



## ABAC Adjudication Panel Determination No 121/24

**Products:** Hahn, West End, XXXX and Threefold Distilling  
**Company:** Lion and Threefold Distilling  
**Media:** Outdoor  
**Date of decision:** 29 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 21 August 2024 about outdoor advertising at an oval overlooked and used by a primary school. The products noted by the complainant are produced by Lion and Threefold Distilling.
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 August 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target 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 the marketing.

## The Marketing

10. The complaint relates to outdoor advertising at an oval overlooked and used by the Glenelg primary school in Adelaide..



## Complaint

11. The complainant objects to the marketing as follows:
- *The alcohol advertising is on a school campus and visible to school children while they are attending school in class.*
  - *The school is Glenelg Primary School. Alcohol advertising is visible from the roads around the school oval, Glenelg Oval on Brighton Road.*
  - *The advertising is visible from the multi-storey school building when children are sitting in their classroom.*

## The ABAC Code

12. Part 2 (b) the Code provides that it does NOT apply to:
- ...
- (v) Sponsorship Agreement.
13. Part 4 of the Code requires that the following Placement Standard be applied:
- (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).
14. Part 8 of the Code contains the following definition:

**Sponsorship Agreement** means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a producer, distributor or retailer of Alcohol or an Alcohol Alternative to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's product or outlet. Sponsorship Agreement also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

## The Company Response

15. Threefold Distilling responded to the complaint by email on 23 August 2024. Its primary comments were:

- Our signage has its back to the school. I've never been in the Glenelg Primary School myself, but I think it's a very safe assumption that our sign is not visible from the school grounds.
- We did not request pre-vetting advice as the sign does not promote our product or brand (alcohol), it is a promotion of our venue. There are a few local pubs who sponsor the football oval and promote their venues on signage around the grounds. We considered the number of minors who attend football matches, and decided it was more appropriate to promote the venue which is down the road, rather than our gins.
- The placement of the sign was decided by the Glenelg Football Club. It is part of our sponsorship agreement with the football club.
- We are sponsors of the Glenelg Football Club. One part of our sponsorship was to be able to place a sign for promotional purposes on the oval. As mentioned above, although we are beverage manufacturers we decided that promoting our venue/cellar door was more appropriate than promoting our products. The image below shows exactly how the sign reads, as you can see, it is a promotion of our distillery and cocktail bar as a venue, not of our gins or liqueurs.



- I would suggest that because this is a venue promotion/sponsorship and not a brand or product promotion (please note that these are two separate entities with separate ABN's) that our sign does not breach ABAC code. I would also like to refer you to the attachment "Glenelg FC Oval Map" which shows the placement of the school in the red square, and the sign in question in blue. The sign faces directly away from the school.
16. Lion responded to the complaint by letter emailed on 6 September 2024. Its primary comments were:
- We refer to your letter dated 23 August 2024 (**Letter**) in relation to a complaint received by ABAC about West End boundary fence signage, portable bars displaying West End, Hahn and XXXX branding, and XXXX and West End portable shelters covering bar areas (**Branded Materials**)

being displayed at Stratarama Stadium / Glenelg Oval on Brighton Road in Glenelg East, South Australia (**Venue**).

- We also acknowledge your email dated 28 August 2024 regarding further investigations conducted by the complainant and verification of this information with Glenelg Primary School.
- 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.
- To our knowledge, the Branded Materials were not submitted for review through the Alcohol Advertising Pre-Vetting Service.
- Lion is a sponsor of the South Australia National Football League (**SANFL**), which is the governing body and league for Australian rules football in South Australia.
- Lion's rights under the SANFL sponsorship agreement include the right to display signage within all licensed bar areas of sponsored SANFL clubs and on-field boundary fence signage at sponsored SANFL club grounds (**SANFL Sponsorship**). The Glenelg Football Club (**GFC**) team is a sponsored SANFL club, and these rights apply to the Venue as GFC's home ground.
- The Branded Materials were provided by Lion to GFC to enable it to fulfil its obligations under the SANFL Sponsorship at the Venue.
- We note that:
  - the Branded Materials are affixed to the Venue's boundary fence or are clearly attached to or being used for bar facilities operated at the Venue by the Glenelg Football Club; and
  - the Branded Materials consist of the Lion brand logos including West End, Hahn and XXXX.
- We respectfully submit that the Branded Materials are:
  - Lion brand logos displayed at the Venue due to the SANFL Sponsorship, which causes them to fall within the "Sponsorship Agreement" exception under Part 2(b) of the ABAC Code and therefore the Placement Rules don't apply (see paragraph 26 of ABAC Adjudication Panel Determination No 32/18).

- We refer to the panel's recent decision in ABAC Adjudication Panel Determination No 53/24 and submit that the Branded Materials "*would fall within the 'naming rights' manifestation of the sponsorship agreement*" between Lion and the SANFL, and this Complaint should be similarly dismissed; and
- not an "out of home" advertising placement that is captured by the Outdoor Media Association Alcohol Advertising Policy (**OMA Policy**). This is confirmed by the Venue's location being unavailable for placement via Lion's media agency, UM and on the OMA Measurement of Outdoor Visibility and Exposure (MOVE) and Veridoo platforms.
- If the above submissions are not accepted and the Placement Rules and OMA Policy are found to apply to the Branded Materials, then we submit:
  - they are being used in relation to bar facilities operated by GFC that sell alcohol, the advertising directly relates to these bar facilities and therefore fall within the 'on-premise advertising' exception under Part 3.4 of OMA Policy; and
  - the 'on-premise advertising' exception of the OMA Policy applies at all times, including when the relevant venue is not operational.
- Further, we note that the photographs submitted as part of the Complaint have been taken within the Venue and not from the Glenelg Public School boundary, which is the relevant approach for assessing whether the Branded Materials are in "sightline" under the OMA Policy. It is unclear whether the Branded Materials are obscured or directed away from the school boundary.
- For these reasons, we submit that there has been no breach of the Placement Standards under Part 4(a) of the ABAC Code or OMA Policy.

### **Practical Implications**

- As the ABAC Panel may be aware, an adverse finding for displaying the Branded Materials at the Venue and bar facilities within the Venue raises broad practical challenges for sponsorships, including:
  - alcohol brand sponsorships play a significant role in the financial support of sporting clubs of all levels, providing vital funding that helps cover operational costs, enhance facilities, and investment in player development. These partnerships offer clubs a steady stream of revenue, which is crucial for maintaining and elevating the level of competition and ensuring the long-term sustainability of the sport. Reducing or eliminating such sponsorship would

jeopardize the financial stability of many clubs and potentially their future;

- non-professional sporting clubs are usually volunteer run and have limited financial resources. A requirement to cover up or remove branded signage at venues when they aren't in use by sponsored teams or clubs would place an administrative burden on these clubs, and reduce possible sponsorship rights and therefore income; and
- non-professional sporting clubs that use modern and state of the art facilities may be forced to relocate to lower quality facilities that don't hold these sponsorships.
- 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**

17. Adelaide's Glenelg Oval is the home to a large multi-sports and community complex, hosting:
  - Statarama Stadium, the home ground of the Glenelg Football Club;
  - the Glenelg District Cricket Club;
  - the Holdfast Tennis Club; and
  - Margaret Messenger Reserve containing various community amenities.
18. Adjoining the Oval is the Glenelg Primary School which dates back to 1881. The School and the Glenelg Football Club have been neighbours for over a century with the Club established at the oval in 1920 and entering the South Australian National Football League (SANFL) the following year.
19. Both the Club and the SANFL are supported and sponsored by a variety of businesses. The sponsors of the SANFL include national businesses such as the superannuation fund Hostplus, insurance company AAMI, supermarket Coles and the major alcohol company Lion and its well-known South Australian beer brand West End. The Club sponsors and partners are more locally based businesses and include several hotels and the craft gin and spirits distiller Threefold Distilling.



20. It is the manifestation of the sponsorship of the SANFL and the Club by the alcohol companies through signage at Statarama Stadium which has drawn the complaint. The signs and other items promote the branding of the following:
- West End beer;
  - Hahn beer;
  - XXXX beer; and
  - Threefold Distilling.
21. The complainant contends this is highly undesirable given the proximity and visibility of the alcohol marketing to the School. It is not unusual for sporting grounds to have signs that acknowledge sponsors/supporters of the clubs or teams that play at the grounds. What is more unusual is having the grounds of a major club like the Glenelg Tigers immediately abutting a school.
22. It can be accepted that the complainant's contention that at least some of the alcohol brand and product signs are visible to the students of the school is correct. This is because of the proximity of Statarama Stadium to the school and the outlook from the two-story buildings at the school. Further it seems the school makes use of the Oval for school sports activities pursuant to a Shared Services Agreement under the auspices of the City of Holdfast.
23. While the ABAC has a wide ambit of the types of marketing materials which are captured including outdoor advertising such as signs, the Code in Part 2 (b)(v) states that the Code does not apply to a Sponsorship Agreement. A sponsorship agreement encompasses the commercial terms by which an alcohol company supports a sports, cultural or similar event or activity in return for the sponsored party agreeing to be associated with the alcohol company's product or outlet.
24. The direct manifestation of the sponsorship such as naming rights to a team, the placing of a logo on a jumper or brand name signage at a stadium is included within the carve out for a sponsorship agreement. The exception is limited and all other marketing that flows from the existence of the sponsorship relationship is captured by the Code for instance TV ads or posts on social media.
25. Both Lion and Threefold Distilling have advised that sponsorship agreements are in place with the SANFL and the Glenelg Football Club respectively. The signage at the grounds arises from this sponsorship. It follows that the signage at the Statarama Stadium that references the Lion beer brands, and Threefold Distillery outlet falls within the Part 2 (b) exception and hence the ABAC standards do not apply.

26. It is appreciated that the complainant will find this an unsatisfactory outcome. There is a legitimate public debate as to the desirability or otherwise of the sponsorship of sports by alcohol companies and the unusual situation of the school and the stadium being adjacent to each other highlights the issue. Ultimately however, the issue of the sponsorship of sports by alcohol companies is a question of public policy for government. The Panel has the more focussed role to apply the ABAC and the Code expressly excludes sponsorship agreements from the application of the Code standards.
27. The complaint is not upheld.