



## ABAC Adjudication Panel Determination No 200/24

**Product:** BWS  
**Company:** Endeavour Group  
**Media:** TV – Subscription (Channel 10 via Foxtel Go)  
**Date of decision:** 20 January 2025  
**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 9 December 2024 about marketing for BWS (“the product”) by Endeavour Group (“the Company”) seen during a Matildas vs Brazil football match at approximately 6:10 pm on 6 December 2024, when watching Channel 10 via Foxtel Go.
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;
  - The Outdoor Media Association Code of Ethics and Policies restricts the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes address either the placement or 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. Ad Standards provides a common entry point for alcohol marketing complaints for ease of public access. Upon receiving a complaint, Ad Standards supplies a copy to the ABAC’s Chief Adjudicator.
  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 9 December 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 the placement of the marketing.

## The Placement

10. The complaint concerns marketing for BWS, as seen during a Matildas vs. Brazil football match at approximately 6:10 p.m. on 6 December 2024 when watching Channel 10 via Foxtel Go.

## Complaint

11. The complainant objects to the marketing as follows:
  - *It's an ad promoting a store that sells alcohol. It's called BWS.*
  - *It was [during] the soccer game, Matildas vs Brazil, via 10*
  - *It was shown after 6 pm, 6th December 2024, on Foxtel Go.*

## 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).
  - (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.

## The Company Response

13. The Company responded to the complaint by letter emailed on 14 January 2025 and clarification emails. Its primary comments were:
- 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 the 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. 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.
  - As far as I can see online:

- No *Matilda's* game was broadcast on AU free-to-air TV on 6 December 2024, either live or as a replay, anywhere in Australia.
- The *Matildas played Chinese Taipei in Geelong on the night of 7 December 2024, and the game was broadcast live on Channel 10/ 10 Bold that night.*
- The Matilda's played two matches against Brazil in Australia around this time:
  - 28 November 2024, and
  - 1 December 2024.
- Both matches were broadcast live on Channel 10 / 10 Bold in Australia. Channel 10 had the exclusive free-to-air and pay-TV rights (which it didn't exercise or sublicense) to broadcast the matches live and as full replays.
- Foxtel Go is an app that allows people to watch Foxtel and Fox Sports content on demand on their personal devices.
- A Foxtel customer can use their Foxtel box to receive the live feed of a free-to-air channel in Australia and transmit it to their television.
- It is my understanding that Foxtel/ Fox Sports/ Foxtel Go did not and does not have any right to broadcast replays of Matilda's matches in full. They did show highlights (under the fair dealing exception to copyright).
- The broadcast of alcohol advertisements is permitted under the Free TV Code of Practice (s.6.2):
  - (a) in the M and MA15+ classification zones set out in Section 2 (except between 5.00 am and 6.00 am, and 7.30 pm and 8.30 pm) and*
  - (b) as an accompaniment to a Sports Program on a Weekend or a Public Holiday, and*
  - (c) as an accompaniment to the broadcast of a Live Sporting Event broadcast simultaneously across more than one licence area if one of subclauses (a) or (b) is satisfied for:*
    - i. the licence area in which the Live Sporting Event being broadcast is held for an event taking place in Australia; and*

*ii. the majority of metropolitan licence areas in which the Live Sporting Event is shown, for an event taking place overseas.*

- Regarding section 4(d) of the Code, to date, the Panel has not found any sporting matches to breach this standard.
- No spots aired on channel 10 during any sport between 1 and 6 December 2024.

**December 1 – Matildas vs. Brazil, Network 10 and 10 Play Average Audience**

Market	Demographic	Total Audience	Broadcast TV	BVOD	% of Total
National	TOTAL PEOPLE	352,232	319,986	32,246	
National	CHILDREN 0-12	25,427	24,733	694	7%
National	TEENS 13-17	9,067	8,518	550	3%
National	PEOPLE 18-54	171,442	149,008	22,434	49%
National	PEOPLE 55+	146,294	137,726	8,568	42%
Perth	TOTAL PEOPLE	12,002	10,716	1,287	
Perth	CHILDREN 0-12	145	118	27	1%
Perth	TEENS 13-17	296	264	32	2%
Perth	PEOPLE 18-54	8,562	7,679	883	71%
Perth	PEOPLE 55+	3,000	2,655	345	25%

Source: OzTAM, Regional TAM, Virtual Australia, Match average including pre/post, Consolidated.

**The Panel’s View**

14. In late November and early December 2024, the Australian national women’s football team—the Matildas—played two home series against visiting teams from Brazil (24 November and 1 December) and Chinese Taipei or Taiwan (4 and 7 December). The games were broadcast on free-to-air TV by the 10 Network.
15. The complainant has advised they were watching one of the games shortly after 6 p.m. and was disturbed to see an ad for the alcohol retailer BWS. While the complainant did not elaborate greatly on their concern, the Panel takes it to be the contention that alcohol advertising should not be placed with the broadcast of sports and/or that any alcohol ads should not be shown on TV around 6 p.m.
16. The complainant’s recollection was that they were watching Matildas vs. Brazil, played on 6 December, and they accessed the broadcast via the subscription service Foxtel Go. The Matildas, however, did not play Brazil or any game on 6 December, with their final game against Brazil being on 1 December. There were games on 4 and 7 December, but these were against Chinese Taipei.
17. It is unlikely the complainant would be mistaken about the teams playing the match, so for the purposes of this determination, the Panel is proceeding on the basis that the 1 December game against Brazil was the game viewed by

the complainant. The Company has advised that they did not advertise on Channel 10 during any sport between 1 and 6 December. Possibly, the complainant was watching a replay or a highlights package on 6 December.

18. It is difficult to reconcile the complainant's recollection and the advertiser's response. For the reasons outlined following, if an ad for BWS appeared during a Matilda's match, it would not be a breach of the ABAC standards.
19. At a fundamental level, the complainant is raising a point about the desirability or otherwise of permitting alcohol marketing during sports broadcasts. While this is a legitimate policy debate, ultimately, it is a question for the government to determine.
20. As it stands, there is no outright prohibition on the placement of alcohol advertising in sports TV broadcasts. However, the circumstances in which alcohol can be marketed with sporting events are restricted, with some restrictions contained in the ABAC Code. The Panel's remit is to assess whether the placement of the alcohol marketing with Matilda's game is consistent with the ABAC restrictions.
21. The ABAC contains both content and placement standards, which alcohol marketing is to satisfy. 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. The complainant does not suggest that the content of the BWS ad was inappropriate, so the issue to be examined is whether the ABAC Placement Standards have been complied with.
22. The ABAC Placement Standards are detailed in Part 4 of the Code and seek to limit the exposure of advertising to minors through four stipulations on alcohol marketers, namely:
  - all applicable media codes applying to alcohol advertising must be complied with, i.e. the Commercial Television Industry Code of Practice (CTICP) - Placement Standard 1;
  - available age restriction controls must be applied to exclude minors from viewing an alcohol marketing communication – Placement Standard 2;
  - the advertisement may only be placed with programs where the audience is reasonably expected to comprise at least 80% adults - Placement Standard 3; and
  - the advertisement must not be placed with programs or content primarily aimed at minors - Placement Standard 4.

23. The CTICP is a longstanding media code governing free-to-air TV, and its time-of-day restrictions on alcohol advertising have been in place since the 1980s. As a general proposition, the CTICP does not permit alcohol ads to be shown at 6 p.m. on free-to-air TV; however, there are two significant qualifiers to this general proposition that are relevant to the complaint.
24. The first qualifier is that the CTICP expressly permits the broadcast of alcohol ads in conjunction with live sports events, irrespective of the time of day the sporting event is occurring.
25. The second qualifier is that the CTICP applies only to free-to-air TV. Since the 1990s, the TV broadcast environment in Australia has been transformed through the introduction of cable, satellite, and internet-delivered subscription TV services and, more recently, streaming services such as Netflix. Increasingly, more Australian households receive services through these various alternatives and extensions to the programming once served solely over free-to-air TV.
26. There are no time of day restrictions on alcohol advertising delivered via these various transmission platforms. This includes programs broadcast on free-to-air TV (i.e., TV that requires an aerial to be received) but accessed via a subscription service such as one of the TV Network apps, e.g., 10Play or 9Now.
27. When the ABAC Placement Standards came into operation in November 2017, it was recognised that the pre-existing regime contained in the CTICP was of diminishing utility, given the explosion in other entertainment platforms and mediums. So while Placement Standard incorporated the CTICP requirements as a starting point, the standards created new obligations based on using available technology to exclude minors from viewing alcohol ads, and when this is not possible, confining the advertising to predominantly adult audiences.
28. It is not clear what technology or platform the complainant used to watch the Matildas game. While the broadcast was seen through Foxtel Go, this facility allows the connection of both the primary Channel 10 free-to-air channel and possibly the 10Play app. The CTICP applies to transmissions on the free-to-air channel but not services received using the 10Play app.
29. In any event, it is clear that Placement Standard 1 has not been breached. This is because the CTICP permits an alcohol ad to be shown with the Matildas' game at or around 6 pm. So whatever technology or platform was being used, there has been no breach of the CTICP and hence placement standard 1.
30. The second placement standard requires that alcohol marketers apply available age restriction controls to exclude minors. To view Foxtel Go, an adult in the household must initially open an account, which in turn requires the giving of a date of birth. There is no information before the Panel suggesting



that a minor with an account in the complainant's household has been served an alcohol ad.

31. The age restriction controls are quite effective when minors typically have an individual internet-capable device like a smartphone or tablet. This is because the minor will have an account in their own name. The standard is less effective in the case of a family internet-connected TV because the account will generally be in the name of a parent or other adult, and the family co-view shows rather than the one-on-one viewing that occurs with a phone or tablet.
32. This means Placement Standard 3 does most of the work in situations when a subscription service can be co-viewed within a family. The standard establishes the 80% adult audience benchmark for the placement of alcohol marketing. Information on the audience of programs is available through the ratings system.
33. Data supplied from OzTam indicates that in the relevant market 97% of the viewers of the Matilda's match on 1 December were adults, and in the national market 90% were adults. Therefore the requirements of Placement Standard 3 have been met.
34. Placement Standard 4 provides that alcohol ads cannot be placed with content aimed primarily at minors irrespective of the actual audience. Football is a world game and is followed across age groups, including minors. The Matilda vs. Brazil matches will be of interest to football fans in Australia, including minors. That said, the games and their broadcast, however, cannot be fairly regarded as being primarily aimed at minors.
35. As it is unclear whether an ad for BWS was broadcast during a Matilda's match and in any event if it was, there has been no breach of the ABAC standards, the complaint is dismissed.