



ABAC Adjudication Panel Determination No 152/24

Products: Tempus Two and Manly Spirits
Companies: Australian Vintage Ltd and Manly Spirits Co Distillery
Media: Digital Billboard – Event Marketing
Date of decision: 5 November 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 4 October 2024 about advertising for Tempus Two and Manly Spirits at an event called Taylor Made: A Tribute to Taylor Swift, which was held as part of Night at The Barracks in Sydney, NSW.
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 4 October 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

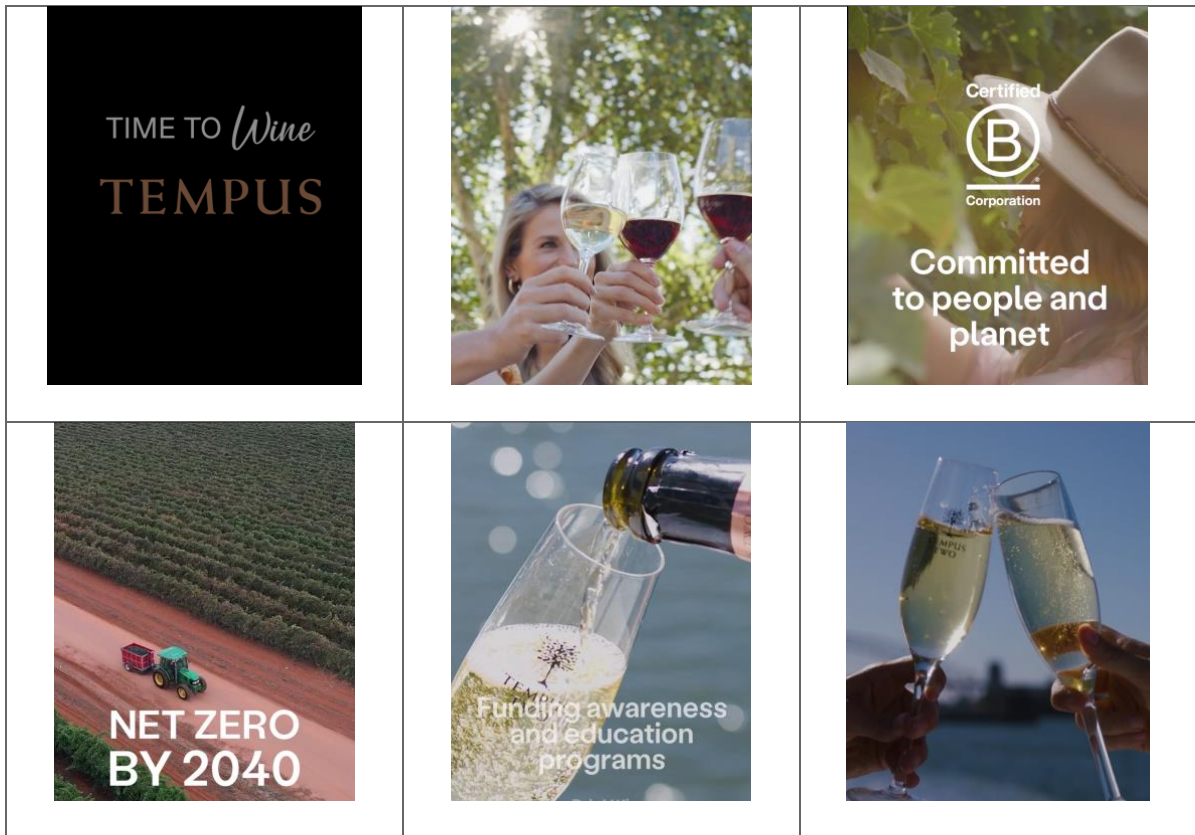
9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards before public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for placement of the marketing.

The Placement

10. The complaint relates to the placement of alcohol advertising at an event called Taylor Made: A Tribute to Taylor Swift which was held as part of Night at The Barracks in Sydney, NSW.
11. Manly Spirits Co Distillery advised that the marketing shown was an approximately one minute video of adults socialising outdoors and drinking Manly Spirits, set to the song “I Just Wanna Have Fun” by Ofri Flint. The following screenshots are from the marketing shown:



12. Tempus Two advised that the marketing shown was a video a little over 30 seconds in length, showing a variety of images and advising of its climate change renewable energy strategy. The following screenshots are from the marketing shown:



Complaint

13. The complainant objects to the marketing as follows:
- *Videos played during a children's event.*
 - *I attended a concert at A Night at the Barracks - Taylor Made, which was advertised as a 13+ event (many kids were younger) and they had advertising (videos) during the concert break on the large screens for sponsors which were alcohol companies (Tempus Two and Manly Spirits) - seeking to promote and glamorize alcohol consumption.*

The ABAC Code

14. Part 2 (b) the Code provides that it does NOT apply to:

(v) Sponsorship Agreement.

15. 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
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	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).
(d)	An Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication must not be placed with programs or content primarily aimed at Minors.

16. 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

17. Australian Vintage Ltd responded to the complaint by letter emailed on 23 October 2024. Its primary comments were:

- We thank you for providing notice of the Complaint and providing the opportunity for AVL to respond to the concerns identified in the Complaint.
- The Complaint relates to a short video played at the event known as ‘Night at The Barracks’ on 29 September 2024, and specifically during a break in the ‘Taylor Made: A Tribute to Taylor Swift’ concert (Event).
- The organiser of the Event was 25 Entertainment Pty Ltd (Organiser).
- The video played at the Event, which is the subject of the Complaint, consisted of a short video of approximately 30 seconds in duration which highlights and showcases the environmental, social and governance (ESG) credentials and achievements of AVL with reference to the Tempus Two wine brand (Video). We note that the Tempus Two wine brand (Tempus Two Brand) is owned by AVL.
- AVL is supportive of the ABAC Scheme, is committed to upholding the principles set out in the ABAC Responsible Alcohol Marketing Code (Code) and takes its obligations to responsibly promote its products seriously.
- To the knowledge of AVL, the Video was not submitted for review through the Alcohol Advertising Pre-Vetting Service.

- As noted, the Video showcases the ESG credentials and achievements of AVL with reference to the Tempus Two Brand, and highlights AVL's commitment to sustainability and its certification as a B Corp business.
- Approximately 15 seconds of the 30-second Video comprises EGS messaging, as opposed to the promotion and marketing of alcohol. The majority of the Video content does not depict alcohol.
- AVL submits that the depiction of alcohol in the Video complies with the applicable requirements of the Code, including the responsible and moderate portrayal of alcohol, and the Video does not have strong or evident appeal to Minors (as that term is defined in the Code).
- The intended demographic for the Video is unequivocally individuals aged 18 and over. AVL does not engage in marketing towards those who are not legally permitted to consume its products.
- Further, and with due respect to the complainant, the Video does not glamorise alcohol consumption as asserted.
- As outlined in further detail below, AVL was appointed by the Organiser as the exclusive wine & sparkling wine sponsor of the Night at the Barracks event series held over a 2-week period in September and October 2024.
- As part of the sponsorship arrangement, the Organiser agreed to promote content at the event series which highlighted AVL's commitment to sustainability and its certification as an official B Corp business. Accordingly, AVL supplied the Video to the Organiser to display on the screens at the 2024 Night at the Barracks event series.
- Importantly however, the specific events at which the Video was played, and the time of play, was determined by the Organiser in its sole discretion without any input from, or prior notice to, AVL. At no time did AVL receive any information or confirmation as to whether the Video would be played at all or some of the Night at the Barracks concert events, or when the Video would be played.
- In the circumstances, should the ABAC Panel form the view that AVL has breached the ABAC Code (which is respectfully denied by AVL for the reasons set out in this response), AVL submits that such breach constitutes a no fault breach under Part 6 of the Code on the basis that the time and dates of the showing of the Video were outside of the reasonable control of AVL.
- AVL and the Organiser were parties to an Official Wine and Sparkling Partnership Agreement which expired on 6 October 2024 (Partnership Agreement).

- Pursuant to the Partnership Agreement, the Organiser granted AVL sponsorship rights in connection with the Night at the Barracks event series covering the dates of 23 September to 6 October 2024. The sponsorship rights relevantly included:
 - AVL wine brands to be the exclusive wine & sparkling wine poured at all bars during the event period at the North Head Barracks;
 - The Tempus Two Brand to be acknowledged across Night at the Barracks marketing and communications, including website, social channels, event advertising and posters;
 - Tempus Two wines to be retailed at 2 serviced and staffed bar facilities at the event series, and Tempus Two branding and signage to be displayed at a dedicated activation space opposite the bar facilities; and
 - The Organiser to promote content at the event series which highlights AVL's commitment to sustainability and its certification as an official B Corp business, which content will assist to demonstrate how the partnership is supporting the Organiser's ambitions of operating a sustainable event series.
- As is evident from the nature of the sponsorship rights granted by the Organiser to AVL, the intended demographic for the Night at the Barracks event series was unequivocally individuals aged 18 and over.
- With regard to the Outdoor Media Association (OMA) Placement Policy (OMA Policy), the Organiser has informed AVL that:
 - the Video was not displayed within 150 metre sightline of a school; and
 - the Event, and the entire Night at the Barracks event series, took place outside of school hours.
- AVL also understands that the grounds upon which the Night at the Barracks event series was held, including the stage area and associated display screens, are not within unobstructed sightline from outside of the event grounds. The Night at the Barracks grounds was surrounded by 2.5M – 3M high fencing, as well as the main stage area, in order to control patron entry. As a paid, ticketed event, the Organiser wanted to ensure that only paying patrons were able to access and enjoy the benefits of the Night at the Barracks event series and the associated hospitality.
- Further, AVL submits that the Video was displayed on a premises that was selling alcohol from various bar facilities during the Event, and the Video

directly related to the business of the Organiser conducted at the Event in relation to the food and beverage offering and facilities operated by the Organiser for the benefit of attendees. As a result, it is submitted that the Video falls within the 'on-premise advertising' exception under Part 3.4 of the OMA Policy.

- For these reasons, AVL submits that there has been no breach of the Placement Standards under Part 4(a) of the ABAC Code or the OMA Policy.
- The Event was promoted and recommended by the Organiser as being for ages 13+ (which is in line with all Night at the Barrack events). The Organiser also informed attendees prior to the commencement of the Event that the Event contained adult themes, humour and some swearing.
- As part of the ticket offering, the Organiser offered 'family passes' to the Night at the Barracks event series. However, the Organiser has confirmed that it abides by all advertising regulations and does not advertise or promote alcohol to minors. The Organiser also had an alcohol management plan in place which covered the event series.
- AVL has been informed by the Organiser as follows:
 - The 2024 Night at the Barracks event series comprised 12 concerts in total, including the Event;
 - The number of attendees who were under 18 years of age across the entire 2024 event series, along with each event series run over the past 3 years, was below 3% of total attendees;
 - A total of 2,214 tickets were distributed for the Event;
 - 536 of the total tickets sold for the Event consisted of family passes (comprising 2 adults plus 2 children (under 18); or 1 adult, plus 3 children (under 18)). This equates to between 268 - 402 children's tickets, or between 12% and 18% of total tickets distributed for the Event.
- For these reasons, AVL submits that it was reasonable to expect that the audience at the Event would comprise at least 80% adults, which is supported by the ticket sale data for the Event provided by the Organiser.
- AVL therefore submits that there has been no breach of the Placement Standards under Part 4(c) of the ABAC Code.
- Night at the Barracks is a music festival held on the Parade Grounds at the North Head Sanctuary, Manly, NSW. The event premiered in September/October 2022. Collaborating with the Sydney Harbour Trust, the

historical site has been transformed by the Organiser into an open-air live music venue each year since 2022.

- The concert series spans four weekends each year, revitalising the music scene with Australia's best artists performing original contemporary music across diverse genres from opera to rock and pop; including icons Icehouse, Missy Higgins, Tina Arena, Kate Ceberano, Hoodoo Gurus, SIX60, Xavier Rudd and Groove Terminator.
- Night at the Barracks 2023 and 2024 was built on the success of 2022, an event that returned live-performing artists to a festival stage after COVID disruptions, creating jobs and boosted local tourism, attracting existing and emerging music fans whilst experiencing the iconic Barracks venue.
- According to information provided by the Organiser, Night at the Barracks is targeted at a 35–65-year old audience, with the performing artists specifically chosen to suit this age demographic. The premium ticket pricing is also consistent with the event being targeted at an audience in this demographic.
- The Organiser has also advised AVL that over the past 3 years, less than 3% of the total audience across all years has been under 18 years of age.
- In relation to the demographic who are considered 'fans' of Taylor Swift, a survey conducted in March 2023 found that 45% of Taylor Swift's US fans are millennials, 21% are Gen X, and 25% are Boomers. The results show that nearly half of Taylor Swift's millions of fans are likely over 45. Whilst this survey data is based on responses provided by Taylor Swift's US fans, there is no evidence to suggest the demographic of her Australian fans would be materially different.
- The Complaint asserts that the Video was "played during [a] children's event". For the reasons outlined above, AVL respectfully rejects the categorisation of the Event as being a "children's event", and AVL submits that there has been no breach of the Placement Standards under Part 4(d) of the ABAC Code.

Concluding Remarks

- For the reasons outlined in this response, AVL submits that there has been no breach of Part 4 of the ABAC Code by AVL and the Complaint should be dismissed by the ABAC Panel.
- AVL also has its own responsible marketing guidelines which sets out its expectations for all marketing materials and activity. AVL is committed to the highest standards of responsible marketing practices across product, consumer marketing, and communications through its responsible

marketing guidelines, in addition to advertising regulations and the ABAC Code.

- AVL is of the view that the Video has been placed in line with the ABAC Code and the OMA Policy, as viewed by a reasonable person.
- Notwithstanding this, AVL does not seek to diminish the concerns of the complainant and would like to reiterate that we take our responsibility to uphold community standards when it comes to the placement and content of advertising incredibly seriously.
- AVL will accept the ABAC Panel's decision in relation to the Complaint.

18. Manly Spirits Co Distillery responded to the complaint by email on 16 October 2024. Its primary comments were:

- Manly Spirits has been a sponsor of Night at the Barracks for the last few years. As a sponsor we have no input into what artists perform or operations of the event.
- I would also like to acknowledge below from the ABAC code:

2 APPLICATION

(b) Notwithstanding Part 2(a), the Code does NOT apply to:

(v) Sponsorship Agreement.

6. NO FAULT BREACH 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 Panel's View

19. The complainant has raised a concern regarding the placement of video advertising for Tempus Two Wines and Manly Spirits on large screens during a break in an event called Taylor Made: A Tribute to Taylor Swift which was advertised as 13+ and a children's event held as part of Night at The Barracks in Sydney, NSW.

20. The Companies argued that there had been no breach of Code standards stating:

- the Code Sponsorship exception in part 2(b)(v) applies and the Code doesn't apply to the marketing;
- the marketing was not within 150m sightline of a school, and in any event as the event served alcohol would fall within the on-premise exception in the OMA Code;

- the video content is aimed at adults;
 - while the Event was promoted and recommended by the Organiser as being for ages 13+ (in line with all Night at the Barrack events), the Organiser also informed attendees prior to the commencement of the Event that the Event contained adult themes, humour and some swearing;
 - the Organiser advised that over the past 3 years, less than 3% of the total audience across all years has been under 18 years of age;
 - for the night complained about, between 12-18% of tickets for the event were for under 18s;
 - a survey in March 2023 found that 45% of Taylor Swift's US fans are millennials, 21% are Gen X, and 25% are Boomers, indicating nearly half of Taylor Swift's millions of fans are likely over 45;.
 - for the reasons outlined above, the categorisation of the Event as being a “children’s event”, is disputed; and
 - the Company had no control or input over the artists or operations of the event including when or where the video would be played at an event and as such if there is a breach it should be a no fault breach.
21. There can be a misconception arising from the exception in part 2(b)(v) that the Code does not apply to Sponsorship Activity. That is not the case. The Code applies to all Sponsorship Activity, except the Agreement itself, 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 marketing communications are videos promoting brand attributes and are not confined to the brand name and logo, and as such the exception in Part 2(b)(v) does not apply.
22. 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. While the complainant expresses a concern that the advertising glamourises alcohol consumption this does not specifically raise an ABAC issue and the complaints are in essence about the placement at the event, so the issue to be examined is whether the ABAC Placement Standards have been complied with.
23. The ABAC Placement Standards are detailed in Part 4 of the Code. The ABAC rules seek to limit the exposure of outdoor advertising to minors through two stipulations on alcohol marketers namely:

- all applicable media codes applying to alcohol advertising must be complied with i.e. Outdoor Media Association – Part 4(a); and
 - the advertisement must not be placed with programs or content primarily aimed at minors – Part 4(d).
24. By requiring compliance with the Outdoor Media Association, Part 4(a) implements a restriction on alcohol ads being placed on outdoor sites positioned within 150m sightline of a primary or secondary school. This restriction reflects that minors will be concentrated at schools in a much higher proportion than in general public places. In its response to the complaint, Australian Vintage Limited has advised that the video was not displayed within 150 metre sightline of a school.
25. Part 4(d) provides that alcohol ads cannot be placed with programs or content aimed primarily at minors. Australian Vintage Limited have advised that:
- The 2024 Night at the Barracks event series compromised 12 concerts in total, including Taylor Made: A Tribute to Taylor Swift;
 - The number of attendees who were under 18 years of age across the entire 2024 event series, along with each event series run over the past 3 years, was below 3% of total attendees;
 - A total of 2,214 tickets were distributed for Taylor Made: A Tribute to Taylor Swift; and
 - Based on sales of tickets, between 12% and 18% of total tickets distributed for the Event were for under 18 year olds.
26. Taylor Swift is the most popular entertainer and singer/songwriter in the world. Her appeal is across all age groups and there is no doubt she has a very large following amongst minors particularly but not limited to teenage and younger girls. That said, her appeal is remarkable because it encompasses all demographic groups. Her music deals with adult relationships and contains adult themes including sex and sexuality. It is not evidently primarily directed at children like say the music of the Wiggles.
27. While the Panel accepts the complainant's view about appeal of the Event to minors and the perceptions about the audience make up are genuinely held, the Panel cannot conclude that the Event was primarily aimed at minors. Further the data on the ticket sales strongly suggests the audience was over 80% composed of adults.
28. The Panel believes the screening of the videos at the Event did not breach the ABAC standards. Accordingly the complaint is dismissed.