



ABAC Adjudication Panel Determination No 193/24

Product: Dan Murphy's
Company: Endeavour Group
Media: TV - Free to Air
Date of decision: 6 December 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 26 November 2024 about a television commercial by Endeavour Group (“the Company”) promoting Dan Murphy’s (“the product”).
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 26 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

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 obtained for the marketing (Approval Number 10510).

The Marketing

10. The complaint relates to a television commercial by Endeavour Group promoting Dan Murphy's, which can be viewed at the following link:

<https://www.youtube.com/watch?v=IAqMRyKoliw>

The ad commences with a female customer in a Dan Murphy's store holding a shopping basket already containing some products. She is standing next to and speaking to a store employee.

Customer (C): *I think that's everything. And we're still under budget.*

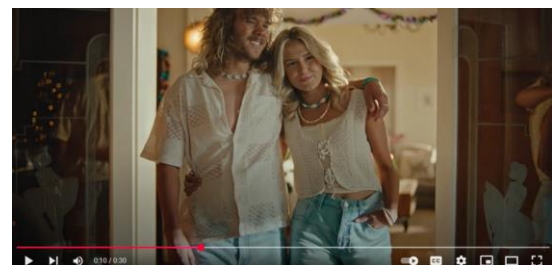
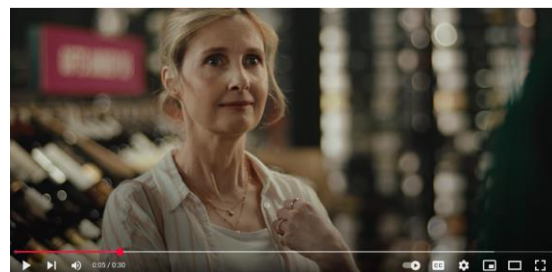
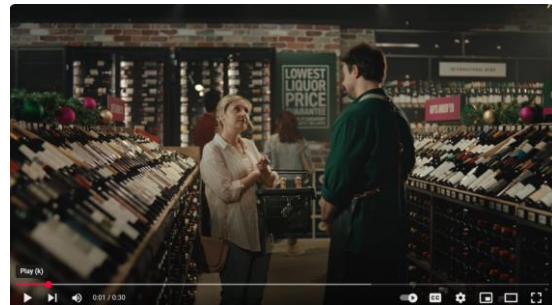
Employee (E): *What about an extra bottle for those surprise guests?*

The customer stares into the distance and says quietly:

C: *The surprise guests.*

The song "Sailing" by Christopher Cross plays as we see the customer imagining a series of four women being introduced to a domestic Christmas gathering.

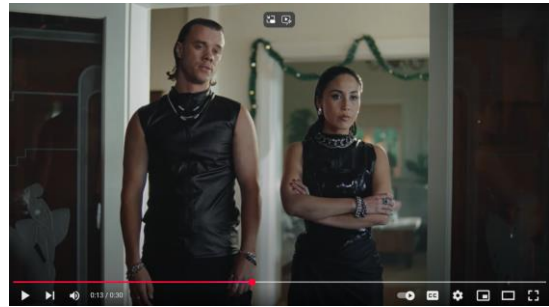
Male Guest (MG): *Hey guys. This is Kayla.*





MG: *Astrid*

The male guest crosses his arms.



MG: *Helen*

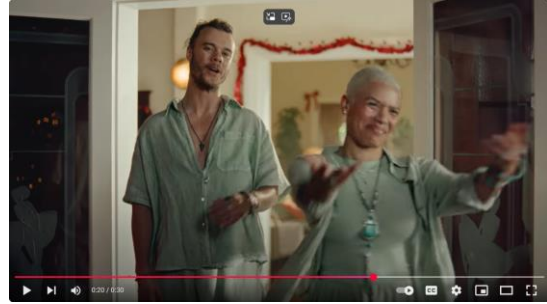


A cork is popped.



MG: *This is Willow.*

Willow moves forward to hug the customer at the imagined domestic Christmas setting.



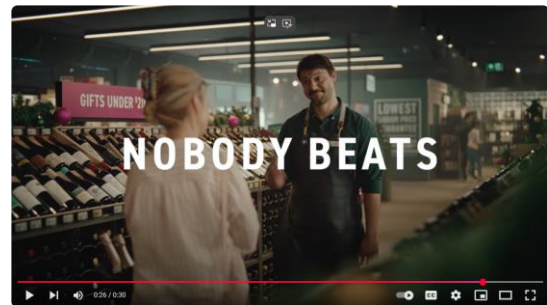
We revert back to the scene in the bottle shop, where the customer says:

C: *Good thinking.*

We see the store employee leading the customer to another section of the store.



Voiceover (V): *Christmas for less.
Even with surprise guests.*



V: *Nobody beats Dan Murphy's.*



Complaint

11. The complainant objects to the marketing as:
 - *The promotion of alcohol, not one bottle, not two bottles but the salesman pushes the woman to buy more alcohol. Not to mention over Christmas as well.*

- *I'm not a prude or Christian but I'm sure a lot of children and family members need to see their festive season ruined by alcohol because Dan Murphy says you need more*
- *Why do they need to advertise at all knowing full well Dan Murphy stores will be packed to capacity over the festive period?*
- *Domestic violence, drink driving - the list goes on.*

The ABAC Code

12. Part 3 (a) of the Code provides that an Alcohol Marketing Communication must NOT:
- (i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:
- (A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day);

The Company Response

13. The Company responded to the complaint by letter emailed on 3 December 2024. Its primary comments were:
- Endeavour thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint and for the extended timeframe in which to respond. Endeavour understands that the Panel is considering whether or not the Advertisement breaches Part 3 (a)(i) of the ABAC Responsible Alcohol Marketing Code (the Code).
 - As a signatory to ABAC, Endeavour commits to the objectives of the Code and prepares all marketing material within its reasonable control, in accordance with the Code.
 - BWS and Dan Murphy's, as part of Endeavour, are committed to maintaining their position as industry leaders in the responsible service of alcohol. This is highlighted by the fact that Endeavour formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all advertising within its reasonable control in accordance with the ABAC Responsible Alcohol Marketing Code (the Code). As a signatory to ABAC, Endeavour commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.
 - Furthermore, BWS and Dan Murphy's maintain strict internal and external processes in addition to those required by the Code. As part of our

community charter 'Our Community, Our Commitment', Endeavour has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage the responsible consumption of alcohol. These include:

- ID25; we ask for ID if a shopper looks under the age of 25;
 - Our Refusal of Service Policy (Secondary Supply, Intoxication and School Uniform); and
 - Staff training that exceeds legal requirements, including our 'Leading in Responsibility' training module, team talkers, regular refresher and reminder courses.
- The processes outlined above provide Endeavour with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.
 - For the reasons outlined below in response to your letter, it is Endeavour's position that the Advertisement does not breach any Part of the Code and Endeavour therefore requests the Panel to dismiss the Complaint.

Background

- The television commercial (TVC) depicts a customer shopping at a Dan Murphy's retail store. The customer suggests to the Dan Murphys' team member that she has everything and asks if she is under budget. The team member asks the customer "how about another bottle, for those surprise guests?". The TVC then depicts various surprise guests of the customer's family who appear to be showing up to the family Christmas gathering unannounced. The TVC goes on with the customer saying to the Dan Murphy's team member "good thinking". The TVC ends with a voiceover stating "Christmas for less even with surprise guests, no one beats Dan Murphy's".
- In relation to the specific questions posed by the ABAC:
 - Alcohol Advertising Pre-Vetting Service Approval was sought and granted for the advertisement. The ABAC reference number is 08729-2024.
 - The intention of the Advertisement is to humorously showcase Dan Murphy's premium range in the context of its advantageous price point to customers. The Advertisement suggests that the customer can afford to cater to a number of potential surprise guests because of the competitively priced products. The inclusion of a montage of potential surprise guests is a humorous parody of the various surprise guests who may show

up unexpectedly (and uninvited) for the particular family's Christmas event.

- It is submitted that the suggestion of purchasing an additional bottle of wine, in the context of a special family event with a comparatively large number of potential surprise guests (4 surprise guests vs 10 invited guests), does not show, encourage or treat as amusing, consumption of alcohol inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day).
- It is submitted that the Advertisement depicts the customer clearly purchasing the alcohol for a special family event. Two (2) bottles of champagne and one (1) bottle of wine are evident in her small hand held shopping basket. It is submitted that this volume could be considered a relatively modest amount to be purchasing for a family Christmas event of 6 consistent family members as well as the 4 invited family members who subsequently arrive, each with a surprise guest.
- Furthermore, the Advertisement must be considered as a whole (Part 5 of the Code). Endeavour submits that the following components further reduce any suggestion that excessive consumption is being condoned in any way:
 - when the family gathering is being pictured in a number of different frames, various drinks are shown, including a jug which appears to be of water, as well as other non alcoholic beverages together with the different types of alcohol which can be seen (for example, beer, champagne, wine and a modest drinks trolley in the various frames). The number of drinks depicted on the table or in the hand of the guests is no more than one per person (in many cases it is less) and that, when considered together with the age and demeanour of the guests does not suggest inappropriate or excessive alcohol consumption is taking place;
 - the depiction (in each frame) of the various, limited, alcoholic and non-alcoholic beverages is in the context of a table heavily laden with celebratory food. There is a very large amount of food comparative to the beverages of every kind (collectively) shown;

- the behaviour of the guests does not depict or suggest excessive alcohol consumption in any way.

The Panel's View

14. This determination arises from a complaint about a TVC set in a Dan Murphy's store. The ad shows a woman with a store salesperson who has been assisting with the selection of wines. The salesperson asks if another bottle might be needed for 'surprise guests'. The question triggers a flashback where the woman recalls past family dinners where a male family member (possibly the woman's son) has arrived with an announced female companion. The reflection prompts the woman to buy another bottle.
15. The complainant believes that the advertisement is irresponsible. It is pointed out the woman has already selected several bottles of alcohol and the Company should not be pushing people to buy more. The complainant notes the negative consequences of the misuse of alcohol.
16. The complainant's concerns raise Part 3 (a)(i) of the Code which requires that an alcohol marketing communication must not encourage consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol (Australian Guidelines) such as excessive consumption which is more than 10 standard drinks in a week or more than 4 standard drinks on any one day.
17. The test of the consistency of a marketing communication against Code standards is assessed from the standpoint of the probable understanding of the marketing item by a reasonable person. The reasonable person concept is drawn from the common law system and means the benchmark is the attitudes, opinions, values and life experiences shared commonly in the community.
18. The Company contends the ad meets the ABAC standards arguing that:
 - when the family gathering is being pictured in a number of different scenes, various drinks are shown, including a jug which appears to be of water, as well as other non-alcoholic beverages together with the different types of alcohol (for example, beer, champagne, wine and a modest drinks trolley in the various frames);
 - the number of drinks depicted on the table or in the hand of the guests is no more than one per person (in many cases it is less) and this with the age and demeanour of the guests does not suggest inappropriate or excessive alcohol consumption is taking place; and
 - the behaviour of the guests does not depict or suggest excessive alcohol consumption in any way.

19. The Panel accepts the complainant is raising a genuinely held concern but does not think that the ABAC standard has been breached. In reaching this conclusion the Panel noted:
- the ad creates a light-hearted scenario based on a family member having a history of bringing unexpected companions into the family Christmas dinner;
 - the amount of alcohol being purchased is not excessive given the number of people attending the dinners;
 - it is likely that a reasonable person would probably understand the question posed by the salesperson is a device to ground the flashback memory of the woman rather than an aggressive sales tactic to push further and excessive alcohol sales;
 - the family scenes depicted don't suggest excessive alcohol consumption is occurring and no person appears affected by alcohol;
 - it is unlikely a reasonable person would take the message of the ad to be the encouragement of excessive or irresponsible levels of alcohol consumption.
20. The complaint is dismissed.