



ABAC Adjudication Panel Determination Nos 72/23 & 79/23

Products: Cellarbrations and The Bottle-O Bottle Shops
Company: Australian Liquor Marketers Pty Ltd
Media: TV – Free to air
Date of decision: 2 June 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 two complaints regarding television advertisements by Australian Liquor Marketers ('the Company'). The first complaint (72/23) relates to Cellarbrations bottle shops and was received on 27 April, while the second (79/23) relates to The Bottle-O bottle shops and was received on 12 May 2023.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 27 April and 12 May 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 marketing (approval numbers 3565 and 2376).

The Marketing Communications

10. The complaints relate to two different Company brands, Cellarbrations and The Bottle-O.

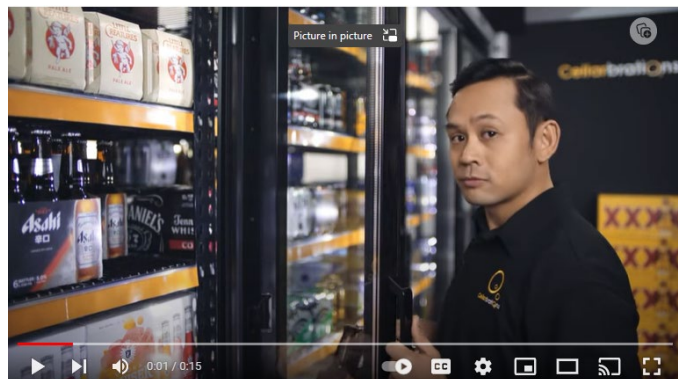
Cellarbrations

Complaint 72/23 relates to a television advertisement which can be viewed at the following link, and is summarised below:

[The right drop for a BBQ. Good shout! - YouTube](#)

The advertisement commences by showing a Cellarbrations employee opening the door of a display fridge.

He is greeted by two customers wearing fencing gear, with food skewered onto their swords. One is also wearing a cooking apron.



Customer: *“Hello. We are having a barbecue. What would you recommend?”*



Employee: *“How about a refreshing Japanese beer?”*

The employee holds up a pack of Asahi.



Customer: *“Splendid. Loser pay?”*

The customers are shown fencing.



The employee looks bemused as he uses a fridge door to shield himself from flying food.

Voice Over: *“Get the right drop for any occasion at Cellarbrations. Good shout.”*





The Bottle-O

Complaint 79/23 relates to a television advertisement which can be viewed at the following link, and is summarised below:

[Good Value Booze For Good Value People - YouTube](#)

“If I said You Had a Beautiful Body Would You Hold It Against Me” by The Bellamy Brothers plays throughout the advertisement.

The advertisement commences with footage of a man cooking on a barbecue.



The man looks into an esky containing ice and an empty Carlton Dry bottle.



The man starts walking along a suburban street, passing and waving to a couple sitting on lawn chairs and a person doing weights in their driveway.



He then picks a plastic cup with ice up off a brick wall...



... and throws it towards a wheelie bin that is being manoeuvred by a woman. The cup bounces off the side of the wheelie bin and several pieces of ice are shown falling onto the driveway. The woman waves and smiles.



The man continues walking until he reaches his destination – The Bottle-O.





The Complaint

11. The complainants object to the television advertisements as follows:

Complaint 72/23 - Cellarbrations

- *In the ad two people are fencing with swords in the bottle shop. Given that a young man was stabbed to death recently in Darwin I find it very insensitive to the 20 year old's family and the community.*
- *No edged weapon should be seen in a community, let alone a bottle shop.*
- *Insensitive to a recent stabbing of a BWS worker in recent weeks.*

Complaint 79/23 – The Bottle-O

- *Towards the end of the advert, the man picks up an empty beer bottle from a garden wall and throws it towards a lady who is wheeling a bin.*
- *The bottle smashes on the ground and the man looks contented and walks on towards the bottle shop. The lady does not appear to mind the bottle being thrown towards her and smashing on her property.*
- *This is not portraying good social behaviour and implies throwing bottles to smash them is an acceptable activity if you come across them.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage Irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage

The Company's Response

13. The Company responded to both complaints by emails on 15 May 2023. The principal comments made by the Company were:

Complaint 72/23 - Cellarbrations

Alcohol Advertising Pre-vetting Service Approval

- The marketing received ABAC pre-vetting service approval on 19.09.22 – approval number 3565.

Responsible and moderate portrayal of Alcohol Beverages

- As signatories to the ABAC code, Australian Liquor Marketers have and will always comply and market to the intent and spirit of the code. It is our view that the marketing communication referenced for banner brand Cellarbrations is also in line with the spirit and intent of the code.
- Our marketing efforts are primarily designed to engage shoppers in an attempt to drive awareness and appeal of our brands. With smaller budgets than most retail liquor brands in Australia we often use tactics to 'disrupt' the shopper to gain attention. This is a typical marketing tactic deployed by many brands.
- It is our view that our communication is a 'clearly absurd' situation that any reasonable (and unreasonable person) would also conclude to be absurd and for entertainment only. Fully dressed fencers with vegetables on fake swords to dramatize a barbeque situation would most clearly fall into the category of absurd and would not be taken as encouragement of irresponsible or offensive behaviour. Our consumer research also supports this with a strong positive reaction to the communication in question.
- It is also important to note, that when we were informed of a tragic incident in Darwin, that we (ALM) reacted swiftly, proactively and definitively. These steps included:
 - Removing 'Fencers' from NT screens; RTV (Regional TV) and BVOD (Broadcast Video on Demand);
 - Replacing Social (Facebook) cover photo and homepage banners nationally; and
 - Removing all 'Fencers' imagery from NT Meta (Facebook and Instagram) assets.

Concluding comments

- I hope you agree that:
 - we have followed the process outlined in the pre-vetting process to the T;
 - our communication is always and in this instance in line with the intent and spirit of the code; and
 - our swift actions are seen as further evidence of our intentions to always be respectful and respectful marketers within the guidelines of the code.

Complaint 79/23 – The Bottle-O

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communication referred to in the complaint received Alcohol Advertising Pre-vetting Service Approval on 23/05/22 – Approval Number 2376.

Responsible and moderate portrayal of Alcohol Beverages

- As signatories to the ABAC code, Australian Liquor Marketers have and will always comply and market to the intent and spirit of the code. It is our view that the marketing communication referenced for banner brand The Bottle-O is also in line with the spirit and intent of the code.
- In the execution referenced where a man walks from home to a store, he passes and acknowledges his neighbours in the community. The complaint referenced refers to a glass bottle being thrown and smashed. It is in fact a plastic cup with ice. The response from the woman with the wheelie bin is clearly not of shock or dismay. She clearly demonstrates a warm response of familiarity to the hero of the ad and even smiles at his failed attempt at a long range shot. We believe this re-enforces the light hearted nature of the relationship and the execution itself.

Concluding comments

- I hope you agree that;
 - we have followed the process outlined in the pre-vetting process to the T.
 - our communication is always and in this instance in line with the intent and spirit of the code.

The Panel's View

Background

14. The determination has been triggered by complaints about different ads for marketing of two of the Company's brands – Cellarbrations and The Bottle-O. The complainants are concerned about the perceived portrayal of violence and antisocial behaviour in the advertisements.
15. The relevant ABAC standard given the nature of the complaints is Part 3 (a)(ii) which provides that an alcohol marketing communication must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage. If a fair interpretation of a marketing item is that alcohol has influenced or contributed to violence or anti-social behaviour, then the marketing communication would be in breach of this standard.
16. Each of the ads will be considered against the Part 3(a)(ii) standard in turn. Assessment of the consistency of a marketing communication with an ABAC standard is from the standpoint of the probable understanding of the marketing by a reasonable person. A 'reasonable person' means that the life experiences, values, and opinions held by most of the community is the benchmark. A person who interprets a marketing item in another way is not 'unreasonable' but possibly their understanding would not be shared by most people.

Cellarbrations Advertisement – 'Fencers'

17. The complainant is concerned that the Cellarbrations advertisement shows an edged weapon in a bottle shop, particularly in light of the recent stabbing death of a BWS employee in Darwin.
18. In response to the complaint, the Company has advised that:
 - the communication is a 'clearly absurd' situation that any reasonable person would conclude was for entertainment only;
 - fully dressed fencers with vegetables on fake swords to dramatise a barbeque situation would most clearly fall into the category of absurd and would not be taken as encouragement of irresponsible or offensive behaviour; and
 - following the Darwin stabbing, the advertisement was removed from NT screens; RTV (Regional TV) and BVOD (Broadcast Video on Demand).
19. Given the tragic event in a Darwin alcohol retailer, the complainant's reaction to the ad is understandable. Against this background, the actions outlined by the Company of the ad being withdrawn from broadcast and on-line channels in the Northern Territory was completely appropriate. That said, the ad is to be

assessed against the Part 3 (a)(ii) standard not in the light of specific external events but as to how a reasonable person would probably understand the marketing item.

20. Clearly the ad is depicting an entirely fanciful scenario and a reasonable person will view it in this light. While humour will not excuse a clear breach of a Code standard, it is a relevant factor in how an ad is understood. The Panel believes the ad would not be understood as encouraging violent or anti-social behaviour. More likely the ad would be viewed as a light hearted reference to a BBQ kebab and selecting a drink to go with the food.

The Bottle-O Advertisement

21. The second complainant believes that The Bottle-O advertisement shows a man throwing a glass bottle towards a woman wheeling a bin, which then smashes on the ground. This concern also enlivens the Code standard that an alcohol marketing communication must not show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage – Part 3 (a)(ii).
22. In response, the Company argued that:
 - The complaint refers to a glass bottle being thrown and smashed. It is in fact a plastic cup with ice.
 - The response from the woman with the wheelie bin is clearly not of shock or dismay. She clearly demonstrates a warm response of familiarity to the hero of the ad and even smiles at his failed attempt at a long-range shot.
23. The key scene in the ad is when the man picks up the cup from the fence and throws it towards the wheelie bin being moved by the woman. If the ad is seen at normal speed on a small screen such as an iPhone, it is not apparent the item thrown is a plastic cup with ice, and it could be taken to be a glass bottle. When seen on a larger screen such as a laptop and certainly a television, the greater definition permits clarity that the item thrown is in fact a plastic cup with ice.
24. The Panel believes that the television ad does not breach the Code by encouraging irresponsible or offensive behaviour. In reaching this conclusion the Panel noted:
 - the esky containing ice and a single emptied beer bottle establishes that while the man has been drinking, his consumption is apparently moderate;
 - the man does not appear affected by alcohol;

- the friendly way the man acknowledges his neighbours on the walk establishes he is known to the three people he encounters including the woman;
- it is clear that the item is being thrown towards the bin, and not the woman as such;
- on a larger screen it is clear enough that the item thrown is a plastic cup with ice but it is noted that this is not as apparent if the ad is viewed on a device with a small screen;
- however, the interaction between the man and woman is warm and amicable. The woman is not portraying that an irresponsible or offensive action has occurred; and
- within the context of the ad as a whole, a reasonable person would most probably understand the throwing scene is about the man trying to land a shot into the bin and that there is no violent or aggressive intent behind the action.

25. The complaints are dismissed.