



ABAC Adjudication Panel Determination No 129/24

Products: Fireball Whiskey
Company: SouthTrade International
Media: Billboard at Bus Stop
Date of decision: 5 October 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 30 August 2024 about advertising for Fireball Whiskey at a bus shelter.
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 30 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 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 obtained for the content of the advertisement (Approval Number 9863).

The Marketing

10. The complaint relates to advertising for Fireball Whiskey at a bus stop:



Complaint

11. The complainant objects to the marketing as follows:
 - *It is in the bus stop on Beaconsfield Road, Revesby, the nearest cross street is Albert Street.*

- *The advertisement is in a bus stop which is only 250 metres from 2 schools. It is advertising alcohol and the character in the advertisement is holding 2 glasses of whiskey in front of his private parts. Highly unsuitable and inappropriate content to place where primary school aged children are walking to and from school everyday!!*

The ABAC Code

12. Part 3 of the Code provides that an Alcohol Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors, in particular;

(A) specifically target Minors;

(B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;

(C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;

(D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or

(E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors

13. 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).

The Company Response

14. The Company responded to the complaint by email on 23 September 2024. Its primary comments were:
 - All our OOH media has been bought in line with OMA guidelines for alcohol advertising.

The Panel's View

15. This determination considers the provisions of both the ABAC Content and Placement Standards, insofar as they apply to responsible alcohol marketing and minors. The complainant argues that an ad for Fireball Whiskey placed on a bus shelter on Beaconsfield Road in the Sydney suburb of Revesby is inappropriate due to its appeal and high visibility to school children.
16. The ABAC Code comprises two sets of standards with which alcohol marketers must comply. The Content Standards go to the messaging conveyed by an alcohol marketing communication irrespective of the medium by which the marketing item is carried. A core content standard is that alcohol marketing must not have strong or evident appeal to minors.
17. The second set of standards in the Code is the Placement Standards that have a policy goal that alcohol marketing should be directed towards adults and to the extent reasonably possible away from minors. The standards do this by imposing on marketers a series of obligations to target their marketing based on the technical capacity of the medium used to carry the marketing.
18. Outdoor marketing (also known as Out Of Home advertising (OOH)) is a broadcast medium and there is no direct means to target an ad placed on a billboard or bus shelter towards only adults. Rather the standards use a proxy measure for OOH advertising of excluding the placement of alcohol ads within a 150 metres sightline of a primary or secondary school.
19. The 150 metres sightline requirement is based on the readability of a sign which is generally only 140 metres even with a large sign such as a billboard. Accordingly, it is contended that if a school is more than 150 metres away from a sign, students on the school grounds will not be able to make out the messaging on the sign.
20. The database for the location of OOH sites is held by the Outdoor Media Association (OMA) and is contained in the Measurement of Outdoor Visibility and Exposure (MOVE) tool. This tool lists some 77,500 out of home advertising sites within the five capital cities of Sydney, Melbourne, Adelaide, Brisbane and Perth. Attached to MOVE is the school mapping tool which according to the 2022 OMA Annual Report contains the boundary locations of some 12,185 schools.

21. The Company responded only briefly to the complaint and stated its advertising was consistent with OMA Guidelines. The Panel's complaint's officer obtained further advice from the OMA which confirmed that the bus stop on Beaconsfield Road is outside the 150-metre radius of any school.
22. The complainant's concern on the sign's placement on the bus shelter is not however confined or even centred upon the sign being visible from a school. It is more that students will pass by the bus shelter on their way to and from school, either by catching a bus or otherwise. In other words, alcohol advertising on the Beaconsfield Road site will have a higher than usual number of minors viewing the ad.
23. The Panel acknowledges the point which also could be made about alcohol advertising in a range of outdoor locations beyond 150 metres of a school. That is why the Panel in Determination 78/24 examined the regulation of OOH marketing in depth and suggested that the MOVE data and technology be tested as a potential basis to more precisely eliminate specific OOH sites for alcohol advertising if the reasonably expected audience of an alcohol ad exceeds 20% minors.
24. That said, the Panel is to apply the standards as they are framed and it is clear the ABAC Placement Standard contained in Part 4 (a) of the Code has not been breached.
25. Beyond the location of the sign, the complainant contended that the content of the marketing was highly unsuitable and inappropriate for minors to see. This seemed to be a decency concern about the illustrated character holding glasses in front of its 'private parts'.
26. This concern is not so much related to alcohol as a product but a more general concern about the ad being distasteful. Presumably the same concern about the image would be there if the product being marketed was say a soft drink as opposed to alcohol. Concerns about advertising being distasteful rest with AANA Code of Ethics and Ad Standards rather than the ABAC Scheme.
27. The ABAC provides in Part 3 (b)(i) that alcohol marketing must not have strong or evident appeal to minors. This standard might be breached if the marketing:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; and

- creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors.
28. In deciding if a marketing communication is consistent with a Code standard, the Panel is to place itself in the shoes of a 'reasonable person' and assess how the marketing would be probably understood by the reasonable person. This means the values, opinions and life experiences shared by most people in the community is the benchmark. A person who views an item of marketing in a different way is not 'unreasonable', but possibly their perspective would not be shared by most people.
29. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
 - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
30. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.

31. The Panel does not believe the ad breaches the Part 3 (b)(i) standard. The images in the ad are a bottle and glass of the product, the fireball devil character, the product name and the strapline 'The Whisky with Balls'. While the strapline and devil character might be regarded as somewhat base in its double entendre, the ad as a whole would probably be understood as directed to adult males rather than minors. Any appeal to minors would be incidental rather than strong or evident.
32. Drawing both elements together, the Panel dismisses the complaint as the ad is positioned outside of the 150 metres radius of a school as required by the relevant Placement Standard and the content of the ad would not be probably understood by a reasonable person as being strongly appealing to minors.