



## ABAC Adjudication Panel Determination No 136/24

**Products:** Kraken Rum and Aldi Alcohol  
**Companies:** Proximo Spirits and Aldi Liquor  
**Media:** Podcast – Short Stories for Kids  
**Date of decision:** 24 October 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 18 September 2024 about advertising for Kraken Rum (“the product”) by Proximo Spirits during a podcast called Short Stories for Kids (“the podcast”). It was also claimed that advertising for Aldi Liquor was heard during the same podcast.
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 18 September 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 placement of the marketing.

### **The Marketing**

10. The complaint relates to the broadcast of alcohol advertising during the Short Stories for Kids podcast.

### **Complaint**

11. The complainant objects to the marketing as follows:
  - *The podcast on Apple called Short Stories for Kids has recently launched advertising alcohol in between each kid's stories. Namely advertising alcohol sold at Aldi in Australia and recently as tonight, ads on Black Spiced Kraken Rum.*
  - *Other ads have aired for electrical appliances but we as parents are more concerned with the alcohol advertising. It needs to stop. I have written a review on their podcast page and reported it to Apple but nothing has changed.*

### **The ABAC Code**

12. Part 4 of the Code requires that the following Placement Standard be applied:
  - (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.

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.

### **The Company Response**

14. Aldi responded to the complaint by email on 18 September 2024, advising that it did not advertise its alcohol offerings during the podcast.

15. Proximo Spirits responded to the complaint by email on 23 September 2024. Its primary comments were:

- Thank you for inviting us to provide comments for the Panel's consideration. Proximo takes our obligations to responsibly promote our brands seriously and maintains internal and external processes to help ensure compliance with the ABAC code. We also take reasonable steps to ensure that the placement of our marketing communications meets the standards set out in the ABAC code.
- Proximo regularly assesses marketing material in line with the ABAC Code. On this occasion, an internal review was conducted, and the pre-vetting service was not utilised. It is noted that the complaint is in reference to placement not content.
- As soon as ABAC made Proximo aware of complaint 136/24, Proximo immediately paused all activity across our programmatic buy so that the matter could be investigated.
- All media bought on Proximo's behalf has alcohol-safe measures and P25+ age targeting in place, through the publishers directly. Targeting for this campaign was set up P25+, which had been confirmed by the publisher. The podcast wasn't identified as children's content on the publisher side, which is why it hadn't been excluded from the campaign.
- The complaint also refers to 'alcohol advertising from ALDI' along with electronic companies that have been heard during the podcast due to the same reason, giving context to the categorisation error on the publisher's side.

- Our planning and targeting of podcast media across all suppliers is confirmed at a minimum only adults 25+ with an additional layer targeting within the sports category.
- Age restriction controls were implemented on the agency buying side according to standard protocol. The campaign was targeted at P25+ audiences, with controls managed either by the Demand Side Platform (DSP) used for programmatic buys or by the publishers for direct deals. However, the Short Stories for Kids podcast was not flagged as children's content by the publisher, which meant that additional age-restriction controls that could have excluded minors were not applied. Nova, the publisher responsible, is currently investigating how this categorisation error occurred and is working to ensure this doesn't happen again. The deal was run by one of the networks (Triton) they work with to purchase this media, utilising a reach extension product. The setup on their side was correct, using the Sports TTAG to target only sports content. Triton is still investigating how the targeting misfired and included non-sports inventory. Their engineering team, based in Spain, will be addressing the issue.
- In this instance, the placement was out of our control given the issue that happened within our campaign set-up and protocols in place with the supplier.
- In this instance, we submit that complaint 136/24 should be deemed a no-fault breach by the ABAC panel.

## **The Panel's View**

### **Introduction**

16. Short Stories for Kids is the name of a podcast developed and presented by Lucy Davies in collaboration with Simon Chadwick. The podcast website describes Lucy as a trained voice actor with over 15 years experience working with children as a teacher's assistant. Simon is a children's book author and graphic artist.
17. As its name suggests, the podcast is directed towards young children aged from 3 to around 10, with new episodes released three times each week. Each episode varies in length from 3 to 15 minutes with the storyline generated by ideas submitted by followers of the podcast. The podcast is hosted on the podcasting platform Spreaker and is accessible via a number of different platforms or 'publishers' with one of these being Apple Podcasts.
18. The Short Stories for Kids podcast has come before the Panel because in mid September 2024 the complainant was accessing an episode on Apple Podcasts when served with an ad for alcohol. The complainant believed this to

be totally inappropriate and complaints were lodged with the podcast creators, Apple and the ABAC Scheme.

19. It is common ground between the complainant, the podcast creator and Proximo Spirits (the alcohol brand owner involved) that alcohol advertising should not be placed with a podcast directed towards children. As will be explained, this is also a breach of the ABAC Placement Standards. So the balance of this determination examines how advertising comes to be placed with podcasts, what are the rules regarding alcohol advertising and podcasts and what happened in this case as to why the ABAC standards were breached.

### **A basic explanation of advertising on podcasts**

20. The term 'podcast' was first coined in a Guardian newspaper article in 2004, which is a reminder that both the underlying communications technology and the popularity of podcasts are quite recent. A brief internet search indicates that in 2024, 9.2 million Australians listen to a podcast each month with the number of listeners worldwide approaching 550 million. The estimated number of active podcasts is 4.19 million with 2.69 million on Apple Podcasts.
21. Monetising podcasts can occur in a number of ways. Short Stories for Kids offers a 'premium subscription' for periods extending from one month to a 'lifetime' subscription. The subscription charges start at \$5.99 USD for one month to a \$99.99 USD one off charge for the lifetime subscription. Subscribers gain a range of benefits such as an additional weekly episode and ad free access to the podcasts.
22. For all other listeners, the podcast is free of charge, with the creators gaining income from advertising. In simple terms, podcast creators derive income from direct sales or by programmatic ad placements. Direct sales are of three types:
  - Sponsorship - a relationship with a specific business sponsor where the podcast creator promotes the sponsor during the podcast;
  - Direct Sales Host Reads - where the creator of the podcast directly sells an ad spot to an advertiser. Usually the podcast then reads a promotion for an advertiser often in a 'pre-roll' or 'mid-roll' position i.e. before the substantive content commences or in a break in the content; and
  - Agency Direct Sales - These are also host reads, but the advertiser is secured via a sales agency with commissions paid to the agency on the ads secured.
23. Advertising spots not sold directly can be made available for purchase for advertisers through an Ad Exchange or Ad Network. These are the marketplaces for programmatic advertising to be placed with a podcast. The Ad Exchange is an automated marketplace matching advertisers via a Demand

Side Platform to potential advertising spots available on a Supply Side Platform. The number of spots available on an individual podcast to be placed in the Ad Exchange is determined by the podcast creator.

24. The extent of control both an advertiser and a podcast creator has over the individual ad that is heard with a podcast varies depending on the type of arrangement involved. In the case of direct sales, both the advertiser and the podcast creator have direct visibility of each other. Accordingly, neither a children's podcast creator nor an alcohol company will likely have an agreement to have alcohol ads placed with the podcast.
25. This clarity is not automatic with programmatic advertising placed through an Ad Exchange. This is because the programmatic advertising model does not individually match a specific program or content with an individual ad as such. Rather an advertiser will select a range of options refining the audience characteristics they wish to reach with their advertising across multiple communication mediums - TV, radio, streaming services, digital social media channels and podcasts.
26. These audience options will go to data points such as age, gender, geographic location, education level, income level and listener interests. In short, the huge amount of personal data that has been collected on us all is used to refine the audience an advertiser seeks to appeal to.
27. On the other side of the virtual marketplace, the podcast creator is able to specify that ads of particular kinds not be matched with their podcast. Depending on the Ad Exchange involved, this can be advertising of particular product categories aimed squarely at adults such as alcohol.
28. A key element of programmatic advertising is the categorisation of content. This means programs and content with which ads can be matched are categorised as to their suitability and appeal to different audiences. The broad equivalent to this is the longstanding classification system of cinema releases into 'G' 'PG' 'M' 'MA15+' etc and the parallel system for free to air TV.

### **The ABAC Placement Standards**

29. The ABAC Scheme is an industry-led regulatory initiative that requires alcohol marketing to occur responsibly and consistently with public policy objectives set by Australian Governments. The ABAC Code creates standards that alcohol marketers must meet in advertising alcohol products. The standards go to both the content of alcohol marketing communications and where the marketing communications can be placed.
30. The policy aim of the ABAC Placement Standards is that alcohol marketing, irrespective of its content, should be directed towards adults and to the extent reasonably possible away from minors. The standards seek to do this by

establishing a cascading set of obligations on marketers to target their marketing linked to the technical capacity of the communications medium over which the marketing is carried to desirably exclude and certainly limit the number of minors likely to see the marketing.

31. Online and digitally delivered communications offer the greatest potential to exclude minors from the potential audience of an alcohol marketing communication (as opposed to a broadcast medium such as TV or an outdoor sign). The starting point obligation is that an alcohol marketer must apply the available age restriction controls to exclude minors from viewing an alcohol marketing communication.
32. If it is not possible to exclude minors entirely, then alcohol marketing can only be placed where the audience is reasonably expected to comprise at least 80% adults. Further, alcohol marketing cannot be placed with programs or content primarily aimed at minors irrespective of the audience.
33. It should be noted that the ABAC obligations are imposed on alcohol industry participants and not media platforms or podcast content creators as such. So in the current case, the ABAC requirements rest with Proximo Spirits, the owner of Kraken Rum and Aldi as an alcohol retailer, not Apple Podcasts nor the creators of Short Stories for Kids.

#### **The alcohol ad placed with the podcast - what happened?**

34. The complainant advised that ads for both Kraken Rum and also Aldi's liquor were heard when they accessed an episode of the podcast. The ABAC Scheme has been in contact with both alcohol companies as well as verifying information with Spreaker, the hosting platform for the Short Stories for Kids podcast. Also information has been sourced from the podcast creators.
35. Firstly it is clear that this is a case of programmatic advertising through the Ad Exchange. Naturally enough the Short Stories for Kids podcast is not sponsored by an alcohol company nor is there any direct sales relationship between the podcast creators and an alcohol company.
36. The podcast creators have placed a disclaimer on their site which explains that ads are heard at the start of every episode. It is stated 'all ad blocks have been applied to ensure no over 18 or inappropriate ads are played. However, there may be the odd occasion where the advert slips through the net because the company submits them under a category that is not correct.' The statement goes on to say the creators will act to have the ad removed if advised of the problem.
37. For its part, Aldi was very surprised to receive the complaint as they assert no advertising for alcohol products has been placed recently with any podcast let alone Short Stories for Kids. There is no reason to believe the complainant is



not entirely genuine in their understanding that an ad from Aldi was heard with the podcast episode, so the hosting platform for the podcast was contacted.

38. Spreaker is a hosting platform for podcasts. This means that a podcast creator uses the Spreaker platform to post their podcasts. A listener can access a podcast directly from Spreaker or through a third party publisher such as Apple Podcasts. Spreaker arranges for the Ad Exchange to take place.
39. The ABAC complaints officer obtained written confirmation from Spreaker that advertising for Aldi was not placed on the podcast while also confirming that advertising for Kraken Rum was placed with Short Stories with Kids. It is not possible to reconcile this advice about Aldi with the recollection of the complainant.
40. Proximo Spirits also responded to the complaint, advising that:
  - as soon as ABAC made Proximo aware of the complaint, Proximo immediately paused all activity across its programmatic buy so that the matter could be investigated;
  - all media bought on Proximo's behalf has alcohol-safe measures and P25+ age targeting in place. Targeting for this campaign was set up P25+, which had been confirmed by the publisher;
  - the podcast wasn't identified as children's content on the publisher side, which is why it hadn't been excluded from the campaign; and
  - the Short Stories for Kids podcast was not flagged as children's content by the publisher, which meant that additional age-restriction controls that could have excluded minors were not applied.
41. Spreaker has confirmed that it did not categorise Short Stories for Kids as containing children's content, and that it is for this reason that the advertisement for Kraken Rum was played in the episode heard by the complainant. This mistake has now been rectified.
42. Drawing this together, the Panel believes on the balance of probabilities the following conclusions can be drawn:
  - the Short Stories for Kids podcast is hosted on the podcasting hosting platform Spreaker and is available to listeners via a number of third party publishers including Apple Podcasts;
  - the podcast creators employ several streams to derive income including making spots available at the beginning of podcasts episodes for paid advertising;

- programmatic advertising is placed on the podcast via an Ad Exchange operated by the Spreaker platform;
- the podcast creators have selected options available to them exclude adult advertising being matched with the podcast;
- Proximo Spirits uses programmatic advertising and this includes ads being placed with podcasts on the Spreaker hosting platform. Proximo employs available age restriction and targeting options to exclude minors from being served with its ads;
- Spreaker has accepted it did not at their end correctly categorise the Short Stories for Kids podcast as containing children's content and the placement of the Kraken Rum ad with the podcast episode heard by the complainant arose from the mis-categorisation of the podcast by Spreaker;
- given the advice of both Aldi and Spreaker, it seems unlikely that an alcohol ad from Aldi was placed on the podcast. The Panel doesn't doubt the complainant's recollection is different from this, but given the discrepancy no adverse finding is made regarding Aldi.

#### **Finding of a breach of ABAC Standards and no-fault ruling**

43. Proximo fully accepts that it was inappropriate for its advertising to be matched with Short Stories for Kids. The Panel also believes that alcohol advertising should not be placed with the podcast and for this to have occurred is a breach of the ABAC Placement Standards.
44. As a formal ruling, the Panel finds that the Standard in Part 4 (c) and (d) of the Code have been breached, namely:
  - the reasonably expected audience of the podcast would have exceeded 20% minors; and
  - the Short Stories for Kids podcast is content primarily aimed at minors.
45. Proximo Spirits 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 and the complaint upheld, but it is appropriate if the breach was reasonably unforeseeable or outside the reasonable control of an alcohol marketer or its media agency.
46. In using the Spreaker Ad Exchange, Proximo is entitled to assume that Spreaker will classify content correctly. For its part, Proximo selected available age restrictions for its programmatic advertising. If the podcast had been properly classified, then Proximo's ad would not have been placed with the

podcast. The grounds for a no fault breach have been made out and no fault ruling is made.

47. The complaint is upheld with respect to advertising of Proximo and Kraken Rum, with a no fault finding made. As the factual circumstances of the Aldi complaint cannot be reconciled, this part of the complaint is dismissed.