



ABAC Adjudication Panel Determination No 37/21

Product: BWS
Company: Endeavour Group
Media: Outdoor Poster
Date of decision: 21 April 2021
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”) arises from a complaint received on 17 March 2021. The complaint concerns outdoor posters for BWS (“the Marketing”) placed by Endeavour Group (“the Company”) outside a row of shops at about 13 South Road, Brighton, Victoria.
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 Code”) – 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 and Policies – which place 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 other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 Ad Standards 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 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

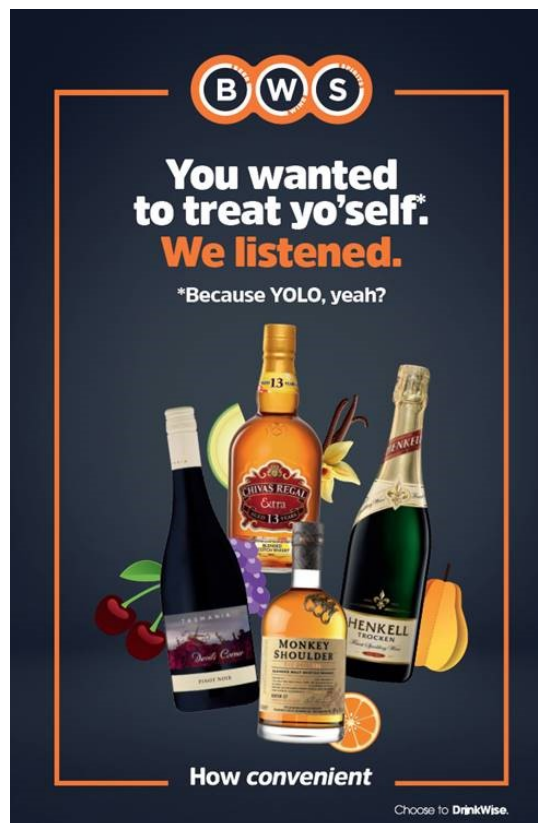
7. The complaint was received on 17 March 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

Pre-vetting Clearance

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 poster.

The Marketing and Placement

10. This determination relates to the following poster which was placed outside a row of shops at about 13 South Road, Brighton, Victoria:



The Complaint

11. The complainant has the following concerns about the marketing and placement:
 - *Telephone box ad that markets BWS stores. They mention “treat yourself” and “yolo”.*
 - *How can an alcohol retailer refer to “you only live once” when marketing alcoholic products? This is less than 500m from a school.*

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 provides that:

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 Placement Policy).
- (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.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

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

14. The Company responded to the complaint by letter emailed on 31 March 2021. The principal points made by the Company were:

- BWS thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint on an extended timeframe. BWS understands that the Panel is considering whether or not the Advertisement breaches Part 3 (b)(i) or Part 3 (b)(iv) of the ABAC Responsible Alcohol Marketing Code (the Code).
- For the reasons outlined below in response to your letter, it is BWS's position that the Complaint does not breach any Part of the Code and BWS therefore requests the Panel to dismiss the Complaint.

Alcohol Advertising Pre-vetting Service Approval

- Alcohol Advertising Pre-Vetting Service Approval was not sought for the Advertisement.

Responsibility toward Minors – Content

- Part 3 (b)(i) of the Code prohibits a marketing communication from having strong or evident appeal to minors. BWS notes that the complaint seems to raise a concern that 'you only live once' (YOLO) may appeal to minors.
- BWS maintains strict internal and external processes in addition to those required by the Code. As part of its community charter 'Our Community, Our Commitment,' BWS 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 years of age);
 - Don't Buy It For Them (stopping secondary supply to minors);
 - 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.'
- The intention of the Advertisement is to humorously showcase the premium offering of products that BWS ranges. The Advertisement suggests that customers can treat themselves to a more premium drink, which generally has a premium price that customers may consider paying because they only live once. The inclusion of '*Because YOLO, yeah?' is a humorous parody of the proliferation of legal disclaimers that are commonly used in advertisements.
 - A rudimentary search for the etymology of the words 'yeah' and 'YOLO' or 'you only live once' indicates that they have been used since the 19th century¹, and are included in the Macquarie Dictionary². As such, BWS submits that informal and abbreviated words such as 'yo'self,' 'YOLO' and 'yeah' are commonplace throughout society and do not have a particular appeal or usage to minors than it does to adults. Additionally, the Advertisement does not use these words in isolation, but rather in sentence structures that are meaningful to adults rather than minors.
 - Furthermore, the Advertisement must be considered as a whole rather than just its words³. As such, BWS submits that the following components of the Advertisement further reduce any potential that it has a strong or evident appeal to minors:
 - the Advertisement does not use bright eye-catching colours, but rather prominently features a black background and deep colours;
 - through its mature humour, the Advertisement is targeted at premium alcohol drinking adults, not to minors; and

¹<https://en.wiktionary.org/wiki/yeah>; <https://en.wiktionary.org/wiki/YOLO>

²https://www.macquariedictionary.com.au/features/word/search/?search_word_type=Dictionary&word=yeah;
https://www.macquariedictionary.com.au/features/word/search/?search_word_type=Dictionary&word=yolo.

³Part 5 of the Code

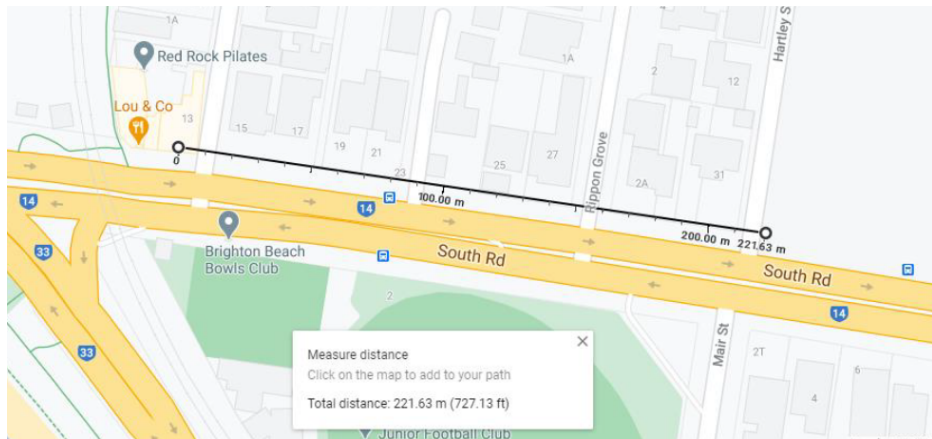
- the products displayed in the Advertisement are noticeably alcoholic products (including because of their labels, designs and bottle shapes) and would not be confused with non-alcoholic products.
- Therefore, BWS believes that the Advertisement, taken as a whole, does not breach Part 3 (b)(i) of the Code.

Responsibility toward Minors - Placement

- As the Advertisement is an outdoor placement, the only applicable placement rule is Placement Rule 1 of Part 6 of the Code (Placement Rule 1). This was confirmed by the Panel in ABAC Adjudication Panel Determination No. 127/17 (at paragraph 19) ***‘the remaining Placement Rules relate to digital electronic and broadcast media and not to outdoor placement’***.
- Placement Rule 1 requires that 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 Placement Policy).’*** The relevant provisions of the Outdoor Media Association (OMA) Placement Policy are as follows:
 - ***‘OMA members will not advertise alcohol products ... within a 150 metre sightline from the boundary of a school’⁴***; and
 - ***‘school’ is defined as an ‘official Australian primary or secondary school which is registered with the appropriate state authority’⁵***.
- The nearest primary or secondary school to the Advertisement is Xavier College (Kostka Hall campus). Based on data from OMA and Google Maps (shown below), the Advertisement is outside the 150-metre radius of the school, and the straight-line distance to the closest boundary of the school is approximately 222 metres.

⁴ Section 3.1 of the OMA Placement Policy.

⁵ Section 5 of the OMA Placement Policy.



- Therefore, BWS believes that the Advertisement does not breach Part 3(b)(iv) of the Code.

The Panel's View

15. This determination concerns an outdoor poster for BWS and considers two ABAC issues raised by the nature of the complaint, namely:
 - does the content of the poster have strong or evident appeal to minors - Part 3 (b)(i); and
 - is the poster located near a school in breach of the ABAC Placement Rule 1.
16. The poster features images of three different alcohol beverages accompanied by a written message - 'You wanted to treat yo'self*. We Listened. *Because YOLO, yeah?'. The complainant believes the messaging of the poster is inappropriate, and although the reason for the concern is not expanded upon, the Panel takes the issue to be about the appeal of the marketing to minors given the style of language and the claimed proximity of the poster to a school. The Company argues the messaging in the poster is consistent with ABAC requirements and would not have strong appeal to minors.
17. The Panel does not believe the poster has strong appeal to minors. While the language adopts an informal and abbreviated form, the expressions 'yo'self', 'yeah' and 'yolo' (you only live once) are used generally in the community and are not particularly centred on under 18 year olds. Further, the overall impact of the poster is mature, the colour plate employed is sedate and not bright or eye-catching and the appeal of the marketing is likely to be stronger for an older rather than younger audience.
18. The second concern is about the location of the poster and its proximity to a school. Placement Rule 1 incorporates into the ABAC the provisions of applicable media body codes including the Outdoor Media Association Placement Policy. This policy prohibits placing alcohol ads on billboards or other outdoor installations situated within 150 metres line of sight of a school. The Company has provided information which establishes that the poster is positioned some 222 metres from the nearest school - Xavier College. Accordingly, the Placement Rule has not been breached.
19. The complaint is dismissed.