



ABAC Adjudication Panel Determination No. 127/19

Product: Asahi and Chivas Regal
Companies: Asahi Premium Beverages & Pernod Ricard
Media: Cinema
Date of decision: 13 January 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an advertisement for Asahi by Asahi Premium Beverages and Chivas Regal by Pernod Ricard (“the Companies”) with a 3:30pm screening of the movie, *Star Wars: The Rise of Skywalker* at Hoyts Greenborough and arises from a complaint received on 23 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 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 meeting the standards contained in the ABAC.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB 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 23 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 was determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast.

Pre-vetting approval was obtained for the content of the advertisements (16821) (17903).

The Placement

10. Advertisements for Asahi and Chivas Regal were seen by the complainant during a 3:30pm screening of *Star Wars: The Rise of Skywalker* at Hoyts Cinema, Greenborough.

The Complaint

11. The complainant is concerned that the advertisement is being displayed during an M rated movie that underage people are permitted to view and which has a large underaged audience.

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 6 of the ABAC Code includes definitions including:

Placement Rules (in part) means:

- 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)
- 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
- 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)
- A Marketing Communication must not be placed with programs or content primarily aimed at Minors

The Company's Response

14. Asahi responded to the complaint by letter dated January 2020. The principal points made by Asahi were:

- a) Asahi Premium Beverages Pty Ltd (**APB**) takes responsible advertising of alcohol seriously. We are aware of the Code requirements and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines.
- b) *Star Wars: The Rise of Skywalker* is rated (M) Mature – 15+
- c) In line with Val Morgan requirements, Alcohol or adult-related products cannot be advertised in cinema if the 18+ audience is forecasted to be less than 75%.
- d) Further, in accordance with the ABAC media placement guidelines, it is our policy to only schedule alcohol advertising content with movie titles where the overall audience is reasonably expected to comprise at least 75% of people aged 18 and over. In this case, we reviewed the audience data of past comparable Star Wars movie titles in order to make an assessment that this requirement would be met for *Star Wars: The Rise of Skywalker*. Unfortunately, audience profile data on *Star Wars: The Rise of Skywalker* will not be available until early February. We are happy to provide this to ABAC as soon as it becomes available.
- e) The adult audience composition for the four previous Star Wars movie releases are:
- i. Force Awakens (2015): 82% P18+
 - ii. Rogue One (2016): 83.8% P18+
 - iii. Last Jedi (2017): 87.3% P18+
 - iv. Solo (2018): 82.9% P18+

Star Wars: The Rise of Skywalker is the third instalment of the 'Star Wars sequel trilogy', following *The Force Awakens* (2015) and *The Last Jedi* (2017), both of which had an audience composition of at least 80% P18+, as outlined above.

- f) We note that cinema media is scheduled by movie title on a weekly basis, not by time of day.
- g) From the available data, *Star Wars: The Rise of Skywalker* is clearly aimed at a mature audience. In particular, we note that:
- *Star Wars: The Rise of Skywalker* is the third instalment of the 'Star Wars sequel trilogy', following *The Force Awakens* (2015) and *The Last Jedi* (2017), both of which had an audience composition of at least 80% P18+, as outlined above;
 - the most recent Star Wars movie in the 'Star Wars sequel trilogy' films, *Last Jedi*, had an audience composition of 87.3% P18; and
 - each of the previous four Star Wars films, including the 'Star Wars sequel trilogy' films, had an audience composition of at least 80% P18+, as outlined above.

In addition to the above data, we refer to the below summary (with our highlights) which is taken from Common Sense Media – an independent, not for profit and research backed recommendations site:

Link: <https://www.common Sense Media.org/movie-reviews/star-wars-episode-ix-the-rise-of-skywalker>

WHAT PARENTS NEED TO KNOW

Parents need to know that *Star Wars: Episode IX: The Rise of Skywalker* is the ninth and final film in the four-decade-long Skywalker saga (and the third installment in the current trilogy). Following the events of *Episode VIII: The Last Jedi*, the film focuses on the battle between the villainous First Order, led by Supreme Leader Kylo Ren (Adam Driver), and the virtuous Resistance fighters, embodied by the last Jedi, Rey (Daisy Ridley). Everything is on the line in this installment, which means the sci-fi action violence is ratcheted up a notch: You can expect even more major space battles, high-stakes destruction, tense chases/crashes, peril, injury, and fierce lightsaber duels (plus blasters, arrows, cannons, and other weapons). This movie feels a little more intense and darker than the previous two in this trilogy, with creepy villains and locations and a few explicit (but not bloody) deaths, including a beheading, a point-blank execution, and a body crumbling to bits. Spoiler alert: Several primary and supporting characters are killed, and a few of those deaths will be extra emotional for audiences. There are also some scenes with lots of flashing lights, which could be difficult for those with photosensitivity. While there's not a lot of romance, the film does include some longing looks, embraces, and a couple of kisses. Language isn't frequent, but you will hear "ass," "hell," and "damn." Women continue to hold strong positions in the Resistance, and there are strong messages of courage, teamwork, hope, and loyalty.

- h) We believe we have taken all appropriate measures to ensure that our Asahi Super Dry communications meets ABAC code requirements.
15. Pernod Ricard responded to the complaint by letter dated 9 January 2020. The principal points made by Pernod Ricard were:
- a) Pernod Ricard Winemakers Pty Ltd (**Pernod Ricard Winemakers**) is a signatory to the Alcohol Beverages Advertising (and Packaging) Scheme (**ABAC**) and takes compliance with the ABAC Responsible Alcohol Marketing Code (the **Code**) very seriously. We are committed to the responsible marketing of our products and endeavour to abide by the Code as well as other applicable advertising codes and laws. As a member of the global Pernod Ricard Group, we are also committed to the responsible marketing and consumption of our products through compliance with the Pernod Ricard Code for Commercial Communications.
 - b) The complaint is said to relate to the placement of an advertisement for Chivas Regal (the **Advertisement**) before the current Star Wars movie (namely, *Star Wars: Episode IX: The Rise of Skywalker* (the **Movie**)) at the Hoyts Greensborough Cinema. While not specified in the complaint, the Advertisement shown before the Movie at the Hoyts Greensborough

Cinema was an advertisement for Chivas Regal XV 15 Years, available here: <https://vimeo.com/tag/videoaustralia/review/373316278/56cfb4776d>.

c) For the reasons set out below, and with respect to the complainant, we submit that there has been no breach by Pernod Ricard Winemakers of the Code and complaint 127/19 should be dismissed by the Panel.

- The Movie is classified “M (Mature)” with consumer advice of “science fiction violence”. Although there are no legal restrictions on access to the cinema by minors, a movie given an “M” classification is not recommended for viewing by persons under the age of 15. On its website, the Classification Board states:

“Films and computer games classified M (Mature) contain content of a moderate impact. M-rated films and computer games are not recommended for children under the age of 15. They include portrayals of elements such as violence and themes that require a mature outlook. However, children under the age of 15 may legally access this material as the classification rating is an advisory category. Parents, teachers and guardians may need to find out more about the specific content before deciding whether the material is suitable for children in their care.”

- Audience composition data for the Movie is not currently available to us. However, there was a reasonable expectation that the audience would comprise at least 75% adults based on the age of the cinema audience for other movies of comparable content, namely the previous four movies in the Star Wars franchise. Val Morgan has advised us, via our media agency: *“in accordance with the ABAC media placement guidelines we only schedule alcohol advertising content with movie titles where the overall audience is reasonably expected to comprise a least 75% of people aged 18 years and over. To make this assessment we look at comparable release. Previous movies in the Star Wars series have all attracted an audience profile that has met the ABAC placement criteria.”*

The percentage of the Australian cinema audience over the age of 18 for the previous four movies in the Star Wars franchise (based on CineTAM data) provided by Val Morgan is as follows:

- Solo: A Star Wars Story (2018) - 82.9%
- Episode VIII: The Last Jedi (2017) - 87.3%
- Rogue One: A Star Wars Story (2016) - 83.8%
- Episode VII: The Force Awakens (2015) - 82%
- Val Morgan advised that they follow their “Cinema advertising guidelines for Wagering Products or Services” in the placement of alcohol cinema advertising as if it was wagering advertising. These guidelines provide:

“Val Morgan schedules Wagering Advertising content only with movie titles where the audience is reasonably expected to comprise at least 75% of people aged 18 and over. CineTAM data on previous movie titles is used to predict movie audience composition; this is compared against actual audience figures for each title as soon as they become available, typically after the film’s opening weekend. These guidelines have been adopted by Val Morgan as part of advertising and marketing self-regulation. The objective is to ensure that advertising in Australian cinemas is responsible in both content and tone and targeted to the correct audience through cinema’s unique audience scheduling processes.”

Val Morgan advised that cinema advertising is scheduled based on movie title rather than time of day.

- We are of the view that the Movie cannot be regarded as primarily aimed at minors, taking into account:
 - the “M (mature)” classification of the Movie. As noted above, movies with an “M (mature)” classification include “portrayals of elements such as violence and themes that require a mature outlook”; the Classification Board suggests that parents, teachers and guardians “may need to find out more about the content before deciding whether the material is suitable for children in their care”. The Classification Board webpage for the Movie (<https://www.classification.gov.au/titles/star-wars-episode-ix-rise-skywalker>) provides that it assessed the content as having a “moderate impact” regarding both theme and violence and the Movie carries a consumer advice of “science fiction violence”. It states:

“Themes

The film contains science fiction themes, featuring futuristic technology and people with advanced powers, as well as themes of destruction and sacrifice.

Violence

The film contains multiple battle scenes, featuring both ground and air combat between the Resistance and the First Order. Weaponry includes light sabers, laser guns and futuristic aircraft. Destroyed aircraft explode in flames and smoke and some characters are seen with small injuries and blood on them.”

Such themes and portrayals of violence are considered by the Classification Board to be mature in nature and therefore should not be regarded as primarily appealing to minors; and

- the overwhelmingly adult audience of the previous movies in the franchise. Over 82% of the Australian cinema audience for the previous four Star Wars movies were over the age of 18.

The Movie is a major “blockbuster” within a franchise of movies with the same theme and many of the same characters. While we accept there is some appeal to minors, the age of the cinema audience demonstrates that movies in this franchise have a primary appeal to adults and not minors.

- In determining whether the Movie is primarily aimed at minors, we ask that the Panel have regard to its views in Determination No. 118/17. This concerned an advertisement placed with the movie *Thor: Ragnarok* which carried the same film classification and contained some similar themes as the Movie. The Panel concluded that “it could not be fairly said that the movie is primarily aimed at minors although the movie would have appeal across age groups including adolescents” and dismissed the complaint. We submit that the same factors taken into account by the Panel in arriving at that conclusion (including those set out in paragraph 36) are equally applicable here.

- d) Lastly, we wish to reiterate that Pernod Ricard Winemakers is committed to the responsible marketing of its products and upholding compliance with the Code. Pernod Ricard Winemakers maintains strict internal and external processes to help ensure compliance, including contractual terms with our agencies requiring them to comply with the Code in the placement of our advertisements.

The Panel’s View

16. Star Wars has been one of the most popular and culturally significant movie franchises of all time. Commencing with the original movie released in 1977, the franchise has expanded into television, video games, novels, a theme park attraction and an extensive range of merchandise. The latest movie Episode IX, *Star Wars: The Rise of Skywalker* was released in late 2019. This determination concerns the placement of two alcohol advertisements prior to the screening of the latest movie.
17. The complainant explains that the ads appeared before a 3-30 pm screening of *Star Wars: The Rise of Skywalker* at the Greensborough cinema located in Melbourne. It is argued that such ads should not be permitted to screen in advance of a M classified movie which minors are permitted to view, and which attracts a large audience of minors.
18. The complainant is correct that the film classification system does not restrict the audience able to access a theatre to a view a M classified movie. The advice given by the Office of Film and Literature Classification about M classified movies is that they are suitable for a mature audience and are not recommended for persons under the age of 15. Such movies can be expected to contain moderate levels of violence and a sense of threat or menace if justified by the context of the movie. Further, M movies might discreetly imply sexual activity and contain coarse language and nudity justified by the context.
19. For its part, the ABAC has a policy aim that alcohol marketing should to the extent possible be directed towards adults and away from minors. It seeks to

achieve this aim by creating a cascading series of requirements on alcohol companies to utilise the technical capacity of the mediums by which marketing communications are carried to direct the marketing to adults. The greatest capacity to do this is with marketing transmitted via digital platforms which have a capacity to apply age restrictions controls on who might access marketing items. Cinema is a controlled medium where there are legal restrictions on the age of persons able to access cinemas with M15+ and R classifications, with movies with lower classifications able to be accessed by all persons irrespective of age.

20. There is no ABAC requirement that alcohol advertising be restricted only to R rated movies. This may reflect that lower classified cinema releases may still be clearly targeted at adult audiences even though they might have a G or PG classification eg many documentaries contain no violence or sexual activity but have a subject matter which is clearly directed towards adults.
21. The ABAC Placement Rules in the case of cinema releases in effect impose the following obligations:
 - no alcohol advertising should be placed with a movie which can be reasonably expected to attract less than a 75% adult audience; and
 - no advertising with a movie which has content primarily aimed at minors.
22. The 75% adult audience rule has to be applied at the time of the placement and hence has to be based upon a reasonable expectation given that the actual audience for a cinema release will only be known after the release. So, in the case of *Star Wars: The Rise of Skywalker*, a 'reasonable expectation' of the age breakdown of the audience would logically be drawn from the known audience demographics of past Star Wars movies. In this respect both Companies in responding to the complaint, advised the audience of recent Star Wars movies to be:
 - 2015 - Force Awakens - 82% over 18
 - 2016- Rogue One - 83.8 % over 18
 - 2017- Last Jedi- 87.3% over 18
 - 2018- Solo - 82.9 % over 18
23. Based on this data of Australian audiences of previous Star Wars movies screened in the last five years, it is reasonable to expect that the audience of *Star Wars: The Rise of Skywalker* will average well in excess of the 75% adult benchmark imposed by Placement Rule 3. It is quite possible that individual screenings of the movie at particular cinemas might have an audience which comprise of more than 25% under 18 year olds, but the data is not so fine grained as to identify this.
24. The next issue is to assess if the content of *Star Wars: The Rise of Skywalker* can be said to be 'primarily aimed at minors'. In this regard some relevant factors include:

- the actual (or expected) audience of the movie;
 - the subject matter of the movie and whether it has themes likely to predominately appeal to children or adolescents;
 - the use of familiar children's characters or the use of children and adolescents within the movie;
 - the storyline and whether the complexity of the plot suggests its target audience is adult; and
 - the use of language and the presence of adult themes such as violence and the portrayal of sexuality.
25. The appeal of the wider Star Wars franchise was considered by the Panel in Determination 34/19. The Panel noted that the appeal of Star Wars is across demographic groups and the multimedia and multi format dissemination of the brand has had a whole of popular culture impact in many countries including Australia. It was considered that Star Wars does have strong and evident appeal to under 18 year olds.
26. The test for Placement Rule 4 is however not 'strong or evident appeal' but the higher benchmark of 'primarily aimed'. The Panel does not consider the movie can be said to be primarily aimed at minors, with its audience intended to be adult. In reaching this conclusion the Panel noted:
- the likely audience (based on recent movies in the franchise) will be predominately adult;
 - the M classification indicates the movie is not considered by the government classification office to be suitable for under 15 year olds;
 - the themes in the movie are directed towards adults rather than minors with overall the movies having become somewhat 'darker' in thematics compared to the original movies of the late 1970's and early 1980's;
 - the movie does not feature children or adolescents;
 - while the movie would have evident appeal to minors, particularly teenagers aged 15 and upwards, taken as a whole it would be primarily aimed at adults and not under 18 year olds.
27. Accordingly, the Panel does not believe the Placement Rules have been breached and the complaint is dismissed.