



## ABAC Adjudication Panel Determination No 94/24

**Product:** Diplomatico Rum  
**Company:** Brown-Forman Australia  
**Media:** Subscription TV  
**Date of decision:** 18 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 21 June 2024 in relation to television advertising for Diplomatico Rum (“the product”) by Brown-Forman (“the Company”). The advertising was seen on Optus Sport, when watching Euro 2024 with their child.
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 21 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 via Optus Sport, during the Euro 2024.

### **Complaint**

11. The complainant objects to the marketing as follows:
  - *The brand advertises on Optus Sport's coverage of Euro 2024.*
  - *Advertising occurs at all times throughout the day and does not appear to have any constraints (e.g. between 12pm-3pm on school days between 8.30pm and 5am every night/morning).*
  - *It is wrong to assume that the audience is adults as I watch the coverage with my son.*
  - *I would argue that the audience exceeds 50% children.*

### **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).

- (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 3 July 2024. Its primary comments were:
  - Brown-Forman Australia takes very seriously our responsibility to market our products in accordance with all applicable laws, the ABAC Code, and above all, responsibly, to Australian consumers. Therefore, it is always a matter of serious concern for us to receive a complaint contending that we are falling below the high standards we set for ourselves in this regard.
  - We appreciate the ABAC Panel giving us the opportunity to offer our responses as set forth below.
  - Optus Sport, which displayed the Diplomatico marketing communication, is a subscription video-on-demand sports streaming service best known for its football coverage. Our placement of marketing communications on Optus Sport aligns with general alcohol and digital advertising requirements as referenced in ABAC's Code, Alcohol Marketing Content Checklist and the Best Practice for Responsible Digital Marketing.
  - The placement of the Diplomatico marketing communication did not breach Part 4 of the Code because it complied with the Code provisions regulating the general placement of Alcohol Marketing. We chose to place Diplomatico marketing communications on Optus Sport because this platform serves ads to its paid subscribers. A paid subscription can only be purchased by those 18 years and above ("LDA") who have a valid credit/debit card. Accordingly, minors cannot hold subscriptions and thus are not targeted.

- Optus Sport maintains a registered user database because all paying customers must provide their date of birth and credit/debit card details to register. As noted above, paid subscriptions can only be purchased by those LDA and above. However, LDA subscription owners are free to grant permission to minors to watch football matches on their LDA-purchased accounts. Nevertheless, we are comfortable that the vast majority of viewers are not minors because the latest Roy Morgan Asteroid data from April 2023 to March 2024 (Appendix 1), shows that the football viewing population is almost 95% adults.

Job: ROY MORGAN SINGLE SOURCE AUSTRALIA: APR 2019 - MAR 2024

Title:

Survey Period: Apr 23 - Mar 24, Filter: All cases, Layer: All cases, Ranking: No ranking, Projected population of Australia 14+ (in '000)

"Which sports do you ever watch on TV?"

	TOTAL		AGE - summary		TOTAL 18+	
			14-17			
(unweighted)	64597		2357		62240	
(POPN '000)	22201		1256		20944	
h%	100.0%		5.7%		94.3%	
	wc	h%	wc	h%	wc	h%
TV SPORTS WATCHED REGULARLY OR OCCASIONALLY						
TOTAL Soccer (incl. FIFA World Cup)	5973	100.0%	310	5.2%	5663	94.8%

Some population estimates are based on a partial sample.

- Given that the Euro 24 football competition was streamed on a platform where all registered, paying users are 18 years old and above, it is reasonable to conclude that the vast majority of viewers were also 18 years old and above. As mentioned above, even though registered, paying subscribers have absolute discretion to grant access to their accounts to minors, we reasonably expected that the audience was at least 80% adults.
- The Diplomatico marketing communication was placed on a subscription service where we reasonably expected all subscribers and the vast majority of viewers to be LDA and above because
  - to be a registered subscriber you must be 18 years old or above and
  - football demographic data shows that viewers are almost 95% adults.
- Thus, the placement of the Diplomatico was not primarily aimed at minors.
- We believe that our marketing communications placed on Optus Sport are fully compliant with the ABAC Code and firmly disagree that any aspect is violative of the Code. The Diplomatico marketing communication was intended to be viewed only by registered, paying subscribers who are LDA

and above. Therefore, it is incorrect to claim that more than fifty percent of viewers were children.

## The Panel's View

### Introduction

14. The complainant is concerned about marketing for Diplomatico Rum which was placed with the streaming of football games played in the Euro 2024 competition over the Optus Sports service. The complainant contended that there were not any time restrictions over when the marketing was shown, and it would be mistaken to believe the audience for the Euro's would be adults. It was surmised that over 50% of the audience watching would be children.
15. Optus Sports is a sports streaming service that is delivered over the internet and can be received via web browsers from an internet connected device such as a phone, tablet and laptop or over internet connected smart TV. It is a subscription service which means an account holder is required to give basic personal details including their date of birth as well as have a payment mechanism.
16. The complainant's concern raises the ABAC Placement Standards. The standards have the policy aim that alcohol marketing be directed towards adults and to the extent reasonably possible away from minors. The standards approach this goal by creating a series of obligations on alcohol marketers related to the technical capacity of various transmission mediums to target the potential audience of an item of marketing.
17. For an internet based streaming service such as Optus Sports, the applicable standards require:
  - the use of available age restrictions controls to exclude minors being served with alcohol marketing where this is possible - Part 4 (b);
  - no alcohol marketing to be placed with programs and content where it is reasonably expected that the audience of minors would exceed 20% of the total audience - Part 4 (c); and
  - irrespective of the likely audience, alcohol ads cannot be placed with programs or content primarily aimed at minors - Part 4 (d).
18. The complainant mentioned time of day restrictions. The most long standing placement restrictions on alcohol ads relates to free to air linear TV broadcasts i.e. 'traditional' TV that requires a TV aerial to be received. These restrictions are contained in the Commercial Television Industry Code of Practice (CTICP) and pre-date the ABAC placement standards by decades.

19. Time of day restrictions contained in the CTICP were not adopted in the Codes that media bodies developed for the newer digital technologies. While these codes are not within the domain of the ABAC Scheme, it would seem a reason was that the set schedule broadcast times of traditional TV that gave time of day restrictions their foundation had far less utility when video on demand enables programs to be accessed whenever the viewer chooses.
20. When the ABAC Placement Standards commenced in 2017, they took the CTICP (and a code with restrictions on outdoor installations such as billboards) as the starting point and built upon them. The ABAC provisions applied to media that up to that time had no specific alcohol marketing restrictions such as print and radio and most importantly applied to digital media such as social media platforms and subscription services like Optus Sports.
21. Further, for the transmission mediums like digital and linear TV, the ABAC standards moved beyond the 'proxy' measure of assuming that at certain times of day, minors would be a lesser segment of the viewing audience e.g. after 8-30pm and required use of ratings systems and data analytics to base the 'reasonably expected' 80% adult audience benchmark.
22. So while time of day restrictions for alcohol ads are not applicable to sports programming over Optus Sports, the ABAC standards related to age restriction controls and the expected level of minors viewing the Euro's are in play.

#### **Have the ABAC Placement Standards been breached**

23. The placement standard in Part 4 (b) requires that alcohol marketers apply available age restrictions controls to exclude minors. Optus Sport requires a subscription account and these accounts are not open to minors. Further the account holder needs a credit or debit card to pay for the account. This means that minors were on the face of it excluded from Optus Sports and this standard has not been breached.
24. That said, as the Company acknowledges there is of course nothing precluding an adult with an Optus Sports subscription from sharing the service with other people including minors. And while a smaller device like a phone might not be a standard way to co-view a football game, it would be very usual for a family with an internet connected TV. The complainant did not explain how his son was watching the Euro's, but it can be readily assumed that it was through an account held by a parent and quite possibly over Optus Sports connected to a smart TV.
25. This means the third placement standard is most important as it relates to the reasonably expected audience of an alcohol marketing communication. The standard provides that marketing is not to be placed if the audience is expected to be less than 80% adults.

26. The Company supplied information on the viewing of football games in the period of April 2023 to March 2024 which included the ratings for the Women's World Cup. This showed that the audience of football is overwhelmingly adult (almost 95%). It is reasonable to expect that the viewership of the Euros would also be predominantly adult and that the audience of minors would not exceed the 20% benchmark in the standard.
27. The fourth standard in Part 4 (d) requires that irrespective of the expected audience, alcohol ads cannot be placed with programs or content primarily aimed at minors. Football is the world game and is followed across age groups including minors. The Euros are a major competition and will be of interest to football fans in Australia. The streaming of the games however cannot be fairly regarded as being primarily aimed at minors.
28. As none of the Code placement standards have been breached, the complaint is dismissed.