



## ABAC Adjudication Panel Determination No 6/23

**Product:** VB  
**Company:** Carlton United Breweries  
**Media:** T-shirts  
**Date of decision:** 23 January 2023  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 6 January 2023 and concerns the representation of VB (“the Product”) by Carlton United Breweries (“the Company”) on two t-shirts.
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 6 January 2023.
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.

### 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:

- *Aimed at minors.*
- *Also, I don't think an open can of VB while mowing lawns is a good idea or should be promoted. Mowing a lawn is a highly dangerous activity.*

## 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;

(d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

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 19 January 2023. 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.

### Responsibility toward Minors

- The t-shirts do not breach Part 3(b)(i) of the Code by having strong or evident appeal to minors.
- As per the ABAC, Strong or Evident Appeal to Minors is defined 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 confectionery or soft drinks; or*
  - (v) *using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors*
- We reject the suggestion that playing or watching cricket is a more appealing activity for minors than it is for adults, noting that ABAC has [previously determined](#) that the acts of [watching cricket](#) or [playing backyard cricket](#) have broad appeal to a wide range of Australians and cannot be considered *per se* activities that have specific appeal to minors.

- With respect to the illustrated can character, we do not believe this character holds appeal to minors. We agreed that the Santa and child characters were engaged in an activity that was relatable to minors and held specific appeal for minors, namely visiting Santa to request gifts ahead of Christmas – an activity that is undertaken exclusively by minors – however we do not agree that the cricket-playing character or the lawn-mowing character are characterised by the same issue. As discussed, playing cricket is an activity enjoyed by many Australians of all ages, and mowing the lawn is a household chore commonly undertaken by adults.
- Illustration and anthropomorphism, as [demonstrated by numerous ABAC decisions](#), is not an automatic indicator of appeal to minors, as adults are also frequent consumers of illustrated media. In our view, the adult activities depicted and the extremely clear reference to one of Australia’s best-known beer advertisements takes this illustration firmly into the category of media produced for an adult audience, and seriously limits its appeal to minors.

### **Safety**

- The t-shirt with the tagline “You Can Get It Mowin” does not breach Part 3(d) of the Code by showing (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination.
- The tagline is a very clear reference to the iconic 1968 VB ‘Big Cold Beer’ commercial where enjoying a VB is presented as a [celebration of a job well done](#). That advertisement (and each subsequent iteration or variation of it) is very clearly constructed to show consumption occurring after the activity.
- As the shirt is referencing what is arguably one of the most iconic Australian advertisements of all time, and the character is not depicted consuming the beverage while engaged in the activity, we are confident that the average consumer understands that any potential consumption of VB should take place after mowing activity has concluded.

### **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.

## The Panel's View

### Introduction

16. This is the second determination to consider the stylised portrayal of cans of VB on t-shirts sold by the vintage and pop culture clothing distributor Uncle Reco. In Determination 121/22 dated 4 January 2023 the Panel considered a Christmas themed t-shirt that showed a 'child' VB can sitting on the lap of a 'Santa' VB can. The Panel found that the t-shirt was in breach of Part 3 (b) of the ABAC as it had strong or evident appeal to minors.
17. On this occasion the complaint concerns two further t-shirts in the Uncle Reco's VB range. The back of each t-shirt shows the well-known VB tagline 'for a hard earned thirst' along with the VB and Uncle Reco logos. The first t-shirt shows an illustrated scene of an opened can of VB with a face, arms and legs, wiping its brow as it pushes a mower with the tagline, 'You can get it mowin''. On the back of the second t-shirt is an illustrated scene showing a can of VB with a face, arms and legs, wearing a hat and shin pads, hitting a cricket ball. The tagline 'You can get it hitting a six' is included.
18. The complaint about these two t-shirts is based on an extrapolation of the reasoning in Determination 121/22. It is contended as the t-shirt images use anthropomorphised cans of VB then the images will also have strong appeal to minors and be in breach of the ABAC standard. A second concern is also raised, namely of associating the product with the dangerous activity of using a lawn mower.
19. With respect, the complainant's extrapolation that the earlier Determination means all t-shirts using anthropomorphised cans of VB will have strong appeal to minors, is misplaced. Firstly, the Panel always assesses each alcohol marketing communication about which a complaint is received on its own merits. Secondly, the reasoning in Determination 121/22 relied on several factors and not simply the anthropomorphised cans. Importantly the earlier case noted the Christmas scene of a child sitting on the lap on a Santa would resonate with minors.
20. This means the Panel cannot automatically extend its earlier decision to all VB t-shirts and is obliged to assess afresh the t-shirts against the two Code standards raised by the complaint. These standards require that an alcohol marketing communication must not:
  - have strong or evident appeal to minors - Part 3 (b)(i);
  - show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination - Part 3 (d).

21. 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.

### **Appeal to Minors**

22. 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.
23. The Company argues that the t-shirt imagery meets the Part 3 (b)(i) standard. It is contended that the t-shirts show scenes either not appealing to minors (lawnmowing) or not more appealing to minors than it is to adults (cricket). Further it is submitted that illustration and anthropomorphism is not an automatic indicator of appeal to minors, as adults are also frequent consumers of illustrated media.
24. The Panel does not believe that the t-shirts breach the Part 3 (b) standard. In reaching this conclusion the Panel noted:
- the anthropomorphised cans of VB are portrayed as adult (not a child as was the case in Determination 121/22);
  - lawnmowing would not likely appeal to minors and is generally regarded as an adult activity;
  - cricket has appeal across age groups including but by no means exclusively minors;
  - the VB 'hard earned thirst' slogan would resonate with adults, most likely older males and not strongly with minors; and
  - taken as a whole, a reasonable person would regard the potential appeal to minors as incidental and not strong or evident.



## Safety

25. Part 3 (d) of the ABAC provides that an alcohol marketing communication must not show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical coordination.
26. The policy intent of the Part 3 (d) standard is that alcohol marketing should not model alcohol consumption before or in conjunction with activities that are inherently dangerous such as driving a motor vehicle. This is because alcohol impacts on a person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.
27. In response to the complaint, the Company asserts that:
  - the character is not shown consuming alcohol; and
  - the t-shirt's taglines of 'You can get it mowin'' and 'for a hard earned thirst' would be recognised as referring to VB's ubiquitous advertisements reciting the ways in which the viewer can build up a hard earned thirst.
  - it is contended that this long running and widely known advertising method and style clearly positions the consumption of beer as occurring after the referenced activity has concluded, and that the viewer would apply this understanding to the t-shirts.
28. The Panel does not believe the t-shirt image breaches the Code standard. While it is accepted that care needs to be taken to use a lawnmower safely, the standard does not prohibit alcohol being placed with potentially dangerous activities. What cannot be shown is alcohol consumption before or during the activity.
29. Most likely the image would be interpreted as a reference to the 'hard earned thirst' slogan and a person having a beer after the activity - once the 'thirst' has been earned by completing the task. The scene does not depict alcohol consumption and would not be likely understood as encouraging alcohol use before or during the activity.
30. The complaint is dismissed.