



ABAC Adjudication Panel Determination No 53/24

Product: Carlton Dry
Company: Carlton & United Beverages
Media: Carlton Dry Assets (marquee, beanbags and dividing panels)
Date of decision: 17 April 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 2 April 2024 in relation to the supply of Carlton Dry marketing assets (marquee, beanbags and dividing panels) by Carlton & United Beverages (“the Company”), for use at a West Australian Football League (WAFL) match.
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 2 April 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 complaint was 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

10. The complaint relates to Carlton Dry marketing assets seen at an AFL Colts game (West Perth vs Claremont) at HBF Arena in Joondalup, Western Australia, at around 6pm on Saturday 30 March 2024.



Complaint

11. The complainant objects to the marketing as follows:

- *Carlton Dry alcohol advertising prominently displayed (branded marquee, windbreak panels and beanbags) at an AFL Colts game - (West Perth vs Claremont) at HBF Arena in Joondalup around 6pm on Saturday March 30.*
- *Clearly a family-friendly event in many other ways, and some (many) Colts players would be under 18.*
- *High number of younger siblings in the crowd. Kids and youths were attracted to the beanbags, which were prominently positioned in the grassed area - usually considered a family friendly zone.*
- *I was offended by the insidious use of beanbags (popular with kids), that there was any alcohol advertising at all at a youth game, and the placement of the 3 forms of alcohol advertising in the grassed area popular with families.*
- *This type of advertising seeks to normalise alcohol consumption in the course of watching sport, and quite frankly, targets young men at one of their most vulnerable ages for alcohol use and abuse.*

The ABAC Code

12. Part 2 (b) provides that the Code does NOT apply to:

...

(v) Sponsorship Agreement.

13. Part 3 (b)(i) 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 8 of the Code provides that:

Sponsorship Agreement means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a producer, distributor or retailer of Alcohol or an Alcohol Alternative to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's product or outlet. Sponsorship Agreement also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise)

The Company Response

15. The Company responded to the complaint by emails on 3 and 16 April 2024. Its primary comments were:

- Carlton Dry is a sponsor of the West Australian Football League (WAFL), which includes A men's, reserve, women's and colts. The sponsorship is of the WAFL as a whole and not a single competition eg A men's.
- The ground in question (HBF Arena) is a WAFL venue. Per standard sports sponsorship practice, we supplied Carlton Dry assets (marquee, beanbags and dividing panels) to HBF arena for Thursday night's WAFL game (28/3).
- The Club who controls the ground (West Perth) retained the Carlton Dry assets until the arranged pickup date on Tuesday (2/4). Unbeknownst to us, the Club continued to utilise the assets for the remainder of the weekend, including at a Colts game on Saturday 3 April we were not affiliated with.
- Carlton Dry does not sponsor any underage leagues. We have significantly reduced our presence at grounds that house both 18+ and <18 leagues, and have removed apparel branding of these clubs.
- As we did not sponsor the game or have any knowledge that the material would be used, we are not responsible for this occurrence. However, to ensure this does not happen again, we will write to the club to explain our expectations for the use of our material in the future.

The Panel's View

16. The West Australian Football League (WAFL) is the Perth based Australian Rules competition featuring 10 clubs in the senior men's league, a women's competition, a reserve grade competition and a Colts competition. The Colts competition is open to players aged 19 years and younger. The Company is a sponsor of the WAFL.
17. The WAFL is played on various grounds in Perth and the near surrounds including Arena Joondalup (known as HBF Arena under commercial naming rights) in the suburb of Joondalup some 26 kms from the Perth CBD. The Arena is a multi-sports complex, but its principal feature is the AFL ground capable of holding about 12,500 people. The Arena is the home ground of the West Perth Football Club, known as the West Perth Falcons within the WAFL competition.
18. The complainant attended a Colts game between West Perth and Claremont held at Arena Joondalup in the evening of Saturday 30 March 2024 and was disturbed to see Carlton branded items being used. It was contended that the game was a family friendly event and given it was a under 19 year old game, that many minors were in attendance. The placement of alcohol branding on items used by the attendees such as bean bags, a marquee and windbreak panels is argued to normalise alcohol use in watching sport and targets young men at a vulnerable age.
19. In response the specific circumstances of the materials used at the Colt's game, Company advised that:
 - the branded material was supplied as per the sponsorship agreement to the WAFL senior game played on Thursday 28 March 2024;
 - the material was not supplied for use at the Colts game and the use of the material at the Colts game was done without the Company's knowledge or approval;
 - the Company does not sponsor under age sporting leagues, nor is it a sponsor of the West Perth team as such;
 - under the sponsorship agreement the materials (banners, marquee etc) should not have been used for the Colts game; and
 - it is writing to West Perth to state its expectations that its branded material not be used for Colts games.
20. The ABAC applies a series of standards of good marketing practice to the content and placement of alcohol marketing communications. The types of marketing material captured by a 'alcohol marketing communication' is widely

drawn by the Code and is certainly capable of including branded items such as a marquee, bean bag and windbreak. The Code however by Part 2 (b)(v) expressly excludes a 'sponsorship agreement' from the coverage of the Code.

21. A sponsorship agreement is defined in the Code to mean any agreement or part of an agreement involving payment or other consideration in lieu of payment by a producer, distributor or retailer of alcohol or an alcohol alternative to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's product or outlet. Sponsorship agreement also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).
22. What this means is that the Code does not apply to the actual agreement between the Company and the WAFL. In other words, the Panel has no role in assessing the desirability or otherwise of an alcohol company providing financial or other support to a sporting code. Further the direct manifestation of the sponsorship such as naming rights of a stadium or branding on a team's jumper etc is also beyond the application of the Code.
23. It should be noted that marketing flowing from the existence of the sponsorship such as a TV ad or a social media post referencing the support given by the alcohol company does fall within the remit of the ABAC standards. It is the actual agreement itself and the expression of the 'naming rights' like signage at a ground that is outside the Code.
24. In the current case it is apparent that the Company has a sponsorship agreement with the WAFL as an entity which conducts the various competitions. Further the Company's support would be recognised by the Company's product brand name being on items used by the WAFL at games such as signage and materials such as the marquee, beanbags and windbreaks. This means the Code standards do not apply to these materials.
25. It is also clear that the Company is not the sponsor of and hence has no sponsorship agreement with the HBF Arena nor the West Perth Falcons as a separate club as opposed to the WAFL within which the Falcons are a competing team. Further the Company advises the branded materials were not intended within the scope of the WAFL sponsorship to be used for the Colts game.
26. The Panel acknowledges the legitimate concern of the complainant and it is not good practice for alcohol branding to be associated with sports or other activities played or conducted primarily or substantially by minors. Nor is it good practice for alcohol branding to be placed at locations where the audience is likely to consist of a significant proportion of minors. The benchmark audience reach standard within the Code is that the reasonable expected audience for alcohol marketing should be at least 80% adults.

27. That said, the Panel believes that the branded items would fall within the 'naming rights' manifestation of the sponsorship agreement between the Company and the WAFL and hence are outside the application of the Code standards. While it is evidently the Company's intention that its branded materials not be used at Colts games, its sponsorship is of the WAFL as a whole and the WAFL conducts the Colt's competition.
28. It is noted that the ABAC Management Committee has commissioned a project to develop a Sponsorship Best Practice Guide which will set out expectations and guidance for alcohol marketers for sponsorship of both individuals, teams and events. It is anticipated this Guide will be released in the second half of 2024.
29. The complaint is dismissed as the branded materials fall within the operation of Part 2 (b)(v) of the Code.