



ABAC Adjudication Panel Determination No 85/24

Product: -196 Suntory
Company: Beam Suntory
Media: Outside of Bus
Date of decision: 13 July 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 4 June 2024 in relation to advertising for -196 Suntory (“the product”) on the outside of a bus by Beam Suntory (“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, 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 4 June 2024.
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 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 prior to 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 for placement of the marketing.

The Marketing

10. The complaint relates to advertising on the outside of a bus:



Complaint

11. The complainant objects to the marketing as follows:
 - *Yet another alcohol ad on a DESIGNATED SCHOOL BUS. This is now the 4th ad I've seen in the past year.*
 - *Advertisers aren't allowed to advertise alcoholic products within 150m of a school - so why is this bus that literally carries school children allowed to be plastered with alcoholic beverages?*

- *Shows that self regulation is FAILING to protect our children. Can you please start taking this seriously and make school buses part of the advertising restrictions.*

The ABAC Code

12. 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).

The Company Response

13. The Company responded to the complaint by letter by email on 17 June 2024. Its primary comments were:
 - The key visual was approved by ABAC application no. 05724-2023 and approval no. 7262 dated 03.10.2023.
 - JCDecaux (media vendor) has analysed the audience for its Transit advertising (displayed on buses) product and it is in line with ABAC's revised Code with the audience threshold expected to comprise approximately 80% adults. The best available data to demonstrate the audience is JCDecaux's Orbit platform, which looks at the MOVE SA1 (2023) exposed areas of transit depots where JCDecaux has advertising and analyses these geographic areas against the census data (2021) for SMBAP. On an initial review of our data, the total exposed audience of people aged under 18 is approximately 20%, meaning the adult population is approximately 80%. Note: The MOVE data is based on an average day of travel.
 - The vast majority of the audience for JCDecaux's Transit product is significantly made up of adults, sometimes the buses may be routed as a school bus at some point during a week, however this still means that advertising on buses should meet the ABAC Code. The agency and vendor request our bus operator partners to avoid displaying alcohol advertising on a school bus at all times, and in this case the operator has said they will do their best to avoid scheduling this as a school bus for the remainder of the campaign however this is not something they can guarantee. Bus operators prioritise the efficient operation of their bus fleet to ensure customer safety and efficiency so at times so despite direction from client, agency and vendor.

- JCDeaux has noted that they do not have any control over the bus routes as they are determined by depots based on operational need however across JCDeaux's network there are no dedicated school buses that they display advertising. It can be difficult for us to determine when a bus with alcohol advertising has been placed on a school bus route however both the agency and vendor ensure that alcohol advertising is on the "off-side" of the bus which means it does not face towards schools as they pull up. In order to avoid this situation in the future the agency and vendor have contacted the bus operator in question and have received a response stating that they will do their best to ensure this situation does not occur again.
- Please note Suntory Global Spirits also has its own responsible marketing code which all marketing materials and activity must adhere. Suntory is committed to the highest standards of responsible marketing practices across product, consumer marketing and communications through our own responsible marketing code, the principles of drink smart® in addition to local advertising regulations and the ABAC code. Responsible marketing of our products is at the core of our commercial purpose, and our commitment to conducting our business the right way and we believe this advertisement has been placed in line with these codes; as a company we would never deliberately target school children or those under legal drinking age with our advertising.

The Panel's View

Introduction

14. On or about 4 June 2024 the complainant noticed a Sydney bus that was carrying an ad for the ready to drink alcohol product -196 Suntory on its driver's side. What disturbed the complainant was that the bus was showing the designation 'School 596' which indicates the bus was servicing a school route. The complainant noted the self-evident tension between the restriction that alcohol marketers cannot place fixed advertising signs within 150 metres sightline of a school and yet a bus carrying school students was displaying alcohol advertising.
15. The short answer to the complaint is that there has been no breach of the ABAC provisions by the placement of the Company's ad on the bus. This is because the ABAC standard restricting the placement of alcohol ads does not apply to transit advertising. The Company advises that its media vendor JCDeaux requests that operators of buses carrying alcohol ads:
 - don't use buses with alcohol ads for school routes; and
 - place the ad on the 'offside' so it does not face a school when the bus pulls up.

16. That said, it is explained that it cannot be guaranteed that a bus carrying alcohol ads will not be used on a school route as the operators will give priority to operational efficiency and customer safety than instructions regarding not using buses carrying ads on school runs.
17. No doubt this explanation will be of little satisfaction to the complainant. It is for this reason the Panel is providing the background as to why the Code provisions about outdoor marketing placement are framed as they are. Further the Panel makes a recommendation to the ABAC Management Committee to test if advances in audience measurement of outdoor advertising have reached a point to base changes in applicable policies.

The ABAC Placement Standards - an overview

18. The ABAC Scheme commenced in 1998 and established good practice standards for the content of alcohol marketing i.e. the messaging from an ad. A core Code content standard is that alcohol marketing must not have strong or evident appeal to minors. The Code however did not regulate the medium by which an item of marketing might be conveyed or restrict where an alcohol ad might be located. In short, the ABAC was a marketing content and not a marketing placement code.
19. This focus by the ABAC Scheme on the content of alcohol marketing remained in place until 2017 when the ABAC Placement Rules (now called Placement Standards) were added to the Code. The standards had the policy aim that alcohol marketing should be directed towards adults and to the extent reasonably possible, away from minors. At this time there were two pre-existing regimes that governed the placement of alcohol advertising namely:
 - the Commercial Television Industry Code of Practice (CTICP); and
 - Outdoor Media Association (OMA) policies applying to outdoor or Out of Home (OOH) advertising.
20. The ABAC Placement Standards took these two existing regimes as the starting point and then built upon them. The standards created placement restrictions for alcohol marketing over communications mediums that up to that time had no placement limitations such as radio, cinema, print and most importantly given the dramatic shift in communications since the ABAC Scheme had commenced, digital platforms.
21. For these communication mediums, the Placement Standards imposed obligations linked to the technical capacity of the different technologies to target audiences based on age. In essence this meant if a technology permitted minors to be excluded from receiving any alcohol marketing materials, then these available age restriction controls must be used.

22. If minors can't be excluded, then the standard required that alcohol marketing only be placed where the expected audience would be overwhelmingly adults (initially 75% and now increased to 80% since 1 January 2024). Further marketing was not to be placed with programs and content primarily aimed at minors irrespective of its likely audience.
23. The first Placement Standard (Part 4 (a) of the Code) acknowledges that there were pre-existing placement requirements prior to the 2017 extension of the ABAC Scheme and provides that an alcohol marketing communication must comply with code provisions regulating the placement of alcohol marketing that have been published by Australian media industry bodies. The effect of this was to incorporate into the ABAC standards the placement restrictions sourced in the CTICP and the OMA policies.
24. The CTICP applied to alcohol advertising broadcast over free to air TV ('traditional' TV requiring a TV aerial to be received) and in simple terms limited alcohol ads to being broadcast at times it was assumed minors would be a lesser component of the likely viewing audience e.g. during school hours and after 8-30 pm at night.
25. In relation to outdoor or OOH alcohol marketing, the OMA policies at a high level provide as follows:
 - the OMA is the peak industry body for companies that place advertising for marketers of all kinds including alcohol on outdoor and out of home settings such as billboards, street furniture, shopping centres and signage placed on public transport;
 - OMA members are obliged to meet government regulatory requirements as well as complying with a series of OMA policies that govern how and where OOH ads can be placed. The key OMA policies for current purposes are:
 - (a) OMA Code of Ethics;
 - (b) OMA Alcohol Advertising Policy; and
 - (c) OMA Placement Policy;
 - taken together the OMA policies require OMA members to have all alcohol ads cleared for their content against the ABAC content standards prior to use and to abide with ABAC Panel determinations finding a OOH ad in breach of ABAC standards; and
 - prohibit the display of alcohol ads on fixed signs within 150 metres sightline of a primary or secondary school.
26. The common feature of the older placement restrictions contained in the CTICP and the OMA policies is the reliance on proxy measures to seek to limit

the exposure of minors to alcohol marketing, namely the time of day of TV broadcasts and excluding outdoor signs near schools. Hence the measurement of the potential for minors to see the marketing item is not based on audience data, but the 'proxy' that fewer minors are viewing TV after 8-30 pm and the obvious fact minors are the great majority of the attendees at a school.

27. In contrast, the post 2017 placement requirements draw on data about the expected audience of an item of alcohol marketing, for instance ratings data on TV shows/streaming services etc or age data analytics captured by digital platforms. While the expected 80% adult audience benchmark has supplemented the CTICP requirements, the OOH restrictions remain based solely on the locations of schools.
28. Drawing this together, the ABAC Placement Standards:
 - adopted as a starting point the pre-existing restrictions on the placement of alcohol advertising namely free to air TV and outdoor sites;
 - extended placement restrictions to all communication mediums not previously subject to restrictions for alcohol marketing;
 - sought to exclude minors from the audience of alcohol marketing if the technology carrying the marketing enabled specific aged based targeting;
 - created an 80% adult audience benchmark for mediums that could not exclude minors, specifically digital, television, radio, cinema and broadcast print media platforms; and
 - adopted the proxy measures for limiting minors exposure to OOH advertising contained in the OMA policies i.e. proximity to a school for ads on fixed signs.

Outdoor Alcohol Marketing - the OMA Placement Policy and MOVE tool

29. The ABAC Placement Standards came into effect on 1 November 2017. It was a practical decision to adopt the existing OMA restrictions for OOH alcohol advertising given the requirements were already operating, the OMA holds the information as to the location of OOH sites on which alcohol ads might be placed and the OMA has matched the location of OOH sites with the locations of schools.
30. The OMA Placement Policy (section 3.1) provides that OMA members will not advertise alcohol products, wagering and gaming products or adult sexual products within 150 metre sightline from the boundary of a school. The policy goes on to carve out an exception to the policy for advertising on premises that sell the restricted products. For instance, if there was a pub located within 150

metres of a school, then the pub is able to have signage identifying it as an alcohol retailer.

31. The delineation of 150 metres sightline as the appropriate radius is explained in supporting materials on the OMA website as being based on the science on how messages are absorbed. It is contended that most messaging is taken in at a distance of no greater than 100 metres and even the largest sign is not clearly visible at a distance of greater than 140 metres.
32. The OMA policy at section 3.5 provides that it does not apply to 'transit advertising'. The examples listed are advertising on 'buses, trains, trams and taxis'. It might be noted that in Victoria, the Liquor Control Reform Act also restricts alcohol advertising within 150 metres of a school. This example of direct government regulation of alcohol marketing also does not prohibit signage on vehicles transiting past a school.
33. The implementation of the OMA policies is via the Measurement of Outdoor Visibility and Exposure (MOVE) tool. This tool provides audience measurement for some 77,500 OOH advertising sites. Attached to MOVE is school mapping data which contains the boundary locations of 12,165 schools in each Australian State other than Tasmania.
34. The MOVE software is described on the OMA website as measuring various audience demographics including age segments. To date, MOVE has not been used as the broad equivalent of the ratings system for television as being the basis to confidently assess audience reach to determine if the 80% adult benchmark for alcohol advertising has been satisfied.
35. That said, the Company in its response to the complaint advised that its media vendor JCDecaux had been able to analyse the audience for its transit advertising and concluded that the expected audience threshold is approximately 80% adults. This is stated to be based on JCDecaux's Orbit Platform that matches MOVE data for 'exposed areas of transit depots where JCDecaux has advertising... against 2021 census data'.
36. A new version of MOVE is scheduled to be released this year. It is anticipated the revised tool will provide additional capabilities in terms of audience measurement and the impact of OOH advertising. It would seem timely to test if the technology and data available in MOVE 2.0 is of sufficient granulation to move beyond the proxy use of school locations to limit minors' exposure to OOH alcohol advertising to a model using credible estimates of audience demographics of specific OOH sites.

Conclusion and Recommendation

37. As explained, the placement of alcohol advertising on buses is not captured by the OMA Placement Policy and as a result the applicable ABAC Placement

Standard in Part 4 (a) of the Code is not breached by alcohol ads on buses. Hence the complaint must be dismissed.

38. There are sound reasons why the ABAC Placement Standards on outdoor and the OMA policies on OOH alcohol advertising should be aligned. That said, it is incongruous that the effect of the OMA policies and hence the ABAC Standard is that an alcohol ad cannot be placed on a bus shelter within 150 metres sightline of a school, but the bus dropping school children at the bus stop near the school could be carrying an alcohol ad.
39. The Company's advice on the instructions given to bus operators to not place alcohol advertising on dedicated school buses and to restrict the placement of ads to the driver's side of the bus is noted. Instructions of this type should not be a company by company variable. Minimum requirements of good practice should be applied across all alcohol marketers.
40. More fundamentally, the use of the proximity to schools restriction on the placement of alcohol marketing is a proxy measure to limit the exposure of minors to outdoor alcohol ads. The data and measurement capacity of the MOVE tool may well be enhanced with the release of its next version later this year. The potential to use this tool to effectively assess the likely audience of individual OOH sites for benchmarking purposes should be tested.
41. Accordingly, the Panel recommends to the Scheme Management Committee (as it did in the recent decision Determination 78/24) that discussions be held with the OMA with the view of revising the relevant OMA policies so as to:
 - exclude alcohol advertising being placed on bus shelters within 150 metres of a school irrespective if the bus shelter is within the sightline of a school or not;
 - further exploration be taken as to use of all reasonable steps to exclude alcohol marketing from placement on buses used for school routes; and
 - testing the MOVE data and technology as a potential basis to more precisely eliminate specific OOH sites for alcohol advertising if the reasonably expected audience of an alcohol ad exceeds 20% minors.