



ABAC Adjudication Panel Determination No 130/24

Product: Vodka Cruiser
Company: Carlton & United Breweries
Media: TV - Subscription
Date of decision: 8 October 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 2 September 2024 about an advertisement for Vodka Cruiser (“the product”) by Carlton & United Breweries (“the Company”), seen when watching the Foxtel Channel Travel HD.
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 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, 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 2 September 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 obtained for the content of the marketing item (Approval Number 9091).

The Marketing

10. The complaint relates to the placement of an advertisement for Vodka Cruiser on Foxtel Channel Travel HD.

Complaint

11. The complainant objects to the marketing as follows:
 - *[I have] just seen an ad for Vodka Cruiser new drink at 14:40 Sat 31st Aug on Foxtel channel Travel HD.*
 - *I thought alcohol ads were banned before 20.30 in Australia.*

The ABAC Code

12. Part 4 of the Code requires that the following Placement Standard be applied:
 - (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).
 - (b) Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.
 - (c) If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults (based on reliable, up-to-date Australian audience composition or social media follower data, if such data is available).

- (d) An Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication must not be placed with programs or content primarily aimed at Minors.

The Company Response

13. The Company responded to the complaint by letter emailed on 23 September 2024. Its primary comments were:
- Thank you for your recent correspondence about a complaint with reference number 130/24, and for the opportunity to respond.
 - Carlton & United Breweries (CUB) takes responsible advertising of alcohol seriously. We are aware of the Code requirements and our policy and practice are in line with ensuring compliance with all relevant alcohol and marketing guidelines.
 - The marketing received Pre-Vetting approval under application number 07305-2024, approval number 9091.
 - In accordance with the ABAC media placement standards, it is our policy to only schedule alcohol advertising content when it complies with code provisions published by Australian media industry bodies.
 - As a subscription-based platform, Foxtel must comply with the *Subscription Broadcast Television Code of Practice*.
 - These Guidelines state that [when scheduling advertising of alcoholic beverages] the Licensee *must take into account the intellectual and emotional maturity of the intended audience of the channel*.
 - Where there aren't rules excluding specific time slots/classifications in alcohol advertising (for example, rules featured in the Commercial Television Industry Code of Practice), the approach is to show up in programming that is predicted to deliver an over 80% adult audience and be able to prove that (see data sets in the following answers).
 - Therefore, the placement of this commercial occurred within ABAC and Subscription Broadcast Television Code of Practice guidelines.
 - Additionally, to ensure no one under the age of 18 mistakenly viewed this commercial, our Media agency proactively ensured the ads were not broadcast between 07:00-08:00 and 16:00-18:00, to avoid when anyone under the age of 18 might be watching (noting these are before and after school timings).

- Foxtel is a subscription-based service. Subscription-based platforms require all users to be over the age of 18 to sign up and access content (noting these guidelines are different across Free to Air TV).
- All Foxtel platforms require a user to log in before accessing content. Additionally, users need to be over the age of 18 to accept set-top boxes.
- Please see the below screen grab from the Foxtel sign-up page, where users need to confirm they are over the age of 18.

The information you have provided will be used in accordance with this [Privacy Notice](#) and the [Foxtel Privacy Policy](#). By clicking the "Confirm" button below you agree to be bound by the [Foxtel Now Terms & Conditions](#) and confirm that you are over 18.

- At the time noted on Foxtel Travel HD (2:40 pm on Saturday 31 August), it appears that the complainant was watching Europe's Waterways, on a pop-up channel on Fox.
- The audience pool was very small but all who were watching were over the age of 18. Please see the below data set, provided by Foxtel.

Program	EUROPE'S WATERWAYS
Station	More Pop Up Hits
Day	31/08/2024
Start	13:51:26
End	14:41:57
Ave Aud (Total People)	73
Ave Aud (P 18+)	73
% 18+	100%

- The marketing communication therefore does not breach the Code, as the audience is reasonably expected to comprise more than 80% adults.
- The program *Europe's Waterways* discusses "*Rivers, canals and lakes that have shaped Europe's culture for centuries. Five journeys uncover the people who live on and with the water, exploring their world from a new perspective.*"
- This is clearly a program targeted to adults over the age of 18, with intellectual and emotional maturity. Not only is the program targeted to mature audiences, but the data also supports that all viewers watching were over the age of 18.

- As such, based on the available data and audience demographics, the placement of the marketing communication did not breach Part 4 of the Code.
- Carlton & United Breweries is committed to ensuring our promotional and marketing material does not appeal to minors. 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

14. This determination has arisen from the broadcast of an advertisement for Vodka Cruiser on Foxtel channel Travel HD, which was aired at 2:40 pm on Saturday 31 August 2024. The complainant could not recall the name of the program they were watching but confirmed it was a part of normal scheduling and that they were not streaming or catching up. The Company has advised that the program was Europe's Waterways.
15. The complainant argues that 2:40 pm is not a time when alcohol advertising should be shown, given that alcohol advertising is prohibited in Australia before 8:30 pm. The complainant is correct that there are time-of-day restrictions on alcohol advertising appearing on linear free-to-air TV contained in the Commercial Television Industry Code of Practice (CTICP).
16. These restrictions which date back to the 1980's however have never applied to subscription TV services such as Foxtel. Nor do the time of day restrictions apply to internet-delivered TV programming accessed on smart TVs using apps like 7 Plus and 10 Play.
17. The Australian Subscription Television Code of Practice (ASTRA) covers Foxtel and as pointed out by the Company, this code has more general guidelines about alcohol advertising that require the intellectual and emotional maturity of the intended audience to be taken into account when scheduling alcohol ads. The ASTRA Code also provides that advertisements promoting alcohol comply with the ABAC.
18. The ABAC Placement Standards create a cascading series of obligations on alcohol companies to direct alcohol marketing towards adults and to the extent reasonably possible away from minors. For subscription TV such as Foxtel, the obligations are:
 - use available age restriction controls to exclude minors;
 - if there are no age restriction controls capable of excluding minors, then an advertisement cannot be shown with programming having a likely audience of more than 20% minors; and

- the content of the program with which the advertisement is shown must not be primarily aimed at minors.
19. The Company has provided very detailed information about the circumstances regarding the ad seen by the complainant. From this it is clear;
- Foxtel requires account holders to be aged over 18;
 - based on ratings data, the actual audience for Europe's Waterways on 31 August 2024 was very small and it seems it was exclusively adults; and
 - the program is no doubt suitable for all ages, but it is not a show aimed primarily at minors.
20. From this, it is clear that no placement obligations were breached by the showing of the ad when seen by the complainant and hence the complaint is dismissed.