



ABAC Adjudication Panel Determination No 208/24

Product: Fireball Whisky
Company: SouthTrade International
Media: Spotify Free
Date of decision: 28 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 12 December 2024 about marketing for Fireball Whisky (“the product”) by SouthTrade International (“the Company”) on Spotify Free when children were listening.
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 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 marketing for Fireball Whisky on Spotify Free when children were listening.

Complaint

11. The complainant objects to the marketing as follows:
 - *The ad makes blatant dodges of obscene and sexual innuendo in the name of humour.*
 - *I am getting tired of this ad airing when my children are in the car, and I do not want to have to explain to them why some people think the words used in this ad are funny and/or appropriate.*
 - *On Spotify Free, you get a set of 3-4 ads after every 2-3 songs, and they usually cycle between about ten ads on a given day. This means I've been hearing this ad roughly once every 20 minutes.*
 - *Regardless of the fact that this is advertising alcohol, I do not find it appropriate to have "Holy shot!" and "Shove it up your..." to be played at all hours of the day in a family environment on repeat.*

The ABAC Code

12. Part 4 of the Code provides that:
 - (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 email on 17 January 2025. Its primary comments were:
- Pre-vetting advice was not requested for this Spotify asset.
 - Spotify Free has age restrictions that can exclude minors. We only serve alcohol ads to logged-in consumers whose profiles fit our target brand demographic.
 - In every instance this would include an 18+ demo.
 - Our Fireball campaign targeted A18+ AND profiles directed towards Alcohol Drinkers, Socialites / Partyiers, and Tastemakers. We only served Fireball ads to Spotify accounts that fit this audience profile.
 - Spotify is LDA compliant, with an 84.1% A21+ audience per GWI (Spotify Free Users). In Australia, the LDA percentage will be even higher when considering A18+.
 - Please see below for the audience breakout by demo (% of impressions delivered through the campaign):
 - A18-24: 15.76%
 - A25-34: 14.17%
 - A35-44: 24.36%
 - A45+: 45.71%

The Panel's View

14. Spotify is a global audio streaming service with 640 million monthly active listeners and access to over 100 million songs and 6 million podcast titles. The service offers both free and subscription options. Subscribers access the service ad-free, whereas users, such as the complainant, accessing the free service are served advertising.

15. In December 2024, the complainant was listening to music on Spotify Free in the family car when travelling with children. One of the ads being served was for the Company's product, and it is this ad that has drawn the complaint. It is argued that the ad is offensive because of obscene language and sexual innuendo and is unsuitable for children.
16. The principal concern of the complainant about the suitability of the ad for children does not fall within the domain of the ABAC standards as such. Instead issues about appropriate language and sexual references in advertising are within the remit of the AANA Code of Ethics administered by Ad Standards. This is because the concern about the language of the ad is not related to alcohol as a product and the complainant would be equally troubled if the ad was marketing milk as opposed to alcohol.
17. The ABAC issue enlivened by the complaint is that children were hearing an alcohol ad irrespective of its content. The ABAC Placement Standards have the policy aim that alcohol marketing be directed towards adults and, to the extent reasonably possible, away from minors. The issue to be examined is whether the placement standards have been complied with.
18. The Standards are detailed in Part 4 of the Code and there are four stipulations which are potentially relevant to the current case, namely:
 - available age restriction controls must be applied to exclude minors from viewing (listening) 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.
19. Placement Standard 2 requires that alcohol marketers apply available age restriction controls to exclude minors. Under Spotify's terms of service, a person must be aged at least 13 to have their own Spotify account, and minors aged 13 to 17 require consent from a parent or adult guardian. In the current case, the Spotify account was held by an adult.
20. As Spotify holds date of birth data on its account holders, it can include age demographic information as one data point advertisers can use to target the audience of ads. This means the Company can use targeting and age controls to exclude minors from its advertising served over Spotify.
21. In this respect, the Company has advised that it only serves alcohol ads to logged-in consumers who fit its target brand demographic, which in every

instance includes an 18-year-old audience. This means Placement Standard 2 has not been breached.

22. The age restriction controls are quite effective when a minor has their own Spotify account and listen to music on their own internet-capable device, like a smartphone or tablet. The standard is less effective when an account is in the name of a parent or other adult and the family co-listens in the car, as occurred here.
23. This means Placement Standard 3 does most of the work in situations when a subscription service is shared within a family. The standard establishes the 80% adult audience benchmark for the placement of alcohol marketing. For broadcast media like TV and radio, the ratings system allows for quite detailed age demographic data on audiences. There is no equivalent for content accessed over Spotify that takes into account co-listening.
24. That said, it is reasonably clear from the data supplied by the Company together with the age of Spotify account holders, that it is unlikely that the audience of content on Spotify would exceed 20% minors. This means Placement Standard 3 has not been breached.
25. Placement Standard 4 provides that alcohol ads cannot be placed with content aimed primarily at minors irrespective of the actual audience. This standard is useful when considering broadcast mediums and services with content directed towards minors, such as the Spotify Kids subscription. In the current case, the content would be a playlist selected presumably by the complainant and suitable for children. The Placement Standard is not really applicable and would not be breached.
26. As there has been no breach of the ABAC standards, the complaint is dismissed.