



ABAC Adjudication Panel Determination No. 30/19

Product: Jimmy Brings
Company: Endeavour Drinks Group
Media: Digital (YouTube)
Date of decision: 3 June 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 a banner ad appearing on YouTube promoting Jimmy Brings alcohol delivery service by Endeavour Drinks Group (“the Company”) and arises from a complaint received 26 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 26 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 banner ad appearing on YouTube.



The Complaint

11. The complainant is concerned that the banner ad appears on a children's program on YouTube, noting that age restriction or targeting was not applied for the ad.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules
13. Part 4 of the ABAC Code provides that:

A breach of this Code that is reasonably unforeseeable or outside the reasonable control of the Marketer or their agency will be classified as a no fault breach.
14. Definition in Part 6 of the ABAC provides:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) If a media platform on which a Marketing Communication appears has age restriction controls available, the Marketer must utilise those age restriction controls to exclude Minors from the audience
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

The Company's Response

15. The Company responded to the complaint by letter dated 9th May 2019 and email exchanges finalised on 27 May 2019 advising that:
 - a) This letter addresses advertising, marketing and retail activities under the control of Endeavour Drinks, which includes Jimmy Brings. Endeavour Drinks' aim is to be Australia's most responsible retailer of alcoholic beverages. In 2013 we formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. Prior to becoming a signatory, Endeavour Drinks' demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. Endeavour Drinks' maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are highly relevant in this context. As part of our community charter, 'Our Community, Our Commitment', Endeavour Drinks has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
 - ID25 (ask for ID from anyone who looks under 25);
 - Don't Buy It For Them (stopping secondary supply to minors);
 - our Intoxication Policy (refusal of service to anyone who may be intoxicated); and
 - staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses, and implementation of the award-winning training program "Safe".
 - b) In marketing alcoholic products, Endeavour Drinks has been fully aware of the requirement not to be directed at minors through breach of the Code's

Placement Rules. It is our view that the Ad was not directed at minors through a breach of the placement rules.

- c) YouTube is a video platform that is owned by Google. YouTube allows users to upload and share videos, and to view uploaded videos. YouTube is accessible via the YouTube website and also via the YouTube app. The Ad was placed via Google Ads, which is Google's online advertising service that allows advertisers to place ads via Google's platforms which includes YouTube. More information about Google Ads and how it works is available via the url: https://ads.google.com/intl/en_au/home/faq/. Google Ads enables advertisers to target their advertising in a number of ways, including audience targeting and content targeting. More information about targeting is available via the following url: <https://support.google.com/google-ads/answer/1704368>
- d) The Ad in question is an app campaign ad where Google automates targeting based on relevant pages or content on YouTube (<https://support.google.com/google-ads/answer/6247380?hl=en-AU>) in particular:
- The Ad is part of what Google Ads calls a 'Universal App Campaign (UAC)' ad, which invites interested viewers to download the app. This is a relatively new campaign type offered by Google to promote the installation of a mobile application. UAC campaigns use all three Google placements: Search, Display and YouTube to find the best users that will be in the market to download a business' application.
 - UAC campaigns are a managed campaign by Google. We cannot manually choose placements, and we cannot alter Interest Targeting or Observations as you can with traditional Display campaigns, nor choose keywords as you would with a Google Search campaign. Google does this so they can best target users that would best convert.
 - Upon setting up the UAC campaigns, we choose the specific locations that Jimmy Brings delivers to and also enable the content exclusion filter to ensure the ad didn't appear with content suitable for underage audiences. It is currently restricted to DL-MA, the highest rating content filter.
 - After setting up these campaigns, we develop creative content that promotes the download of the application, rather than our specific services. After all, the goal of the UAC campaign is simply for the user to download the application.
 - We believe the placement is algorithm-based where Google targets users based on content they previously viewed or are currently viewing on YouTube by matching relevant keywords. We believe it is highly likely that the device referenced in the complainant's screenshot would have been used in the past to search and/or view content that is related to alcohol or alcohol delivery.
- e) Underage content filters were applied so the Ad was restricted to DL-MA, however I am told that this content filter does not work for 'live' content because, by its live nature, the content is not rated when it goes live. On the screenshot provided by the complainant, "LIVE" is displayed under the word 'Oddbods'

which may explain why the content filter did not work. I have been provided the attached screenshots which confirm the filters applied and also that Google Ads identifies the Ad as alcohol-related.


- f) Also, alcohol falls within Google Ads' 'Restricted content' policy (available via the following url: <https://support.google.com/adspolicy/answer/6008942#res>) which confirms that Google does not allow alcohol-related advertising unless it meets Google's alcohol-related policies and does not target minors.
- g) YouTube also has YouTube Kids to manage and restrict advertising and content on its platform. YouTube Kids is a video platform also owned by Google, which has additional filters and restrictions, designed to make video viewing safer for children. It allows users to specifically approve content that is viewable and also block specific content that should not be viewable. Importantly, as stated on Google's support webpage (available via the following url: <https://support.google.com/youtube/answer/6168681?hl=en>), advertising on YouTube Kids is heavily restricted:
- "All advertisements sold in the YouTube Kids app must comply with the additional advertising policies... as well as YouTube's general advertising policies...All YouTube Kids Paid Ads must be pre-approved by YouTube's policy team prior to being served in the YouTube Kids app. Additionally, advertisers must also comply with applicable laws and regulations (including any relevant self-regulatory or industry guidelines)."
 - YouTube Kids prohibits paid advertising that relate to a number of categories. This includes any beverages and regulated products such as alcohol. Based on the above, we believe it is unlikely that YouTube Kids was being used when the Ad was viewed.
- h) We do not have audience composition data for the 'Oddbods' cartoon (nor do we suggest that 'Oddbods' is adult in nature). Despite our efforts we have also not been able to directly obtain audience composition data for the YouTube platform, though we note that data provided to ABAC in 2017 (ABAC Determination 116/17) confirms that 92% of YouTube users in Australia are over 18.
- i) We should also note that the content of the Ad only contains the name and logo of Jimmy Brings. It does not include any images of or mention alcohol or drinking. The Ad only promotes the Jimmy Brings app the use of which is also subject to restrictions to ensure that alcohol-related content is not directed towards minors.
- j) For the reasons outlined above, we believe the complaint should be dismissed, and the Panel should determine that there has been no breach of the Code. The ad campaign has been voluntarily suspended by Jimmy Brings since receipt of the complaint, pending ABAC's determination.

⚠️ 1 limitation(s)

[Policies that may limit your audience](#) [Learn more](#)

⚠️ Alcohol sale [Learn more](#)

Mobile app

 Jimmy Brings (Android)
[com.jimmybrings](#) - Jimmy Brings

Excluded types and labels ^
 All campaigns Opt out of showing your ads on content that doesn't fit your brand

By default, all video campaigns filter out the most inappropriate or graphic content from all sensitive content categories and content labels. You can customise the filter in the Content exclusions page of campaign settings.

Digital content labels ?	Content Type ?
<input checked="" type="checkbox"/> DL-G: General audiences	<input type="checkbox"/> Games
<input checked="" type="checkbox"/> Content suitable for families	<input type="checkbox"/> Live streaming YouTube video
<input checked="" type="checkbox"/> DL-PG: Most audiences with parental guidance	<input type="checkbox"/> Embedded videos
<input checked="" type="checkbox"/> DL-T: Teen and older audiences	<input type="checkbox"/> Below-the-fold (Display only)
<input type="checkbox"/> DL-MA: Mature audiences	<input type="checkbox"/> Parked domains (Search only)
<input type="checkbox"/> Content not yet labeled	

While content exclusions are completed to the best of our ability, we can't guarantee that all related content will be excluded.

The Panel's View

Introduction

16. Oddbods is a children's focussed CGI-animated television and internet series which depicts the amusing everyday adventures of 7 furry characters. First released in 2015 the series is accessible via the video streaming platform YouTube. YouTube is the second most popular web site in the world attracting over 1.8 billion users each month, following only Facebook which has over 2 billion monthly users.
17. In late April 2019 the complainant's three year old niece was watching an episode of Oddbods over YouTube when it was noticed that a banner advertisement for Jimmy Brings appeared. Jimmy Brings is a home delivery alcohol beverage retailer. The complainant, not surprisingly, believed that the placement of the ad in conjunction with an episode of Oddbods was totally inappropriate and indicated that age exclusions for alcohol advertising available over the net had not been applied.
18. It is a common position between the complainant and the Company that alcohol advertising should not be occurring in conjunction with a children's video series. The question for this determination is how the banner ad came to be seen with the accessing of the Oddbods episode over YouTube and did the Company meet its

obligations under the ABAC to endeavour to direct its marketing to adult audiences and away from minors.

The ABAC Placement Rules

19. The ABAC Scheme establishes a set of content standards and placement requirements to regulate alcohol marketing in Australia. The content standards go to what messaging can be responsibly included within alcohol marketing communications. The Placement Rules go to where and how alcohol marketing communications might be located or transmitted irrespective of the content of the marketing. The aim of the Placement Rules is, to the extent possible, to direct alcohol marketing toward adult audiences and away from under 18 year olds.
20. The obligations in the Placement Rules are differentiated depending on the capacity of the communication medium to permit targeting of audiences. For instance, with broadcast mediums such as television it is not possible to specifically target the audience of an ad shown with a TV program. So, the rules relate to the time of day an alcohol ad might be broadcast and to the expected audience composition of the program with which an ad is shown. Equally it is not possible to control who might see an ad placed on a billboard so the rule here restricts the areas where the billboard might be located so that the ad is not adjacent to a school.
21. The greatest technical capacity to target audiences is offered through marketing over the internet. For this domain the Placement Rules impose three obligations namely:
 - available age restriction controls must be used to exclude minors from the marketing item's audience;
 - if there are no available age restriction controls then the marketing communication can only be placed where an audience is reasonably expected to comprise at least 75% adults; and
 - irrespective of the audience, an alcohol ad cannot be placed with programs or content primarily aimed at minors.

Marketing over YouTube

22. Digital Platforms in Australia are dominated by two global providers namely Facebook and Google. Google has substantial market power in relation to its internet search engine. Google is also the parent company of YouTube. Revenue for Google and YouTube comes from various sources with a significant source derived through the placement of advertising over the platforms. The Company explains that the banner ad which appeared on the complainant's mobile device when the niece was watching Oddbods over YouTube arose from its campaign to increase uptake of a Jimmy Brings app. Presumably the app is a convenient means for consumers to access the services of the alcohol retailer.
23. In any event, it seems the ad was placed with a service known as 'Google Ads' and resulted in the Company's banner ad being delivered via Google Search, Google Display and YouTube. When using Google Ads an advertiser does not specify nor have control over the individual programs and content with which the ad will appear. In other words, the Company could not have selected 'Oddbods' as a companion to show its ad, even if for some misguided reason it wanted to do this. Rather the ads are placed automatically through the application of an algorithm which uses data about the demographic targets, locations, and the internet search patterns of Google users.

24. The Company does have choices as to how it wants its advertising campaign targeted. In this regard the information supplied shows the Company chose filters which should have excluded minors from being served the ad. Further, Google/YouTube code children's content which means that alcohol ads and other advertising unsuitable for minors should not appear with content designed to appeal to children. Despite these measures the banner ad did in fact appear when viewing the Oddbods episode.
25. So, what happened? In short, the Panel does not have the information to answer this. It can be assumed that a three year old did not have a dedicated mobile device and was presumably using the device of an adult. The Google algorithm would have adopted the internet use patterns of the adult holder of the Google and YouTube accounts. But this does not explain why an alcohol ad appeared with a children's program. Possibly the code applied to OddBods was incorrect so that the program was not identified as children's content. Possibly 'Jimmy Brings' was not coded as an alcohol linked service but neither of these explanations seem likely. The Company noted that 'live' broadcasts are not coded in advance as it cannot be known what their content will be, and the screen shot of the ad supplied by the complainant did say the Oddbods episode was a 'live' cartoon.

Findings as to the Placement Rules

26. Drawing the available information together the Panel can make reasonable assumptions as to compliance with the Placement Rules. The Panel concludes:
 - Placement Rule 2 has not been breached as the information supplied by the Company combined with the publicly available information on how Google Ads operates supports the view that the Company selected available age restriction controls on the placement of its marketing
 - Placement Rule 3 has not been breached in that the Company commissioned a campaign to have ads placed on YouTube within parameters that would have its ads placed with content and programs expected to have audiences of at least 75% adults given that the overall audience of YouTube is predominately adult (Nielsen data indicates the Australian YouTube audience is 92% adult)
 - Placement Rule 4 has been breached in that irrespective of the actual audience of OddBods, the content of the program is primarily directed toward minors and predominantly quite young children
27. The ABAC provides that the Panel can make a no fault finding when a breach has been established, but the breach was reasonably unforeseeable or outside the reasonable control of the marketer. The Panel believes it should make a no fault ruling in this case given it is unclear as to how the ad came to be placed with the OddBods episode and it appears that the Company took reasonable steps and set appropriate parameters about the campaign so as to exclude minors from its audience, consistent with the Placement Rule obligations.
28. The consequence of a no fault finding does not diminish the fact that the breach occurred and that the complainant's concern in raising the complaint has been found to be justified.
29. Accordingly, the complaint is upheld in relation to Placement Rule 4.