



ABAC Adjudication Panel Determination No 192/23

Product: -196 Double Lemon and Double Grape
Company: Beam Suntory
Media: Billboard
Date of decision: 30 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 a complaint received on 4 December 2023 in relation to a shopping centre billboard advertising Minus 196 Double Lemon and Double Grape (“the products”) by Beam Suntory (“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:
 - (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 4 December 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 7414).

The Marketing

10. The complaint relates to a billboard suspended from the ceiling of the Carindale shopping centre, in Brisbane, Queensland.





Complaint

11. The complainant objects to the marketing as follows:

- [The marketing shows] cans of brightly coloured cans of vodka, shochu and fruity flavours that can be confused with children's drinks;
- This digital advertising billboard has been placed over a Santa Land area where children are being photographed with Santa.
- They will associate the festive coloured alcohol beverage with Santa, Christmas and good times. This is not the type of conditioning we want to imprint on the children of Australia.

The ABAC Code

12. Part 3 of the ABAC Code provides that a marketing communication must NOT:

- (b)(i) have strong or evident appeal to minors, in particular;
 - (A) specifically target minors;

- (B) have a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
- (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors;
- (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors;
or
- (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by minors.

13. Part 4 of the ABAC Code provides that:

- (a) An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing and an Alcohol Alternative Marketing Communication must comply with code provisions regulating the placement of Alcohol Alternative marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).

The Company Response

14. The Company responded to the complaint by email on 18 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 Scheme, utilising the pre-vetting service and comply with the code standards to ensure the execution of marketing and advertising materials is in line with the spirit of the code and assessed through the eyes of a reasonable person.

Alcohol Advertising Pre-vetting Service Approval

- Both the advertising material and packaging referenced received pre-vetting approval and final approval prior to placement (reference 06083-2023 for the campaign images, including the one referenced in this complaint).

Placement of the Marketing

- The marketing communication referenced in this complaint complies with relevant OMA placement policy.
- Beam Suntory was alerted to this complaint on Monday 4th December at 12.48pm, and whilst this placement is compliant with both the ABAC and OMA code, Beam Suntory holds itself to the highest standards of responsible advertising and requested that the advertisement be removed immediately. This was actioned at 1.39pm on the same day.

Responsibility toward Minors

- Beam Suntory also has its own responsible marketing code which all marketing materials must adhere to. This includes but is not limited to;
 - Be directed and designed to appeal to a Legal Drinking Age (LDA) adult audience.
 - Not depict children or portray objects and images, constructed in a way that primarily appeals to persons below LDA.
 - The production is directed and primarily appeals to an adult audience.
 - Content does not feature underage drinking, excessive drinking or other irresponsible consumption.
- The creative featured shows 2 x cans of Suntory -196 product as well as branded copy. Both the advertising material featured and the product packaging featured have received pre-vetting guidance.
- The products are fruit flavoured, both lemon and grape. 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 alcoholic cues on this imagery is dominant in nature, including;
 - Primary copy references “Premix” a widely understood category abbreviation for Premixed Alcohol, or Ready to Drink product
 - Both product packaging include; the spirit base (Vodka,Shochu, Soda) and the ABV content

- “Contains Alcohol” Sign off.
- 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

Introduction

15. The Carindale shopping centre is located within the Brisbane suburb of the same name. Within the shopping centre there are electronic billboards, and this determination concerns the use of a billboard to screen an ad for – 196 Double Lemon and Double Grape. The billboard in question is suspended from the ceiling above an atrium like open space within the centre.
16. What particularly attracted the concern of the complainant is that a ‘Santa Land’ installation had been erected in the open space immediately under where the billboard is suspended from the ceiling. Santa Land appears to be a Christmas themed temporary structure where children have their photo taken with Santa.
17. The complainant raises concerns about the ad’s placement and its content. In regard to its placement, it is argued that the alcohol ad will increase the appeal of alcohol to children by conditioning them to associate alcohol with the excitement and happiness of Christmas. In regard to the content of the marketing, it is contended the ad will appeal to minors, due to showing brightly coloured cans, and fruity flavours that may create confusion with soft drinks.

The ABAC Placement Rules

18. The concern about the billboard being suspended above Santa Land brings into play the ABAC Placement Standards which have the policy aim that, to the extent possible, alcohol advertising should be directed towards adult audiences and away from minors.
19. The Placement Standards recognise that different mediums used to carry marketing have quite different technical capability to target audiences. Digital media such as social media platforms e.g. Facebook and Instagram can effectively exclude minors from receiving alcohol communications. For free to air television, there are time of day restrictions on when alcohol ads can be

shown. The ability to restrict minors from seeing ads placed on billboards is much more limited.

20. There is a restriction on alcohol ads being placed on billboards positioned within 150m sightline of a primary or secondary school. This restriction reflects that minors will be concentrated at schools in a much higher proportion than in general public places.
21. While a shopping centre is a public area, the proportion of minors likely to present at a centre in most instances will be no higher than the proportion of minors within the population as a whole. In any event, there is no ABAC Placement Standard which restricts alcohol ads being placed on signage located within shopping centres and hence the display of the ad on the billboard suspended from the ceiling is not a breach of the Code.
22. That said, it is clearly not desirable that an alcohol ad would be shown on a sign positioned above a child-heavy feature such as the Santa Land installation. It can be reasonably assumed that while the billboard is a permanent feature, the Christmas structure is short term and was probably not in contemplation when the booking of the ad on the billboard was programmed. It is noted that the Company upon receiving the complaint took immediate action to have its advertising removed from this billboard. This was the appropriate step for the Company to take and acknowledges that the complainant has raised a legitimate concern.

The ABAC Content Rules

23. The complainant's second point was 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, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; or
 - creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors;
24. 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.

25. 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.
26. 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.
27. The ad shows two cans against a yellow background, one is a can of – 196 Double Lemon and the other is a can of -196 Double Grape. Above the cans are the words ‘From Suntory’s’, in white font against a rectangle of red, and ‘No 1 Premix in Japan’ in larger black font. In the bottom right corner are what appear to be Japanese characters, followed by the words ‘Extreme Japanese Spirit’, in relatively small black font. Also, in relatively small font in the bottom left of the marketing are the words ‘Drink Smart’ and ‘Contains Alcohol’.

28. The Company contends the ad is consistent with the ABAC standard, arguing that:

- the brand and the proposition do not exist as a non-alcoholic/soft drink product;
- the product is made with a premium spirit base, Shochu and Vodka, unlike many soft drink forward brands in market that use Ethanol as a base;
- the alcoholic cues on this imagery are dominant in nature, including;
 - the use of the term 'Premix', a widely understood category abbreviation for Premixed Alcohol, or Ready to Drink product;
 - the packaging of both products includes the spirit base (Vodka, Shochu, Soda) and the ABV content; and
 - the marketing conveys that it 'Contains Alcohol'.

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

- the ad is very simple, using a single predominant background colour, and does not feature pictures, illustrations or language/expressions popular with or aimed at children;
- the products pictured do not resemble any well-known soft drink products commonly consumed by minors;
- the ad sufficiently establishes the products as being alcohol beverages and not soft drinks; and
- any appeal to minors would be incidental rather than strong or evident.

30. The complaint is dismissed.