



ABAC Adjudication Panel Determination No. 44/19

Product: Carlton Zero
Company: Carlton & United Breweries
Media: Radio
Date of decision: 2 August 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns radio advertising for Carlton Zero by Carlton & United Breweries (“the Company”) and arises from a complaint received 24 June 2019.
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. 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 the other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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 24 June 2019.
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.
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 substantively obtained for this marketing communication.

The Marketing Communications

10. The complaint refers to a radio advertisement:

- MVO: Carlton Zero has the refreshing taste of a beer without the alcohol, so you can drink it anywhere.
- MVO: Sip it working in an office building
- SFX: Keyboard and mouse clicks
- MVO: Sip it working on an office building
- SFX: Hammers hitting and metal clanging
- MVO: Drink it during a job interview
- SFX: Office atmosphere
- MVO: Drink it during a news interview
- SFX: News sting
- MVO: Enjoy it while hiking
- SFX: Birds chirping and nature atmosphere
- MVO: Enjoy it while hiking on top of Kosciuszko!
- SFX: Wind and snow with faraway voice
- MVO: Have one while lifting weights
- SFX: Weights clanking and straining voice
- MVO: Have one while lifting weights in the Olympics!
- SFX: Weights clanking, people cheering and voice straining harder
- VO: Carlton Zero.
- SFX: Bottle twist
- VO: We've rewritten the rules. 0.0% alcohol.100% taste.

The Complaint

11. The complainant is concerned that the advertisement:

- refers to “a beer you can drink anywhere” and provides examples of places where it is highly inappropriate or irresponsible to consume alcohol such as on top of an office building, during a job interview and during physical activity which are activities that require a high degree of alertness or physical co-ordination;
- Carlton Zero is a brand extension of the highly recognisable Carlton alcoholic beer brand and the Panel has determined its marketing must meet the ABAC Code; and
- The advertisement was broadcast at 12pm on a Sunday when children and young people are likely to be listening to the radio.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage

- (b)(iv) be directed at Minors through a breach of any of the Placement Rules
- (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming

13. Part 6 of the ABAC Code includes definitions including:

Available Age Restriction Controls means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a third party platform, website or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used to place a Marketing Communication.

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.

The Company's Response

14. The Company responded to the complaint by letter dated 12 July 2019 advising that:

- The advertisement is an audio clip which contains various descriptions of activities that can be undertaken whilst consuming Carlton Zero, 0.0% alcohol beer, with corresponding sound effects to complement each description. Carlton Zero is an important part of our portfolio and our efforts to provide opportunities for people to moderate their drinking. The advertisement is a light hearted exploration of scenarios where people who may not wish to consume alcohol could instead consume Carlton Zero. We are confident that the advertisement meets both the spirit and the letter of the ABAC.

- We believe the radio advertisement does not breach Part 3(a)(ii) of the ABAC. Carlton Zero is a non-alcoholic beer for the purposes of the ABAC Code as it contains less than 0.5% alcohol by volume. It is definitionally unable to result in irresponsible or offensive behaviour as a consequence of its consumption. We have chosen to market this product under the Carlton brand as a signal to beer drinkers who are choosing to moderate their alcohol consumption, that this product will appeal to their palates. But the product is definitionally not an alcohol beverage under the ABAC. As Carlton Zero does not fall within the ABAC definition of an alcohol beverage, whilst we do not believe any of the activities referenced are irresponsible, we also believe that Part 3(a)(ii) has not been breached as none of the activities are 'related to the consumption or presence of an Alcohol Beverage'. Laying aside the non-alcoholic nature of the product, we do not believe that any of the activities referenced are irresponsible or offensive. The activities described in the advertisement, such as employment related activities and physical sporting activities are day to day activities undertaken by consumers and are not irresponsible or offensive behaviours.
- The placement of the radio advertisement at 12pm on a Sunday does not breach Part 3(b)(iv) as the advertisements only played during the afternoon time slot from 12.00pm until 3.59pm, where 75% or more of the audience comprised of adults, and during content that was targeted at an adult audience. Additionally, the advertisement makes very clear that the product is a non-alcoholic beer, and that it is intended for consumption by adults who are looking for an alternative to alcohol.
 - On Sunday 16 June the advertisement ran on Nova 93.7 at 12pm and HIT929 at 12.02pm.
 - The cumulative reach for people aged 10-17 years old for the Nova 93.7FM Sunday afternoon time slot (12-3.59pm) is 25% of the total audience with 75% of the audience being 18+. The source data for that date shows that for the time period of 12-12.29pm, the composition of Nova 93.7's audience was 33% of people aged 10-17 years and 67% of people aged 18+. These statistics do not show a breach of the ABAC Placement Rules as the total audience composition for the afternoon time slot (being the allocated time slot that the ad was to be aired within) was within the ABAC Placement Rules, namely a 75% adult audience was reasonably expected. Radio segments are typically broken into three time slots: the morning time slot, the afternoon time slot and the drive time slot. Based on the composition data, it is reasonably expected that the audience of Nova 93.7FM during the Sunday afternoon time slot will comprise 75% adults, and hence airing the Carlton Zero advertisement in the afternoon time slot, and requesting the

advertisement to be aired within that time slot, complies with the ABAC Placement Rules. The source for this data is GFK, Survey 3, 2019 run through audience specific software program ERAM (copies supplied). (The data shows that HIT 929 had 83% 18+ audience from 12-12.29pm and the 18+ audience for the afternoon time slot was also 83%).

- The radio station programs during which the advertisement was broadcast are not primarily aimed at minors:
 - Nova 93.7's Sunday afternoon programming on 16 June was music and entertainment targeted at Perth's 25-54 demographic. A local announcer is on air and the majority of the shift is music with intermittent talk breaks. The local announcers generally talk about the promotions and other major events happening on the station and occasionally brings listeners to air. This type of content is the same as would be heard during a work day broadcast played from 9am to 3pm, which is targeted at working adults aged over 18.
 - HIT929's afternoon time slot comprised of two shows. At the time that the advertisement was broadcast the Tim Lee show was airing (9am-1pm). From 1-6pm the Dustin Skipworth show was aired. HIT9829 is a radio station targeted at listeners aged 18-39 years old with an ideal listener profile being 39 year old females, which results in all content produced for the station created with this target consumer in mind. These shows involve a local announcer, who is on air, playing music with intermittent talk breaks. The local announcer generally talks about the promotions and other major events happening on the station and occasionally brings listeners to air. This type of content is the same as would be heard during a work day broadcast played from 9am to 3pm, which is targeted at working adults, aged over 18.
- We do not believe that Carlton Zero should be subject to Part 3(d) as it is definitionally not an alcohol beverage under the ABAC. In the advertisement, none of the activities referenced in the script are depicted as having occurred after or during the consumption of an alcoholic beverage as Carlton Zero is not an alcohol beverage as defined in Part 6 of the ABAC. Therefore, we believe that the advertisement does not breach Part 3(d) of the ABAC.
- CUB is committed to ensuring its promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsible and in moderation. It is in service of promoting responsible consumption and moderation that we have developed and launched Carlton Zero. Despite Carlton Zero not being an

alcohol beverage under the Code, we have taken all steps possible to ensure that it, like all our products, is promoted in a way that is compliant with the rules, principles and spirit of the Code.

The Panel's View

15. Carlton is a widely recognised Australian brand name. In August 2018 the Company introduced a new product, Carlton Zero, which is a non-alcoholic beer, whereas other Carlton products e.g. Carlton Draught are alcohol products. This determination concerns the responsibilities imposed by the ABAC on a Company when marketing a non-alcoholic product which shares a brand name with alcohol products. The determination deals with both the ABAC content standards and the Placement Rules.
16. The ABAC creates a code of practice to govern the marketing of alcohol beverages. An alcohol beverage is defined in the Code as a beverage which contains at least 0.5% alcohol by volume. Carlton Zero contains no alcohol content at all and hence is not an 'alcohol beverage'. The reason the ABAC has any application to the marketing of Carlton Zero is because the ABAC applies to marketing communications which include 'alcohol brand extensions to non-alcohol beverage products'. The Panel has in previous determinations (Determinations 144&146/18 and 35/19) concluded that the marketing of Carlton Zero is captured as a brand extension.
17. The 'brand extension' as a type of marketing communication has not attracted much attention in terms of previous complaints. In 2009 the Panel considered a complaint concerning a TV ad for a pizza which featured 'Jim Beam' BBQ sauce (Determination 7/09). It was decided that the ad did fall within the scope of the ABAC as a form of surrogate advertising of an alcohol product via a non-alcoholic item, although it was noted that the code standards are not easily applied to such a form of marketing. Since that decision the terms of the ABAC have been revised and the concept of a "brand extension" has been expressly included within the ambit of the Code. The application of standards crafted to apply to alcohol products to non-alcoholic products however remains clunky at best.
18. This 'clunkiness' is highlighted by the current complaint. The radio ad from the Company has the aim of promoting the product by contrasting circumstances where the product could be consumed when it would be regarded as inappropriate to consume an alcohol beverage. For instance, a person would not normally consume alcohol at work in an office during working hours. Other examples in the ad are self-evidently occasions when an alcohol product should not be consumed such as working on a construction site or lifting weights.
19. The complainant argues the fact that an alcohol beverage should not be consumed in these circumstances means that the ad as promoting the Carlton brand breaches the code standards. The Company contends that the very point of the ad is to give

examples when you can't consume alcohol to highlight that Carlton Zero is not an alcohol beverage and as such it can be responsibly consumed in these circumstances even if some examples are clearly fanciful e.g. Olympic weightlifting.

20. In interpreting the ABAC the Panel is to adopt the standpoint of a 'reasonable person'. This means the life experiences, values and opinions held in a majority of the community is to be the benchmark. Further the Panel endeavours to apply the Code in a common sense and not strictly legal way guided by the intent and spirit of the standards and the policy intent of the scheme.
21. While the conclusion is not entirely straightforward as the Code provisions have not been crafted to deal with this type of situation, the Panel believes the better view is that the ad does not breach the ABAC content standards. In reaching this position the Panel has noted:
 - the policy aim of the ABAC is regulate alcohol beverage marketing so that the marketing is consistent with responsible and moderate use of alcohol by adults;
 - the product is non-alcoholic and is captured by the ABAC by the fact that 'Carlton' is a recognised alcohol beverage brand;
 - the 'brand extension' category of marketing communications was likely envisaged as dealing with alcohol product branding being extended to non-beverage products and services rather than non-alcoholic beverages;
 - a common sense approach needs to be adopted when applying the standards and it would be a mildly perverse outcome to conclude that an ad which seeks to promote a non-alcoholic beverage as an alternative to an alcoholic beverage was struck down for promoting the irresponsible use of alcohol; and
 - a reasonable person would not take the ad as promoting the use of alcohol in unsafe circumstances which is the policy aim of Part 3 (d) nor can the ad be fairly taken as promoting alcohol use more generally when it is seeking to increase awareness of a non-alcoholic beverage.
22. The complaint also raised that the ad was broadcast at 12 noon on a Sunday when children and young people are likely to be listening. This element of the complaint brings into play the ABAC Placement Rules. The rules sit within Part 3 (b) of the Code which has the policy aim of alcohol marketing not having strong or evident appeal to minors.
23. Again, the nature of the product raises some tensions with this part of the Code. The product is a non-alcoholic beer. As it contains no alcohol, its use by under 18 year olds would presumably not be prohibited by State laws which regulate the sale and consumption of alcohol by persons under the lawful drinking age of 18. That said and consistent with the reasonable person benchmark, the Panel considers that an ad for a "beer" even if it is non-alcoholic in nature should not be strongly

appealing to minors. Accordingly, the Panel believes the broadcast of the ad should occur consistently with the requirements of the ABAC placement rules.

24. Data on the audience demographics of radio broadcasts is quite robust due to the rating system. While ratings data is naturally retrospective i.e. the actual audience breakdown of a particular station on a specific day and time is not known until after the broadcast, the results of earlier surveys provide a basis upon which a reasonable expectation of the likely audience can be drawn. The Company has supplied data for Nova and HIT929 which showed the actual audience for Nova in the 12 to 12-30pm slot on Sunday 16 June was below the 75% requirement. The data for HIT929 shows the audience was in excess of 75% adult.
25. The Company argues that while the actual 12 to 12-30pm results were below the requirements of the Placement Rule, it (or its advertising placement agency) relied on previous data as to the afternoon segment on Sundays on Nova to have a reasonable expectation that the audience would likely have been over 75% adult. It does seem that bookings are made in broader segments of the day rather than half hour slots for which it seems ratings are available. For the afternoon slot as a whole the figures show a history of an audience which exceeds the 75% benchmark.
26. The obligation created by Placement Rule 3 is for alcohol marketers to take steps that are reasonably open to achieve compliance with the requirements. In the case of ratings data, if more granulated data than simply 'the afternoon' segment is available to predict the likely audience at particular times, then this data needs to be utilised when forming up instructions as to the placement of ads. Past data is predictive of a future audience and not a guarantee of what the actual audience will be. Based on what has been supplied to the Panel it does not seem the rule has been breached given past ratings, but care will need to be taken to reflect the most recent results.
27. Placement Rule 4 goes to the content of the program with which an ad has been placed. This content cannot be aimed primarily at minors. It seems the afternoon slots at the two radio stations reflect the 25 to 39 year old target demographic of the stations and is not aimed primarily at minors.
28. Accordingly, the complaint is dismissed.