



ABAC Adjudication Panel Determination Nos 5 & 10/24

Product: Carlton Dry
Company: Carlton & United Breweries
Media: Cinema
Date of decision: 13 February 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from two complaints received on 5 and 11 January 2024 in relation to cinema advertising for Carlton Dry (“the product”) by Carlton & United Breweries (“the Company”). The marketing was seen:
 - prior to the screening of “Anyone But You” at Event Cinemas at Bondi Junction on 31 December 2023 at 1:25pm; and
 - prior to the 10:30am screening of “Aquaman 2” at Event Cinemas at Burwood in January 2024.
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 is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 5 and 11 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 approval was obtained for the content of the marketing (Approval Number 6720).

The Marketing

10. The complaints relate to the content and placement of an advertisement for the product:
 - prior to the screening of “Anyone But You” at Event Cinemas at Bondi Junction on 31 December 2023 at 1:25pm; and
 - prior to the 10:30am screening of “Aquaman 2” at Event Cinemas at Burwood in January 2024.
11. The marketing may be viewed at the following link and a brief description follows:

<https://www.bing.com/videos/riverview/relatedvideo?q=youtube+drylandia&mid=17C7F67EB40B3092D6F917C7F67EB40B3092D6F9&FORM=VIRE>

The advertisement is accompanied throughout by a soundtrack of recorder-like music and chanting.

It commences with footage of 12 people riding on an elongated white horse, with the lead person holding a bottle of beer.

Voice Over (VO): *“Drink the drink of a distant land”.*



We see a close up of the person at the back who turns to the camera and says "It's a beer".



We then see a long shot of the people travelling across a landscape. There is chanting in the background:

"Drylandia. Drylandia"



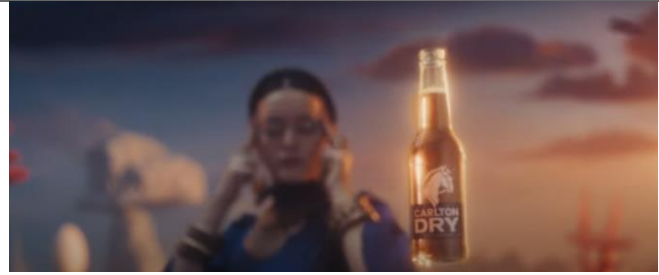
We see a plate of food slide out from the side of the elongated horse, and the person at the rear selects a piece.





The elongated horse and its riders are shown approaching and then looping through some self building arches.



We see the person at the rear of the horse seemingly use mind power to remove the lid from a floating bottle of Carlton Dry.



<p>The floating bottle of Carlton Dry then falls into the hand of the lead man, who has now alighted from the elongated horse, and he takes a drink.</p> <p>VO: “Carlton Dry. Imported from Drylandia.”</p>	
<p>The advertisement concludes by showing the surrounding landscape, superimposed with the words “Carlton Dry. Imported from Drylandia.”</p>	

Complaint

12. The complainants object to the marketing as follows

Complaint #	Concern
<p>5/24</p>	<ul style="list-style-type: none"> ● <i>I attended a movie with my teen children at 1.25pm in Event cinemas Bondi junction on 31/12/23 called “Anyone But You”.</i> ● <i>It was a MA rated romantic comedy and the cinema was full of teenagers.</i> ● <i>Prior to the movie commencing there was an advertisement for a beer - Carlton Dry.</i> ● <i>I was shocked that an alcohol advertisement could be shown to an under 18 audience.</i> ● <i>Also, I believe that the ad is an example of promotion failing to show responsibility towards minors. It appeared to try to appeal to children.</i> ● <i>Even my children commented on the strangeness of the advertisement and why it was on in a children present arena.</i>
<p>10/24</p>	<ul style="list-style-type: none"> ● <i>The ad was at 10:30am movie session at Burwood Event Cinema before “Aquaman”, which was predominantly attended by children under 18.</i>

	<ul style="list-style-type: none">• <i>I was under the impression alcohol/gambling advertising could not be shown before a certain time slot. If this does not apply to cinemas as well it seems strange to me.</i>
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The ABAC Code

13. Part 3 (b) of the Code provides that an Alcohol Marketing Communication must NOT:

- (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

14. Part 4 of the Code provides that:

- ...
- (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.
- ...

The Company Response

15. The Company responded to the complaints by letters emailed on 19 January 2024. Its primary comments were:
- Carlton & United Breweries (CUB) takes responsible advertising of alcohol seriously. We are aware of the Code requirements and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines.
 - The advertising campaign for Carlton Dry, titled "Drylandia" (as referenced in the complaint), is the culmination of extensive internal considerations and consultations with the ABAC pre-vetting service.
 - We have diligently ensured compliance with marketing code standards, particularly in avoiding any appeal to minors.
 - The intended demographic for this advertisement is unequivocally individuals aged 18 and over. CUB does not engage in marketing towards those who are not legally permitted to consume its products.

Responsibility toward Minors

- It is worth noting that the "Drylandia" campaign received pre-vetting approval from ABAC, issued under the pre-vetting number 59-2023. While this does not bind the ABAC Panel in this decision, it further demonstrates our commitment to adhering to established marketing codes and standards
- We reject the assertion made by the complainant that the campaign possesses any specific appeal to minors above that which it might have for adults. It is expressly targeted at an adult audience. The advertisement is devoid of any imagery, designs, motifs, animations, or cartoon characters that would be appealing to Minors beyond the general attractiveness it has for an Adult.
- We firmly refute the notion that the surreal realm portrayed in our campaign possesses a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult.
- The concept of "Drylandia" was created to show consumers the provenance of their beloved beer in a light-hearted way. The eccentricity of the ad was employed as a creative proposition that would appeal to Carlton Dry's adult consumers.
- In collaboration with ABAC, and in response to initial feedback concerning our depiction of a horse that bore resemblance to unicorns, we conscientiously revised our concept. The "Drylandia" horse, a computer-

generated character, was redesigned as a substantial, mature workhorse, emblematic of the Carlton Clydesdale breed, to ensure it resonated with an adult audience.

- The form of the horse is also clearly distinguishable by its ‘surreal’ extended torso from a normal horse with which Minors would be familiar (similar to ABAC determination 37/10 relating to the appeal of the Bundy Bear to minors). The horse is not behaving in the advertisement in a child-like or ‘cutesy’ manner such that the inclusion of this character is likely to increase the appeal of the advertisement to Minors, but it is rather serving a practical purpose, being to transport its riders across the "Drylandia" landscape.
- Furthermore, our casting decisions were deliberately curated to be appealing to adults. All actors are dressed in apparel that is distinctly mature: the main characters are in elegant suits and formal evening gowns, and the supporting cast in understated turtlenecks and jeans. Each actor (with the exception of the female actress wearing a formal evening gown) has their hair styled in a dramatic and more severe short-bang hairstyle. The cast members and voice over actors are also distinctly adult looking and sounding, with the narrating voices being of a deep and gravelly timbre.
- Additionally, the setting of the campaign was deliberately crafted to reduce appeal to minors. The landscape is depicted as dry and arid, removing vivid, eye-catching colours that might attract a younger demographic. The topography is closer to surreal, rather than fantastical/magical, eliminating any association with a Disney-like setting. This choice reinforces the adult-centric nature of the campaign, aligning it more with mature tastes and preferences. We believe that the "Drylandia" campaign is clearly adult in theme, with the eccentricity of the ad not shown in a manner which gives it appealing characteristics beyond the general attractiveness it would have for an Adult.

Placement Rules – “Anyone But You”

- In accordance with the ABAC media placement standards, it is our policy to only schedule alcohol advertising content in cinemas where the audience is reasonably expected to comprise at least 80% Adults.
- To understand the actual age of audiences attending, we can review logged-in audiences (Cinebuzz Members) who have purchased cinema tickets. Of the 52,197 Cinebuzz Members who have watched “Anyone But You”, P18+ account for 93% of the total attendees.
- Breakdown is as follows:

< 14 years old: 1.66%
14 – 17 years old: 5.24%
18 – 21 years old: 14.6%
22 – 29 years old: 27.6%
30 – 39 years old: 13.1%
40 – 49 years old: 15.5%
50 – 59 years old: 12.8%
60 – 64 years old: 2.9%
> 65 years old: 6.6%

(Extracted from 52,197 Cinebuzz Members who have watched "Anyone But You")

- The total percentage of minors (under 18 years old) is 6.9% (1.66% + 5.24%). This indicates 93.1% of the audience is 18 years or older, comfortably exceeding the 80% threshold for adult audiences.
- Therefore, the marketing communication does not breach the Code as the audience is reasonably expected to comprise more than 80% adults.
- We do not possess specific information about the target audience of "Anyone But You". However, in addition to the above data, we refer to the below plot summary of "Anyone But You", taken from leading cinema chain Hoyts (emphasis added):

In the comedy Anyone But You, Bea (Sydney Sweeney) and Ben (Glen Powell) look like the **perfect couple**, but after an amazing first date something happens that turns their **fiery hot attraction** ice cold — until they find themselves unexpectedly **thrust together at a destination wedding** in Australia. So they do what any two **mature adults** would do - **pretend to be a couple**.

- It is clear by this plot summary (with our highlights demonstrating the adult themes featured) that this film is aimed at adults. This is supported by the film's MA15+ Restricted rating.
- We can also infer from the age demographic data that the movie is not primarily aimed at minors. According to Cinebuzz data, the average age of the audience is 36 years, and a significant portion of the audience falls within the 22 – 59 years old range. This demographic spread suggests the

film appeals to a broad adult audience rather than being primarily targeted at minors. As such, based on the available data and audience demographics, the placement of the marketing communication did not breach Part 4 (c) or (d) of the Code on either of the grounds specified.

Placement Rules – “Aquaman and the Lost Kingdom”

- To understand the actual age of audiences attending, we can review logged-in audiences (Cinebuzz Members) who have purchased cinema tickets. Of the 69,147 Cinebuzz Members who have watched “Aquaman and the Lost Kingdom” (standard & 3D combined), P18+ make up 94% of the total attendees (breakdown below):

< 14: 3.33%

14 – 17: 2.25%

18 – 21: 5.55%

22 – 29: 16.21%

30 – 39: 22.45%

40 – 49: 27.74%

50 – 59: 13.78%

60 – 64: 3.35%

65 +: 5.37%

- The total percentage of minors (under 18 years old) is 5.58% (3.33% + 2.25%). This indicates 94.4% of the audience is 18 years or older, comfortably exceeding the 80% threshold for adult audiences.
- Therefore, the marketing communication does not breach the Code as the audience is reasonably expected to comprise more than 80% adults.
- We do not possess specific information about the target audience of “Aquaman and the Lost Kingdom”. However, “Aquaman and the Lost Kingdom” is rated (M) for Mature audiences. Movies given an (M) classification contain content of a moderate impact and are not recommended for children under the age of 15 as they include portrayals of elements such as violence and themes that require a mature outlook.
- The plot involves darker, adult themes, which when combined with the M rating, indicates that the film is primarily aimed at a mature audience. We

can also infer from the age demographic data that the movie is not aimed at minors.

- According to Cinebuzz data, the average age of the audience is 40 years, and a significant portion of the audience falls within the 30 – 49 years old range (over 50%).
- The above data suggests the film appeals to a broad adult audience rather than being targeted at minors. As such, based on the available data and audience demographics, the placement of the marketing communication does not breach Part 4 (c) or (d) of the Code.

Concluding Comment

- Carlton & United Breweries is committed to ensuring our promotional and marketing material does not appeal to minors. 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 arises from two complaints relating to an advertisement for Carlton Dry seen at the cinema prior to screenings of 'Anyone But You' and 'Aquaman and the Lost Kingdom'. Combined, the complainants are concerned that:
 - the advertising was placed before movies predominantly watched by minors under 18 years of age;
 - alcohol advertising should not be shown before a certain time slot; and
 - the content of the advertisement strongly appeals to minors.
17. The ABAC contains standards of good practice for alcohol marketing. A key standard is that alcohol marketing should not be strongly appealing to under 18-year-olds. To achieve this policy goal, the ABAC contains both a standard going to the content of alcohol marketing and standards which aim to have alcohol marketing (irrespective of its content) directed towards adult audiences and to the extent possible away from minors.
18. This means the issues for consideration for this determination is whether:
 - the placement of the advertisement with "Anyone But You" and "Aquaman and the Lost Kingdom" breaches the ABAC Placement Standards (Part 4); and

- the content of the advertisement has strong or evident appeal to minors in breach of the ABAC content standard (Part 3(b)(i)).

The Placement Standards

19. The ABAC has a policy aim that alcohol marketing should to the extent possible be directed towards adults and away from minors. It seeks to achieve this aim by creating a cascading series of requirements on alcohol companies to utilise the technical capacity of the mediums by which marketing communications are carried to direct the marketing to adults.
20. The greatest capacity to do this is with marketing transmitted via narrowcast digital platforms (Facebook, Instagram etc) that have a capacity to apply age restrictions on who is served alcohol marketing items. Cinema is a broadcast medium, however the Film and Literature classification system does impose some age restrictions and controls on the age of viewers to be admitted to cinemas. A child aged 15 and under is required to be accompanied by an adult to see a M15+ movie and minors are not to be admitted to a R classified film.
21. Further and unlike linear free to air television, there are no time of day restrictions on when alcohol ads might be screened at a cinema as such. Accordingly the fact the ads were seen in the cinema in the morning is not of itself a breach of the ABAC standards.
22. Rather the ABAC Placement Standards tackle the issue of advertising at the cinema by means of the reasonably expected audience of a movie and whether the movie itself is directed towards minors. Specifically:
 - no alcohol advertising should be placed with a movie which can be reasonably expected to attract less than an 80% adult audience; and
 - no advertising with a movie which has content primarily aimed at minors.
23. The 80% adult audience rule has to be applied at the time of the placement and hence has to be based upon a reasonable expectation given that the actual audience for a cinema release will only be known after the release. Further it should be noted that individual screenings of the movie at particular cinemas might have an audience which varies from the overall audience data.
24. Relevant factors to consider when assessing whether 'Anyone But You' or 'Aquaman and the Lost Kingdom' can be said to be 'primarily aimed at minors'. include:
 - the actual (or expected) audience of the movie;
 - the subject matter of the movie and whether it has themes likely to predominately appeal to children or adolescents;

- the use of familiar children's characters or the use of children and adolescents within the movie;
- the storyline and whether the complexity of the plot suggests its target audience is adult; and
- the use of language and the presence of adult themes such as violence and the portrayal of sexuality.

25. In response to the complaints, the Company has advised that:

- over 90% of the ticket sales for both movies was older than 18 years;
- 'Aquaman and the Lost Kingdom' is rated (M) for Mature audiences. Movies given an (M) classification contain content of a moderate impact and are not recommended for children under the age of 15 as they include portrayals of elements such as violence and themes that require a mature outlook;
- 'Anyone But You' has a MA15+ Restricted rating; and
- both movies contain mature, adult themes.

26. 'Anyone But You' is a 2023 American romantic comedy, set in the modern day but based on Shakespeare's "Much Ado About Nothing". It features adult characters and themes. 'Aquaman and the Lost Kingdom' is part of the DC superhero franchise movies.

27. The Panel does not consider that placement of the advertisement prior to 'Anyone But You' and 'Aquaman and the Lost Kingdom' breaches the Placement Standards. In reaching this conclusion the Panel noted:

- the overall expected audience of both movies appears to be overwhelmingly adult;
- the M and MA15+ classifications indicate the movies are not considered by the government classification office to be suitable for under 15 year olds;
- the themes in the movies are directed towards adults rather than minors;
- while there will be some appeal in both movies to teenagers in the 16 and 17 age cohort in particular, it cannot be fairly concluded that the movies are primarily directed towards minors.

Content of the advertisement

28. Beyond the question of the placement of the ad with 'Anyone But You' and 'Aquaman and the Lost Kingdom', one of the complainant's also argued that the content of the ad drew the attention of children.
29. The relevant ABAC content standard is contained in Part 3 (b)(i) of the Code and provides that an alcohol ad must not have strong or evident appeal to minors. This might be breached if the ad:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors.
30. 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.
31. The Company submitted that the ad was consistent with the ABAC standard arguing that:
 - the advertisement is devoid of any imagery, designs, motifs, animations, or cartoon characters that would be appealing to minors;
 - the eccentricity of the ad was employed as a creative proposition that would appeal to Carlton Dry's adult consumers;
 - the 'Drylandia' horse, a computer-generated character, was designed as a substantial, mature workhorse, emblematic of the Carlton Clydesdale breed, to ensure it resonated with an adult audience;
 - the horse is not behaving in a child-like or 'cutesy' manner such that the inclusion of this character is likely to increase the appeal of the advertisement to minors;
 - casting decisions were deliberately curated to be appealing to adults. All actors are dressed in apparel that is distinctly mature. The cast members and voice over actors are also distinctly adult looking and sounding, with the narrating voices being of a deep and gravelly timbre;

- the landscape is depicted as dry and arid, removing vivid, eye-catching colours that might attract a younger demographic. The topography is closer to surreal, rather than fantastical/magical, eliminating any association with a Disney-like setting; and
 - the "Drylandia" campaign is clearly adult in theme, with the eccentricity of the ad not shown in a manner which gives it appealing characteristics beyond the general attractiveness it would have for an adult.
32. The Panel has considered the factors that might give rise to a strong or evident appeal to minors on previous 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;
 - 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.
33. 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.
34. The Panel does not believe the ad breaches the ABAC standard. It was noted:
- the ad adopts a magic realism style which is distinctive and hence makes the ad stand out to its audience, however;

- the ad establishes the product being marketed is a beer;
- all characters depicted are clearly mature in appearance, dress and demeanour;
- the activities shown are not relatable or familiar to minors; and
- taken as a whole, any appeal to minors is incidental and not strong or evident.

35. Accordingly, the Panel does not believe the Code has been breached and the complaints are dismissed.