



ABAC Adjudication Panel Determination No 203/24

Products: First Choice Liquor and/or Liquorland
Company: Coles Group
Media: Podcast – Trivia for Kids
Date of decision: 9 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 11 December 2024 about marketing for First Choice Liquor and/or Liquorland (“the products”) by Coles Group (“the Company”) during the “Trivia for Kids” podcast.
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 11 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 placement of the marketing.

The Marketing

10. The complaint relates to the broadcast of alcohol advertising during the Trivia for Kids podcast.

Complaint

11. The complainant objects to the marketing as follows:
 - *There are several ads in this series, First Choice and I believe Liquorland too. They seem to be Coles Group ads from memory.*
 - *This is advertising alcohol on a podcast for children. It is on Apple Podcasts, called Trivia for Kids.*

The ABAC Code

12. Part 4 of the Code requires that the following Placement Standard be applied:
 - (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 letter emailed on 20 December 2024. Its primary comments were:

Background

- Coles Liquor has been a signatory to the Alcohol Beverages Advertising Code since 2013. We take our alcohol advertising obligations very seriously and are committed to industry best practice – including compliance with the ABAC Responsible Alcohol Marketing Code's (the ABAC Code) spirit and intent.
- Coles Liquor has a demonstrated and long-standing commitment to the responsible service, supply, advertising, and promotion of alcohol. We maintain robust internal compliance processes about liquor advertising and have a strong culture of compliance training embedded throughout the business to ensure our teams have the necessary skills to successfully navigate this heavily regulated environment.
- Coles Liquor is also a key contributor to DrinkWise, an independent, not-for-profit organisation whose primary focus is to help bring about a healthier and safer drinking culture in Australia.
- As a preliminary matter, we note that Coles Liquor is mindful of the importance of responsible advertising of alcohol products. To this end, it is never Coles Liquor's intention to publish advertisements that could contravene the ABAC Code.
- Coles Liquor confirms it will accept the decision made by the ABAC Adjudication Panel about this complaint.

The complaint:

Ad Description:

- The advertisement (the Advertisement) is a 30-second recording advertising Flybuys at either Liquorland, First Choice Liquor Market, or both. All three ads follow the same script, except for the different liquor brand callouts. The co-branded script can be found below.

3. Summer Upgraded 30" Spring Save script - cobranded

SFX: Champagne Cork popping!

Background atmos' of a summer BBQ:
chatter, laughing, sizzling BBQ.

VO: Upgrade your summer at Liquorland & First Choice Liquor Market with Flybuys!

Enjoy 10 times Flybuys points across your favourite drinks, this November.

SFX: Glasses clink.

With new deals every week, scan and collect Flybuys points to get more rewards, holidays and money off your shop.

Not a Flybuys member? Sign up today and get 1,000 bonus points!

SFX: People cheersing. Glasses chime. People: "Cheers!"

VO: Head instore or order online today to upgrade your summer. Only at Liquorland & First Choice Liquor Market.

T&C's apply. Choose to Drinkwise.

Soundtrack: Young Folks

Reason for concern, as described by the complainant:

- "This is advertising alcohol on a podcast for children. It is on Apple Podcasts, called "Trivia for Kids"

Coles Liquor's responses to ABAC's questions:

- The Advertisement was submitted to the ABAC Pre-vetting Service on 6 November 2024 with final approval from ABAC granted on 7 November 2024. The Application number for the submission was A 08754-2024.
- Following receipt of this complaint, Coles Liquor immediately escalated the issue to the publisher of the podcast, LiSTNR.
- LiSTNR confirmed the Advertisement had been promoted on the "Trivia for Kids" podcast and the Advertisement was subsequently removed.
- By way of background, when Coles Liquor engages LiSTNR with the promotion of our advertisements, a whitelist of approved content is provided to them. This whitelist outlines a specific selection of podcasts that Coles Liquor advertising is approved to appear on. LiSTNR advised that rather than adhere specifically to the Coles Liquor whitelist, it instead excluded the genres that did not appear on the whitelist.
- Coles Liquor requires the additional control of 18+ age targeting being applied, and content exclusions which include children's and family podcasts.
- Upon investigating the issue, LiSTNR advised Coles Liquor they had not adhered to all the requirements set by Coles Liquor. Specifically, the "Trivia

for Kids” podcast had been incorrectly tagged which resulted in the podcast not being recognised as a program for children.

- Additionally, the “Trivia for Kids” podcast had not been listed as approved content in the whitelist Coles Liquor had provided to LiSTNR.
- LiSTNR has acknowledged they had not adhered to the correct process as it relates to either the whitelist of podcasts provided or their internal quality checks to ensure the content was appropriately tagged and accepts full responsibility for this.
- LiSTNR has advised that they are aware of the ABAC requirements and that ads from this Coles Liquor campaign should not have been served in the Trivia for Kids podcast. LiSTNR accepts full responsibility and has apologised to Coles Liquor for their mistake. LiSTNR also advised that as a result of this complaint, they have set up new protection rules for their run of network campaigns that include podcasts from publisher partners to automatically exclude any podcast from their podcast network (including the “Trivia for Kids” podcast) which are not sending the correct signals.
- Coles Liquor submits that despite having appropriate measures in place within our reasonable control to adhere to the Code requirements, it was the errors of the publisher LiSTNR, as outlined above, that resulted in the Advertisement being played on the “Trivia for Kids” podcast.
- Coles Liquor submits that due to a categorisation error by the publisher LiSTNR, the podcast was not tagged as being aimed toward children and as a result the Age Restriction Controls were not correctly applied.

Concluding remarks:

- Coles Liquor would like to reiterate its commitment to industry best practice – including compliance with the Code’s spirit and intent.
- Coles Liquor respectfully submits that this complaint should be deemed a no-fault breach by the ABAC panel.
- We once again thank ABAC for the opportunity to respond to the complaint.

The Panel’s View

Introduction

15. The Trivia for Kids podcast is produced weekly, with each episode focussing on five unique and educative topics. It describes itself as family-friendly and promotes positive interaction and engagement between family members. The podcast commenced in January 2022 and at the time of writing, there are 145 episodes available on various platforms including Apple Podcasts.

16. The podcast has come before the Panel because, in early December 2024, the complainant was accessing episodes on Apple Podcasts when served with ads for First Choice Liquor and/or Liquorland. Understandably the complainant believed this to be inappropriate given that the podcast is directed towards 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 the podcast and makes a formal ruling of a breach of the applicable ABAC standards.

The placement of the ads with the podcast - what happened?

18. Securing advertising revenue is a principal means for podcast creators to monetise their work. In basic terms, the process operates as follows:
 - 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;
 - 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 e.g. radio and podcasts; and
 - programmatic advertising does not feature a 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 the ad being placed and the content with which the ad will be placed. This process identifies a product as suitable only for adults and identifies content that adult products should not be placed with. 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.

20. Self-evidently there has been a failure as an alcohol ad of any type should not be placed with the Trivia for Kids podcast. The Company contended that the failure resulted from a breakdown by LiSTNR, which operated the Ad Exchange placing advertising for the Company's alcohol retailers with podcasts. It was explained as follows:
- Coles Liquor provided LiSTNR with a whitelist outlining a specific selection of podcasts that Coles Liquor advertising is approved to appear on. LiSTNR advised that rather than adhere specifically to the Coles Liquor whitelist, it instead excluded the genres that did not appear on the whitelist;
 - Coles Liquor requires the additional control of the application of 18+ age targeting and content exclusions which include children's and family podcasts;
 - LiSTNR advised Coles Liquor they had not adhered to all the requirements set by Coles Liquor. Specifically, the "Trivia for Kids" podcast had been incorrectly categorised which resulted in the podcast not being recognised as a program for children; and
 - the "Trivia for Kids" podcast had not been listed as approved content in the whitelist Coles Liquor had provided to LiSTNR.

The finding of a breach of ABAC Standards

21. 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 the content of alcohol marketing communications and where the marketing communications can be placed.
22. 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 interact with the marketing.
23. 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).

24. The starting point obligation is that an alcohol marketer must apply the available age restriction controls to exclude minors from engaging with an alcohol marketing communication. 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% of adults. Further, alcohol marketing cannot be placed with programs or content primarily aimed at minors irrespective of the audience.
25. 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 the Coles Group, not Apple Podcasts or LiSTNR. As a formal ruling, the Panel finds that the standards in Part 4 (b) (c) and (d) of the Code have been breached, namely:
- available age restriction controls were not applied;
 - the reasonably expected audience of the podcast would have exceeded 20% minors, and
 - the Trivia for Kids podcast has content primarily aimed at minors.

No-Fault Breach

26. In accepting the breach had occurred, the Company argued that a no-fault finding should be made. A no-fault finding does not diminish that the breach of ABAC standards has occurred and that the complainant's concern is fully vindicated. It recognises that the alcohol marketer has acted properly and the breach was outside the reasonable control of the marketer.
27. The Company's submission is that it had given instructions on the placement of its advertising with podcasts that included the application of available age restriction controls and a specific 'whitelist' of approved podcasts for the ads. LiSTNR as the Ad Exchange operator has accepted the fault was due to their failure to apply the full age controls and follow the whitelist instructions. Further and critically the Trivia for Kids podcast had been incorrectly classified as to its content.
28. The Panel accepts that the Company has taken reasonable measures to meet the ABAC standards, and it is appropriate to make a no-fault finding.
29. The complaint is upheld and a no-fault finding made.