



ABAC Adjudication Panel Determination No. 7/16

Product: Carlton Dry
Company: Carlton & United Brewers
Media: Television
Complainant: Confidential
Date of decision: 9 February 2016
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Carlton Dry and arises from a complaint received 6 January 2016.
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 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”) – 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 – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don't go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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.

The Complaint Timeline

7. The complaint was received on 6 January 2016.
8. The Panel endeavour 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 has been determined within this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication (14558).

The Marketing Communication

10. The advertisement opens with three people talking at a gathering all holding a stubby of Carlton Dry. One of the men opens the lid of his stubby, looks at the lid and has a surprised expression before the scene changes to a dream sequence showing a person heli-skiing, then three people driving in a convertible through the streets of Las Vegas, a person flyboarding above the ocean and a racecar speeding along a road. Small print at the bottom of the screen states "AU res 18 plus, AU passport is req'd. Go to carltondry.com.au for full details. Prizes: 160 x AU music festival double passes (\$864 ea), 18 trip prizes (\$5k-\$25kea)." These scenes are accompanied by the voiceover, "Carlton Dry wants you to live an epic life, that's why we are sending you heli-skiing in Alaska, to Vegas with 5 grand, flyboarding in Thailand or drifting in Tokyo.
11. The scene then returns to the gathering as someone calls the daydreaming man's name, "Josh" and he is shown smiling as the two other people are looking at him strangely and then smiling. A voiceover states "There are 100s of experiences to win but take the prize in 48 hours or you miss out." 'Josh' is shown looking strangely at his beer and taking a sip. The voiceover continues, "Buy specially marked Carlton Dry packs and "Seize the Dry". A hand is shown holding a stubby of Carlton Dry next to the text "Seize the Dry". Small print on the bottom of the screen states "Max 1 minor & 1 major prize per household (excl SA res.). Jug entry also avail. Keep receipts, unique codes & game cards. Permits LTPs/15/04075, TP15/06024, T15/890." There is also an 18+ logo with the text "For people over the age of 18 only" on the top right hand corner of the screen.

The Complaint

12. The complainant is concerned that by promoting a competition where after uncovering a winning bottle top you only have 48 hours to submit the winning bottle top this encourages people to drink more than they usually would to identify if they have won anything.

The ABAC Code

13. Part 3 provides that a Marketing Communication must NOT:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;

The Company's Response

14. The Company responded to the complaint by letter received 20 January 2016. The principal points made by the Company were:

- The complaint relates to a Carlton Dry television commercial (TVC) advertisement seen on Foxtel. The advertisement is part of an on-going campaign to encourage people to enjoy the spontaneity of life and to seize opportunities when they are presented – something the brand promotes as living an 'epic life'. All activities depicted throughout the campaign to illustrate and promote an 'epic life' are alcohol-free, including heli-skiing, driving around in Las Vegas, fly-boarding, and race car driving.
- CUB takes the promotion of responsible consumption very seriously. CUB promotes consumption of its products based on the Australian Guidelines to Reduce Health Risks from Drinking Alcohol. CUB ensures its promotions and competitions are compliant with the gaming laws, ABAC standards and internal company policies and do not depict or encourage irresponsible consumption.
- In addition all product container labels include the alcohol by volume percentage, number of standard drinks based on the Australian Drinking Guidelines, and a 'Get the facts' DrinkWise.org.au logo – a website where consumers can visit to find out information on how alcohol effects the body.
- There appears to be a misunderstanding of what the promotion is and how to enter. The promotion is a game of chance for both on-premise and off-premise consumers of Carlton Dry. It is being run for four months (entry period: 9AM 01/10/2015 – 11:59PM 31/01/2016). It requires consumers to submit a code via the promotion website to find out whether or not they have won. If they are a winner, the consumer then has 48 hours to claim the prize. This means the consumer has to have a valid passport and be 'ready' to leave to enjoy their prize.
- For on-premise the consumer is required to purchase a jug of Carlton Dry to be given a game card containing a code. This was limited to one per person, per day, per venue. It is important to note that in all marketing material it was stated that that eligible jugs were 'to be shared with friends'. The off-premise promotion required the consumer to submit codes found either under a bottle cap or can lid or inside the carton packaging. Codes were available in 6, 10, and 24 bottle packs, and 24 can packs.
- It is critical to note that consumers have four months to enter the competition, but only 48 hours from being notified they have won to claim the prize. Therefore there is no requirement for a consumer to drink any product within a 48 hour period of being informed that they are a winner. This is made clear in the TVC, which outlines that 'there are hundreds of experiences to win, but take the prize in 48 hours or you miss out'. The TVC also features text encouraging consumers to visit the

carltondry.com.au website for full details. Four months is a standard competition length for industry 'game of chance' competitions. Consumers could have bought any of the eligible products and consumed them over the competition period in a way that would not exceed Australian Drinking Guidelines.

- For reasons stated above we do not believe the competition, or the TVC incentivises excessive consumption of alcohol over a short period of time. CUB has been, and will remain, vigilant in ensuring no competitions or promotional material depicts or encourages irresponsible consumption.

The Panel's View

15. Between October 2015 and 31 January 2016, the Company ran a competition by which a consumer of a Carlton Dry product was given a code number to be submitted to the Company by a competition website. Upon submitting the code, a consumer would learn if the code number was linked to a particular prize. If the code number was a prize winner, then the consumer had a 48-hour period to claim their prize from the Company.
16. One method the Company promoted for competition was through a television advertisement. It was this advertisement which concerned the complainant. In the complainant's view, the advertisement would be interpreted as meaning that a consumer had to consume the product within a 48-hour period of purchase to be eligible to enter the competition and this condition would "encourage people to drink more than they would usually would to identify if they had won anything".
17. The ABAC by section (a)(i) creates a standard of good practice in alcohol marketing that requires that advertisements must not encourage the excessive or rapid consumption of an alcohol beverage. The issue for the Panel is whether the advertisement has breached this standard.
18. The Company, in response to the complaint, argues that the complainant has misunderstood the advertisement and the way in which the competition worked. It is explained that the 48-hour condition was not related to the time period from the identification of the code (say by opening a bottle of the product) and its submission to the website. Rather, the time limit related to the period from the entry of the code into the website and the notification of the person's identity with a winning code number to the Company to claim the prize. This means, for instance, a product might have been purchased in October, the product then consumed in November, and the code related to the product submitted to the website in December, and still the consumer would be eligible for the competition. The 48-hours ran from the entry of the code into the website and not the time from when the code was first located on the container of the product.
19. The Panel accepts the competition timeframe worked as explained by the Company and that there was in fact no linkage between the time the product was consumed and when a prize had to be claimed. While this may have been the rules of the competition and the intention of the Company in making the advertisement, this is not the end of the question. This is because the Panel's

test is not the Company's intention in making an advertisement, but rather how a reasonable person would probably understand the advertisement. So, if the advertisement would be interpreted as encouraging rapid consumption in order to be able to enter the competition, then the advertisement will be in breach of the ABAC standard, irrespective of what the Company's intention might have been.

20. The Panel believes, however, that the advertisement would not be interpreted by a reasonable viewer in the way taken by the complainant. This means that the advertisement is not in breach of the ABAC standard. In reaching this conclusion, the Panel has noted:

- The advertisement is focused on particular experiences rather than the terms of entry of the competition and would be essentially taken as advising of the existence of the competition.
- The reference to 48-hours is in the context of the time available to claim the prize and not the time available to enter the competition i.e. the voiceover statement "there are hundreds of experiences to win, but take the prize in 48-hours or you miss out".
- It is common sense that the Company would have no way of knowing when a person located the code and hence the 48-hours could only relate to the time from the entry of the code on the competition website to a person claiming the prize.

21. Accordingly the complaint is dismissed.