



## ABAC Adjudication Panel Determination No. 31/19

**Product:** BWS  
**Company:** Endeavour Drinks Group  
**Media:** Television  
**Date of decision:** 21 May 2019  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an advertisement appearing on field during televised coverage of an NRL match promoting BWS by Endeavour Drinks Group (“the Company”) and arises from a complaint received 29 April 2019.
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 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”) – 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 – 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, 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 the other codes as well as meeting the standards contained in the ABAC.
  4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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 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 29 April 2019.
8. The Panel endeavour 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 has been determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval **was** not obtained for the marketing communication.

### **The Marketing Communication**

10. The complaint refers to the below advertisement for BWS appearing on the field during a sporting match.



## The Complaint

11. The complainant is concerned that the ad promotes alcohol being delivered asap during a sporting match.

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage
  - (d) A Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.
13. Part 2(b) of the ABAC provides that the Code does not apply to:
  - (v) Sponsorship
14. Part 6 of the ABAC includes the following definition:

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

## The Company's Response

15. The Company responded to the complaint by letter dated 10th May 2019 advising that:
  - a) Endeavour Drinks, accepts that the ad does not fall within the sponsorship exception to the Code. Based on our understanding of typical advertising

arrangements, we would expect the NRL to receive some benefit from the advertising during their event, but this is not something we can confirm.

- b) We do not believe the Ad encourages irresponsible behaviour related to the consumption or presence of alcohol in breach of Part 3(a)(ii) of the Code. The Ad features the BWS on Demand logo, which includes the slogan “drinks delivered ASAP”. The Ad does not depict the consumption of alcohol nor does it include any alcoholic products. BWS On Demand is a delivery service. BWS On Demand, and the Ad as a whole, focus on delivery, not the consumption of alcohol nor the consumption of alcohol during the playing of a sporting match. The Ad promotes the proposition that delivery is a convenient means to purchase drinks. It does not encourage or make any suggestions about the subsequent consumption of those drinks. The Ad, and BWS on Demand, are about convenience and service.
- c) The advertising of home delivery services has been considered by the Panel previously (Determination No. 118/18), in which the Panel observed that: *“While Part 3(a)(ii) of the Code provides that alcohol marketing must not encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol, this provision cannot fairly be said to prohibit the advertising of home delivery services”*.
- d) Additionally, the distinction between alcohol purchases and consumption has been considered by the Panel in a number of previous decisions (Determination No. 9 & 14/16), in which the Panel observed that: *“...There is a clear distinction between the purchase of an alcohol product and the pattern of its subsequent consumption. Alcohol by its nature is a product with a relatively long shelf life in that it can be stored for months or in the case of wine and spirits, for years, prior to its use. It does not follow that simply because alcohol products are home delivered that a person will then engage in binge drinking, any more than a person purchasing a product in store at a bottle shop will engage in subsequent excessive or rapid consumption of the product purchased.”*
- e) It is important to reiterate that the Ad was virtual signage, only viewable by those watching the televised version of the NRL game. The Ad was not visible to those in attendance at the NRL game at Suncorp stadium.
- f) The responsible service of alcohol is a very important part of Endeavour Drinks’ operations, including for the BWS On Demand service. Endeavour Drinks’ responsible service initiatives outlined earlier, including ID25 and our Intoxication Policy, apply to our delivery services to ensure that alcohol is not delivered to someone who is under 18 years of age or someone who is intoxicated. We also note we have been advised that the campaign which this Ad was a part of ended with the round of NRL games on 5 May 2019.
- g) We do not believe the Ad to be in breach of Part 3(d) of the ABAC, namely directly implying the consumption of alcohol during the playing of a sporting game. As discussed above, the Ad relates to BWS’ On Demand delivery service. The Ad does not depict any alcohol products or any alcohol consumption, nor does it directly imply the consumption of alcohol. As discussed above, alcohol as a product has a relatively long shelf life and delivery is about convenience. The delivery of alcohol is distinct from the

consumption of alcohol. We do not believe that the promotion of a drinks delivery service during the live broadcast of a sporting match encourages the consumption of alcohol during the actual playing of a match. It is important to restate again that the Ad was only visible on the televised version of the NRL game, not in the stadium itself, therefore the Ad would not have been visible to players of the sport, only 'at home' viewers of the game.

- h) Endeavour Drinks understands the seriousness of the consumption of alcohol before or during a sporting activity as the playing a sporting match requires a high degree of alertness and physical coordination.

### **The Panel's View**

16. BWS is a major retailer of alcohol products in Australia and is part of the Woolworths Group of companies. The Company operates a home delivery service for its products and this determination concerns the marketing of this service via advertising broadcast in conjunction with the live to air telecast of a game of rugby league.
17. The marketing takes the form of a projection which gives the impression that an ad for the Company is on the grass in the in-goal area of the playing field. In reality the projection is only visible to TV viewers and is not seen by actual spectators attending the game. For the complainant, the ad is highly irresponsible as it is promoting immediate alcohol delivery during a sports game. Presumably, the concern is that alcohol and playing sport is being directly associated, as well as the detrimental consequences from easy access to alcohol.
18. The association of alcohol and sport is an issue which attracts differing views in the community. Ultimately the question of whether alcohol companies should be able to sponsor sporting teams or competitions or be permitted to advertise during sporting events is a matter of public policy for government. The ABAC does not prohibit the marketing of alcohol in association with sport, but rather has specific standards as to how any such marketing must be conducted. The Panel's role is to assess compliance of an individual ad against these standards rather than postulate a value judgement about the overarching policy issue.
19. The Company accepts that the ad needs to meet ABAC standards and does not fall within the exception the Code affords to the direct sponsorship of a sport by an alcohol company. In this case, the relevant standards are that alcohol marketing must not encourage irresponsible or offensive behaviour related to alcohol use nor is it permitted to show or imply the consumption of alcohol before or during an activity that requires a high degree of physical co-ordination.
20. The ad promotes the home delivery service with the phrase 'On Demand - Drinks delivered ASAP'. The implication apparently taken from this by the complainant is that irresponsible alcohol use is being encouraged. The Panel believes the ad cannot be said to breach the ABAC standard given:
  - The ad is promoting a convenient way to purchase alcohol and does not promote a subsequent pattern of alcohol consumption;
  - There is a clear distinction between the home delivery of alcohol in bottles or cans and its later consumption given alcohol is a product which by its nature can be stored and consumed over time and does not require immediate

consumption. This can be contrasted with say, a 'happy hour' type promotion within a hotel where the purchased alcohol would be consumed immediately;

- It is reasonable to assume that the message 'drinks delivered asap' can be interpreted as a solution to a perceived desire i.e. 'I would like to have a drink, but I have no alcohol at home with me'. But it does not follow that any alcohol then purchased will be consumed excessively, rapidly or in an irresponsible manner any more than alcohol purchased by a consumer travelling to a store to complete the purchase.

21. The ABAC standard going to the use of alcohol and undertaking a physical activity requiring co-ordination is also not breached. Clearly the ad does not imply that the rugby players are being encouraged to consume alcohol before or during the game. The ad is directed at television viewers and it would not be taken as saying alcohol should be used while engaging in sport.
22. Accordingly, the complaint is dismissed.