



ABAC Adjudication Panel Determination No 114/24

Product: BWS
Company: Endeavour Group
Media: Social Media
Date of decision: 30 August 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 26 July 2024 in relation to social media marketing for BWS (“the product”) by Endeavour Group (“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 26 July 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 approval was not obtained for the marketing.

The Placement

10. The complaint relates to placement of an advertisement for BWS on Facebook.



Complaint

11. The complainant objects to the marketing as follows:
- *Advertising alcohol specials on social media without thought as to the audience.*
 - *Can be triggering for people struggling with alcohol abuse, or viewed by underage consumers.*
 - *We have a very large problem in Tasmania with alcohol addiction and abuse, and a large number of our population with alcohol abuse related health conditions. This is not an appropriate form of advertising on a social media page designed for local support.*

The ABAC Code

12. Part 4 (b) of the Code provides that:

Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.

13. Part 6 of the Code provides that:

A breach of this Code that is reasonably unforeseeable by or outside the reasonable control of a marketer or their agency will be classified as a no fault breach.

14. Part 8 of the Code defines that:

Available Age Restriction Controls means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a platform, website or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used to place a Marketing Communication.

The Company Response

15. The Company responded to the complaint by letter emailed on 5 August 2024. It's primary comments were:

- BWS thanks the ABAC Adjudication Panel (the **Panel**) for the opportunity to respond to the Complaint. BWS understands that the Panel is considering whether or not the Advertisement breaches Part 4 (b) of the ABAC Responsible Alcohol Marketing Code (the **Code**) by not applying Available Age Restriction Controls to exclude Minors from viewing an Alcohol Marketing Communication.

- At the outset, BWS would like to note the following:
 - Upon being made aware of the Complaint, the Advertisement was promptly removed.
 - BWS, as part of Endeavour Group, is committed to maintaining our 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. As part of our commitment to the Code we have prepared useful resources for the business including our Responsible Marketing Guidelines and we regularly conduct internal training on ABAC compliance.
 - The importance of ensuring all necessary marketing communications (involving the BWS 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.
 - Furthermore, BWS 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
 - c. 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 BWS with a compliance framework to serve our customers in accordance with its obligations under the various applicable laws.

Placement of the Marketing

- Part 4 (b) of the Code requires that Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.
- Upon receiving the Complaint, we promptly conducted internal enquiries with relevant stakeholders of the business. The staff member responsible for posting the Advertisement confirmed that:
 - They took immediate action and removed the Advertisement from the Sorority Sisters - Launceston Facebook page (**Facebook Page**) on 30 July 2024;
 - The Facebook Page administrator did not apply Available Age Restriction Controls to the Advertisement; and
 - The Facebook Page is not age-gated.
- Although the Facebook Page did not apply Available Age Restriction Controls, we note that the Facebook Page is a closed group that can only be joined by request subject to the approval of its administrator. Further, posts on the Facebook Page can only be viewed by its members.
- We confirm that the Advertisement was a single instance and was created and posted by a single staff member without any instruction, inducement or motivation from BWS.
- This isolated act is incongruous with our marketing processes and practices. The breach was reasonably unforeseeable and we therefore submit that this should be classified as a “no fault breach”.
- Notwithstanding this, BWS 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. To that end, we are requiring that the relevant staff member, and all staff at the BWS Longford, Tasmania store, undertake additional ABAC compliance training to ensure the team understands their obligations under the Code.
- In addition, to prevent similar issues arising in the future, we are raising this Complaint with other relevant parts of the business to reinforce their obligations to ensure that in-store marketing materials (including those

created by team members) are compliant with the Code and pre-vetted where appropriate and are also in accordance with our standards and guidelines.

The Panel's View

16. Sorority Sisters – Launceston is a private Facebook group described as a 'group for girls in the Launceston region to post how they are feeling, ask for recommendations and just general chit chat'. The group has 8,700 members as at the date of this determination.
17. It seems that sometime in mid July 2024, a staff member of the Company from its Longford store who was permitted entry to the Sorority Sisters group posted about the release of a new Lemon Lime flavoured variant of the Hard Rated RTD product. It is this post which has drawn the complaint.
18. The complainant is a member of the Facebook group and believes it was entirely inappropriate for BWS to have posted about an alcohol product to the group. It is contended that the post could be triggering for those dealing with alcohol dependency issues and it would be viewed by underage consumers.
19. This concern therefore is not about the content of the post or Hard Rated as a specific product as such, but that any alcohol marketing should have been directed to the Sorority Sisters Facebook group. This enlivens the ABAC Placement Standards.
20. The Placement Standards have the policy goal that alcohol marketing should be directed towards adults and to the extent reasonably possible, away from minors. The standard in Part 4 (b) of the Code captures social media platforms such as Facebook and requires that available age restriction controls be applied to exclude minors from viewing an alcohol marketing communication.
21. The age restriction controls available on Facebook can effectively exclude minors from seeing posts advertising alcohol. The fact that the Sorority Sisters was a private group does not negate the need to utilise available age restriction controls.
22. The Company accepts that the Facebook page for the group was not age gated and available age restriction controls were not applied to the post. It explains that the post was made by the staff member without instruction from BWS as such. It was removed upon the complaint being received and additional compliance training is being initiated.
23. It is clear that the Placement Standard in Part 4 (b) of the Code has been breached as available age restrictions were not applied. The age profile of the members of the Sorority Sisters is not known. As a general benchmark, the ABAC Placement Standards adopt an 80% adult audience as the threshold for

alcohol marketing where it is not possible to exclude minors by use of age restriction controls. Possibly the membership of the group has more than 20% under 18 year olds, but no finding can be made on this point.

24. The Company has requested that as the breach was reasonably unforeseeable it should be classified as a 'no fault breach'. A no fault finding does not diminish that a complainant's concern was accepted, but it is appropriate if the breach was reasonably unforeseeable or outside the reasonable control of an alcohol marketer or its media agency.
25. It can be accepted that BWS as a corporate entity did not have a marketing plan to target the Launceston Sorority Sisters and that the staff member acted on their own volition rather than as part of overall marketing strategy. It is welcomed that the Company took the breach seriously and has instigated additional training for its Longford employees. Given the system in place, and an employee acting outside that system, it is believed a no fault finding is appropriate.
26. The complaint is upheld and no fault ruling made.