



## ABAC Adjudication Panel Determination No 179/24

**Product:** Wynter Tavern – Jack Daniel’s  
**Company:** Wynter Tavern  
**Media:** Billboard  
**Date of decision:** 3 December 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 November 2024 about a billboard promoting Jack Daniel’s (“the product”) on the site occupied by Wynter Tavern (“the Company”) in Taree, 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**

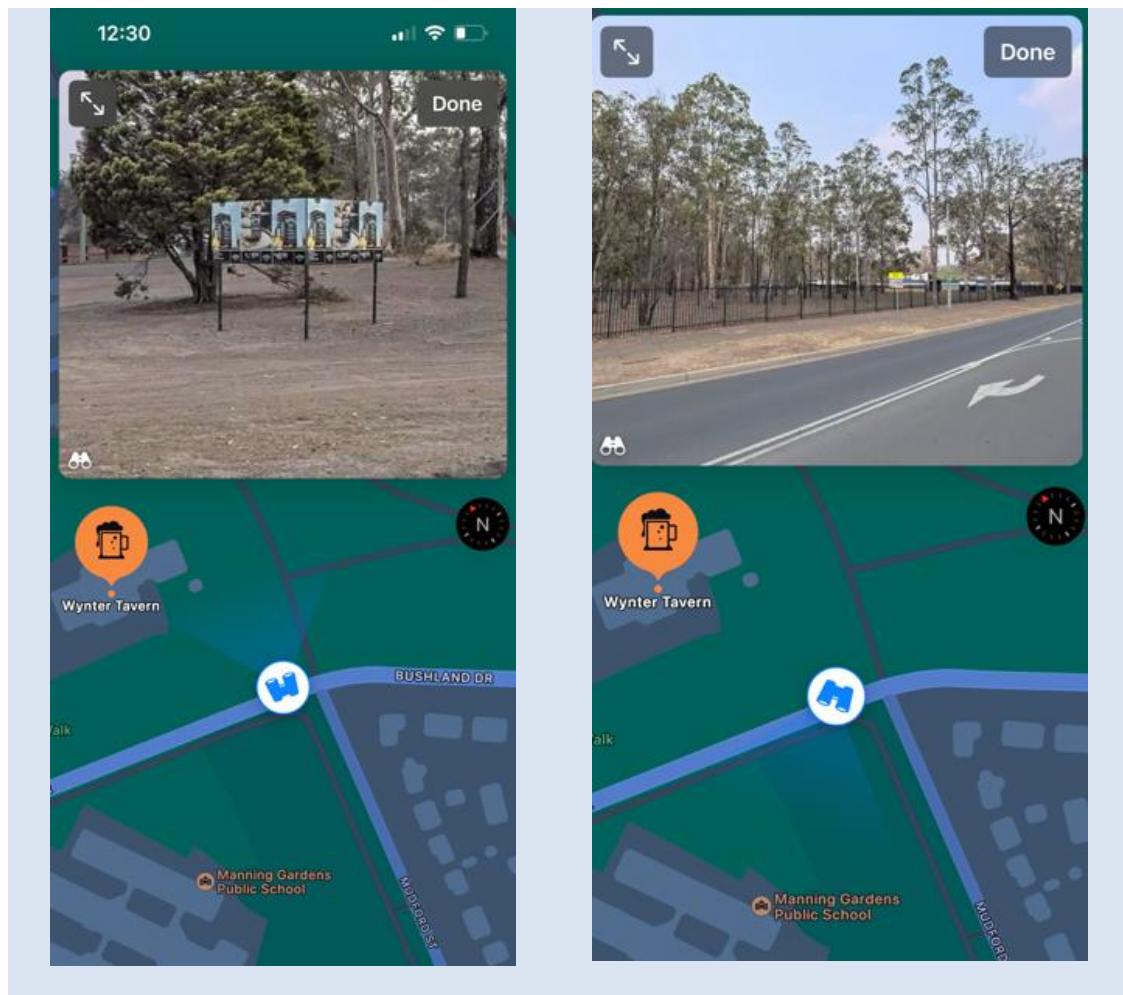
7. The complaint was received on 4 November 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

## Pre-vetting Advice

- 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 the marketing.

## The Marketing

- The complaint relates to a billboard promoting Jack Daniel's, placed on a site adjoining the Wynter Tavern in Taree, NSW, opposite the Manning Gardens Public School.





## Complaint

11. The complainant objects to the marketing as:
  - *Advertising pre-mix cans directly opposite Manning Gardens Public School in the open, facing the school playground.*

## The ABAC Code

12. 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

13. The Company responded to the complaint by email on 25 November 2024. Its primary comments were:
  - Thank you for bringing this to our attention.
  - We are working with the supplier of the sign to have it removed. If it is not removed by 29th December 2024 we will cover the sign until it is.

## **The Panel's View**

### **Introduction**

14. The Manning Gardens Public School is a primary school located in the NSW town of Taree on a block boarded by Mudford Street and Bushland Drive. Opposite the school on Bushland Drive is the Wynter Tavern which also features a Liquor Legends alcohol retail outlet. Positioned on a wide verge adjacent to the exit driveway of the Tavern and near the intersection of Bushland Dr and Mudford St is a small billboard that shows an ad for the alcohol product Jack Daniel's. It is this billboard ad that has attracted the complaint.
15. The complainant is concerned about the proximity of the billboard with the alcohol ad to the school. This concern brings into play the ABAC Placement Standards.

### **The ABAC Placement Standards**

16. The ABAC Placement Standards have the policy aim that alcohol marketing should be directed towards adults and to the extent possible away from minors. The standard in Part 4 (a) provides that marketing must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies. For outdoor installations, the relevant media industry code is the Outdoor Media Association (OMA) Placement Policy.
17. The general requirement in the OMA policy is that alcohol advertisements cannot be placed within a 150-metre sightline of a school. The policy however is qualified to not apply to advertising located on premises that sell alcohol where the advertising directly relates to the business of the venue. This is known as "on-premise" advertising.
18. While it is not usual, sometimes schools and businesses that sell alcohol such as hotels are located quite close to each other. This might reflect the pattern of the development of a town where a hotel might be long-standing and then shifts in population density see a school opened. That's why the on-premise advertising exception exists as it would be unreasonable to prohibit a hotel from having a sign identifying its business.
19. Whatever the sequence of events between the Tavern or the school first opening, what is clear is that the billboard and its alcohol ad are within 150 metres of the boundary of the Manning Gardens School and hence the OMA policy and the ABAC Standard will have been breached unless the exception for on-premise advertising can be established.
20. The Panel requested that the Tavern provide some background information about the billboard and ad such as the ownership of the land where the

billboard is located and whether the Tavern seeks to rely on the on-premise advertising exception. In response, the Tavern did not address those issues but rather stated that it was working to have the sign removed and if this had yet to occur by 29 December, it would have the sign covered.

21. The application of the on-premise exception includes in-store posters, digital screens in windows and exterior signage placed on the building where the business operates. It could also capture a sign on land owned by the alcohol marketer and immediately adjacent to the premises e.g. a sign at the entrance of a car park of a hotel. The further away the sign is from the physical premises, the less likely it would be regarded as on-premise.
22. In any event, given the Tavern does not seek to make an argument the billboard sign is on-premise advertising, then the Panel finds the alcohol ad is placed within 150 metres of the school and the ABAC standard has been breached.
23. The complaint is upheld.