with the word "Cola".

P1 and P2 commence singing to the tune of The Piña Colada Song:

P1: "I was mowing my lawn"

P2: "And I was mowing it too"

P2: "It was a ride on for two"



P1 and P2 are then shown having swapped from using a mower to a roller, as they sing in unison:

“If you like Woody and Cola”

“And cricket’s your game”



We then see P1 and P2 wicket-keeping, as part of a backyard cricket game. Three other people are also shown participating in the game, as the batsperson swings at a ball.

P1 and P2 sing: “You gotta take that turf seriously”

P1: “And perfect your terrain”



The penultimate scene shows P1 and P2 standing, holding cans of Woodstock Bourbon & Cola, with five other people standing and sitting behind them, also holding cans of the product.



The advertisement concludes with a closer shot of P1 and P2, still holding the Product, with the words “Some things just go together” superimposed.

Both P1 & P2 sing: “If you like Woody and Cola”

The Complaint

12. The complainant is concerned about the marketing as follows:

- *The timing of this ad at 12:30pm would have undue influence on young people. The ad itself heavily emphasises "cola" and the viewer may not be aware it is an alcoholic beverage. It associates itself with backyard cricket and was aired during the coverage of the Ashes game.*

The ABAC Code

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

- (b)(i) have Strong or Evident Appeal to Minors.

14. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

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

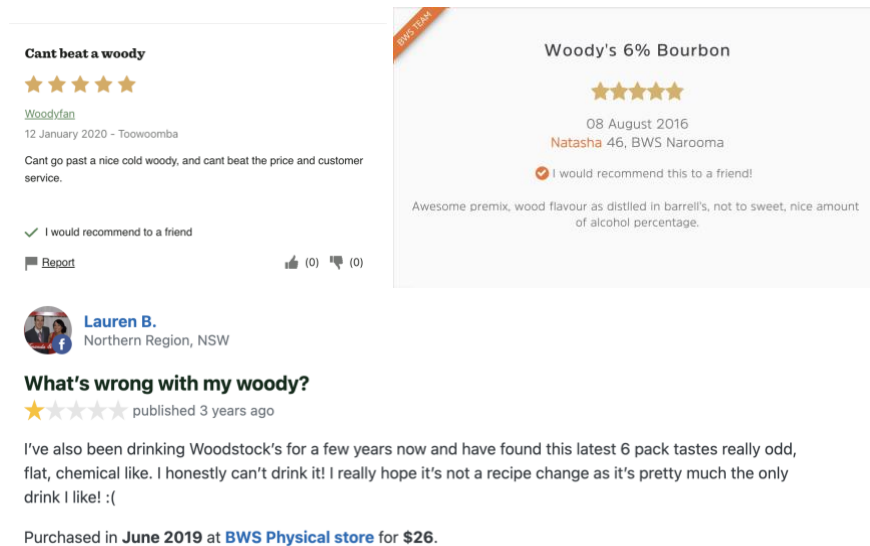
15. The Company responded to the complaint by letter emailed on 19 January 2022. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- AAPS approval was sought under Application No. 640/21 and was granted on 26 November 2021 with approval number 20499.

Responsibility toward Minors

- A minor could not confuse the product with a soft drink due to the advertisement emphasising “cola”, and there not being sufficient other indicators that the product is an alcohol beverage.
- The product is clearly an advertisement for the popular premixed RTD Woodstock Bourbon and Cola. It is common in Australian vernacular to shorten longer words, and “Woody and Cola” is a widely used colloquialism that is well-understood by a reasonable person to refer to an alcoholic beverage.
- The screenshots below are reviews taken from Dan Murphy’s, BWS and productreview.com.au; the examples predate the current advertising campaign and show consumers using the term “Woody” in reference to the product.



- The campaign arose from a market research insight that consumers of the product often refer to it as “Woody and Cola”; and the advertisement was tested prior to airing to ensure that product recognition was maintained.
- The advertisement never references “Cola” on its own without the addition of “Woody and”. Additionally, the final frame of the advertisement has a tightly cropped shot of the Woodstock Bourbon and Cola 4.8% can. The word “bourbon” is clearly visible, making it obvious that the advertisement is for an alcoholic beverage.



- The advertisement does not resonate with minors by showing a relatable backyard scene and backyard cricket.
- The advertisement is part of a summer advertising campaign for the product and was aired during coverage of the summer cricket season. The ad features a backyard cricket scene that is intended to have elements of everyday relatability, but with a clearly eccentrically humorous overlay.
- The advertisement shows the two protagonists, “Woody” and “Cola” mowing the lawn with a “ride-on for two” to the tune of the “Pina Colada Song”. They are then shown using a cricket pitch roller, singing that if “cricket’s your game / you’ve got to take that turf seriously / and perfect your terrain”. Both the ride-on mower (for two) and the pitch roller are clearly incongruous and excessive in what is shown to be a suburban backyard that is hosting a group of young adults playing a game of backyard cricket before enjoying a Woody and Cola.
- Although backyard cricket is a popular summer pastime for Australians of all ages, the advertisement very clearly shows a group of adult friends, in a setting that resembles a suburban share house. There is no suggestion that minors are present, and the overall look and feel of the ad is clearly meant to evoke the look and feel of a backyard gathering of young adults.

Concluding comment

- CUB Premium Beverages 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

16. This determination relates to a television commercial for Woodstock Bourbon & Cola and considers whether the ad has strong or evident appeal to minors in breach of Part 3 (b) of the ABAC. The complainant contends this is the case and argues:
 - the ad was broadcast at a time of day and in conjunction with an Ashes cricket test which means it will be seen by many minors; and
 - the content of the ad appeals to minors by failing to clearly establish the product is an alcohol beverage and by using a backyard cricket theme.
17. The first point about broadcasting the ad during the day with the Ashes raises the ABAC Placement Rules. The Panel has previously fully considered alcohol advertising and the Placement Rules with TV broadcasts of test cricket in Determination 186/20 & 208/20 dated 14 January 2021 and Determination 3/20 dated 30 January 2020. As result the issue will not be canvassed again, suffice to say the Rules are not breached. This is because:
 - it is permitted to broadcast alcohol advertising with live sports event such as the cricket pursuant to the terms of the Commercial Television Industry Code of Practice - Placement Rule 1;
 - test cricket attracts a predominantly adult audience well in excess of the 75% adult audience requirement - Placement Rule 3; and
 - while cricket has wide appeal, it's broadcast cannot be said to be aimed primarily at minors - Placement Rule 4
18. An alcohol marketing communication might have strong or evident appeal to minors if it:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionery or soft drinks.
19. Assessment of the consistency of an ad with an ABAC standard is from the probable understanding of the ad by a reasonable person, taking the contents of the ad as a whole. The 'reasonable person' concept comes from the common law

system and means the life experiences, values and opinions found commonly in the community is the benchmark.

20. The first point made by the complainant is the ad emphasises the 'cola' aspect of the beverage and a minor might not recognise the product is alcoholic. The Company refutes this, arguing that it is common Australian vernacular to shorten longer words and 'woody and cola' will be recognised as referring to the product. Further, it is contended that cola is not referred to on its own and the final frame shows a can of the product.
21. The Panel acknowledges the point being made by the complainant, and a viewer unfamiliar with the product might not immediately register exactly the nature of the product being marketed, although it does become clear enough by the conclusion of the ad. Further, the Panel does not believe a reasonable person would believe the ad is marketing a soft drink.
22. The second point is whether the backyard cricket game gives the ad as a whole a strong appeal to minors. It is recognised that cricket is a national Australian sport and many minors will have played cricket and the backyard game of cricket is a stereotypical depiction of a suburban Australian activity.
23. That said, the Panel does not believe the ad is in breach of the Part 3 (b) standard. In reaching this conclusion the Panel noted:
 - the core of the ad is not the cricket game as such but the relationship between the two adult men, who are seen on a rider mower and then a cricket pitch roller and then finally sharing the wicket keeper position in the game by each sharing one of keeper's gloves;
 - the ad is humorous in a 'daggy dad' style and is considered unlikely to be a humour strongly appealing to minors;
 - all characters depicted in the ad including the cricket game are clearly adult and no minors are shown in incidental or other roles;
 - the song and music featured in the ad is adapted from a song (Escape - the Pina Colada Song) made popular in 1980 and is likely to resonate more strongly to middle aged adults than under 18 year olds; and
 - taken as a whole, the ad is unlikely to appeal strongly to minors.
24. The complaint is dismissed.