



ABAC Adjudication Panel Determination No 121/22

Product: VB
Company: Carlton United Breweries
Media: T-shirt
Date of decision: 4 January 2023
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 13 December 2022 and concerns the representation of VB (“the Product”) by Carlton United Breweries (“the Company”) on a t-shirt.
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 13 December 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 product packaging.

The Marketing Communication

10. The complaint relates to representation of the Product by the Company as shown below:



The Complaint

11. The complainant objects to the marketing as follows:
- *The Santa Claus character has a very strong appeal to minors.*
 - *The CUB product Victoria Bitter can is dressed up as a kid.*
 - *Says clearly on the advert that Trademark owned by and used with the permission of CUB Pty Ltd.*
 - *The T-Shirt also has the Victoria Bitter logo.*

The ABAC Code

12. Part 2 (a) of the ABAC Code provides that:

The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

...

- Marketing Collateral

...

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:

Marketing Collateral means material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

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 Minors 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.

The Company's Response

15. The Company responded to the complaint by letter emailed on 22 December 2022. The principal comments made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communication referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.

CUB involvement with the Product

- The t-shirt is not manufactured or caused to be manufactured by CUB.
- CUB has a licensing agreement in place with Uncle Reco.
- Designs are submitted by Uncle Reco to our brand licensing team, and should then be forwarded to our internal sales and marketing compliance committee for approval.
- We have investigated this matter and have discovered that the proper internal approval process was not followed correctly. This design is clearly inappropriate and would not have been approved if it had gone through the correct internal approvals process.
- As soon as we received this complaint and realised the error the product was pulled from sale and destroyed, and all references to it have been removed from Uncle Reco social channels.
- We agree this is a brand extension to a non-alcohol beverage product and we agree that VB branding should be portrayed in a manner consistent with the ABAC.

Responsibility toward Minors

- As per our responses above, we do not believe this product meets our requirements under Part 3(b)(i) of the Code, and as a result it has been removed from sale and destroyed.

Concluding comment

- Carlton & United Breweries is committed to ensuring our promotional and marketing material does not appeal to minors. 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. We regret that this product has slipped through our usually robust approvals process and we thank both the complainant and the ABAC for bringing it to our attention.

The Panel's View

16. This determination arises from a complaint about the stylised portrayal of cans of VB on a t-shirt sold by the vintage and pop culture clothing distributor Uncle Reco. On the back of the t-shirt is an illustrated scene showing:
 - a can of VB portrayed as Santa, with arms, legs, a bearded face and wearing a Santa hat;
 - a can of VB portrayed as a child sitting on Santa's knee, with arms legs and a face;
 - the well-known VB taglines, "You can get it sittin'" and "for a hard earned thirst"; and
 - the VB and Uncle Reco logos.
17. The complainant is concerned that the t-shirt, as an alcohol advertising medium used by CUB, has a very strong appeal to minors.
18. Uncle Reco is not an alcohol industry participant and is not within the scope of the ABAC Scheme. For the t-shirt to be within the remit of the ABAC provisions, it must be an "alcohol marketing communication" for ABAC purposes. In essence, this means that CUB must have reasonable control over the placement of VB images and the VB logo on the shirts.
19. The Company has confirmed that it has a licensing agreement with Uncle Reco which gives it control over how its brand is used. As a result, the t-shirt is an example of marketing collateral and falls with the ABAC Scheme. Accordingly, the Panel can make a decision on the substance of the complaint.
20. The concern raised by the complainant invites consideration of the Code standard that an alcohol marketing communication must not have strong or evident appeal to minors - Part 3 (b)(i).
21. Alcohol marketing might have strong appeal to minors if it:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.

22. The benchmark applied when assessing if an ABAC standard has been satisfied is the “reasonable person” test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.
23. The Company accepts that the t-shirt imagery does not meet the Part 3 (b)(i) standard. It advised due to an error the t-shirt design was not subjected to its proper approval processes. Upon becoming aware of the mistake, the Company acted quickly to have the t-shirt removed from sale and stocks destroyed.
24. The Panel agrees that the t-shirt breaches the Part 3 (b) standard. In reaching this conclusion the Panel noted:
 - the anthropomorphised cans of VB, with arms, legs and faces, would appeal to children;
 - sitting on Santa’s knee is an experience that children would find relatable; and
 - taken as a whole, a reasonable person would assess the t-shirt’s overall impact as having strong or evident appeal to minors.
25. The complaint is upheld.