



ABAC Adjudication Panel Determination No 7/23

Product: Summer Shots Competition
Company: Thirsty Camel
Media: Broadcast Radio
Date of decision: 21 February 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 10 January 2023 and was triggered by a radio ad from Thirsty Camel (“the Company”) for its Summer Shots Competition (“the Competition”).
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 10 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 obtained for the competition.

The Marketing Communication

10. The complaint relates to a radio advertisement, a transcript of which is shown below:

Consider yourself an amateur Le Bron James?
Or an expert at Around the World.

Put your basketball skills to the test this summer and score up to \$50K CASH

PLUS, there are \$500 Thirsty Camel gift cards up for grabs every week.

To be in the running, shop at Thirsty Camel and enter online.

Find all the details and your local bottleshop at thirstycamel.com.au.

The Camel is Calling this summer

<Camel Sfx 3 or 1 sec>

Ends 22 Jan 23 Ts & Cs apply. Hydrate responsibly.

The Complaint

11. The complainant objects to the marketing as follows:
 - *I was in the car with my family (including my 12 yo son and 10 yo daughter) when we heard an advertisement on the radio for Thirsty Camel bottle shops and the ad piqued our attention because of a*

Basketball shooting competition they are running (our family loves Basketball).

- *The tone and focus of the advertisement and competition sounded as though it was geared towards a young audience which was my first concern. Then at the end of the radio ad instead of saying 'drink responsibly' it said 'hydrate responsibly' which to me implies that alcohol is a form of 'hydration' like water.*
- *I object to the use of 'hydrate responsibly'. I believe the ad is in breach of the ABAC Responsible Alcohol Marketing Code, Standard (c) (iv) whereby marketing communication must NOT: 'suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation'.*
- *Additionally, the Thirsty Camel basketball shooting competition advertisement that we heard on the radio sounded like they were trying to reach a young audience/families with kids and now that I have seen the competition website and imagery I am even more concerned. I believe the radio ad was designed to catch my children's attention and it succeeded. This is not in the spirit of regulations pertaining to advertising alcohol to young people.*

The ABAC Code

12. Part 2 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:

...

- Competitions

...

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors;

(c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

14. 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 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 23 January 2023. The principal comments made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- Pre Approval was given on the promotional mechanic and artwork. It was stated by the pre-vetter that:

"Summer shots' meets the ABAC standard providing the expression refers to basketball. It would be in breach of the Code if it was linked to 'doing shots'. This would constitute excessive consumption and a breach of section 3 (a)(i)".
- The radio ad did not mention any reference to consuming alcohol.

Responsibility toward Minors

- In 2021 there were approx. 2.8 times as many adults playing basketball vs children. Basketball is the fastest growing sport amongst 18+ year olds in Australia and there is no reason to think that aligning to basketball is any different to other sports such as cricket or AFL.
- James LeBron is 38 years old so we do not believe that he has a particular appeal to children.
- Thirsty Camel Bottleshops takes the responsible promotion and consumption of alcohol very seriously and this is clearly detailed on our marketing communications and website. The Summer Shots promotion has finished; however we will take learnings from this case and apply them to future activity.

The Panel's View

Introduction

16. During January 2023 the Company was conducting a basketball themed competition called Summer Shots. The competition was open to adults who had made a purchase (or at least had a purchase receipt) from one of the Company's retail outlets. The major prize was a trip to Melbourne and the chance to win cash in the Summer Shots contest of basketball skill.
17. The Company promoted the competition by way of a radio ad. It was initially the radio ad which attracted the attention of the complainant and their 12 and 10 year children. The complainant explained that all the family are keen basketball players and fans. The complainant was concerned that the ad:
 - had a tone and message that was appealing to minors;
 - used the expression 'hydrate responsibly' which gave a incorrect impression about the impact of alcohol ie that it is hydrating like water; and
 - beyond the radio ad, the competition itself was inappropriately promoted so as to appeal to minors.
18. The Summer Shots game allowed the major prize winner 45 seconds to take up to ten shots from the free throw line. The number of successful shots determined the total winnings, ranging from \$100 for not successfully making any shots, to \$50,000 for making ten successful shots. The minor prize winners received a gift card from the Company valued at \$500.
19. The complainant's concerns raise the following Code standards requiring that an alcohol marketing communication must not:
 - have strong or evident appeal to minors – Part 3 (b)(i); and
 - suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit - Part 3 (c)(iv).
20. The use of the words "Hydrate Responsibly" in the terms and conditions at the conclusion of Thirsty Camel's radio ads was recently considered in Determination 120/22 dated 19 December 2022 and will not be fully canvassed again. While the Panel did not within the context of the radio ad find the expression breached the Part 3 (c)(vi) standard, the Panel recommends that the Company cease using the phrase "hydrate responsibly" and simply use "drink responsibly".

Strong or Evident Appeal to Minors

21. The principal concern of the complainant is that the radio ad and the Summer Shots competition strongly appeals to minors. 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 assessment of the consistency of a marketing item with a Code standard is from the viewpoint of the probable understanding of the marketing by a reasonable person. A 'reasonable person' has values, opinions and life experiences shared by most of the community. A person who interprets a marketing message in a different way is not 'unreasonable', but possibly their take on the marketing would not be shared by most people.
23. The complainant's contention regarding the radio ad is based on a combination of the appeal of basketball as a sport to minors and the tone and style of the ad. There are a number of ways the popularity of a sport can be assessed - e.g., the number of participants, the number of spectators the game attracts, media coverage, attraction of sponsorship etc. Basketball is clearly a popular sport in Australia with statistics indicating overall participation at around 1 million, with youths aged 15 to 18 being the single largest cohort closely followed by young adults aged 18 to 24.
24. Accordingly, it is reasonable to believe that a competition based on a core basketball skill of taking shots from the free throw line will pique the interest of basketball fans including minors who play and follow the game. That said, basketball is by no means solely played by minors (statistics indicate three quarters of active players are adults), and the national elite leagues for men and women attract national media coverage. Equally the leagues in the USA in particular are also followed in Australia. In short, basketball has broad appeal across the Australian community.
25. The Panel does not believe either the radio ad or the competition itself can be fairly said to breach the Part 3 (b) standard. In reaching this conclusion the Panel noted:
 - the competition was open only to adults able to demonstrate that a purchase at a Company's retail outlet had been made;

- the ad is spoken by an adult male and, while upbeat in tone, is factual in nature;
- the background soundtrack consists of basketball sound effects and jaunty music that would not be more appealing to minors than it would to adults;
- the ad has no reference to minors, or any indication that the competition is open to minors;
- basketball fans would be familiar with LeBron James, and 'Around the World', but these references do not have a particular attractiveness for a minor beyond the general attractiveness they have for an adult; and
- taken as a whole, the ad and the competition would be probably understood as being directed to adult consumers of alcohol with an interest in basketball with any appeal to minors being incidental rather than strong or evident.

26. The complaint is dismissed.