



## ABAC Adjudication Panel Determination 1/25

<b>Determination Date</b>	7 February 2025
<b>Brand/Company</b>	Alcohol Delivery/Menulog
<b>Media</b>	Radio
<b>ABAC Code provisions</b>	Part 3 (b)(ii), (b)(iii)
<b>Outcome</b>	Dismissed

### Part 1 - Determination Overview

#### ***Complaint:***

- A radio ad for Menulog on Gold FM aired on 3/1/25 at approximately 4.43 pm.
- The person performing the voice-over sounded like a teenager under the age of 18.
- Part 3 (b)(ii) and (iii) of the Code require persons in alcohol ads to be adults and at least 25 years old.

#### ***Key findings:***

The Panel dismissed the complaint finding:

- The ABAC Scheme does not formally capture Menulog as it is not an alcohol producer, distributor or retailer, but it accepts its marketing referencing alcohol should meet ABAC standards.
- Part 3 (b)(ii) and (iii) of the Code applies to persons voicing radio ads.
- The person heard in the ad is 29 years old and does not appear to be a minor.

#### ***Marketing Communication:***

The marketing was a radio ad with the following transcript:

Voice Over: Menulog and BWS have teamed up and are ready to deliver all your favourite drinks on demand.

Oooh – bottles are officially popping at yours with alcohol delivered.

Drink responsibly.

Singers: Did somebody say Menulog?

## Part 2 - The Panel's View

### **Background**

1. Menulog is an Australian online food and beverage ordering app and delivery service platform headquartered and founded in Sydney in 2006. It connects customers with restaurants and grocery stores and, since late November 2024, with the significant alcohol retailer BWS. This determination arises from a radio ad announcing that Menulog and BWS have 'teamed up'.
2. The ABAC is one part of the national regulatory regime which collectively aims to have alcohol marketed responsibly. The ABAC applies to alcohol marketing communications in Australia generated by or within the reasonable control of a producer, distributor or retailer of alcohol beverages. Menulog is not an alcohol company but a delivery service of various foods and drinks. While not formally captured by the ABAC Scheme, Menulog accepts the ad, and its marketing referencing alcohol products should meet the standards for responsible alcohol marketing contained in the ABAC.

### **Responsibility toward Minors**

3. A key standard of good alcohol marketing practice is that alcohol ads should not strongly appeal to minors. For a public-facing alcohol ad, one element in meeting this standard is that the people 'shown' in advertising must not only be adults but should be at least 25 years old - (Part 3 (b)(ii) and (iii)).
4. The complainant believed the person reading the radio ad sounded as if they were a minor. The Code standard is couched in language about the appearance of a person depicted in an ad. This is the first time a complaint has been made about a person's age based only on their voice and not their visual appearance.
5. The Panel interprets the ABAC Code in a commonsense and non-legalistic way, guided by the spirit and policy intent of the Code. In this instance, this means the Part 3 (b)(ii) and (iii) requirements should be understood as applying broadly to the depiction of an individual in an alcohol marketing communication, inclusive of physical appearance but equally how a person speaks and communicates.
6. The age of a person used in advertising is a question of fact. The Company has advised that the ad was voiced by actor, beatboxer, and professional voice-over artist Bernadina (Bernie) Van Tiel or BVT, who is 29 years old.
7. Regardless of the actual age of the person in the ad, the Code also requires that they must not appear to be a minor. Determining a person's age based solely on their sound can be challenging, and BVT has a distinctive vocal range. That acknowledged, the actual words spoken in the ad do not contain cues suggesting the speaker is a minor, and the Panel believes a reasonable person would assume the person speaking is an adult.

8. The ad is no longer being used, but as a formal decision, the Panel believes the complaint should be dismissed.

### Part 3 - Supporting Information

#### **Panel Process**

This complaint was received from Ad Standards (the common entry point for all marketing complaints by members of the Australian community). The Chief Adjudicator referred it to the ABAC Adjudication Panel for consideration against the ABAC Responsible Alcohol Marketing Code. The complaint process is explained [here](#).

The Panel operates under the [ABAC Rules & Procedures](#) and has regard to the principles of procedural fairness.

The Panel comprised Chief Adjudicator Professor the Hon Michael Lavarch AO, Health Sector Panelist Richard Mattick, and Panelist Jeanne Strachan.

#### **Applicable ABAC Responsible Alcohol Marketing Code Standard**

*Part 3 (b) – An Alcohol Marketing Communication must NOT:*

- (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role and there is no implication they will consume or serve Alcohol or*
- (iii) depict in a visually prominent manner:*
  - (A) paid models, actors or Influencers that are and appear to be Adult but are under 25 years of age; or*
  - (B) other people that are and appear to be Adult but are under 25 years of age UNLESS the depiction has been placed within an Age Restricted Environment.*

#### **Company Response**

The Company was provided with an opportunity to respond to the complaint, and its principal comments were:

- The radio advertisement launches the partnership between Menulog (delivery partner) and BWS (retailer). Menulog and its marketing agency, ThinkerBell, created and distributed it, which is within the scope of the Code.
- Menulog and BWS are in a commercial partnership to use Menulog's Delivery Service to deliver alcohol products. Menulog can confirm that BWS reviewed and approved the VO record. BWS is a signatory to the ABAC.
- Menulog believes it has met all its obligations under the Code, primarily to the core content standard that alcohol marketing must not have strong or evident appeal to minors.

- The ad complies with Part 3 (b) of the Code. It references the social nature of enjoying a drink for a celebratory occasion to signal the official partnership between BWS and Menulog.
- The talent voicing the ad is Bernadina Van Tiel, 29 years of age, and a paid voiceover talent Menulog has previously used in voiceovers for TVC and radio advertisements.
- The person sounds to be an adult over 25 years of age. There is no implication the person will consume or serve alcohol products. They are advertising the new partnership and announcing that BWS alcohol products are now available on Menulog for delivery.
- Menulog has processes in place to ensure it meets the obligations of the ABAC Code and made a considered effort to ensure talent for this radio advertisement was well within the age required and sounded like an adult to ensure it would not appeal to minors.
- However, Menulog has noted the complaint and can confirm that the radio advertisement is no longer in circulation.

### ***Marketing Best Practice***

Menulog was asked how it demonstrates a commitment to alcohol marketing best practice. It advised:

- While not a formal ABAC signatory, Menulog is committed to ensuring it meets all Code standards and Panel determinations, including using the pre-vetting process as if it were a Code signatory.
- Alcohol Advertising Pre-vetting Service Approval was obtained under application number 08604-2024 with approval number 9957. This approval covered out-of-home and radio material related to this advertisement.
- All Menulog marketing employees and Thinkerbelle account members have completed the current ABAC online training course.
- Menulog is a responsible delivery service of alcohol products and has robust processes to ensure marketing practices meet community expectations. This includes detailed approvals processes internally and with commercial partners while also adhering to any advice provided as part of the ABAC Pre-vetting Service.