



ABAC Adjudication Panel Determination Nos. 197 & 204/21

Product: Dan Murphy's
Company: Endeavour Group
Media: TV - On Demand & Facebook post
Date of decision: 16 September 2021
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 television and website marketing for Dan Murphy’s by Endeavour Group (“the Company”) and arises from two complaints received on 13 August 2021 and 24 August 2021.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 13 August 2021 and 24 August 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 complaints were 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 obtained for the video (Approval Number 19758).

The Marketing Communication

10. The complaint relates to a television advertisement, which can be viewed at the following link and is also described below:

<https://vimeo.com/566356971>

Voice Over (VO): Zac was gifted golf lessons last year but he didn't quite get the swing of things.

[Footage of Zac taking various beginner golf shots, before throwing down the golf club and walking off]



VO: Keith over here asked for a rock climbing class but he just couldn't get a grip on it.

[Footage of Keith learning to rock climb, including hanging upside down from the rope]



VO: Eli was gifted a ceramics class. Well...he gave it a good crack.

[Footage of Eli learning pottery, before smashing down his creation].



VO: This year gift dad a winner



VO: Do dad's day different at Dan Murphy's

[Three scenes are shown of dads Zac, Keith and Eli, in their golfing, rock climbing and pottery environments, holding glasses of alcohol and smiling].



[As music plays]



11. The video was also posted on Dan Murphy's Facebook page, with accompanying text as follows:

Dan Murphy's
5 August at 18:58

We love our dads for who they are, not what they might be, so instead of cluttering the garage with the fallout from yet another failed hobby, let's fill their day with the things they love; good wine, cold beer, smooth whiskey & the rare opportunity to relax at home. 🍷
What drink is on his list?
👉 Get inspired & visit our link to treat your dad to the day that he deserves <https://bit.ly/FathersDayDM>
See less

Most relevant ▾

DA AR
Rip offs price gouging \$25 increase in a week \$109 last week
Like Reply 3 w

Geoff Mower
DIFFERENTLY!!!
Like Reply 2 w

View 1 more comment

The Complaint

12. The complainants object to the marketing as follows:
- *...an advertisement that will be picked up by children and families for Fathers' Day, recommends buying alcohol for dad rather than a sporting or hobby voucher.*
 - *The ad is encouraging children to buy alcohol for their fathers.*
 - *suggests that fathers are incapable of doing new activities and is not a healthy message to be giving*
 - *...encouraging children to buy alcohol as reward for their father sends a very wrong message, children will see it a reward and even expect to share a drink with their fathers. This messaging is wrong at so many levels.*

The ABAC Code

13. 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.

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

14. Part 6 of the ABAC Code provides that:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal to strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minors 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 letter emailed on 26 August 2021. The principal points made by the Company were:

- For the reasons outlined below, Dan Murphy's position is that the Advertisement does not breach any Part of the Code and it, therefore, requests the Panel to dismiss the Complaints.

Alcohol Advertising Pre-vetting Service Approval

- It is Dan Murphy's aim to be Australia's most responsible retailer of alcoholic beverages. This is highlighted by the fact that Dan Murphy's formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all its advertising in accordance with the Code.
- Furthermore, Dan Murphy's maintains strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Dan Murphy's 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);
 - 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'.
- The processes outlined in the paragraph above provide Dan Murphy's with a compliance framework to ensure that it serves and markets to its customers in accordance with its obligations under the various applicable laws.
- Accordingly, the Advertisement received Alcohol Advertising Pre-Vetting Service Approval on 24 June 2021 with approval number 19759.

Responsible portrayal of Alcohol Beverages

- Part 3(a)(ii) of the Code prohibits a marketing communication from showing or encouraging irresponsible or offensive behaviour that is related to the consumption or presence of alcohol. Dan Murphy's notes that the first

Complaint suggests that the Advertisement discourages healthy pursuits in favour of alcohol use.

- In assessing the Advertisement's compliance with the Code, it must be considered from the perspective of a 'reasonable person to whom the material is likely to be communicated and taking its content as a whole.'
- The Advertisement begins by depicting scenes of three actors engaging in activities that they received as Father's Day gifts last year. Each actor is shown poorly attempting their activity in a humorous manner; the golfer hits multiple shots astray, the rock climber is perched awkwardly on the climbing grips and the ceramics class ends with the clay collapsing while spinning on the turntable. The scenes are light-hearted and jovial, with each attempted activity paired with a witty pun in the voiceover. The Advertisement ends by suggesting that viewers can find an alternative Father's Day gift at Dan Murphy's.
- The Advertisement makes no suggestion that alcohol consumption is more preferable than physical activity. Rather, the Advertisement suggests that alcohol is an alternative gift that some may consider to give as a Father's Day gift. The Advertisement delivers this message by playing off the well-known cliché that fathers receive unwanted presents for Father's Day.¹ This message is further supported by the caption accompanying the video, which states 'so instead of cluttering the garage with the fallout from yet another failed hobby, let's fill their day with the things they love'. Thus, the overall message of the Advertisement is to humorously discourage viewers from giving their father an unwanted present, not to discourage any particular physical activity.
- Furthermore, the Advertisement does not display any irresponsible or offensive behaviour relating to the consumption of alcohol. Each actor is shown holding one alcoholic beverage after engaging in their respective activity, and they are not shown consuming it. There is no indication that any actor is intoxicated in the Advertisement.
- In light of the above, Dan Murphy's believes that the Advertisement does not breach Part 3(a)(ii) of the Code.

Responsibility toward Minors

- Part 3(b)(i) of the Code prohibits a marketing communication from having strong or evident appeal to minors. Dan Murphy's notes that the Complaints

¹ Dan Murphy's in partnership with YouGov conducted a nationwide survey of approximately 1,000 Australian fathers. The results of this survey indicated that a majority of the respondents answered that a large number of Australian fathers receive unwanted presents for Father's Day.

seem to raise a concern that the reference to Father's Day gifts may appeal to minors.

- The Advertisement does not state or suggest that minors should buy alcohol. Dan Murphy's has strict policies in place to prevent minors from purchasing alcohol. Additionally, Dan Murphy's conforms to strict industry broadcast guidelines (as well as the ABAC Code) to prevent its television advertisements airing at times where minors may be watching television, and to restrict digital advertisements using age-gating so they are only viewable to users above the age of 18.
- Furthermore, the Advertisement is aimed at adults, and the reasonable viewer would not likely consider the Advertisement to have a strong or evident appeal to minors given that:
 - Father's Day is a holiday that is celebrated by the wider community, and people of various ages purchase gifts for Father's Day;
 - the Father's Day gifts shown in the Advertisement are of the mature kind that adults would purchase (namely, golf lessons, rock climbing pass, ceramics class, and alcohol), and are not the usual knick-knacks that minors would typically purchase;
 - through its mature humour, the Advertisement is targeted at adults, not minors, looking to purchase a Father's Day gift;
 - the Advertisement features only adult actors engaging in mature activities that minors would generally not be interested in; and
 - the Advertisement uses Dan Murphy's imagery (including the name, logo, and associated bold green colour palette) which would be recognisable by adults, not minors.
- In light of the above, Dan Murphy's believes that the Advertisement does not breach Part 3(b)(i) of the Code.
- For the reasons outlined above, Dan Murphy's believes that the Advertisement does not breach any Part of the Code and therefore requests that the Panel dismiss the Complaints.

The Panel's View

16. In the lead up to Father's Day 2021, the Company ran a campaign suggesting that purchasers of Father's Day gifts 'do dad's day different' by gifting an alcohol product from one of the Company's retail outlets. The TV ad for the campaign presents three scenarios that show different fathers struggling with a gift given to them last Father's Day and contrasting this with the fathers enjoying a gift of alcohol this Father's Day.
17. The TV ad and a supporting post on the Company's Facebook account attracted two complaints raising concerns that the marketing communications:
 - suggest dads can't do anything new;
 - suggest children buy alcohol for dad rather than a sporting or hobby voucher which is not healthy for our nation;
 - encourage children to buy alcohol as a reward for father's, sending the wrong message as:
 - alcohol is a major cause of death; and
 - children will see alcohol as a reward and even expect to share a drink with their fathers.
18. The nature of the complaints and the marketing brings into play two ABAC standards as follows:
 - does the marketing show or encourage irresponsible or offensive behaviour related to alcohol use (Part 3(a)(ii)); and
 - does the marketing have a strong or evident appeal to minors (Part 3(b)(i)).
19. In assessing if marketing is in breach of a Code standard, the Panel adopts the probable understanding of the marketing by a reasonable person, taking its content as a whole. The 'reasonable person' test is drawn from the common law system and means the life experiences, values and opinions commonly held by a majority in the community is the benchmark.
20. The Company contends the marketing is consistent with the ABAC standards. It is argued:
 - the marketing suggests that alcohol is an alternative that some may consider to give as a Father's Day gift, playing on the well-known cliché that fathers receive unwanted presents for Father's Day;

- the overall message is to humorously discourage viewers from giving their father an unwanted present, not to discourage any particular physical activity;
- the marketing does not display any irresponsible or offensive behaviour relating to the consumption of alcohol;
- the marketing does not state or suggest that minors should buy alcohol and Dan Murphy's policies prevent minors from purchasing alcohol;
- Dan Murphy's conforms to strict industry broadcast guidelines (as well as the ABAC Code) to prevent its television advertisements airing at times where minors may be watching television, and to restrict digital advertisements using age-gating so they are only viewable to users above the age of 18;
- The marketing is aimed at adults, and the reasonable viewer would not likely consider the marketing to have a strong or evident appeal to minors given that:
 - Father's Day is an occasion that is celebrated by the wider community, and people of various ages purchase gifts for Father's Day;
 - the Father's Day gifts shown in the marketing are of the mature kind that adults would purchase (namely, golf lessons, rock climbing pass, ceramics class, and alcohol), and are not the usual knick-knacks that minors would typically purchase;
 - through its mature humour, the marketing is targeted at adults, not minors, looking to purchase a Father's Day gift;
 - the marketing features only adult actors engaging in mature activities that minors would generally not be interested in; and
 - the marketing uses Dan Murphy's imagery (including the name, logo and associated bold green colour palette) which would be recognisable by adults, not minors.

21. The complaints essentially raise concerns at two levels. Underlying both complaints is a view that it is undesirable to position alcohol as a potential gift for Father's Day as alcohol is 'a killer' and unhealthy for the nation. While this is a perfectly legitimate view to hold, it raises issues of public policy which are beyond the remit of the Panel and rest directly with government. The ABAC standards assume that alcohol is a legal product that can be marketed provided the marketing does not portray alcohol use in an irresponsible way e.g., alcohol should not be consumed excessively or consumed in conjunction with dangerous activities such as driving a car. It is not a

breach of any ABAC standard to suggest in marketing that alcohol be given as a gift provided the marketing does not propose the alcohol be used irresponsibly or otherwise breach a standard of good practice.

22. The second level of the complaints does go to the ABAC standards, namely, does the ad have a strong or evident appeal to under 18-year-olds and/or does the ad encourage irresponsible behaviour related to alcohol use. The Panel does not believe the ad nor the Facebook post breaches the relevant standards. In reaching this conclusion the Panel noted:

- the ad does not depict minors nor family scenes but shows mature scenarios with middle aged men;
- the scenarios depicted are not considered likely to strongly resonate with minors;
- the ad is light hearted but the humour is not couched in language nor life experiences likely to strong appeal to minors;
- alcohol consumption shown in the ad is moderate and no person appears affected by alcohol use; and
- taken as a whole, the ad appears directed at an adult audience and shows alcohol use in a responsible manner.

23. The complaints are dismissed.