



ABAC Adjudication Panel Determination No 204/24

Products: Canadian Club, Devils Corner Pinot Noir and Guinness
Companies: Beam Suntory, Brown Family Wine Group and Lion
Media: TV – Free to Air
Date of decision: 13 January 2025
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 12 December 2024 about advertising for Canadian Club by Beam Suntory, Devils Corner Pinot Noir by Brown Family Wine Group, and Guinness by Lion during the English Premier League (“EPL”) catch-up programs on Optus Sport, which the complainant’s children were watching.
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 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 12 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 advertising for Canadian Club, Devils Corner Pinot Noir, and Guinness during EPL highlight replay programs on Optus Sport.

Complaint

11. The complainant objects to the marketing as follows:
 - [The advertising was seen on] *Optus Sport at 8 am on Sundays.*
 - [The advertising was for] *Canadian Club and Guinness.*
 - *I watch Optus Sport on Sunday morning with my young kids. We watch 6 or 7 highlight recaps of the overnight games because they typically take place after midnight.*
 - *In each of these recap videos, there are advertisements for alcohol and gambling.*
 - *My sons will have watched these ads 6 or 7 times each in just under 1 hour, and this happened every week. And then there are ads for Guinness/gambling again at halftime.*

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. **Beam Suntory** responded to the complaint by letter emailed on 16 December 2024. Its primary comments were:

- Alcohol advertising is permitted within the highlights packages across Optus Sport. It is a subscription streaming platform that follows the ACMA guidelines for the subscription broadcast television industry.
- These are different from the guidelines in place in the Free-to-Air Television sector. As a subscription service, you have access to a very clear view of audience age profiling, which shows that the platform, including the highlights content, is reaching an adult audience, not an under-18 audience.
- Before 6th Dec, we had frequency caps of 1 spot per week, which have since shifted to 3 per week across the whole Optus platform.
- Below is the Optus Sport audience breakdown, highlighting 99% of the audience > 18YO.

- **Optus Sport Audience Profile:**

| | |
|-----------|-----|
| Age 18-20 | 3% |
| Age 21-24 | 11% |
| Age 25-29 | 13% |
| Age 30-34 | 12% |
| Age 35-39 | 11% |

| | |
|-----------|-----|
| Age 40-44 | 11% |
| Age 45-49 | 11% |
| Age 50-54 | 9% |
| Age 55-59 | 7% |
| Age 60-64 | 5% |
| Age 65-69 | 3% |
| Age 70-74 | 2% |
| Age 75+ | 2% |
| Below 18 | 1% |

- The placement of the marketing does not breach the code, as Optus Sport's audience is an adult audience, not an under-18 audience.
- The subscriber base is over 18, so if a minor is viewing this content, it is second-hand viewing because the minor has access to someone else's account.
- The content is not aimed at minors. As shown by the platform audience breakdown, it is aimed at an adult audience. None of the content on Optus Sport is aimed at minors.

14. **Brown Family Wine Group** responded to the complaint by email on 20 December 2024. Its primary comments were:

- Note the complainant has not directly named Devil's Corner in reference to the complaint; only provided an image.
- The complainant has advised that both ads (for Canadian Club and Guinness) show people enjoying drinking alcohol. Note that this is not in reference to the Devil's Corner advert. Our creative does NOT feature "showing people enjoying drinking alcohol" (see example) and is not targeting minors in any way.
- Asset can be viewed here:
<https://www.instagram.com/reel/DDtXs-uN7I/?igsh=MThveW5ua3loZ3Awbw%3D%3D>
- The marketing has been approved by ABAC Pre-vetting with final approval for all campaign elements: 08822-2024
- The Devil's Corner advert is shown during selected live EPL games; however, as Optus Sport is a streaming service, it can appear during the replay highlights.

- Optus Sport follows ABAC’s guidelines regarding alcohol advertising—the audience must be predominantly adult, and ads must not appeal to minors. The restricted hours for alcohol (before 8.30 pm and after 5 am) are enforced on traditional broadcast platforms like TV and Radio, not directly applied to streaming platforms where compliance is voluntary. Further, for live sports, there is no specific time-based restriction for streaming platforms.
- Also, please note that we had selected matches outside the exclusion times, focussing on an adult audience:
 - Liverpool v Everton – 7/12 @ 11:30pm, Manchester United v Manchester City – 16/12 @ 3:30am, Liverpool v Tottenham – 23/12 @ 3:30am
- Below is a screenshot of the Optus Sports audience age breakdown (from those who have added their DOB at sign-up):

| | |
|-----------|-----|
| Age 18-20 | 3% |
| Age 21-24 | 11% |
| Age 25-29 | 13% |
| Age 30-34 | 12% |
| Age 35-39 | 11% |
| Age 40-44 | 11% |
| Age 45-49 | 11% |
| Age 50-54 | 9% |
| Age 55-59 | 7% |
| Age 60-64 | 5% |
| Age 65-69 | 3% |
| Age 70-74 | 2% |
| Age 75+ | 2% |
| Below 18 | 1% |

- Under-18s don't exist on the platform from an account ownership perspective, as you need a credit card to sign up, given its subscription platform. However, this does not allow the management of co-viewing within households, which is why Optus Sport takes cautious measures and assesses the creative itself before scheduling to ensure minors aren't targeted, which they weren't in this case.
- Optus Sport has confirmed that the highlights are NOT primarily aimed at minors. No content they produce is aimed at minors. Their entire audience is adults, and the content they create is geared towards adults. Live sport and highlights from live sport are not a content type that's aimed towards children, and the viewing backs that up—it's predominantly adults watching.

15. Lion responded to the complaint by letter emailed on 24 December 2024. Its primary comments were:

- Thank you for raising this complaint and providing us with the opportunity to respond to the complainant's concerns. Lion reiterates its commitment to the ABAC Scheme and takes its obligations to promote its products responsibly seriously.
- For the following reasons, and with respect to the complainant, we submit that Lion has not breached Part 4(b), ©, or (d) of the ABAC Code, and the Complaint should be dismissed by the ABAC Panel.
- The Advertisement was submitted through the Alcohol Advertising Pre-Vetting Service (**AAPS**) (Application 08855-2024) and received Interim Approval on 16 September 2024. However, due to an internal administrative error, it was not submitted through AAPS for Final Approval. Lion otherwise conducted relevant internal reviews of the Advertisement to ensure compliance with the ABAC Code.
- We are informed by Lion's media agency, UM, that:
 - The Advertisement was placed within the EPL highlights package on the Optus Sport on-demand video platform (Platform). The Platform is a paid subscription service and can be accessed only by valid subscribers by signing-in on the relevant mobile application or connected television. To create an account to access the Platform and advertising communications on the platform, a subscriber must have a valid credit or debit card to pay for the account must be 18 years of age or older.
 - The Placement of the Advertisement on the Platform is compliant with Part 4(b) of the ABAC Code. The Platform takes all available measures to avoid the targeting of sensitive advertising to minors. The targeting applied to the Advertisement is only for EPL content

on the Platform. As noted above, to subscribe to the Platform a person must be 18 years of age or older and must hold a valid credit or debit card to pay for the account. Accordingly, minors cannot hold subscriptions to the Platform and, accordingly, are not targeted.

- The Placement of the Advertisement on the Platform is compliant with Part 4(c) of the ABAC Code. Part 4(c) of the ABAC Code provides that an Alcohol Marketing Communication can be placed where the audience is reasonably expected to comprise at least 80% adults. Breakdown data which has been obtained directly from Optus Sport shows that 99% of the audience of the Platform are 18 years of age or older, with only 1% of the audience being below 18 years old.

- Specifically, the breakdown of the audience the Platform is as follows:

| | |
|-----------|-----|
| Age 18-20 | 3% |
| Age 21-24 | 11% |
| Age 25-29 | 13% |
| Age 30-34 | 12% |
| Age 35-39 | 11% |
| Age 40-44 | 11% |
| Age 45-49 | 11% |
| Age 50-54 | 9% |
| Age 55-59 | 7% |
| Age 60-64 | 5% |
| Age 65-69 | 3% |
| Age 70-74 | 2% |
| Age 75+ | 2% |
| Below 18 | 1% |

- Given that the EPL highlights videos are streamed on a platform where all registered, paying subscribers are 18 years of age and older, and with reference to the data above, it is reasonable to conclude that the audience of the EPL highlights is at least 80% adults.
- The Placement of the Advertisement on the Platform is compliant with Part 4(d) of the ABAC Code. EPL highlight videos condense key moments from soccer games played in the EPL. The sport of soccer and the EPL (one of the most popular soccer leagues in the world) appeal to an audience of all ages, and these videos do not contain any cues to suggest that they are specifically aimed at minors.
- The Panel has previously acknowledged that, although soccer is a sport that is followed across age groups, the streaming of soccer cannot be fairly regarded as being primarily aimed at minors, nor is

there a breach of the placement rules by showing an alcohol advertisement during the streaming of soccer on a platform such as Optus Sport (see Panel Determination No 94/24).

- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes.

The Panel's View

16. The complainant has raised a concern regarding the placement of ads for Canadian Club, Devils Corner Pinot Noir, and Guinness on Optus Sport during the EPL highlights show on Sunday mornings. The complainant explained that the highlights show was watched by the complainant with children and argued that the placement of alcohol (and gambling) ads with the show was inappropriate.
17. At a fundamental level, the complainant is raising a point about the desirability or otherwise of permitting alcohol marketing to occur during sports broadcasts. While this is a legitimate policy debate, it ultimately is a question for the government to determine. The Panel has a more confined role, and that is to assess if the placement of the alcohol marketing was consistent with the ABAC Code.
18. Optus Sports is a sports streaming service delivered over the internet and can be received via web browsers from an internet-connected device such as a phone, tablet, laptop, or smart TV. It is a subscription service, which means an account holder is required to give basic personal details, including their date of birth, and have a payment mechanism.
19. The ABAC contains both content and placement standards. 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 alcohol marketing was inappropriate, so the issue to be examined is whether the ABAC Placement Standards have been complied with.
20. 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.
21. 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. The ABAC commenced in 1998 as a content-only set of advertising standards. The Placement Standards came into operation in November 2017, and for free-to-air TV, they adopted the pre-existing regime contained in the CTICP as a starting point and built upon it.
 22. It is clear that Placement Standard 1 has not been breached. This is because the CTICP, while generally restricting the broadcast of alcohol advertising to after 8:30 p.m., does not apply to subscription services such as Optus Sports broadcasts. There are no time of day restrictions on the placement of alcohol ads on subscription or streaming platforms.
 23. The second placement standard requires that alcohol marketers apply available age restriction controls to exclude minors. To view Optus Sports, 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.
 24. 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.
 25. 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. Each of the Companies have advised that the EPL Highlights shown on Optus Sport attract a predominately adult audience and it is evident the placement rule benchmark of an 80% adult audience has not been breached.
 26. Placement Standard 4 provides that irrespective of the actual audience, alcohol ads cannot be placed with content aimed primarily at minors. Football is the

world game and is followed across age groups including minors. The EPL is a major competition and 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.

27. As there has been no breach of the ABAC standards, the complaint is dismissed.