



ABAC Adjudication Panel Determination No 10/22

Products: Peroni and Corona
Company: Carlton & United Breweries
Media: Television
Date of decision: 11 February 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 the placement of Peroni and Corona (“the Products”) by Carlton & United Breweries (“the Company”) during the Channel 9 Australian Open female tennis final after-show. It arises from a complaint received on 31 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:
 - 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;
 - 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 31 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 marketing communication.

The Marketing

10. The complaint concerns the placement and consumption of the Products during the Channel 9 Australian Open female tennis final after-show. The after-show participants, including the final winner Ash Barty, are shown consuming the products.

The Complaint

11. The complainant objects to the marketing as follows:
 - *There was a large, nicely presented display of Peroni and Corona beers in the TV interview with Ash Barty who just won the tennis final. The host asked the player which beer she would like. All panel members proceeded to drink the beers, mentioning the brand names whilst doing it.*
 - *Video footage can be seen here:*
<https://twitter.com/wwos/status/1487385780393848833?s=21>
 - *I think the segment glorified and glamorised alcohol and was very deceptive if it was indeed a paid promotion. Why else are they doing it if it wasn't a paid stunt? It's poor when many children were up watching the final and Ash Barty is a role model for many girls too.*

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.
 - (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 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 confectionery or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

The Company's Response

14. The Company responded to the complaint by letter emailed on 9 February 2022. Its principal comments were:

Scope of the Code

- Carlton & United Breweries does not have a partnership or agreement with Channel 9 relating to the promotion of our products during the Australian Open broadcast.
- Peroni is the Official Beer Partner of the Australian Open. In 2021 and 2022, Peroni activated the partnership extensively onsite with a custom designed Peroni Aperitivo Bar within the Rod Laver Arena zone, as well as at venues across Melbourne and Australia. The partnership also included Peroni pouring rights at restaurants, bars and food outlets across the Australian Open Melbourne Park precinct.
- This clearly falls under the definition of Sponsorship in the code:

***Sponsorship** means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).*

- There is no provision within the terms of our agreement with the Australian Open for product placement in post-match interviews.
- Carlton & United Breweries was not aware that our brands Peroni and Corona would be depicted in this or any other post-match interview. We were not contacted by Channel 9 with respect to any reference to our brands.
- Prior Panel adjudications have clearly noted that product placement does fall within the remit of the Code. However, given there is no such product placement arrangement in place, the interview does not meet the definition of a Marketing Communication under the ABAC.

Responsible and moderate portrayal of Alcohol Beverages

- We feel it is important to note that although the representation of our brands in the interview does not meet the definition of a Marketing Communication for ABAC purposes, we strongly reject any suggestion that the interview breached Part 3(a)(ii) of the Code.

- Part 3(a)(ii) states:

A Marketing Communication must NOT 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 complainant's assertion is that the depiction of our products "glorified and glamorised alcohol". Part 3(a)(ii) of the Code is concerned with irresponsible and offensive behaviour relating to the consumption or presence of alcohol. Many Australians enjoy drinking beer responsibly, and we reject the notion that depicting panelists taking moderate sips of beer on television in any way constitutes irresponsible or offensive behaviour.

Responsibility toward Minors

- Again, we note that the representation of our brands in the interview does not meet the definition of a Marketing Communication for ABAC purposes, however, for completeness, the ABAC defines Strong or Evident Appeal to Minors as:
 - (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.*
- Definitions (iv) and (v) are clearly irrelevant in this instance. In relation to definition (ii), we also note that the depiction of alcoholic beverages occurred during a post-match interview after 9.30pm on a Saturday evening, that is, at a time when beer advertisements can be shown on TV as per the Commercial Television Industry Code of Practice.
- In relation to definitions (i) and (iii), Ash Barty is a great sportswoman who is an inspiration to many Australians of all ages. We do not accept that Ash Barty's appeal is solely limited to minors or is greater among underage tennis fans than the general population of adult Australians who watch and enjoy sport.

- Finally, we note that Channel 9 presented Ash Barty with a selection of beers with the context that she had abstained from drinking alcohol during her preparation for the tournament. Ash Barty is clearly a moderate and responsible consumer of alcohol, and we congratulate her on her well-deserved Australian Open success.
- 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. In 2022 Ms Ash Barty became the first Australian player to win an Australian Open tennis championship for over 40 years. Following her success, Ms Barty was interviewed by several commentators from the 9 Network, including Ms Barty's former doubles partner. The interview was broadcast live to air on Saturday 29 January at approximately 9:45 pm.
16. The interview occurred in the 9 Network studio located at the Rod Laver Arena. On the desk of the studio set was a large metal bowl which contained several bottles of beer. The commentators during the interview offered Ms Barty a bottle of beer and then each of the participants partially consumed the beer. It was this element of the interview that has drawn the complaint.
17. The complainant found the insertion of alcohol into the interview 'glorified and glamorised alcohol' and was 'deceptive if it was paid promotion.' It was noted that Ms Barty is a role model and many minors would have been watching the interview. These concerns potentially raise ABAC standards of good alcohol marketing practice, if in fact the inclusion of alcohol into the interview amounts to making the interview an alcohol marketing communication.
18. Not every reference to alcohol in everyday life is 'alcohol marketing'. In fact, the vast majority of references to alcohol in private conversations, or in private social media posts will not be alcohol marketing. Equally, depictions of alcohol use in literature or in movies or in TV dramas are also not usually alcohol marketing. What makes a reference to alcohol an 'alcohol marketing communication' is a discernible link to an alcohol marketer that can be said to mean that the marketer either caused the reference to occur or gave the marketer a reasonable measure of control over the way its alcohol product was portrayed.

19. In the case of TV broadcasts, distinguishing an 'alcohol ad' from surrounding program content is usually self evident - ie the scheduled program is interrupted and a series of distinct advertisements are seen, after which the scheduled program resumes. But marketing can take a more organic form that is not readily distinguished from the content of a program. This 'surrogate marketing' can take the form of a product placement in which a recognised brand is seen in ostensibly independent material. For instance, the famous 'shaken not stirred' vodka martini of the James Bond movies is made with a recognised vodka brand, and this product identification arose because of a commercial relationship between the film producer and the alcohol company.
20. In the 9 Network Barty interview, the beer offered to Ms Barty and then consumed by the participants is identified by brand name. From this the complainant, not unreasonably, sees an implication that the beer was introduced into the interview through a commercial relationship between the Company and the 9 Network. If this is the case, then the interview might be subject to the ABAC standards.
21. The Company explained its relationship to the Australian Open. It stated that it was 'the Official Beer Partner' of the Australian Open. For this sponsorship arrangement, the Company obtained certain things such as 'a custom designed Peroni Aperitivo Bar' at Rod Laver Arena and Peroni pouring rights in restaurants and food outlets. It's relationship did not:
 - involve the 9 Network; or
 - have any requirement that its products be referenced in post-match interviews.
22. Further, the Company advises it had no prior knowledge that its products would feature in the Ash Barty interview. The Company then goes on to argue that in any event, the depiction of alcohol in the interview was consistent with the responsible and moderate use of alcohol.
23. It is beyond the Panel's remit to conduct an investigation into how and why the alcohol products came to be offered and consumed during the interview. Based on the Company's information it is apparent that:
 - there was no direct relationship between the 9 Network and the Company, with the Company's relationship with the Australian Open arising from its commercial sponsor arrangement with Tennis Australia;
 - the Company did not arrange for its products to be used in the interview and it was unaware that the interview would feature its products; and
 - the decision to introduce alcohol into the interview was taken by 9 Network.

24. In these circumstances, the interview is not a marketing communication for ABAC purposes and hence the ABAC standards do not apply to how alcohol was portrayed in the interview. This means the Panel has no jurisdiction to make a decision on how alcohol was shown during the interview.
25. The complaint is dismissed.