



ABAC Adjudication Panel Determination No 66/23

Product: Carlton Draught
Company: Carlton & United Breweries
Media: Competition
Date of decision: 29 May 2023
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 17 April 2023 and concerns marketing for Carlton Draught (“the Product”) by Carlton & United Breweries (“the Company”). The marketing involves the Carlton Draught AFL Footy Tipping Competition (“the Competition”) which is run via the FANZO app, and in particular the promotion of receiving a free beer after successfully tipping a winner with the correct margin.
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 17 April 2023.
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

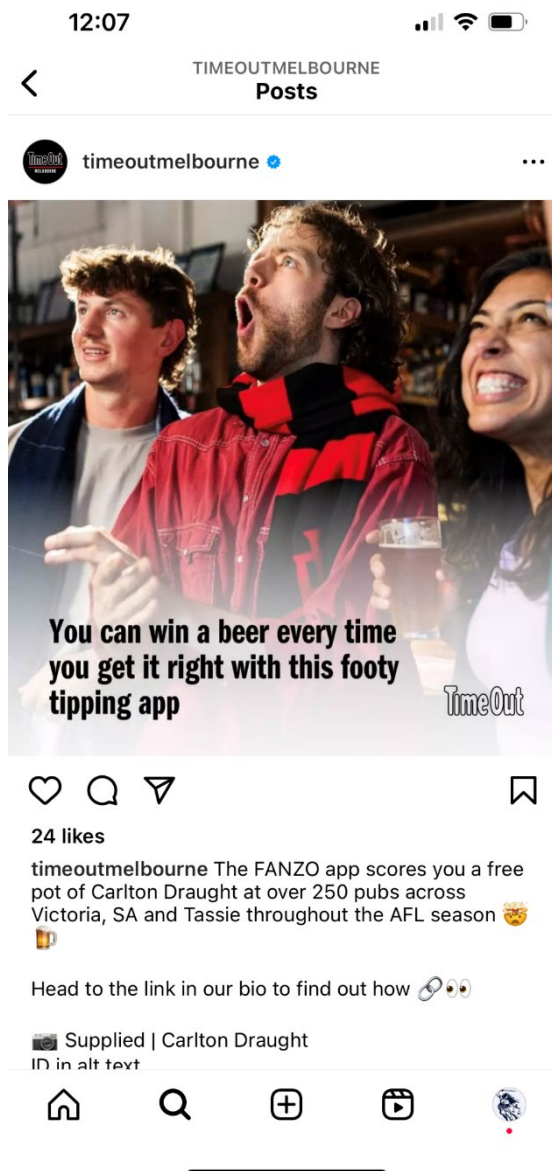
materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the content of the marketing.

The Marketing Communication

10. The complaint relates to marketing via the Carlton Draught AFL Footy Tipping Competition (“the Competition”) which is run via the FANZO app, and in particular the promotion of receiving a free beer after successfully tipping a winner with the correct margin.



The Complaint

11. The complainant objects to the marketing as follows:
- *I object because the marketing team is incentivising 2 of the most problematic things in society - gambling AND alcohol.*
 - *It encourages (incentivising) the use of a gambling app and then being rewarded with alcohol...I can't believe I even have to justify my complaint??*
 - *Everyone knows that alcohol lowers your inhibitions, which would in turn make the individual less likely to be able to control their gambling habits or alcohol consumption.*
 - *To me, this is blatant predatory marketing.*

The ABAC Code

12. Part 3 of the ABAC Code 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.
 - (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.

The Company's Response

13. The Company responded to the complaint by letter emailed on 1 May 2023. The principal comments made by the Company were:
- The alcohol marketing communications referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval.
 - The Competition and free product prize are alcohol marketing communications within the reasonable control of CUB.
 - In 2023 CUB again partnered with FANZO to provide a footy tipping platform to on-premise venues. Carlton Draught AFL Footy Tipping is running across Victoria, South Australia and Tasmania, while VB NRL Footy Tipping is running in NSW venues. CUB has offered tipping programs to venues as a form

of trade marketing for many, many years, and this is the second year that tipping has been offered through the FANZO platform.

- The tipping programs use a digital mechanic via the FANZO mobile app to simplify the in-venue tipping process and maximise the number of players tipping in a venue's league, doing away with the need for paper tipping and making the process of offering a traditional pub tipping league much less onerous for the venue.
- With Carlton Draught AFL Footy Tipping, players entered in their local venue league can win a free pot of Carlton Draught to redeem at their local, if they tip the winner **and** exact margin of a game correctly. If they tip the margin within a kick (6 points) they win a pot to gift to a mate with the intention of driving further engagement and promoting shared occasions.
- If players submit their round tips in-venue they can win one free 285ml pot. If players submit their tips from home they can win a 2-for-1 pot offer that can be redeemed when they next head into their local.
- Participants also have the opportunity to win the major prize: a 2023 Toyota AFL Grand Final Experience for the winner and one adult companion. This includes 2023 AFL Grand Final tickets, two nights' accommodation in Melbourne, return economy airfares, and \$500 spending money. The winner is determined by the player with the overall highest number of correct tips (and lowest total points margin) from all entrants in the Carlton Draught AFL Footy Tipping Competition.
- All rewarded complimentary beer offers expire before the following round starts, preventing participants from stacking redemption offers.

Responsible and moderate portrayal of Alcohol Beverages

Not showing or encouraging excessive consumption

- Participants can win one complimentary pot of Carlton Draught (approximately 1.1 standard drinks at 285ml and 4.6% ABV) upon placing their tips. Any additional complimentary pots for the tipper are predicated on predicting the winner and exact margin of a game. This is quite difficult to do. Laying aside the difficulty of exactly predicting the margin for every game and simply looking at correct winning team tips, for context, the four highest-scoring tippers across the entire competition average 6.7 correct winning team tips per round.
- With nine games in a round it is strictly theoretically possible for a tipper to correctly predict the exact margin of every game and

thus win a maximum of 10 pots, or 11 standard drinks over the course of a week, but the real-world chances of this occurring are extremely minimal.

- Players who tip the margin within a kick (6 points) can win a pot to gift to a friend. There is no suggestion or encouragement that this will be the same individual every time, but in any case, the maximum number of pots that could be gifted to any one person in a week is 9 (9.9 standard drinks). Again, this is a highly unlikely occurrence in practical terms.
- Any reasonable person would understand that the point of this promotion is to provide a way for local venues to engage their regular patrons through the footy season with a fun and convenient footy tipping solution. There is no intent on the part of either CUB or any venue to give away large amounts of alcohol or to promote excessive alcohol consumption, and we note that venues are also bound by responsible service of alcohol rules.

Not showing or encouraging irresponsible behaviour

- Footy tipping is a very commonly enjoyed pastime across a range of social groups and although it involves making a prediction on the outcome of a game, in the context of a pub footy tipping league, it is not usually understood to constitute a form of gambling or wagering. It is very common for pubs to offer some sort of footy tipping league as a means of engaging regular customers who enjoy the social experience of watching live sport in-venue.
- In specific relation to the FANZO app, FANZO describes itself as a “fan engagement platform for brands, broadcasters and rights holders” that exists to “show sports fans what game is being televised in which pub, wherever they are, on their computer or via their iPhone.” This helps venues to drive patronage and customer engagement.
- FANZO is not a Licensed Interactive Gambling Operator and as such does not and cannot legally provide wagering products or services. Wagering self-regulation is the subject of the AANA Wagering Advertising Code, which notes that “services ancillary to wagering such as odds compilation or **tipping services** provided by third parties who are not licensed operators” are not covered by the Code.
- Users of the FANZO app are not wagering money or any other form of collateral; there is no ‘stake’ required for a participant to take part in the competition. There are no odds provided in the app, which is in contrast to other major tipping sites such as

ESPN footytips. FANZO does not partner with any Licensed Operator or direct users to any tipping site.

- Engagement with the FANZO app and/or a local venue's footy tipping league does not constitute a form of gambling while drinking alcohol.
- Carlton & United Breweries is committed to ensuring our promotional and marketing material is always compliant with the ABAC Code. 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

Background

14. This determination concerns the conduct of a football tipping competition by the Company. In short, the operation of the competition is as follows:
 - a person joins a competition through a participating licensed venue e.g. a local pub;
 - the mechanics of the competition is through the FANZO app which enables the person to submit their tips on the games being played in the round and records the results;
 - a participant is entitled to redeem a glass of beer from the venue with whom they are registered if they have correctly tipped both the winner of a game and the exact winning margin; and
 - if a participant fails to pick the exact margin but is within 6 points of the winning margin (for an AFL match), then a beer is won but needs to be "gifted" to another person.
15. The complainant came across a story about the competition in the "Time Out" magazine and believed it amounted to a highly irresponsible combination of gambling and alcohol consumption. Possibly the complainant believed the FANZO app was an on-line gambling platform akin to Sportsbet and similar on-line gambling sites.
16. It is important to recognise that the FANZO app is not a gambling platform. Rather the app describes itself as a "fan engagement platform for brands, broadcasters and rights holders". A review of FANZO indicates its principal purpose is to list venues where fans of a sporting game can gather to watch the game with friends and other fans e.g. a pub. The app does not provide a facility for users to "place a bet" or otherwise gamble on the outcome of a game through the payment of money.

17. The app does facilitate the tipping competition. The Company explains that in effect it is an electronic on-line version of the paper based manually recorded tipping competitions that many pubs used to offer.
18. The ABAC does not seek to either prohibit nor endorse specific types of alcohol marketing. A tipping competition can be run by an alcohol marketer and there is no prohibition on offering alcohol as the prize in a competition. What the Code does prohibit is alcohol marketing of any type, and including activities such as competitions, that models or encourages alcohol use in a manner inconsistent with the Code standards.
19. Given the complainant's concerns, potentially two ABAC standards are enlivened, namely that an alcohol marketing communication must not show or encourage:
 - the excessive or rapid consumption of an alcohol beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines – Part 3 (a)(i); or
 - irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage - Part 3 (a)(ii).

Excessive consumption of alcohol

20. As mentioned, the FANZO app, and the footy tipping competition specifically, are designed to encourage consumers to visit pubs. While it is reasonable to assume a visit to a pub will likely involve alcohol consumption, this does not mean the consumption will be excessive. The competition does reward winners with a glass of alcohol however this occurs only if a competition participant:
 - correctly tips the winner of a game by the correct margin; and
 - tips the winner and margin within six points (gift for a friend).
21. Using the AFL as a template, theoretically a participant could correctly pick the winner and the margin in all 9 games in a round and hence win 9 pots of Carlton Draught (approximately 9.9 standard drinks at 285ml and 4.6% ABV). However, in reality:
 - it is quite unlikely a person will pick both the winner and the exact margin in more than 1 or 2 games at best;
 - the games in a round are played from Friday night to Sunday afternoon, so a person cannot collect 9 beers on a single occasion in the highly unlikely event that the person picks all winners and the exact winning margin;
 - all rewarded complimentary beer offers expire before the following round starts, preventing participants from stacking redemption offers; and

- participants who tip the margin within 6 points can win a pot to gift to a friend but it does not follow that the same friend would be gifted each time. Again, it is unlikely to occur more than once or twice a round.
22. In assessing if a Code standard has been breached, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. This means the attitudes, values and life experiences shared by most members of the community is the benchmark.
23. Drawing this together the Panel does not believe that a reasonable person would consider that the competition is encouraging excessive alcohol consumption. Rather the most probable understanding of the competition is that it encourages a person to engage in the competition and attend a pub to watch a game. While this may be taken as encouraging alcohol use, this use would not be understood as excessive in breach the Part 3 (a)(i) standard.

Irresponsible behaviour

24. The complainant's concerns can also be taken as raising Part 3 (a)(ii) of the Code which prohibits alcohol marketing communications from showing irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage. This arises from the contention that gambling and alcohol promotion should not be combined.
25. In response to the complaint, the Company advised that:
- a pub footy tipping league is not usually understood to constitute a form of gambling or wagering;
 - FANZO is not a Licensed Interactive Gambling Operator and as such does not and cannot legally provide wagering products or services. Wagering self-regulation is the subject of the AANA Wagering Advertising Code, which notes that "services ancillary to wagering such as odds compilation or **tipping services** provided by third parties who are not licensed operators" are not covered by the Code;
 - Users of the FANZO app are not wagering money or any other form of collateral; there is no 'stake' required for a participant to take part in the competition. There are no odds provided in the app, which is in contrast to other major tipping sites such as ESPN footytips. FANZO does not partner with any Licensed Operator or direct users to any tipping site; and
 - Engagement with the FANZO app and/or a local venue's footy tipping league does not constitute a form of gambling while drinking alcohol.

26. The Panel is satisfied that participation in the Carlton Draught AFL Footy Tipping Competition is not a form of gambling and does not believe that a reasonable person would understand that the competition is irresponsible behaviour within the meaning of the Part 3 (a)(ii) standard.
27. The complaint is dismissed.