



ABAC Adjudication Panel Determination No 156/23

Product: Good Tides Seltzer
Company: Carlton & United Breweries
Media: Subscription TV
Date of decision: 13 November 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 a complaint received on 3 October 2023 in relation to marketing for Good Tides Seltzer (“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 3 October 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 content of the marketing (Approval Number 6160).

The Marketing

10. The complaint relates to both the content of the marketing having strong or evident appeal to minors and the placement of the marketing on Fox Channel 504 during a Richmond v Fremantle AFLW match.

Complaint

11. The complainant objects to the marketing as follows:
 - *Showing of this ad at this time is clearly a breach of the ABAC Responsible Alcohol Marketing Code in that it has a "Strong or Evident Appeal to Minors" and it has been placed in a time slot during the day on a public holiday when it clearly fails the Placement requirement (iii) that a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults.*

The ABAC Code

12. A new ABAC Responsible Alcohol Marketing Code commenced on 1 August 2023, with a longer transition time for placement rule (iii) and pre-existing marketing communications. As the concern is primarily placement rule (iii) the complaint will be considered under the previous Code.
13. 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.
14. 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 Response

15. The Company responded to the complaint by letter emailed on 12 October 2023. Its primary comments were:

- We note that the Panel has already considered the content of the advertisement in ABAC Determination 134/23 with the complaint dismissed on both the ABAC content standard and the Placement Rules consideration.
- The program aired on Fox Footy Channel 504 which the complainant has stated is accessed through an on-demand service. CUB has controls in place that ensure our advertisements are only shown to people over the age of 18 on BVOD and subscription services. CUB purchases BVOD advertising instances through our programmatic partner Adobe. Adobe provides the capability to access video inventory across a range of environments; CUB uses Adobe services to access inventory with the major TV networks' catch-up/streaming services in desktop/mobile/tablet environments or via connected TV. We apply 18+ targeting instructions to Adobe, ensuring our advertisements are shown to logged-in users who have positively identified they are over the age of 18.
- Notwithstanding the above, we can confirm eTAM projection data indicates 84.7% 18+ audience composition.

Standard eTAM Report : New File*

Period : 1/09/2023 - 30/09/2023

Data Types : Projection (P 18+), Projection (Total People)

Options : With Guests, Viewing > 1mins C, Consolidated 7 (Last Consolidated 26/09/2023), All Minutes

Data Source : National Subscription Panel

Markets : National

Info : R&F Apply Weighting to Seconds Viewed: ON

No Page Headings

					Projection	
					P 18+	Total People
LIVE: AFLW: RICHMOND V FREMANTLE	1	13:05:00 - 14:49:59	FOX FOOTY	29/09/2023	11,098	13,098

- As per ABAC Determination 162/21, we agree “AFL ... is a sport with broad appeal across all age groups rather than appeal aimed primarily at minors,” and we note that notwithstanding the advertisement was shown on Fox Footy, the Commercial Television Industry Code of Practice (CTICP) allows that “A Commercial for Alcoholic Drinks may be broadcast ... as an accompaniment to the broadcast of a Live Sporting Event”.
- Carlton & United Breweries is committed to ensuring our promotional and marketing material is always compliant with the ABAC Code. 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

16. This determination has arisen from a complaint about marketing for Good Tides Seltzer seen during an AFLW match watched on Fox Channel 504, an Australian subscription TV service. The concerns expressed are twofold. Firstly, it is contended that alcohol advertising should not be placed during an AFLW game during the day on a public holiday. The complainant believes the audience for the game shown at this time would comprise over 25% minors and breach the ABAC Placement Rules. Secondly, the complainant argues that the alcohol advertisement itself has a strong or evident appeal to minors.
17. The Panel previously considered the content of the advertisement in Determination 134/23. While it was acknowledged that an ad featuring well known AFL and AFLW players would be recognised by minors who follow Aussie Rules football, the Panel believed the ad was directed towards adults and would have incidental rather than strong appeal to minors.
18. Determination 134/23 also considered the ABAC Placement Rules in relation to the showing on the ad with an AFL game accessed over Kayo Sports a subscription TV streaming service. In finding that the Placement Rule had not been breached the Panel noted:

- Available age restriction controls had been applied to limit the insertion of the ad to subscribers accessing the game aged over 18;
 - ratings data demonstrate the audience for broadcast AFL games easily exceed 75% adults; and
 - while AFL is a popular Australian sport across age groups including minors, it could not be fairly concluded the broadcast of AFL games is primarily directed towards minors.
19. The new elements between the factual circumstances of Determination 134/23 and the current case is that the game was between ALFW teams not AFL teams, the day the game was shown on a public holiday and the channel showing the game was Fox Footy 504 and not Kayo Sports.
20. The ALFW is the national semi-professional women's Australian rules football competition. The competition had its first season in 2017 and currently consists of 18 teams. The ALFW has grown solidly in support through attendances and viewers of broadcast games although it is reported that TV viewership numbers had declined in 2023 compared to past seasons.
21. Working through the relevant facts:
- The advertising was seen on Fox Channel 504, a subscription TV streaming service. A Fox sports subscription via a Foxtel service is held in the name of an account holder and this account holder gives a date of birth when establishing the account. This means the Company can apply age restriction controls and it advised it did so in relation to its advertising;
 - the audience of programs accessed over a subscription service as well as broadcasts over free to air TV can be accurately tracked via the ratings system. The Company supplied the data for the Richmond v Fremantle game in which the ad was inserted and it shows the audience was 84.7% adults;
 - as a sport there is no apparent data showing ALFW is more popular with minors than AFL even if there might be some difference in the gender breakdown of fans of the sport. There is no basis to believe the sport is primarily aimed at under 18 year olds or that the broadcast of ALFW games is primarily aimed at minors; and
 - finally the fact the game was shown on a public holiday probably is not greatly significant in terms of the likely audience of minors compared to the broadcast on a weekend when most ALFW (and indeed AFL and other football codes) are played and screened.

22. Drawing this together, it is clear that the placement of the ad with the Richmond v Fremantle game shown on Fox Sports Channel 504 has not breached the ABAC Placement Rules.

23. The complaint is dismissed.