



ABAC Adjudication Panel Determination Nos 178 & 179/23

Product: Suntory -196 Double Lemon
Company: Beam Suntory
Media: Television – Free to Air
Date of decision: 13 December 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 received on 13 November 2023 in relation to television advertising for Suntory -196 (“the product”) by Beam Suntory (“the Company”), seen on Channel 7 free-to-air television during the Women’s Big Bash League (“WBBL”).
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 complaints were received on 13 November 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 4881).

The Marketing

10. The complaints relate to television advertising for the product which was seen on Channel 7 free-to-air television during the WBBL.

The following is a link to the television advertisement, and a brief summary is provided below:

[-196 Double Lemon Sumo Film - YouTube](#)

The ad commences with footage of a man looking at the camera who says:

"Is this how we make minus 196?"



The man throws a lemon into the air as two sumo wrestlers enter the scene, between whom the lemon falls.



We then see a man in a white coat, holding a transparent beaker as a quantity of yellow liquid falls into it (the implication being that the lemon has been squashed between two sumo wrestlers to produce the lemon juice).



The man is seen holding a beaker full of yellow liquid, as he turns to the screen and says:

“Are you crazy? This is how we make minus 196”



Three screens are then shown as a voice over says:

“Whole”



“Freeze”



“Crush”

The whole lemon shatters.



A voice continues:

“Extreme Japanese Spirit”, as we see a picture of – 196 Double Lemon, behind which is presumed Japanese writing. Along side the can is some more Japanese characters, together with the words “Extreme Japanese Spirit”



Complaint

11. The complainants object to the marketing as follows:

- *The product was advertised during the WBBL. This is a kid’s program. Kids should not see alcohol ads. Also, the ad looks like a soft drink ad which is aimed at kids. This is so wrong.*
- *The product was advertised consistently on ch7 women’s cricket on Sunday morning and afternoon from 9am in contravention of the tv advertising standards.*

The ABAC Code

12. ABAC is transitioning to a new Code between 1 August 2023 and 1 January 2024. Complaints received between 1 August 2023 and 31 December 2023 are considered against the [new Code](#) UNLESS the complaint relates to Part 4(c) of the revised Code OR relates to a marketing communication that has been continuously in market from 31 July 2023, with complaints meeting either of those two criteria being considered against the previous Code.
13. ABAC understands that the marketing referred to in these complaints entered the market before 1 August 2023. The complaints will therefore be considered against the [previous Code](#).

14. Part 3 (b) of the previous Code provides that a Marketing Communication must NOT:

(i) have Strong or Evident Appeal to Minors;

...

(iv) be directed at Minors through a breach of any of the Placement Rules.

15. Part 6 of the previous 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)

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 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 confectionary or soft drinks; or

- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company Response

16. The Company responded to the complaint by email on 4 December 2023. The principal comments made by the Company were:

- Beam Suntory takes its adherence to the ABAC and responsible marketing code seriously. We are active members of the ABAC, utilizing the pre-vetting service and view of the code to ensure the execution of marketing and advertising materials in line with the spirit of the code and through the eyes of a reasonable person.
- We appreciate that at this time, the reputation of the industry has been challenged by practices from other manufacturers and advertisers who have not operated and upheld the spirit of the code, which Beam Suntory does not condone.
- Beam Suntory also has its own responsible marketing code which all marketing materials must adhere. This includes but is not limited to;
 - Be directed and designed to appeal to a LDA adult audience.
 - Not depict children or portray objects and images, constructed in a way that primarily appeals to persons below LDA.
 - Not appear in sections of newspapers, magazines or other publications or programming that might specifically appeal to those under LDA.
 - Employ actors and models in advertisements, promotional materials or point-of-sale, proven to be at least 25 years of age (and reasonably appear to be LDA or older), substantiated by proper identification.
 - The production is directed and primarily appeals to an adult audience.
 - Content does not feature underage drinking, excessive drinking or other irresponsible consumption.

Responsibility toward Minors - Placement Rules

- Beam Suntory places advertising in line with alcohol advertising standards within which placement of alcohol ads is permitted in sports broadcasting – where the WBBL falls.
- The placement has also been verified against age placement thresholds supplied as per the below:

	12/11/2023	% of Total
Total People	51,242	100.0%
P 18+	48,057	93.8%

Source: eTAM (Nielsen) overnight data. Channel Seven, WBBL program minute x minute audience average.

Responsibility toward Minors – Content Rules

- The 15” Sumo spot is part of a broader communications platform and brand positioning showcasing our “Extreme Japanese Spirit”.
- The intent of this brand statement and the integrated campaign is to showcase how the brand name “-196” relates to the Suntory’s proprietary technology (Freeze Crush Infusion, or FCI™) where whole fruit is snap frozen using liquid nitrogen at -196 degrees celsius, crushed into a powder and infused in the spirit base – delivering an intense flavour hit of lemon (derived from both FCI and the addition of natural lemon juice) with no added sugar.
- The Sumo spot depicts “extreme” aspersions of “how we make minus 196”, with the intent to use a well known Japanese professional sport (Sumo Wrestling), drawing parallels between the extreme process and temperature Suntory’s proprietary FCI technology uses to deliver on our consumer promise of intensely flavourful refreshment.
- The spot itself was created with pre-vetting approval and received final approval post production. It has been designed to appeal to our target consumer, being 24-35yo males. The ad contains;
 - Adult cast members who are all +25yo in line with the ABAC code
 - Representation of a well known professional, Japanese sport which is adult in nature. Of the current active list of Japanese professional Sumo’s. The current average age of a Japanese Professional Sumo

Wrestler is 29.7 years* Source: *Current Age of Japanese Sumo Wrestlers

- Contextually relevant treatment of professional Japanese Sumo Wrestlers/competitions as one would experience in Japan
- Accents that are those of the actors, who are +25 years, in line with the code and contextually relevant in nature
- The script and language used is designed to be humorous to an LDA audience using a commonly known phrase “are you crazy” in an attempt to draw attention to the science behind our production method and brand name.
- One scene depicts a Scientist/Lab Technician (who wears a laboratory overcoat) who is, for the purposes of the scene, responsible for formulating the product. He holds in his hand a beaker commonly used in food science laboratories. It is clearly a beaker in both context and how it is positioned to camera
- The end frame shows the product can with visible the alcohol components (Shochu, Vodka) and the mixer (Soda) the ABV (6%) and “Contains alcohol” and “Drink Smart” subtext. It is clearly alcoholic in nature.
- The product is lemon flavoured – both powderised whole lemons and natural lemon juice. Importantly, the brand and the proposition do not exist as a non alcoholic/soft drink product and as such the brand is not marketed or available except for in licensed outlets which require ID.
- The product is made with a premium spirit base, Shochu and Vodka, this is unlike many soft drink forward brands in market that use Ethanol as a base.
- The taste profile is designed for LDA + palette and is bitter with no added sugar and leverages a unique premium spirit from Japan (Shochu).
- Beam Suntory is committed to the highest standards of responsible marketing practices across product, consumer marketing and communications through our own responsible marketing code, the principles of drink smart® in addition to local advertising regulations and the ABAC code. Responsible marketing of our products is at the core of our commercial purpose, and our commitment to conducting our business the right way. Beam Suntory does not produce or market alcoholic versions of non alcoholic brands.

The Panel's View

17. This determination arises from a complaint about the content of marketing for Suntory – 196 Double Lemon, as well as its placement on free-to-air television during the WBBL. The complainants' specific concerns are:
 - the product was advertised during the WBBL on Sunday morning and afternoon from 9am in contravention of television advertising standards;
 - the WBBL is a kid's program, kids should not see alcohol ads; and
 - the ad looks like a soft drink ad which is aimed at kids.
18. The ABAC Code 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.

The ABAC Placement Standards

19. The ABAC Placement Standards require that marketing be directed towards adults and to the extent possible away from minors. The standard in part 3 (b)(iv) requires that marketing must not be directed at Minors through a breach of any of the Placement Rules.
20. As a broadcast medium, it is not possible to exclude under 18-year olds from watching TV, so the ABAC rules seek to limit the exposure of advertising to minors through three stipulations on alcohol marketers namely:
 - all applicable media codes applying to alcohol advertising must be complied with i.e. the Commercial Television Industry Code of Practice (CTICP) - Placement Rule 1;
 - the advertisement may only be placed with programs where the audience is reasonably expected to comprise at least 75% adults - Placement Rule 3; and
 - the advertisement must not be placed with programs or content primarily aimed at minors - Placement Rule 4.
21. Placement Rule 1 has not been breached. This is because the CTICP, while generally restricting the broadcast of alcohol advertising to after 8:30pm, does expressly permit alcohol advertising in conjunction with the broadcast of a live sport event. This means it was permitted to show alcohol advertising with live broadcasts of the WBBL prior to 8:30 pm.

22. Placement Rule 3 establishes the 75% adult audience benchmark for the placement of alcohol marketing. Information on the audience of TV programs is available through the ratings system. The Company supplied audience data which establishes that the specific WBBL game watched by the complainants attracted an adult audience more than 90%. It is evident the placement rule benchmark of a 75% adult audience has not been breached.
23. Placement Rule 4 provides that irrespective of the actual audience, alcohol ads cannot be placed with content aimed primarily at minors. While the WBBL has appeal across age groups, including minors, its broadcast cannot be said to be aimed primarily at minors. In fact, the audience data is highly suggestive that the appeal of the WBBL was primarily to adults.

The ABAC Content Standards

24. A complainant also raised a concern that the advertising itself will appeal to children. This raises Part 3 (b)(i) of the Code, which requires that an alcohol marketing communication must not have strong or evident appeal to minors. This might occur if the marketing:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks.
25. 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.
26. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
 - the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - the illusion of a smooth transition from non-alcoholic to alcoholic beverages;

- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
27. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
28. The ad features two Japanese sumo wrestlers and speculates that the lemon juice used to flavour the product is created by squashing a lemon between them to fill a glass beaker with lemon juice. It then continues by referring to this speculation as “crazy” and describes how the lemon flavoured product is actually produced by taking a whole lemon and then freezing and crushing it.
29. The Company contends the ad is consistent with the ABAC standard, arguing that:
- the ad has been designed to appeal to our target consumer, being 24-35yo males;
 - The ad contains:
 - adult cast members who are all +25yo;
 - representation of Sumo wrestling which has an average age of 29.7 years for current wrestlers;
 - accents that are those of the actors, who are +25 years, in line with the code and contextually relevant in nature;
 - the script and language used is designed to be humorous to an adult audience using a commonly known phrase “are you crazy” in an

attempt to draw attention to the science behind our production method and brand name;

- the end frame shows the product can with visible the alcohol components (Shochu, Vodka) and the mixer (Soda) the ABV (6%) and “Contains alcohol” and “Drink Smart” subtext. It is clearly alcoholic in nature; and
- the taste profile is designed for an adult palette and is bitter with no added sugar and leverages a unique premium spirit from Japan (Shochu).

30. The Panel does not believe that the marketing breaches the Part 3 (b)(i) standard after taking the following into consideration:

- the ad features adults;
- while the ad is humorous, the humour is not directed towards minors or uses expressions or imagery regarded as highly popular with minors;
- the ad sufficiently establishes the product as being an alcohol beverage and not a soft drink; and
- at its highest any appeal to minors would be incidental rather than strong or evident.

31. The complaints are dismissed.