



ABAC Adjudication Panel Determination No 31/22

Product: Carlton Draught
Company: CUB Pty Limited
Media: YouTube
Date of decision: 19 May 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 27 April 2022 and concerns an advertisement for Carlton Draught (“the Product”), seen during a YouTube video called “How I Cured Years of Depression Within Days (Do These 4 Things)”.
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 27 April 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 independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the advertising (Approval Number 20846 and 20894).

The Marketing





10. The complaint concerns an advertisement for Carlton Draught (“the Product”), seen during a YouTube video called “How I Cured Years of Depression Within Days (Do These 4 Things)”.
11. The advertisement can be viewed at the following link, and a brief description follows:

[Link to Carlton Draught Advertisement on YouTube](#)

The advertisement consists of a series of still photos shown as a female voice over reads the “Ode to the Pub”. Quiet, gentle music can be heard in the background.

Selection of still photos	Voice Over
	<i>To the pub, the local, the front bar, the rubbity.</i>

Selection of still photos	Voice Over
	<p><i>To the schooeys, to the sevens, to the pots, the pints, the ponies and the ponies and the dogs and to sure things and Sha Tin.</i></p>
	<p><i>To the sticky carpet and roaring fires, to the dance floor, to the cheeky beer, the quiet beer, here hold my beer.</i></p>
	<p><i>To the G & T, house white, just a light, it's quiet tonight, to in off the black.</i></p>
	<p><i>Singlets and skivvies to triple twenties.</i></p> <p><i>To the bouncer, the bussy, the licensee, to the boys, the girls, the old man, the first date, the last date, the wetting heads.</i></p>
	<p><i>To working late, to fallen mates.</i></p>

Selection of still photos	Voice Over
	<p><i>To kick it long, two dollars three songs. To the winner Trivia Newton-John. To cock rock and rock gods. To acoustic wonders wailing Wonder Wall.</i></p>
	<p><i>To last drinks, taps off, kicking on, house lights, call it a night.</i></p>
	<p><i>To leaving quietly for sake of the Neighbours.</i></p>
	<p><i>To the pub.</i></p>

The Complaints

12. The complainant is concerned about the advertising as follows:
- [The ad is a] *Montage of sentimental imagery with rousing poem voiceover designed to establish and exploit existing emotional relationships with alcohol.*
 - *The video is about depression and is being watched specifically by people who are directly or indirectly affected by depression.*
 - *The harm caused by encouraging alcoholism in a depressed cohort of viewers is significant, and increases pressure towards suicide, domestic violence and other social ills.*
 - *The advertiser has possibly even specified this cohort as a target for its alcohol advertising. This conduct is so harmful that it breaches norms of common law. I haven't read your laws or codes but if this isn't already illegal, it absolutely must become illegal.*
 - *Please understand the importance of harm reduction in alcohol advertising. Why is it even still allowed.....*

The ABAC Code

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
 - (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.
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

The Company's Response

14. The Company responded to the complaint by letter emailed on 10 May 2022. Its principal comments were:

Alcohol Advertising Pre-vetting Service Approval

- The ad received alcohol advertising pre-vetting service approval. A total of three 30” and three 60” edits of the ‘Ode to the Pub’ advertisements, for VIC/NSW and QLD markets, were submitted under application number 657/21 and approved on 2 March 2022 and 15 March 2022 with approval numbers 20846 and 20894.

Responsible and moderate portrayal of Alcohol Beverages

- The advertisement does not breach:
 - Part 3 (a)(i) of the Code by showing or encouraging the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
 - Part 3(a)(ii) of the Code by showing or encouraging irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
- The advertisement was first created in the aftermath of COVID-19 lockdowns in order to support local publicans and on-premise venues struggling with the impact of COVID-19 closures.
- All iterations of the advertisement feature images of people gathered at a variety of venues, while a voiceover narrates a series of events, occasions, and scenarios that frequently take place at a much-loved local venue. Neither the images or the script make any suggestion of excessive or rapid consumption of alcohol.
- The point of the advertisement is not to depict or glamorise the consumption of alcohol. It is an homage to the local pub, its patrons and staff, and a celebration of the sense of community and camaraderie that often exists in such venues. While alcohol is certainly consumed in pubs, the intent of this advertisement is to highlight the venues themselves as a space for community and togetherness. There is no encouragement for individuals to drink alcohol contained in the advertisement.
- We note as well that the complainant appears to have come across the video while consuming YouTube content targeted towards people with depression. We agree that it is not appropriate for alcohol ads to feature on such content, which is why we apply exclusions to all CUB campaigns running on YouTube.

- I can confirm that for the Ode to the Pub media buy all ads were targeted to users aged 18+, and as with all campaigns, both 'Mental Health' and 'Mental Health > Depression' are categories that we actively exclude.
- However, these exclusions rely on the content being tagged/categorised correctly by content creators and by YouTube in order for them to be accurate. It appears that this content has been miscategorised, and as a result the complainant has inadvertently had the ad served to them.

Responsible depiction of the effects of alcohol

- The advertisement does not breach Part 3©(iv) of the Code by suggesting that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.
- The advertisement certainly draws on nostalgia for the shared experience and culture of the Australian pub, but a reasonable person could not conclude that the advertisement is inducing the viewer to attend a venue and drink alcohol in order to improve their mood. The advertisement evokes a range of experiences that occur at the pub, but it does not suggest, explicitly or implicitly, that going to the pub and drinking alcohol will result in the viewer having a positive experience.

Concluding comments

- 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

Introduction and context

15. In March 2022 the Company launched a post Covid lockdown campaign stated to have the aim of supporting the local pub. It was contended that many pubs were family businesses that had experienced hardship due to Covid restrictions. A centrepiece of the campaign was an advertisement used both on television and social media platforms entitled 'Ode to the Pub'. It is this ad accessed by the complainant on YouTube which has drawn the complaint.
16. The ad aims to invoke nostalgic memories of experiences viewers might have of attending a pub with the intent to rekindle customers' interest in going to a pub.

The format is a series of photographs, some black and white and some colour accompanied by the poet and performance artist Flessy Malay reciting the Ode to the Pub. The images and the poem reference experiences such as attending a live band, being on a date, playing a game of pool, watching racing on TV screens and drinking with friends. Physical features of pubs and stereotypical characters encountered in a pub such as a bouncer, and an old man drinking are referenced. Alcohol consumption is shown, although largely incidentally, as well as some Company branding.

17. The complainant was served the ad while viewing a video on YouTube. The video was entitled 'How I cured years of depression within days (Do these four things)' and was from Mr Jimmy Corsetti. A brief internet search indicated Mr Corsetti is an 'independent researcher, former theft/fraud investigator and US army veteran who makes videos related to ancient mysteries, conspiracies and the cosmos'. The video dealing with his experience with depression appears to be unrelated to the majority of videos made by Mr Corsetti and possibly was included as a result of the complainant searching for videos dealing with depression as opposed to videos from Mr Corsetti as such.
18. The complainant's concerns are two levels. Firstly, it is argued that the content of the ad through using sentimental imagery with a rousing voiceover establishes, and exploits existing, emotional relationships with alcohol. Secondly, it is contended that the placement of the ad with a video about depression means that the ad will be seen by people struggling with depression and could encourage the use of alcohol to cope with the condition and even alcoholism. The complainant speculates that people dealing with depression could be a target for alcohol advertising.
19. The nature of the complaint raises the question of how the ABAC deals with alcohol marketing and vulnerable people. This in turn goes to both the ABAC content standards and the placement rules. Both aspects will be reviewed to assess if the Company's advertisement and its placement on YouTube have breached ABAC requirements.

Background and policy context

20. In a recent decision - Determination 26 & 28/22 - the Panel provided a detailed explanation of how the regulatory regime applying to alcohol marketing treats vulnerable communities and individuals. This detail will not be repeated but the most salient points include:
 - Public policy such as the National Alcohol Strategy accepts that while alcohol is a lawful product, its misuse causes great social, health and economic harm.

- Overall alcohol consumption levels are decreasing but some communities and contexts witness higher levels of alcohol related harm compared to the population as a whole. People with co-occurring mental health conditions such as depression are recognised as individuals at risk.
- Public policy seeks to minimise the risk of harmful alcohol use and it is recognised that alcohol marketing is a factor potentially contributing to risky alcohol use. Hence, marketing should meet regulatory requirements to minimise this risk.
- The regulation of alcohol marketing is a shared responsibility with government regulators, such as liquor licensing authorities and self-regulation initiatives such as the ABAC Scheme each playing a part.
- Express regulatory obligations on alcohol marketers are not specifically directed to at risk groups and communities (beyond under 18-year-olds) but are generally directed at alcohol related behaviours eg excessive consumption, and drink driving or depictions about the impact of alcohol e.g. suggesting alcohol is needed for success in life or alcohol offers a health benefit.

ABAC and co-occurring mental health conditions such as depression

21. As mentioned, the ABAC Scheme is one component within a lattice of alcohol regulation. The ABAC consists of standards that go to the content of alcohol marketing and, since 2017, placement rules that seek to limit the exposure of minors to alcohol marketing irrespective of the content of the marketing.
22. The ABAC contains express provisions that reflect minors are an 'at risk' group in relation to alcohol related harm. Part 3 (b) of the Code is entitled 'Responsibility towards Minors' and provides that the content of alcohol marketing must not have strong or evident appeal to minors. Also minors and young adults under the age of 25 are generally not to appear in alcohol advertisements. The ABAC Placement Rules endeavour to limit the exposure of minors to alcohol marketing including the requirement that age restrictions controls be used when marketing is carried over digital media platforms such as YouTube.
23. In contrast the ABAC does not expressly refer to any other 'at risk' group. Rather the Code has provisions about the responsible and moderate portrayal of alcohol beverages (Part 3 (a)), responsible depiction of the effects of alcohol (Part 3 (c)), and alcohol and safety (Part 3 (d)). The Placement Rules are directed only at minors.
24. This means there is no express ABAC standard directed towards marketing and people with co-occurring mental health conditions such as depression. Rather the more generally framed standards apply, namely alcohol marketing must not:

- Encourage the misuse or abuse of alcohol (Part 3 (a)(i)).
 - Encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol (Part 3 (a)(ii)).
 - Suggest that the consumption of alcohol may create or contribute to a significant change in mood or environment (Part 3 (c)(i)).
 - Suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation (Part 3 (c)(iv)).
25. The lack of express standards going to alcohol marketing and responsibility towards persons experiencing depression does not mean it is acceptable for alcohol marketers to 'target' people with depression. For instance, if an alcohol ad can be fairly understood as seeking to encourage a person to use alcohol to cope with depression, the ad would be encouraging the misuse or abuse of alcohol (in breach of Part 3 (a)(i)) or suggesting alcohol consumption creates a significant change in mood (in breach of Part 3 (c)(i)) or suggesting alcohol consumption offers a therapeutic benefit (in breach of Part 3 (c)(iv)) depending on the nature and messaging of the ad.
26. The benchmark for assessing the consistency of an alcohol marketing communication with an ABAC standard as required by Part 5 of the ABAC is the probable understanding of the marketing item by a 'reasonable person'. This benchmark seeks to align the understanding of the Code with commonly held values, opinions and life experiences, or in other words, prevailing community standards. This means the test is not from the standpoint of a person who holds individual views or particular sensitivities (even if entirely understandable at an individual level) but not shared by a majority of the community.

Does the advertisement breach the ABAC standards

27. The complainant submits that the ad has strong resonance for a person dealing with depression arising from how the ad positions alcohol and from its insertion in a YouTube video covering the subject of coping with depression. With regards to the content of the advertisement, the Company argues that:
- Neither the images or the script make any suggestion of excessive or rapid consumption of alcohol.
 - The point of the advertisement is not to depict or glamorise the consumption of alcohol. It is an homage to the local pub, its patrons and staff, and a celebration of the sense of community and camaraderie that often exists in such venues.

- While alcohol is certainly consumed in pubs, the intent of this advertisement is to highlight the venues themselves as a space for community and togetherness.
- There is no encouragement for individuals to drink alcohol contained in the advertisement.
- The advertisement certainly draws on nostalgia for the shared experience and culture of the Australian pub, but a reasonable person could not conclude that the advertisement is inducing the viewer to attend a venue and drink alcohol in order to improve their mood.

28. The Panel does not believe the ad breaches the ABAC content standards. In reaching this conclusion the Panel noted:

- Marketing communications such as a TV ad or an ad placed on a social media platform must be assessed on its own content. It is not open to take differing interpretations of an ad because it is seen with say a drama or a sports broadcast or a documentary.
- The theme of the ad is to invoke fond reminiscences of experiences in a pub. The ad aims to be emotionally rousing, but this is not a breach of the ABAC unless the ad would be understood by a reasonable person as portraying alcohol use or the effects of alcohol in a manner inconsistent with a Code standard.
- While alcohol consumption is a component of many experiences at a pub, the ad shows alcohol use as a secondary element to the primary purpose of promoting the 'pub' as a venue for various entertainments and life experiences.
- Alcohol use is not shown irresponsibly e.g. no excessive consumption is depicted or implied, nor is alcohol related anti-social behaviours suggested.
- A reasonable person would not understand the ad as suggesting alcohol use is an appropriate response to dealing with depression

29. As explained earlier, the ABAC Placement Rules are aimed to limit the exposure of minors to alcohol marketing. The rules do not go to alcohol marketing and other potentially at-risk groups or individuals. The Company advised that it applies exclusions to campaigns running on YouTube so that advertisements are not shown during videos tagged as being in the 'Mental Health' and 'Depression' categories. The effectiveness of the exclusions depends on the categorisation of YouTube content by the platform. In the case of the video from Mr Corsetti with which the complainant was served with the ad, the Company suggests the content

may have been miscategorised. In any event, the placement of the ad with the Corsetti video is not a breach of the Placement Rules.

30. The Panel does not doubt that the complainant's concern is genuine and that persons dealing with mental conditions such as depression using alcohol as a harmful form of self-medication is a very real issue in the Australian community. The complainant's view that alcohol marketing should not be permitted is ultimately a matter for governments to determine and is well beyond the remit given to the Panel.

Options for a YouTube user to limit exposure to alcohol marketing

31. The advertisement identified by the complainant was conveyed by the YouTube social media platform. While not a complete answer, there are steps a holder of a YouTube account can take to limit, if not exclude, alcohol advertising from being served to them while using the platform.
32. An account holder can apply settings on their account to see 'fewer ads' of particular categories including gambling and alcohol. While Google - the owner of YouTube - does not guarantee that the use of the settings will mean no alcohol ads will ever be seen, it does advise that the number should be very limited and possibly only in incidental circumstances e.g. an airline ad showing someone drinking a glass of champagne. A link to instructions to apply the settings is:

<https://support.google.com/ads/answer/10261289?hl=en>
33. In raising this option, the Panel is not suggesting that the primary obligation to market responsibly imposed on alcohol companies should be in any way diminished. Marketers must always operate consistently with their formal regulatory requirements and be conscious of their social license to adopt practices that minimise the risk of harm from alcohol misuse.
34. The complaint is dismissed.