



ABAC Adjudication Panel Determination No 21/24

Product: Suntory -196 Double Lemon
Company: Beam Suntory
Media: TV – Free to Air
Date of decision: 15 February 2024
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 29 January 2024 in relation to advertising for Suntory - 196 Double Lemon (“the product”) by Beam Suntory (“the Company”), seen when watching Gladiators on Channel 10 free to air TV.
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 29 January 2024.
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 complaints were completed in this timeframe.

Pre-vetting Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the placement of the marketing.

The Marketing Placement

10. The complaint relates to the placement of the advertisement during *Gladiators* on Channel 10 free to air TV. The complainant advised that they saw the advertisement at 8:47pm on a Sunday night.

Complaint

11. The complainant objects to the marketing as follows:
 - *This TV Ad was shown at 8.47pm last Sunday on Channel 10, during Gladiators which is a family program.*

The ABAC Code

12. Part 4 of the 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).
 - (b) Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.
 - (c) If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the

audience is reasonably expected to comprise at least 80% Adults (based on reliable, up-to-date Australian audience composition or social media follower data, if such data is available).

- (d) An Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication must not be placed with programs or content primarily aimed at Minors.

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The Company Response

13. The Company responded to the complaint by email on 31 January 2024. Its primary comments were:
 - Beam Suntory takes its adherence to the ABAC and responsible marketing code seriously. We are active members of the ABAC, utilising 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.
 - The placement of the Alcohol Marketing Communication was compliant with the ABAC Code. Under section 4 of the ABAC Code (Placement Standards), an Alcohol Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults. For the Gladiators broadcast in question, the total average audience comprised approximately 85% Adults (OzTam 5 city metro).
 - In addition, the ABAC Code requires that an Alcohol Marketing Communication comply with code provisions that have been published by Australian media industry bodies such as the Commercial Television Industry Code of Practice for commercial free-to-air television (Free TV Code). Under the Free TV Code, a commercial for alcoholic drinks may be broadcast between 8.30pm and 5.00am on any day. The advertisement in question was classified 'L' by ClearAds and broadcast on commercial free-to-air television after 8.30pm. Hence the placement complied with the ClearAds classification and the Free TV Code.
 - Furthermore, an Alcohol Marketing Communication must not be placed with programs or content primarily aimed at Minors. The advertisement was broadcast during Gladiators which Network Ten has indicated is not designated as a children's program or a program primarily aimed at Minors. The program episode was classified PG and broadcast on Channel 10 after 8.30pm.

- Audience composition data provided by media agency PHD below via eTAM reporting tool – if you require further breakdown of data it is available on request:

Standard eTAM Report	New File*		
Period	1/01/2024 - 28/01/2024		
Data Types	Projection (P 0-17), Projection (P 18+)		
Options	With Guests, Viewing > 1mins C, Consolidated 7(Last Consolidated 21/01/2024), All Minutes		
Data Source	Metro 5 City Panel plus Subscription		
Day Part Set File	20:30 - 20:59 SMTWTF5*		
Markets	Sydney, Melbourne, Brisbane, Adelaide, Perth		
Info	R&F Apply Weighting to Seconds Viewed: ON		
	Projection P 0-17	Projection P 18+	Under 18's exposure
	307,255	1,866,614	14%
	Total	2,173,869	

- Beam Suntory also has its own responsible marketing code which all marketing materials and activity must adhere. 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. We believe this advertisement has been placed in line with these codes, as viewed by a reasonable person.

The Panel's View

14. This determination arises from a complaint about the placement of a television advertisement for Suntory -196 Double Lemon on Channel 10 free-to-air TV at 8:47pm on a Sunday, during Gladiators.
15. The ABAC Placement Standards require that marketing be directed towards adults and to the extent possible away from minors. This is done by creating a cascading series of requirements linked to the technical capacity of the medium by which the marketing is carried to exclude or limit minors from seeing the marketing.
16. As a broadcast medium, it is not possible to exclude under 18-year-olds from watching free to air TV, so the ABAC standards 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) - Part 4 (a);
 - the advertisement may only be placed with programs where the audience is reasonably expected to comprise at least 80% adults - Part 4(c); and

- the advertisement must not be placed with programs or content primarily aimed at minors - Part 4(d).
17. The Part 4 (a) standard 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 linear 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.*
18. The CTICP provides the following information about the M Classification zone:
- M Classification zone.*** *Subject to sub clause 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 and 12 noon to 3.00 pm*
 - b) Weekends and School Holidays 7.30 pm to 6.00 am*
 - c) Public Holidays 7.30 pm to 6.00 am.*
19. 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 (i.e. after 8:30pm and between 12 noon and 3:00pm on school days).
20. The complainant saw the advertisement on free-to-air television at approximately 8:47pm, a time at which the CTICP permits alcohol advertising. Accordingly the Part 4 (a) standard has not been breached.

21. The Part 4 (c) standard establishes the 80% 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 Gladiators attracted an adult audience of approximately 85%. It is evident the Placement standard benchmark of an 80% adult audience has not been breached.
22. The Part 4 (d) standard provides that irrespective of the actual audience, alcohol ads cannot be placed with content aimed primarily at minors. This means the content has to do more than simply gain the interest of minors and requires the program to have minors as its primary focus. If a program is primarily focused towards adults with minors having a discernible but secondary interest in the program, then the standard will not be breached.
23. The recent iteration of the Gladiators TV series premiered on 15 January 2024 on Channel 10. It is hosted by Beau Ryan and Liz Ellis, well known for their respective successful rugby league and netball careers. The referee of the show is the former Australian Gladiator and rugby league player, Mark McGaw. The show involves permanent competitors known as "Gladiators" who compete against "Contenders" in several events designed to test both their physical and mental capabilities.
24. For the 2024 TV season, the profile of the Gladiators are as follows (the descriptions are taken from the online publication Mamamia):
 - Jett Kenny - an influencer, ironman and media personality. He is the son of ironman Grant Kenny and champion swimmer Lisa Curry, and grew up competing in professional surf lifesaving competitions before becoming a model. He's already had a few brushes with reality TV, appearing on *Australian Ninja Warrior*, *Dancing with the Stars*, and *SAS Australia*.
 - Sandor Earl - a performance director at Air Locker Training and a former NRL player from Melbourne. He has previously represented the Sydney Roosters, Penrith Panthers, Canberra Raiders, Melbourne Storm, and the New Zealand Māori teams. Sandor is known as a bit of a bad boy of the sport after being banned for four years for a doping violation in 2013.
 - Kwame Duah - a world champion bodybuilder, fitness coach and TikToker with almost 5 million followers. Hailing from Adelaide, Kwame has previously competed on *Australian Ninja Warrior*.
 - Harriet Roberts - a gymnastic coach and athlete from New Zealand and currently living on the Sunshine Coast.
 - Blessings Chilufya - an F45 training coach and influencer.

- Chanique Greyling - a stunt actor who has appeared in *Thor: Love and Thunder*, *Home and Away* and *NCIS*.
 - Damien Rider - a life coach, author, men's health worker, and athlete from Adelaide. He has previously given TED talks about his life as an endurance athlete.
 - Khan Porter - a Crossfit athlete, mental health advocate and podcaster.
 - Alethea Boon is former elite gymnast and current weightlifter with an impressive resume. Boon represented New Zealand at the Commonwealth Games in 1998 and 2002 in artistic gymnastics. In 2018, she represented the country for weightlifting. That's called range!
 - Tatyanna Dumas is a YouTuber, athlete and actor who has competed twice on *Australian Ninja Warrior*.
25. While the content of each program with which an alcohol ad is placed will always need to be assessed individually, some factors to be taken into account include:
- the actual audience of a program;
 - the theme of the program and whether it has a storyline directed towards minors;
 - the presence of minors in the program or personalities highly popular with minors e.g. entertainers or artists will a strong following amongst minors;
 - the use of violence and/or adult themes concerning sex, sexuality and nudity.
26. It would be fair to conclude that *Gladiators* will have appeal across age groups and while the show has a certain level of cartoonish violence, the program would not be considered unsuitable to minors to watch. That said, the program is not focussed towards minors and its primary market is adults. Equally the *Gladiators* have not gained their profile from activities directed towards minors. The Panel is of the view that placement of alcohol advertising with *Gladiators* would not breach Part 4 (d).
27. Drawing all this together, there has not been a breach of the ABAC Placement Standards by showing alcohol ads with *Gladiators* given:
- the CTICP has been complied with;
 - the audience for *Gladiators* fell comfortably over the 80% adult requirement; and

- Gladiators cannot be said to be primarily aimed at minors.

28. The complaint is dismissed.