



## **ABAC Adjudication Panel Determination No. 120/19**

**Product:** BigShot Brewed Alcoholic Drink  
**Company:** BigShot Drinks  
**Media:** Outdoor  
**Date of decision:** 21 December 2019  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### **Introduction**

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement by BigShot Drinks (“the Company”) and arises from a complaint received 6 December 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 6 December 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 this marketing communication.

## Marketing Communication Placement

10. The following advertisement for BigShot Brewed Alcoholic Drinks was located on a trailer parked outside Waverley College at 9am on 16 December.



## The Complaint

11. The complainant is concerned that alcohol is being advertised on a trailer outside a high school at 9am on a school day, on a major road on which school students travel and the “Adults Only” wording is a worry.

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors

(b)(iv) be directed at Minors through a breach of any of the Placement Rules

13. Part 6 of the ABAC Code includes definitions including:

**Available Age Restriction Controls** means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a third party platform, website or account that is not primarily related to alcohol to be age restricted in its entirety before it can be used to place a Marketing Communication.

**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) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.

- (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.

14. Definition in Part 6 of the ABAC provides:

**Strong or Evident Appeal to Minors** means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

### **The Company's Response**

15. The Company responded to the complaint by emails dated 11 and 12 December 2019 advising that:

- The trailer is parked in the location temporarily due to the lack of available non-restricted parking in the area.
- The rep is currently down on the south coast and due to the fires has been delayed returning to move the trailer.
- The school is currently on holiday, refer <https://waverley.nsw.edu.au/information/term-and-holiday-dates/>.
- We will have the trailer moved ASAP.
- The wording "Adults Only" is to state the product is for consumption by Adults only.
- The term is widely used in film, television and media and is therefore not confusing or misleading (e.g. <https://www.travelonline.com/cook->

[islands/accommodation/adults-only](https://www.islands/accommodation/adults-only) & <https://www.science.org.au/news-and-events/events/adults-only-science>).

- The product is only sold in Licenced Retailers which require age confirmation before purchase.

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

16. The Company has a trailer with promotional material for its products on the sides. The trailer was seen parked near the entrance to Waverley College after the school year had concluded.
17. The ABAC goes to both the content of alcohol marketing and where the marketing is placed. The Code Placement Rules have the policy aim that alcohol marketing should be directed toward adults and away from minors. The ability to do this is essentially linked to the technical capacity of the medium by which the marketing is carried to target audiences.
18. Accordingly, digital marketing conveyed over the internet has the greatest capacity to apply age restriction controls and the ABAC Placement Rules require that available age restriction controls be utilised. Broadcast mediums such as television cannot be age restricted but advertising can be restricted to particular times of day and/or to being placed with programming likely to have predominantly adult audiences. Advertising placed on fixed outdoor settings such on billboards and bus shelter sheds can be restricted to areas away from an area of a high concentration of young people such as a school.
19. In this case the marketing took the form of signage on a parked trailer. Neither the ABAC nor other applicable codes such as that applying to outdoor media, contains any express restriction over such a form of alcohol marketing. This is the second occasion the ABAC scheme has received a complaint about advertising on a company vehicle. The question is whether a parked trailer is a "fixed" advertisement as defined in the Outdoor Media Association Alcohol Policy.
20. Placement Rule 1 in effect provides that outdoor ads cannot be placed on fixed signs within 150 metres of a school. Given that a trailer is a movable advertisement, in the same way as a taxi or bus this rule would not apply as the ad was not 'fixed' to a particular location. While parking the trailer in front of a school is not technically a breach of the ABAC Code, the Panel understands the complainant's concerns. The advertiser advised the trailer would be removed ASAP and the Panel believes that is an appropriate course of action.
21. In addition, the complainant has raised a concern about the reference to 'Adults Only' on the promotional material, presumably on the basis that it would be attractive to Minors. On balance the Panel does not believe that this wording within the context of the advertisement as a whole would strongly appeal to minors.
22. The complaint is dismissed.