



## ABAC Adjudication Panel Determination No 198/24

**Product:** BWS  
**Company:** Endeavour Group  
**Media:** Point of Sale  
**Date of decision:** 8 January 2025  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 2 December 2024 about Christmas ornaments being placed on display in a BWS retail store operated by the Endeavour Group (“the Company”).
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 is within the Panel’s jurisdiction.

### **The Complaint Timeline**

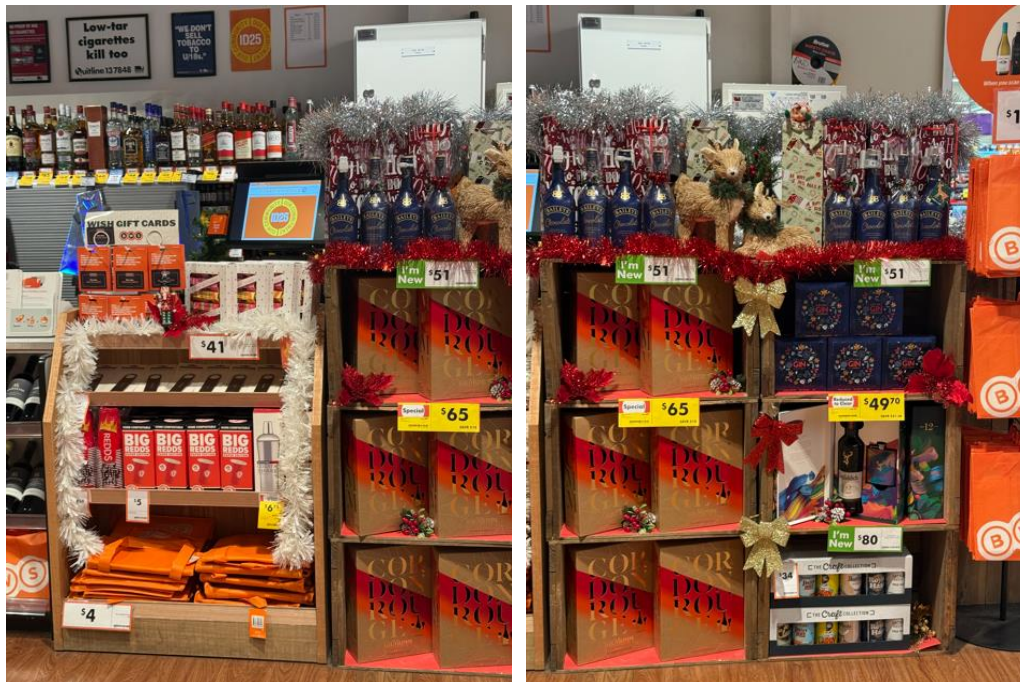
7. The complaint was received on 2 December 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

## 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 not obtained for the marketing item.

## The Marketing

10. The complaint relates to the placement of Christmas ornaments in a BWS store:



## Complaint

11. The complainant objects to the marketing as follows:
  - They have installed a lot of Christmas decorations, including figurines and stuff that will definitely appeal to kids and younger people. I have personally seen kids going to the store just to see the figurines. This can have a negative impact on them, as they can get biased towards alcohol.
  - The ornaments are visible from the outside. As the store attaches to a Woolworths, one side of the store directly leads to Woolworths and vice versa.

## The ABAC Code

12. Part 2 (b)(iv) provides that the Code does NOT apply to:
- ...
- Point of Sale Marketing initiated by Alcohol retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol has no reasonable control over the Point of Sale Marketing;
- ...
13. Part 3 (b) of the Code provides that An Alcohol Marketing Communication must NOT:
- (i) have Strong or Evident Appeal to Minors, in particular;
    - (A) specifically target Minors;
    - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
    - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
    - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
    - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

## The Company Response

14. The Company responded to the complaint by letter emailed on 24 December 2024. Its primary comments were:
- We refer to your letter dated 4 December 2024 about complaint 198/24 (the Complaint) regarding the sighting of tinsel and a reindeer placed inside the Craigieburn BWS store by a consumer who was standing in the adjoining Woolworths store.
  - Endeavour thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. 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 as part of Endeavour, is committed to maintaining its position as an industry leader 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 suggest that consuming alcohol can result in or contribute to the achievement of sporting or other success.
- Furthermore, BWS maintains 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.

## **Background**

- It is Christmas and the manager of BWS Craigieburn Plaza decorated some of the stock displays with tinsel and put an ornament on a shelf within the store. This particular BWS store is adjoined to Woolworths Craigieburn Plaza meaning that you can enter this BWS store from inside the Woolworths store and see inside of it while standing on property leased by Woolworths.
- Endeavour rejects that tinsel and the particular ornament referred to are a marketing communication under the Code.
- Our conversations with the manager of this store reveal that the tinsel could be seen by consumers who peered into the BWS store from the entrance to it, while standing within the adjoining Woolworths store. The ornament could not be clearly seen by a consumer unless they were inside the store.

- But despite this, all of the tinsel and the ornament have been removed from the store.
- We respectfully submit that for the reasons above, the Panel should dismiss the complaint in full.

## **The Panel's View**

### **Introduction**

15. Craigieburn Plaza is a shopping centre located in the Melbourne suburb of Craigieburn. Among the centre's stores are a Woolworths and an adjoining BWS alcohol retail outlet. The centre's configuration means that direct access is possible from the Woolworths into the BWS store. A person inside the Woolworths standing near the entrance of the BWS can see some of the shelves and products within the alcohol retailer.
16. In the lead-up to Christmas 2024, the complainant was at the centre and was concerned about how the BWS store had placed Christmas decorations and Christmas-themed ornaments and figurines on its shelves. It was argued that children were able to see the Christmas decorations from the Woolworths and were being drawn to the store. This, in turn, was contended to harm minors and potentially instill an interest in alcohol.
17. The Company confirmed that its Craigieburn store is accessible from Woolworths and that some of the stock displays were decorated with tinsel and Christmas ornaments. For reasons that will be examined later, the Company argued that there was no breach of the ABAC standards on responsible alcohol marketing, but it nonetheless acted on the complainant's concern and the decorations were removed.
18. In a practical sense, the Company's actions have ended the complaint process and a Panel decision on the application of the ABAC to the circumstances of the complaint is academic. That said, the complaint does raise a couple of technical points about the operation of the Code and the obligations of alcohol retailers and the Panel will address these issues.

### **Are the in-store Christmas decorations within the scope of the ABAC Standards?**

19. As a general proposition, displays and product shelf decorations within an alcohol retail store are 'point of sale' marketing and are expressly excluded from the scope of the Code - see Part 2 (b)(iv). The reason for this exclusion is that alcohol retailers are licensed under State/Territory liquor laws and the promotional activities that occur within the retail outlets are regulated directly by government bodies as part of responsible service of alcohol obligations.

20. The intended audience of point-of-sale marketing is the patrons and customers within the retailer. Marketing communications by a retailer directed towards an external audience are within the scope of the ABAC standards. There can be a grey area where the promotional activity conducted by the retailer occurs within the store but is visible to people outside the store.
21. For instance, a store window display is directed at people outside the store and is subject to ABAC standards. But it is not intended that material inside the store would be captured by the Code merely because someone could come up to the window, peer inside and catch a glimpse of the material inside.
22. The current case is in the grey area. It seems there is a roller door between the Woolworths and the BWS store that permits a shopper in the Woolworths to move directly into BWS. Because of this entrance, a more expansive view of the displays and shelves inside the BWS is afforded to consumers inside the Woolworths and near the entrance, than would otherwise be the case.
23. The Company accepted that someone inside the Woolworths and near the BWS entry could see the tinsel on the displays, but it was claimed the ornaments/figurines could only be seen from inside the BWS. The complainant contended the figurines could be seen from the Woolworths. The photograph supplied by the complainant did show the ornaments/figurines, but the Panel doesn't know the vantage point the photo was taken. Hence, it's hard to be definitive although the Panel fully accepts the complainant is being genuine in raising the concern.
24. The Company goes on to argue that decorations are not 'marketing communications'. While this is a valid point, it is not a complete answer as the decorations need to be seen in the context of their use with the display of products. It is the overall impact of the decorations with the alcohol products and other aspects of the display that will shape how a reasonable person will be influenced by the promotional material.
25. Drawing this together, the Panel believes the complainant raised a legitimate concern about the potential appeal of Christmas-themed ornaments to minors and it was the responsible action for the Company to take to have the decorations removed. That said, the Panel does not believe the in-store decorations are within the scope of the ABAC standards and are properly understood as point-of-sale marketing within the intended meaning of Part 2 (b)(iv) of the Code. In reaching this conclusion the Panel noted:
  - it is standard practice for retailers of all types to mark the Christmas period with Christmas-themed decorations within stores;
  - the BWS display was located inside the store and would be generally regarded as point-of-sale marketing;

- the fact that a display inside a store can be seen from a doorway does not alter the display from being point-of-sale marketing;
- this means the display falls within the intended jurisdiction of the Victorian Liquor Licensing regulator rather than the ABAC Scheme.

26. The complaint is dismissed.