



## ABAC Adjudication Panel Determination No 23/23

**Product:** Pure Blonde  
**Company:** Carlton & United Breweries  
**Media:** TV – Free to Air  
**Date of decision:** 8 March 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 31 January 2023 and concerns a television commercial for Pure Blonde (“the Product”) by Carlton & United Breweries (“the Company”). The marketing was seen on free to air television when watching Married at First Sight on Channel Nine.
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 31 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 placement of the marketing.

## The Marketing Communication

10. The complaint relates to a commercial for Pure Blonde, seen while watching “Married At First Sight” on Channel Nine.

## The Complaint

11. The complainant saw the advertising on free-to-air TV on Tuesday 31 January 2023 at 1:40pm, and objects to the marketing as:
  - *I was led to believe no alcohol ads [should be shown] during [the] day, except [during] international events.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
13. Part 6 of the ABAC Code provides that:

### Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up-to-date audience composition data, if such data is available).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.

- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

**The Company’s Response**

- 14. The Company responded to the complaint by letter emailed on 21 February 2023. The principal comments made by the Company were:

**Alcohol Advertising Pre-vetting Service Approval**

- Approval was sought under application number 601/21 and was granted on 19 October 2021 with approval number 20259.

**Responsibility Toward Minors**

- The complainant’s understanding of the watershed hours is flawed. Per the Commercial Television Industry Code of Practice:

A Commercial for Alcoholic Drinks may be broadcast ... in the M and MA15+ classification zones ... (except between 5.00 am and 6.00 am, and 7.30 pm and 8.30 pm)

The M classification zones are defined as:

School Days	7.30 pm to 6.00 am 12 noon to 3.00 pm
Weekends and School Holidays	7.30 pm to 6.00 am
Public Holidays	7.30 pm to 6.00 am

- The complainant saw the advertisement at 1.40pm on Tuesday, 31 January. This is within the M classification zone as detailed above. The placement of the advertisement is compliant with the Code.

**Ratings Data**

Given the program was viewed via free-to-air broadcast, we have provided the FTA encore (i.e. during the day), average audience for the season so far:

	Projection
Total People	134,432
P 18+	128,764
P 18+ Audience %	96%

## **Content**

- MAFS is a reality TV show where the participants are, per the name, married to strangers 'at first sight'. The broadcaster gives the following additional description of MAFS' conceptual premise:

Following Australian couples in a ground-breaking experiment as they meet for the first time at their wedding, then honeymoon, meet the in-laws and set up home, all the while getting to know one another more deeply.

- A sample of recent reporting on the program details frequent discussion of sex, disrespectful relationships, cheating scandals, revenge porn, and so on.
- Self-evidently, this is not content aimed at Minors.

## **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**

15. This determination arises from a complainant's concern that alcohol advertising was seen while watching Married at First Sight on free-to-air television during the day.
16. Married at First Sight is a reality TV program that follows the accelerated development of personal relationships between two previously unacquainted people. A number of couples are "married" in an unofficial commitment ceremony on their first meeting, and then "honeymoon" before cohabiting. Each week the program participants attend a commitment ceremony where they decide whether to continue their relationship or leave. The program first premiered on the Nine Network in 2015 and is currently in its tenth season.

### **ABAC Placement Rules**

17. The point made by the complainant is not about the content of the advertisement but the broadcast of the alcohol ad during the day. This brings into play the ABAC Placement Rules. The Rules have the policy aim

that to the extent possible alcohol advertising should be directed towards adult audiences and away from minors.

18. There are four rules which could be of relevance to the complaint namely:
- have media industry codes regulating placement been complied with - Rule 1;
  - does the media platform on which the ad appeared have age restriction controls to exclude minors, and if so, were they used - Rule 2
  - was the audience of the program with which the ad was placed in excess of 75% adult - Rule 3; and
  - can the program i.e. Married At First Sight, be regarded as being 'primarily aimed' at minors - Rule 4.

19. Rule 1 requires that all media codes applying to alcohol placement be complied with, for example, the Commercial Television Industry Code of Practice (CTICP). The CTICP regulates alcohol advertising on free to air television. It does this primarily by designating time zones during which alcohol advertising can be broadcast, as follows:

*A Commercial for Alcoholic Drinks may be broadcast at any of the following times:*

- a) *in the M and MA15+ classification zones set out in Section 2 (except between 5.00 am and 6.00 am, and 7.30 pm and 8.30 pm); and*
- b) *as an accompaniment to a Sports Program on a Weekend or a Public Holiday; and*
- c) *as an accompaniment to the broadcast of a Live Sporting Event broadcast simultaneously across more than one licence area, if one of subclauses (a) or (b) is satisfied for:*
  - i. *the licence area in which the Live Sporting Event being broadcast is held, for an event taking place in Australia;*
  - ii. *the majority of metropolitan licence areas in which the Live Sporting Event is shown, for an event taking place overseas.*

20. The CTICP provides that the following information about the M Classification zone:

***M Classification zone.*** *Subject to subclause 2.3.2(a), material that has been classified M may only be broadcast at the following times:*

- a) *School Days* *7.30 pm to 6.00 am*  
*12 noon to 3.00 pm*

- |    |                                     |                           |
|----|-------------------------------------|---------------------------|
| b) | <i>Weekends and School Holidays</i> | <i>7.30 pm to 6.00 am</i> |
| c) | <i>Public Holidays</i>              | <i>7.30 pm to 6.00 am</i> |

21. The CTICP is complicated, but broadly speaking, it permits alcohol advertising during live sporting events or at times when children would generally be expected to be in bed or at school (ie after 8:30pm and between 12 noon and 3:00pm on school days).
22. The complainant saw the advertisement on free-to-air television on Tuesday 31 January 2023 at 1:40pm. This was a school day in the area provided by the complainant's address, meaning that the CTICP permitted alcohol advertising between 12 noon and 3pm. As the advertising was seen at 1:40pm, Placement Rule 1 has not been breached.
23. The Panel notes that episodes of *Married At First Sight* are first broadcast on free-to-air TV on Sunday nights at 7pm, and Monday, Tuesday and Wednesday nights at 7:30pm. The CTICP does not permit alcohol advertising during the original broadcast on Sunday, or during the first hour when originally broadcast on weekday evenings. However, the programs are repeated during the day at a time when alcohol advertising is permitted, and this is when the complainant was watching the program and saw the advertising.
24. Rule 2 requires that age restriction controls should be used when available. Free-to-air television does not have available age restriction controls, meaning that Rule 2 has not been breached.
25. Rule 3 goes to the audience of a program. It provides that an alcohol ad may only be placed where the audience is reasonably expected to comprise at least 75% adults. It is possible to assess the 'reasonably expected' audience of TV programs through the ratings system and the Company has supplied ratings data.
26. This data shows that the audience for *Married At First Sight* when broadcast during the day comfortably exceeds the 75% adult benchmark. On this basis, Placement Rule 3 has not been breached.
27. Rule 4 goes to the content of programs and raises the question of whether *Married At First Sight* can be said to be primarily aimed at under 18 year olds. Some factors to be considered in assessing this question include:
  - the actual audience composition of a program;
  - the subject matter of the program and whether the subject matter has themes likely to predominantly appeal to children or adolescents;
  - the use of familiar children's characters or the use of children and adolescents within the program;

- the storyline and whether the complexity of the plot suggests its target audience is adult; and
- the use of language and the presence of adult themes such as violence and the portrayal of sexuality.

28. The Panel is of the view that placement of alcohol advertising with Married At First Sight would not breach Placement Rule 4 after considering that:

- the people in the show are all adults;
- the show focuses on the development of adult relationships, featuring adult language and themes;
- the show is considered adult in nature and the Panel does not believe it can be characterised as being primarily aimed at minors; and
- accordingly, Placement Rule 4 has not been breached.

29. The complaint is dismissed.