



ABAC Adjudication Panel Determination No 116/24

Product: Jameson Irish Whiskey
Company: Pernod Ricard Winemakers Pty Limited
Media: TV – Free to Air
Date of decision: 6 September 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 13 August 2024 about advertising for Jameson Irish Whiskey (“the product”) by Pernod Ricard Winemakers Pty Limited (“the Company”) on Channel 7, Saturday 10 August 2024, at approximately 2:30 pm.
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 places 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, and 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 13 August 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 before 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 marketing (Approval Number 5713).

The Placement

10. The complaint relates to television advertising for Jameson Irish Whiskey on Channel 7, Saturday 10 August 2024, at approximately 2:30 pm.

Complaint

11. The complainant objects to the marketing as follows:
 - *Channel 7 advertised Jameson Irish Whiskey during the children-friendly hours of 8.30 am and 8.30 pm.*

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 22 August 2024. Its primary comments were:
- Pernod Ricard Winemakers Pty Ltd (Pernod Ricard Winemakers) is a signatory to the Alcohol Beverages Advertising Code Scheme (ABAC) and takes compliance with the ABAC Responsible Alcohol Marketing Code (Code) very seriously. We are committed to the responsible marketing of our products and always endeavour to abide by the Code as well as other applicable advertising codes and laws. As a member of the global Pernod Ricard Group, we are also committed to the responsible marketing and consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.
 - The complaint is said to relate to a television commercial that aired on Channel 7 in Perth on Saturday, 10 August at 2:30 pm. Our media agency has confirmed that the Jameson Irish Whiskey television commercial aired around that time (at 2:13 pm) in Perth on Channel 7 that day.
 - The Advertisement aired during a commercial break during the broadcast of the AFL's Round 22 match between North Melbourne and West Coast.
 - There were a further three television commercials on Channel 7 that afternoon for Jameson Irish Whiskey, two of which aired during the same AFL match programming at 12:56 pm and 1:07 pm; and a further commercial aired at 5:18 pm during the broadcast of a later AFL match between Fremantle and Geelong.
 - The Advertisement was submitted for pre-vetting advice on 11 April 2023 (Application No. 162-2023) and received pre-vetting final approval on 11 April 2023 (Approval No. 5713).
 - The name of the program being broadcast on Channel 7 in Perth on Saturday, 10th August 2024 at 2:13 pm was AFL (Round 22: North Melbourne v West Coast).
 - Part 4 of the Code requires compliance with code provisions regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, the Commercial Television Industry Code of Practice (CTICP)).

- The placement of the Advertisement did not breach the CTICP as the Advertisement appeared in a timeslot permitted by section 6.2.1 of the CTICP. Section 6.2.1 of the CTICP provides that Commercials for Alcoholic Drinks may be broadcast only during specified times which include:
 - *“6.2.1(b) as an accompaniment to a Sports Program on a Weekend or Public Holiday”.*
- ‘Sports Program’ is defined in CTICP as “a Program predominantly consisting of (a) coverage of a sporting event (whether live, replay or highlights); (b) sporting commentary, analysis, interviews and news; and (c) presentations/awards and ceremonies associated with a sporting event. Channel Seven’s coverage of the AFL’s Round 22 match between North Melbourne and West Coast falls within this definition.
- As the Advertisement was shown on a Saturday afternoon during a live broadcast of a sporting event, it was broadcast at a time when commercials for alcoholic drinks are permitted to be broadcast on commercial television in accordance with the CTICP. The additional Jameson Irish Whiskey television commercials broadcast on the same day also complied with the code requirements in the CTICP.
- Pernod Ricard Winemakers sought audience composition data for broadcasts of AFL matches from our media agency before booking the Advertisement to air to ensure that the audience at that time was reasonably expected to comprise at least 80% adults, as required by the Code.
- We were provided with audience data for the broadcast of AFL matches that aired in the previous year, 2023, which showed that an average of 92.8% of the audience across all broadcasts was aged over 18 years.
- This was the most accurate, up-to-date and reliable composition data available before the Advertisement was booked by our media agency. We considered it reasonable to expect that the audience composition for AFL matches in 2023, including for Saturday afternoon broadcasts, would be the same or similar to that for the programs in 2024.
- Channel 7 has now provided us with composition data for their Perth audience for Saturday afternoon football during Round 22 when the Advertisement aired. This data shows that less than 2% of the audience was under the age of 18 for the match between North Melbourne and West Coast.
- This demonstrates that not only was the audience reasonably expected to comprise at least 80% adults at the time the Advertisement was booked to air, but the data confirms that the audience did comprise at least 80%

adults. As such, the placement of this advertisement complies with this Code requirement.

- We wish to reiterate that Pernod Ricard Winemakers is committed to the responsible marketing of its products and upholding compliance with the Code. Pernod Ricard Winemakers maintains strict internal and external processes to help ensure compliance.

The Panel's View

14. The complainant has raised a concern regarding the placement of an ad for Jameson Irish Whiskey on free-to-air television at approximately 2:30 pm on Saturday 10 August 2024. The concern expressed is that alcohol advertising should not be shown between 8:30 am and 8:30 pm, due to the chance of children seeing the advertising.
15. The ABAC contains both content and placement standards. The content standards go to the messaging contained within alcohol marketing while the placement standards have the policy aim that alcohol marketing be directed towards adults and to the extent reasonably possible, away from minors. The complainant does not suggest that the content of the Jameson TV ad was inappropriate, so the issue to be examined is whether the ABAC Placement Standards have been complied with.
16. The ABAC Placement Standards are detailed in Part 4 of the Code. As a broadcast medium, it is not possible to exclude those under 18 years old from watching free-to-air TV, so the ABAC rules seek to limit the exposure of advertising to minors through three stipulations on alcohol marketers namely:
 - all applicable media codes applying to alcohol advertising must be complied with i.e. the Commercial Television Industry Code of Practice (CTICP) - Placement Standard 1;
 - the advertisement may only be placed with programs where the audience is reasonably expected to comprise at least 80% adults - Placement Standard 3; and
 - the advertisement must not be placed with programs or content primarily aimed at minors - Placement Standard 4.
17. The CTICP is a longstanding media code governing free-to-air TV and its time-of-day restrictions on alcohol advertising have been in place since the 1980s. The ABAC commenced in 1998 as a content-only set of advertising standards. The Placement Standards came into operation in November 2017 and for free-to-air TV, adopted the pre-existing regime contained in the CTICP as a starting point and built upon it.

18. While the complainant did not nominate the program being viewed when the ad was broadcast, the Company advised it was advertising Jameson Whiskey on 10 August in conjunction with the broadcast of two AFL matches. At approximately 2:30 pm an ad was shown during the North Melbourne and West Coast game and presumably, this is the specific ad referred to by the complainant.
19. It is clear Placement Standard 1 has not been breached. This is because the CTICP, while generally restricting the broadcast of alcohol advertising to after 8:30 pm, does expressly permit alcohol advertising in conjunction with the broadcast of a live sports event. This means it was permitted to show alcohol advertising with live broadcasts of the AFL before 8:30 pm.
20. Placement Standard 3 establishes the 80% adult audience benchmark for the placement of alcohol marketing. Information on the audience of TV programs is available through the ratings system. The Company has advised that ratings data obtained before the marketing was placed showed that in 2023 an average of 92.8% of the audience across all broadcasts of the AFL was aged over 18 years. It further advised that data shows that less 2% of the audience was under the age of 18 for the match between North Melbourne and West Coast. It is evident the placement rule benchmark of an 80% adult audience has not been breached.
21. Placement Standard 4 provides that irrespective of the actual audience, alcohol ads cannot be placed with content aimed primarily at minors. While the AFL has appeal across age groups, including minors, its broadcast cannot be said to be aimed primarily at minors. In fact, the audience data is highly suggestive that the appeal of the AFL is primarily to adults.
22. As there has been no breach of the ABAC standards, the complaint is dismissed.