



ABAC Adjudication Panel Determination No 87/24

Products: Dan Murphys and Tooheys
Companies: Endeavour Group and Lion – Beer, Spirits & Wine Pty Ltd
Media: Billboard at Bus Stop
Date of decision: 19 July 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 6 June 2024 in relation to advertising for Dan Murphys by Endeavour Group and Tooheys by Lion at two Sydney bus stops.
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 6 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 obtained for the content of the two advertisements.

The Marketing

10. The complaint relates to advertising at two Sydney bus stops, being the bus stop at the intersection of Woollooware Road with Burraneer Bay Road, and the bus stop at Dolans Road and Burraneer Bay Road.





Complaint

11. The complainant objects to the marketing as follows:
- *The bus stop at the intersection of Woollooware Rd with Burraneer Bay Rd, and also the bus stop at Dolans Road and Burraneer Bay Rd both have had Tooheys ads and the bus stop at Dolans Rd and Burraneer Bay Rd now has a Dan Murphys ad.*
 - *These are both bus stops used by school children and it is in their face waiting for the bus.*

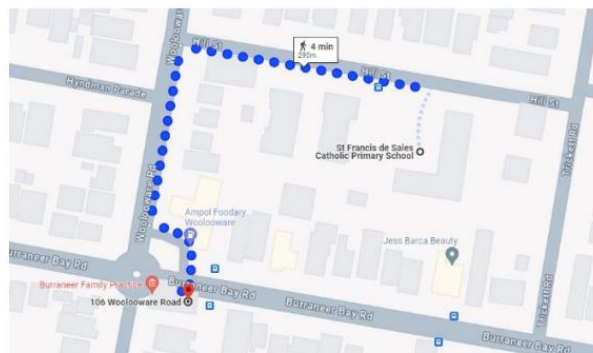
The ABAC Code

12. Part 4 of the Code provides that:

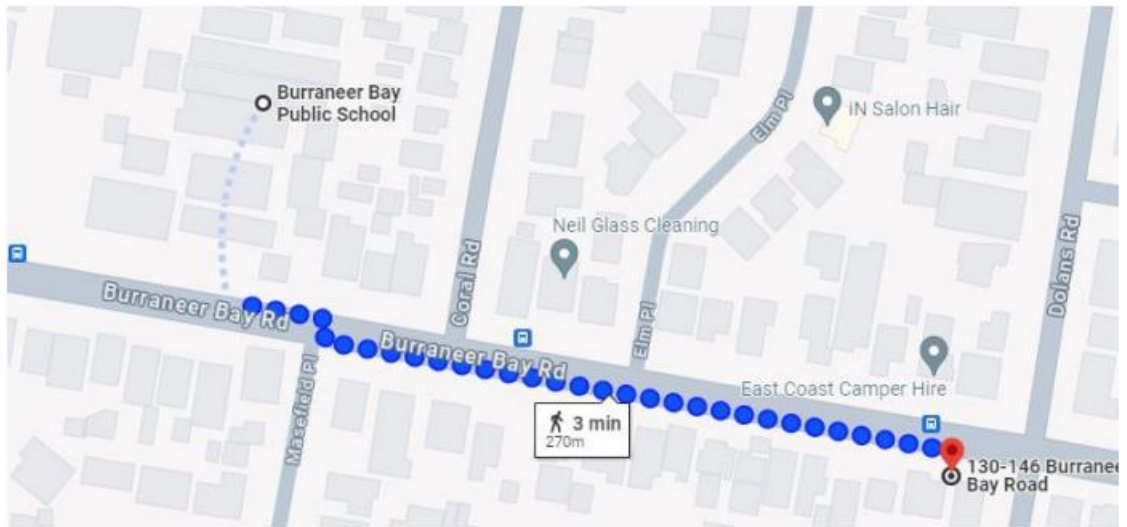
(a)	An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing and an Alcohol Alternative Marketing Communication must comply with code provisions regulating the placement of Alcohol Alternative marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).
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The Company Response

13. **Lion** responded to the complaint by letter emailed on 17 June 2024. Its primary comments were:
- We refer to your letter dated 12 June 2024 (Letter) in relation to a complaint received by ABAC about Tooheys “How Do You Feel?” posters (Advertisement) being placed at bus stops at the intersection of Woollooware Rd and Burraneer Bay Road (Placement 1), and Dolans Road and Burraneer Bay Rd (Placement 2) in Burraneer, NSW (together, the Placements).
 - Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of the complainant. Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously. For the following reasons, and with respect to the complainant, we submit that there has been no breach of Part 4 of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel.
 - We requested that Lion’s media agency, UM investigate this Complaint and they have advised as follows:
 - Placement 1 is a block away from the nearest school, St Francis de Sales Catholic Primary School (290 m by foot) and obscured by buildings (including a petrol station):



- Placement 2 is a block away from the nearest school, Burraneer Bay Public School (270 m by foot):



- UM's internal systems and MOVE (Out of Home Audience Measurement System) did not flag these locations as raising concerns under the Outdoor Media Association Placement Policy (OMA Placement Policy).
- Part 4 of the ABAC Code, which incorporates the OMA Placement Policy, requires that no alcohol advertising is displayed within 150m sightline of a school. We submit that the Placements are not in sightline of the respective schools and there has been no breach on this basis.

- We also respectfully submit that the ultimate placement of the Advertisement was beyond Lion's reasonable control, and any finding against Lion based on this Complaint should be a no-fault breach under Part 6 of the ABAC Code.
 - As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure its compliance.
14. **Endeavour Group** responded to the complaint by letter emailed on 21 June 2024. Its primary comments were:

- We refer to your letter dated 12 June 2024 in relation to the complaint 87/24 (the Complaint) regarding marketing for Dan Murphy's, by way of an advertisement at a bus stop (the Advertisement) at the corner of Dolans Road and Burraneer Bay Road in the suburb of Burraneer in NSW. Dan Murphy's thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint.
- Dan Murphy's understands that the Panel is considering whether or not the Advertisement breaches Part 4 of the ABAC Responsible Alcohol Marketing Code (the Code).

Background

- Dan Murphy's has a media agreement with Carat Australia Media Services Pty Ltd ABN 37 081 739 979 (Media Agency) (the Agreement) which governs the supply of certain media services to Dan Murphy's. Pursuant to the Agreement:
 - the Media Agency provides certain services to Dan Murphy's, including identifying media opportunities and master media buying and planning services;
 - the Media Agency is responsible for arranging the placement of Advertising Materials, which includes material that advertises, promotes or communicates Dan Murphy's, such as the Advertisement;
 - Dan Murphy's is ultimately responsible for the content of the Advertising Materials, however;
 - the Media Agency must ensure that the Advertising Materials comply with all laws and self-regulatory codes in Australia, including (but not limited to), the Code and the Outdoor Media Association (OMA) advertising codes of practice;

- more generally, the Media Agency must comply with all laws and self-regulatory codes of conduct related to the provision of the services under the Agreement.
- For the purposes of the Complaint, Dan Murphy's notes that the Media Agency was responsible for the placement of the Advertisement in accordance with the Agreement. The Media Agency, with the consent of Dan Murphy's, subcontracted the placement of the Advertisement to a third party marketing service provider (Media Provider).
- At the outset, we would like to note that the Advertisement was scheduled to be removed from the bus stop on 16 June 2024 and confirm that the Advertisement has been removed accordingly.
- Dan Murphy's as part of Endeavour Group, is committed to maintaining its position as an industry leader in the responsible service of alcohol. This is highlighted by the fact that Endeavour Group formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all advertising within its reasonable control in accordance with the Code.
- As a signatory to ABAC, Endeavour Group commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.
- The importance of ensuring all necessary marketing communications (involving the Dan Murphy's brand name or logo) are reviewed from a Code compliance perspective (and pre-vetted where appropriate), has been reinforced with the marketing team, even in circumstances where that material is controlled by a third party.
- To that end, we confirm that the content of the Advertisement received Alcohol Advertising Pre-Vetting Service Approval on 20 May 2024 pursuant to approval number 9169.
- Furthermore, Dan Murphy's maintains strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Endeavour Group has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage the responsible consumption of alcohol. These include:
 - ID25 - we ask for ID if a shopper looks under the age of 25;
 - Our Refusal of Service Policy (Secondary Supply, Intoxication and School Uniform); and

- Staff training that exceeds legal requirements, including our 'Leading in Responsibility' training module, team talkers, regular refresher and reminder courses.
- The processes outlined above provide Dan Murphy's with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.
- Dan Murphy's submits the following:
 - Part 4 of the Code prohibits a marketing communication from being directed at minors through a breach of any of the placement rules.
 - As the Advertisement is an outdoor placement, we refer to Part 4(a) of the Code, which requires 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 (for example ... Outdoor Media Association Placement Policy).' The relevant provision of the OMA Placement Policy is that 'OMA members will not advertise alcohol products ... within a 150 metre sightline from the boundary of a school '.
 - As previously mentioned, the Media Agency and Media Provider were responsible for selecting the placement of the Advertisement. Dan Murphy's, having worked with the Media Agency on numerous occasions, can confirm that the Media Agency is fully aware of the Code's placement rules and ensures that all Advertising placements are in accordance with the Code.
 - Since being made aware of the Complaint, Dan Murphy's has consulted the Media Agency to understand the measures that were in place to ensure this particular Advertisement was placed in compliance with the Code. We have been instructed that when deciding on sites for alcohol advertising, the Media Provider provides the Media Agency access to the Measurement of Outdoor Visibility and Exposure (MOVE) tool, which sets out advertising constraints of each site based on laws and self-regulatory codes, including the OMA Placement Policy. MOVE is owned by OMA and "is Australia's premier quantitative audience measurement currency for Out of Home (OOH) advertising" used by media companies throughout 2 Australia. The Media Agency has again inspected the constraints recorded by MOVE against the relevant Advertisement site and has verified that whilst it prohibits advertising that is political, sexual/adult and/or religious in nature, it does not prohibit the other advertising constraints, namely advertising relating to alcohol and/or gambling/gaming.

- Importantly, Dan Murphy's has further investigated the placement of the Advertisement, i.e. the bus stop at the corner of Dolans Road and Burraneer Bay Road and confirms that the Advertisement was not within 150 metres line of sight of a school. In particular, both the Burraneer Bay Public School and Our Lady of Mercy Catholic College are approximately 250 metres away from the Advertisement.
- In view of the above, Dan Murphy's respectfully submits that there is no breach of the Code as the Advertisement was not placed within 150 metres line of sight of a school for the purposes of the OMA Policy and therefore does not breach any placement rules.
- Notwithstanding this, Dan Murphy's does not seek to diminish the concerns of the complainant and would like to reiterate that we take our responsibility as an industry leader in the responsible service and marketing of alcohol incredibly seriously.

The Panel's View

Introduction

15. This determination considers the provisions of the ABAC Placement Standards insofar as they apply to the positioning of alcohol ads on bus shelters. The complainant nominates two bus shelters on Burraneer Bay Road in the Sutherland Shire which it is argued are used by school children and hence are unsuitable for alcohol advertising.
16. The ABAC Code comprises two sets of standards with which alcohol marketers must comply. The Content Standards go to the messaging conveyed by an alcohol marketing communication irrespective of the medium by which the marketing item is carried. A core content standard is that alcohol marketing must not have strong or evident appeal to minors.
17. The second set of standards in the Code is the Placement Standards which have a policy goal that alcohol marketing should be directed towards adults and to the extent reasonably possible away from minors. The standards do this by imposing on marketers a series of obligations to target their marketing based on the technical capacity of the medium used to carry the marketing. For instance, digital platforms such Facebook or Instagram have the ability to exclude minors from being served with alcohol ads and the Placement Standards require that marketers use this capacity.
18. Outdoor marketing (also known as Out Of Home advertising (OOH)) is a broadcast medium and unlike digital platforms there is no direct means to target an ad placed on a billboard or street furniture towards only adults. Rather the standards use a proxy measure for OOH advertising of excluding

the placement of alcohol ads within a 150 metres sightline of a primary or secondary school.

19. In the vicinity of the two bus shelters identified by the complainant are several schools, namely:
 - St Francis de Sales Catholic Primary School located at 14 Hill Street, Woollooware;
 - Burraneer Bay Public School located at 163 Burraneer Bay Road, Burraneer; and
 - Our Lady of Mercy Catholic College located at 62-66 Dominic Street, Burraneer
20. The database for the location of OOH sites is held by the Outdoor Media Association (OMA) and is contained in the Measurement of Outdoor Visibility and Exposure (MOVE) tool. This tool lists some 77,500 out of home advertising sites within the five capital cities of Sydney, Melbourne, Adelaide, Brisbane and Perth. Attached to MOVE is the school mapping tool which according to the 2022 OMA Annual Report contains the boundary locations of some 12,185 schools in each Australian State other than Tasmania.
21. Both alcohol companies responded to the complaint by advising that the two bus shelters upon which the ads were placed are not within 150 metres sightline of the three schools. The Panel's complaint's officer obtained further advice from the OMA which confirmed that the bus stop at Dolans Rd and Burraneer Bay Rd is outside the 150 metre radius of the schools. The OMA advice was that the Woollooware Rd and Burraneer Rd bus stop is within 150 metres of the St Francis de Sales school, but the shelter shed is not within the sightline of the school due to residential buildings that block the sightline.
22. This means that the ABAC Placement Standard contained in Part 4 (a) of the Code has not been breached.

Conclusion and Observations on OOH Advertising

23. This is the second recent decision of the Panel that has considered OOH advertising and the location of ads on bus shelters in the vicinity of a school. In Determination 78/24 dated 1 July 2014 a detailed explanation of the regulation of OOH alcohol advertising is provided. While this full detail is not repeated again, the observations made by the Panel are equally relevant to this case.
24. By its nature, outdoor advertising is not able to be specifically targeted at particular age groups in the way that narrowcast marketing via digital platforms can be. And while the MOVE tool apparently is able to produce audience measurement for OOH advertising, to date the available data has not been

sufficient to assess the composition of minors reasonably expected to view a specific outdoor advertising site so as to use the data for regulatory benchmarks. Hence the proximity of OOH sites to schools is used as a proxy for limiting the exposure of minors to outdoor alcohol advertising.

25. It is noted that the 150 metre delineation for advertising placement is used on the argument that messaging from outdoor signs is not readily absorbed at this distance. This means if an ad is on a sign outside 150 metres from a school, then students while physically on the school grounds should not be impacted by the location of the sign. Equally, if the sign is closer than 150 metres but can't be viewed from the school, then the same contention applies.
26. But the placement of alcohol advertising at a bus stop has a dimension beyond the viewing of the ad from the grounds of a school. It can be reasonably assumed that a proportion of school students will travel to and from school by taking buses that use the nearby bus stop.
27. The Panel believes the bus shelters within 150 metres of a school should not be used for alcohol ads and recommends that the Scheme Management Committee engage 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.
28. The complaint is dismissed.