



## ABAC Adjudication Panel Determination No 159 & 164/24

**Product:** IGA Liquor  
**Company:** Australian Liquor Marketers Pty Ltd  
**Media:** Podcasts  
**Date of decision:** 4 November 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 two complaints received on 13 and 15 October 2024, in relation to advertising during podcasts for IGA Liquor (“the product”) by Australian Liquor Marketers (“the Company”). The podcasts were called Kids Quiz by Fun Fables and Fun Fables – Sleep Time Stories.
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 complaints raise concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 13 and 15 October 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 Placement**

10. The complaint relates to the placement of alcohol advertising during two different podcasts called Kids Quiz by Fun Fables and Fun Fables – Sleep Time Stories.

### **Complaint**

11. The complainants object to the marketing as follows:
  - *Advertising on a children's podcast. Podcast is Kids Quiz by Fun Fables.*
  - *On the Fun Fables Sleepy time podcasts via Spotify there is an ad for IGA liquor.*
  - *It starts 30 seconds in and goes for 45 seconds.*
  - *This podcast is stories for children going to bed. While the ad says "hey parents" the children will hear the ad as it is well into the recording. It is not skippable and is built into the file i.e. if you download to listen offline ad is still there.*
  - *The "about" info on the podcast says "Drift off to sleep with a calming meditation and classic kids bedtime story".*
  - *I'm concerned about children hearing an ad for alcohol at their bedtime story, particularly as there are several episodes with the ad reinforcing the content.*

### **The ABAC Code**

12. Part 4 of the Code provides that:
  - (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. The Company responded to the complaint by email on 16 October 2024. Its primary comments were:

- Thank you for sharing the two complaints with us, the below response relates to both 159/24 and 164/24.
- I have provided a response to the below questions, however, I would like to share our actions and responses taken to date. We have investigated the two complaints as they relate to the IGAL Cocktail campaign through paid media with the media partner ACAST.
- Unfortunately, due to a human error the incorrect targeting was selected by the media partner as Supermarkets and not liquor. The media buy was an audience buy across a cross section of lifestyle podcasts and it was missed by the partner in selecting “80% or more adults.”. The media went live Friday 11<sup>th</sup> October and today at midday (16 October) it was paused. The correct audience restrictions have now been placed on the media buy from the agency, however we have not pushed it live until we hear back from yourselves.
- We always endeavour to abide by the ABAC code and hold the intention and application of it in high regard. This was unfortunately a human error, and we do apologise for the inconvenience it has caused the listeners of this podcast.

- The scripts were not approved through the ABAC process. However, we believe they are in-line with previously approved scripts.
- After investigating with our media agency it is understood that ACAST, the radio media platform, had placed the incorrect targeting on the ads. The media buy was across a cross-section of podcasts, which invariably included the one in question.
- The targeting from ACAST was set up for IGA supermarkets and not IGA Liquor. Our direction to our agency and their media partners is to always place our ads with the correct targeting in alignment with the ABAC code. This was a human error which when investigated the ads were immediately paused and the partner has apologised for the mistake and any inconvenience caused.
- This media buy is an audience buy – it is a collections package across lifestyle podcasts. The audience was incorrectly selected as supermarkets. This has now been paused and fixed to an alcohol audience with at least 80% adult audience. However, the ad set has not gone live again until we hear back from yourselves.
- While this individual podcast’s primary audience is unfortunately minors the media buy was a lifestyle audience buy, programmatic across a cross section of podcasts. Unfortunately, due to the error in its set up the Adult Liquor restrictions were missed. This again has been paused at midday 16<sup>th</sup> October and pending outcome of this will be pushed live again with the correct restrictions.
- I can confirm 18+ age targeting is also available, and it is in place for the activity, now that the setup is corrected.

## **The Panel’s View**

### **Introduction**

15. The Fun Fables podcasts are a collection of classic children's audio stories, fairy tales, fables and nursery rhymes. Developed by Josh Newth and narrated by his father and established voice over artist Ross Newth, the podcasts have been available since 2020. There are now over 164 episodes of the Sleep Time Stories and a smaller collection of Kids Quizzes.
16. The Kids Quiz and Fun Fables – Sleep Time Stories podcasts have come before the Panel because in mid-October 2024 the complainants were accessing episodes on Spotify and Apple Podcasts when served with ads for IGA Liquor. Understandably the complainants believed this to be totally inappropriate given that the podcasts are clearly directed towards young children.

17. There is no dispute from the Company that its alcohol ads should not have been placed with the podcasts. Nor is there any doubt that the ABAC Placement Standards have been breached by this occurring. So the balance of this determination examines how advertising came to be placed with podcasts and makes a formal ruling of a breach of the applicable ABAC standards.

### **The placement of the ads with the podcasts - what happened?**

18. The Panel recently in Determination 136/24 dated 24 October 2024 provided a detailed background about advertising on podcasts and how the creators of podcasts monetised their work. This full explanation will not be repeated but the salient points include:
- podcast creators record and post the podcasts via a hosting platform and the podcasts can be accessed on various 'publishers' including platforms such as Apple podcasts and Spotify;
  - monetisation of podcasts is achieved through subscriptions by followers or by different types of advertising;
  - advertising might arise from a direct relationship between the podcast creator and the advertiser but more typically through the placement of ads via an Ad Exchange or Ad Network and programmatic advertising;
  - programmatic advertising involves an advertiser selecting a range of data points about a targeted desired audience including the age profile for the product/service and ads being placed across a range of different mediums such as social media platforms, broadcast mediums eg radio and podcasts;
  - programmatic advertising does not feature direct line of sight between the content creator and the advertiser as much as data matching between the audience the advertiser seeks to reach and the audience profile of various programs/content with which an ad is placed.
19. A critical element in programmatic advertising is the categorisation of both the ad being placed and the content with which the ad will be placed. It is this process which identifies a product as being suitable only for adults as well identifying content that adult products should not be placed in.
20. While it is obvious that an alcohol ad should not be placed with a children's focussed podcast, the context is that categorisation involves enormous numbers of both content and ads. For instance there are believed to be 4.19 million active podcasts worldwide with 2.69 million accessible on Apple podcasts alone.
21. A review of publicly available information suggests that the Fun Fable podcasts are hosted on podadvertise.fm which operates an Ad Exchange for advertising

on podcasts. The Fun Fable content is published on several platforms including Apple podcasts and Spotify. The podcasts can also be accessed from the Fun Fables website.

22. The Fun Fable's website advises that income is generated from subscriptions which enable a subscriber to listen to the episodes ad free. Income is also derived from the sale of merchandise e.g. themed t-shirts for children and from advertising. Advertising is in the form of pre-recorded programmatic ads (rather than direct sales narrator reads) that are placed 'pre-roll' i.e. prior to the substantive content.
23. Self-evidently there has been a failure as an alcohol ad of any type should not be placed with the Fun Fable episodes. IGA Liquor responded to the complaint, advising that:
  - the targeting from its media partner ACAST was set up for IGA Supermarkets and not IGA Liquor;
  - our direction to our agency and their media partners is to always place our ads with the correct targeting in alignment with the ABAC code;
  - this was a human error which when investigated the ads were immediately paused and the partner has apologised for the mistake and any inconvenience caused.
24. In short, the Company through its media agent placed ads categorised for the wrong business i.e. for IGA general supermarkets and not the Company's dedicated alcohol retailer.

### **Finding of a breach of ABAC Standards**

25. 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.
26. 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.

27. 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.
28. 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.
29. 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 IGA Liquor, not Spotify and Apple Podcasts nor the creators of the podcasts.
30. 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 Kids Quiz and Fun Fables – Sleep Time Stories podcasts have content primarily aimed at minors.
31. It is noted that the Company fully accepts that a breach has occurred and also explains that the mistake occurred with its media agent. While the placement of the ads was not deliberate in the sense that the Company did not seek to advertise alcohol with children's focussed content, the Company is responsible for the actions of its agents.
32. The complaints are upheld.