



ABAC Adjudication Panel Determination No 97/24

Product: Guinness
Company: Lion – Beer, Spirits & Wine Pty Ltd
Media: Out of Home – Workplace Lift
Date of decision: 29 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 24 June 2024 in relation to advertising for Guinness (“the product”) by Lion – Beer, Spirits & Wine Pty Ltd (“the Company”) in a lift.
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 24 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 Placement

10. The complaint relates to advertising for alcohol in a workplace lift.

Complaint

11. The complainant objects to the marketing as follows:
 - *This is an ad for alcohol (Guinness) in a workplace lift.*
 - *I am concerned it is promoting alcohol consumption while people are in their workplace which could be a trigger for people with an unhealthy relationship with alcohol and those trying to avoid alcohol consumption.*
 - *There is not really any way for people who may want to, to avoid this advertising if they have to see it in the lift in their workplace.*

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 12 July 2024. Its primary comments were:
- We confirm that Lion – Beer, Spirits & Wine Pty Ltd (**Lion**) is the distributor of Guinness in Australia, and the advertiser for the purposes of this complaint.
 - Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of the complainant. 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.
 - The Advertisement received approval through the Alcohol Advertising Pre-Vetting Service (**AAPS**). Please refer to AAPS Application No. 07399-2024.
 - We requested that Lion's media agency, UM investigate this Complaint and they have advised as follows:
 - there are a number of buildings in the Melbourne CBD that could've been used for this Placement so it's not possible to provide further details based on the Complaint. However, as an office building in the CBD, the tenants are highly likely to consist of professional services businesses and users of the elevator during working hours would entirely be an adult audience;
 - UM's internal systems and MOVE (Out of Home Audience Measurement System) did not flag any of the potential office building locations in the Melbourne CBD as raising concerns under the Outdoor Media Association Placement Policy (**OMA Placement Policy**); and

- the same process as any other placement is applied for placements using elevator and lobby screens – this includes having regard to the tenancy of the building, likely audience composition and requirement not to place within 150m sightline of a school under the OMA Placement Policy.
- 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.

The Panel’s View

14. The complainant has raised a concern regarding the placement of an ad for the Company on an electronic screen located in a lift in an office building in Melbourne. The concern expressed is that advertising of this nature should not occur in the workplace and it may be triggering for someone dealing with alcohol dependency issues.
15. The complainant is raising a legitimate concern about the challenge confronted by individuals with alcohol dependency in a society where references to and depictions of alcohol use are extensive. Alcohol use is shown throughout popular culture from programs on TV, to movies and of course through the advertising of alcohol products. It can be readily accepted that it is difficult to navigate life without some degree of exposure to the use of alcohol.
16. For its part, the ABAC Scheme like regulatory settings and public policy more broadly operate on the basis of harm minimisation. This recognises that alcohol is a lawful product and it can be consumed by adults. While accepting that starting point proposition, harm minimisation employs a range of public health, law enforcement and other strategies to assist responsible choices regarding alcohol and limit the detriment from alcohol misuse.
17. Alcohol marketing is one area that is regulated with the aim of avoiding irresponsible alcohol use. The ABAC Scheme is one component of a multi-faceted legal regime consisting of direct government requirements and industry led codes of practice. The ABAC Code comprises both content standards about the messaging of alcohol marketing and placement standards that govern the locations and media over which alcohol can be sited and conveyed.
18. The Placement Standards are directed towards the protection of minors and create differential obligations on alcohol marketers related to the technical

capacity of communications mediums to target the audience of an item of marketing based on age. Taken as a whole the placement standards:

- impose time of day restrictions when alcohol ads can be broadcast on linear free to air TV;
- prohibit the outdoor location of an alcohol ad within 150 metres sightline of a school;
- if the marketing is transmitted by a digital channel (social media, broadcast video on demand etc), then available age restriction controls must be used to exclude minors;
- if minors can't be excluded, then the expected audience of marketing over digital platforms as well as TV, radio, print and cinema must be 80% adult for the medium to be used for alcohol communications;
- advertising can't be placed with programs or content primarily aimed at minors; and
- alcohol marketing material cannot be delivered directly to a minor by hand or electronic direct mail.

19. Other vulnerable groups beyond minors do not fall within the preview of the placement standards except the standard in Part 4 (e)(iii) creates an obligation on alcohol marketers to act on a request from any person to be removed from a marketer's mailing list or other method of direct communication e.g. text, social media messaging. Rather the Code imposes standards on the messaging within alcohol marketing and prohibits amongst other things:

- encouragement of consumption at levels beyond those identified with the Australian Guidelines to Reduce Harm from Drinking Alcohol;
- excessive or rapid consumption;
- strongly appealing to minors;
- suggestions that alcohol contributes to social or other success or alcohol is needed to cope with stress or offers health benefits; and
- showing alcohol use before or during risky activities such as driving or using machinery

20. The complainant mentions that alcohol use should not be suggested as occurring in the workplace. As a general proposition, alcohol use and employment settings would be regarded as inappropriate. In some employment circumstances, it would be negligent and possibly criminal to use alcohol e.g. a bus driver before or during a shift. There might however be settings where

moderate alcohol use might be acceptable e.g. say an accountant having one glass of wine at an industry function over lunch.

21. That said, there is no express ABAC prohibition on the placement of an alcohol ad on an electronic screen in a lift in an office building. While the ad is notionally subject to the placement standards mentioned above, it is improbable the location of the ad would breach these standards. Moreover, the expected audience of an ad in an office lift will be overwhelmingly adult office workers and not minors.
22. As there has been no breach of the ABAC standards, the complaint is dismissed.