



ABAC Adjudication Panel Determination No 127/24

Product: Carlton Draught/Dry
Company: Carlton & United Breweries
Media: TV – Free to Air
Date of decision: 9 September 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 30 August 2024 about the possible placement of a Carlton beer product (“the product”) on the Gogglebox television program by Carlton & United Breweries (“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, and 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 30 August 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target 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 before 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 as the Company had no involvement with the program.

The Marketing

10. The TV program Gogglebox features a cast member Keith who is often seen consuming a stubby of beer which is argued to be subliminal marketing.



Complaint

11. The complainant objects to the marketing as follows:
 - *I am trying to watch a comedy show, one hour each week, titled Gogglebox.*
 - *Keith continuously holds up his bottle of beer, with his Carlton "stubby holder".*
 - *This continues for the whole hour, and he continues to hold the bottle nearest to his chest and face height.*
 - *Also, he holds the bottle from underneath and therefore the word CARLTON is displayed.*
 - *Subliminal advertising of an alcoholic beverage whilst pretending to be holding a football logo.*
 - *Many viewers are being tricked into seeing Carlton Beer.*
 - *This has continued for many seasons and it is so obvious. Maybe Carlton Beer supplies him with a free slab of beer every week.*

The ABAC Code

12. Part 2 (a) of the Code provides that:

Parts 3 and 4 of the Code APPLY to all Alcohol Marketing Communications.

Part 5 of the Code APPLIES to all Alcohol Alternative Marketing Communications.

Examples of marketing communications and media the Code applies to include, but are not limited to:

- (i) product names and packaging;
- (ii) brand advertising (including alcohol retailer advertising, Influencer marketing, user-generated content, marketing arising from a Sponsorship Agreement and trade advertising);
- (iii) product placement;
- (iv) Marketing Collateral;
- (v) competitions and other brand activations;
- (vi) cross-category brand promotion;
- (vii) advertorials; and
- (viii) any medium whatsoever, including without limitation cinema, internet, outdoor, print, radio, television, telecommunications, digital or other direct-to-consumer media including new and emerging technologies.

13. 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).

14. Part 8 of the Code provides the following definition:

Alcohol Marketing Communication means a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

The Company Response

15. The Company responded to the complaint by email on 3 September 2024. Its primary comments were:
 - The stubby holder used by Keith is clearly for the Carlton Football Club, not CUB or our brands.
 - To confirm, however – Keith drinking alcohol on Gogglebox is not a marketing communication for alcohol, for, or within the reasonable control of CUB.
 - I can confirm that neither CUB nor Carlton Draught/Dry have any affiliation with Gogglebox or its participant Keith. CUB does not provide any product or collateral to Gogglebox or its participants.

The Panel's View

16. Gogglebox is a popular and long-running TV program broadcast on free-to-air TV on the 10 Network. The premise of the show is that 10 different Australian households are filmed as they watch, react and comment on various TV programs being screened on TV. One of the enduring households featured on Gogglebox is a middle-aged couple Keith and Lee who live in suburban Melbourne.
17. Keith is a knockabout traditional Aussie bloke often shown watching TV while consuming a stubby of beer. It is this depiction of alcohol use that has raised the complainant's suspicions. The complainant thinks that the beer consumption is subliminal advertising and given that Keith drinks his beer in a Carlton Football Club branded stubby holder, the suspicion is directed at the Company as the producer of CUB beers.
18. The threshold question is whether the depiction of alcohol use by Keith on Gogglebox is an alcohol marketing communication within the scope of the ABAC Scheme. Alcohol is a lawful product and is seen in various settings in everyday life. Hence the starting point is that not every reference to alcohol is 'alcohol marketing'. In fact, the vast majority of references to and experiences of alcohol that a person will encounter in their private lives are not marketing.
19. What makes a reference to alcohol an 'alcohol marketing communication' to bring it within the remit of the ABAC Scheme is a discernible link to an alcohol marketer. This will arise if the alcohol depiction was caused by an alcohol marketer or if the marketer had a reasonable measure of control over the way the alcohol product was portrayed.
20. In the case of TV broadcasts, distinguishing an 'alcohol ad' from surrounding program content is usually self-evident - i.e. the scheduled program is

interrupted and a series of distinct advertisements are seen, after which the scheduled program resumes.

21. However, marketing can take a more organic form that is not readily distinguished from the content of a program. This 'surrogate marketing' can take the form of a product placement in which a recognised alcohol brand is seen in ostensibly independent material. For instance, if the famous 'shaken not stirred' vodka martini of the James Bond movies was made with a recognised vodka brand, and this product identification arose because of a commercial relationship between the film producer and the alcohol company.
22. In Gogglebox, Keith is often shown drinking what appears to be beer, within a stubby holder showing the word 'Carlton'. From this, the complainant sees an implication that the beer was introduced into the program, potentially through a commercial relationship between the Company and either Keith or Gogglebox. If this is the case, then Keith's segments on Gogglebox would be subject to the ABAC standards.
23. It appears however that on this occasion the complainant's suspicions are not well founded. The Company advises that:
 - the stubby holder used by Keith is clearly for the Carlton Football Club, not CUB or our brands;
 - Keith drinking alcohol on Gogglebox is not a marketing communication for alcohol, for, or within the reasonable control of CUB; and
 - neither CUB nor Carlton Draught/Dry have any affiliation with Gogglebox or its participant Keith. CUB does not provide any product or collateral to Gogglebox or its participants.
24. Based on the Company's information it is apparent that:
 - there was no direct relationship between Keith or Gogglebox and the Company;
 - the Company did not arrange for its products to be used in Gogglebox; and
 - Keith, being a Melbournite, presumably is a follower of the AFL and apparently a supporter of the Carlton team.
25. In these circumstances, Keith holding and drinking what would appear to be alcohol (it might be a zero-alcohol alternate product) is not a marketing communication for ABAC purposes. This means the Panel has no jurisdiction to consider how alcohol use is depicted during Gogglebox.
26. The complaint is dismissed.