



ABAC Adjudication Panel Determination No 125/22

Product: VB
Company: Carlton United Breweries
Media: Instagram
Date of decision: 9 January 2023
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”) arises from a complaint received on 21 December 2022 and concerns Instagram advertising for VB (“the Product”) by Carlton United Breweries (“the Company”).
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 21 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 sought for the marketing.

The Marketing Communication

10. The complaint relates to the following post made to the Company's Instagram account:



The Complaint

11. The complainant objects to the marketing as follows:
 - *The advertisement shows a man triumphantly skulling a VB can in front of a tower of VB cans which are all empty and have been drunk.*
 - *A Beer Brand like VB that contributes significantly and is the root cause to the misuse and abuse of alcohol should be phasing out its 'David Boon' era advertising.*
 - *This advertisement is a breach of 3 (a) (i) of the code as it does not state if the man drank the beers in the Christmas tree as per Alcohol Consumption guidelines. 204 Cans + the one he is consuming seems a lot for one person.*

The ABAC Code

12. 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;.

The Company's Response

13. 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 Instagram post did not receive alcohol advertising pre-vetting service approval.

Responsible and moderate portrayal of Alcohol Beverages

- The angle at which the person is holding the can of beer to their mouth does not indicate that they are skulling the contents. The person is clearly striking a pose to highlight the quantity of branded merchandise they have managed to fit into a single image, and the angle of the can is consistent with the posed quality of the photo.
- It is an extreme stretch of the imagination to suggest that a still photograph of a person holding a VB can to their lips depicts skulling, given the absence of any clear indicators of rapid consumption.

- The person is not posing triumphantly as if they have accomplished the task of drinking an excessive amount of alcohol so they can create a Christmas tree from the empty cans. ABAC has determined on several occasions (for example, in decisions 158/21 and 117/15), that it is not a breach of Part 3 (a)(i) of the Code to show a quantity of cans with no other cues to indicate they have been rapidly consumed. It is entirely reasonable to assume the cans have been collected over a period of time, possibly by multiple individuals or members of a household, in order to construct the Christmas tree.
- The subject of the photo is clearly a VB fan given his collection of branded merchandise, and a reasonable person would assume he had collected the cans over some time to create this object. Likewise, if his pose is read as triumphant instead of merely exaggerated in order to better depict the branded merchandise, there is nothing in the image that suggests he is triumphant as a result of excessive or rapid consumption. He seems proud of his Christmas tree creation, but it does not strictly follow that he is proud as a result of consuming beer.
- Carlton & United Breweries is committed to ensuring our promotional and marketing material does not promote or encourage the irresponsible consumption of alcohol. Our goal is always for consumers to enjoy our products responsibly and in moderation.

The Panel's View

14. This determination arises from a complaint about a VB Instagram post which shows a man kneeling in front of a Christmas tree constructed using opened and presumably empty VB cans, including a gold can at the very top. The man is holding a can of VB to his mouth and is presumably consuming the product.
15. The complainant claims the man is sculling the beer and that the number of empty cans in the tree indicates excessive consumption beyond that recommended in the Australian Alcohol Guidelines has occurred.
16. In response to the complaint, the advertiser has advised that:
 - the angle at which the person is holding the can of beer to their mouth does not indicate that they are sculling the contents. The person is clearly striking a pose to highlight the quantity of branded merchandise they have managed to fit into a single image, and the angle of the can is consistent with the posed quality of the photo;

- it is an extreme stretch of the imagination to suggest that a still photograph of a person holding a VB can to their lips depicts sculling, given the absence of any clear indicators of rapid consumption; and
 - it is entirely reasonable to assume the cans have been collected over a period of time, possibly by multiple individuals or members of a household, in order to construct the Christmas tree.
17. The complainant's concern about the Instagram post raises Part 3 (a)(i) of the Code. This standard provides that a marketing communication must not 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.
18. The assessment of the consistency of a marketing item with a Code standard is based on how a reasonable person would probably understand the marketing. This means that the benchmark is the values, opinions and life experience likely shared by most members of the community.
19. While the interpretation placed on the post by the complainant is not farfetched, on balance the Panel does not believe that the Part 3 (a)(i) has been breached. In reaching this conclusion the Panel considered that:
- the photo is clearly staged, with the man adopting an exaggerated pose for the camera;
 - the man does not appear intoxicated, he is able to maintain his balance and is neatly dressed and composed;
 - it is not possible to conclude the man is rapidly consuming the beer from the photograph; and
 - the careful placement of the cans in the shape of a Christmas tree implies a level of creativity, co-ordination and concentration which is not consistent with excessive or rapid consumption.
20. Further the large number of cans in the tree is most likely to be understood as a Christmas themed novelty, more than evidence that the man has consumed excessively. Alcohol has a long shelf life, and a carton of beer (the base of the tree) can be consumed over a long period or by multiple people. It doesn't imply binge drinking.
21. The complaint is dismissed.