



ABAC Adjudication Panel Determination No 273/21

Product: Alcohol delivery
Company: BoozeBud
Media: OOH - Billboard
Date of decision: 23 December 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor mural for the alcohol home delivery service BoozeBud (“the Company”). It arises from a complaint received on 1 December 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 the 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 meet 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 1 December 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 an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the outdoor mural (Approval Number 20434).

The Marketing and Placement

10. The complaint refers to the following outdoor mural, shown at the corner of Wellington and O'Brien Streets in Bondi, New South Wales:



The Complaint

11. The complainant is concerned about the outdoor mural as follows:
 - *It is a large billboard sign on the side of the building, on a street with a primary school, passed by hundreds of children every day.*
 - *This location has been used for alcohol advertising before, but the new billboard looks exactly like a children's cartoon, and is, in my opinion, inappropriate for the location.*
 - *Marketing alcohol to children, possibly inadvertently, but nevertheless in a style appealing and eye-catching to young children.*

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 the Placement Rules.

13. Part 6 of the ABAC Code provides that:

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 confectionery or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

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).

The Company's Response

14. The Company responded to the complaint by letter emailed on 8 December 2021. The principal points made by the Company were:

Alcohol advertising pre-vetting service

- Whilst BoozeBud are not signatories to the ABAC Code of Conduct, we ensured that we received ABAC pre-approval (Approval #20434) of our mural design prior to going live as BoozeBud is committed to ensuring our communication materials do not promote or encourage any irresponsible consumption of alcohol.
- Apparition Media (the facilitators of the mural) abide by the OMA Alcohol and Placement Guidelines, therefore the site abides by these Guidelines.

Responsibility toward Minors

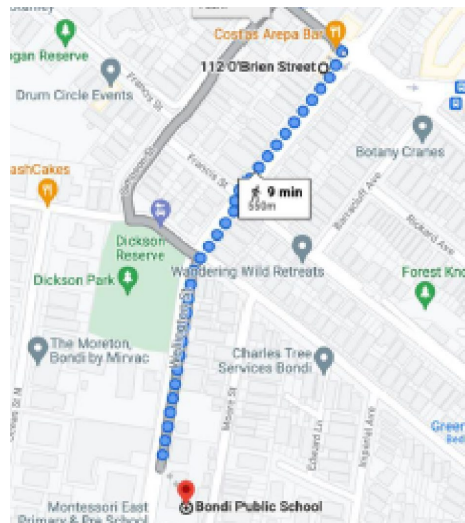
- Throughout the development of this mural, we worked collaboratively with ABAC to ensure compliance with the Code. We believe we have taken all appropriate measures to ensure the mural meets the requirements of the Code and we reject the complainant's assertion that the mural is in breach of Part 3 (b)(i) of the Code.
- The mural was created in collaboration with Sindy Sinn, a well-known mural artist, extremely familiar with the ABAC Code from his work with a plethora of other alcohol clients including but not limited to Young Henry's, Jamesons and CrowBar.
- We chose to work with Sindy Sinn in his iconic illustrative style rather than photorealism to align with the street art and murals alongside Bondi Beach's iconic graffiti wall, ensuring the mural was natural within the Bondi environment.
- We worked closely with ABAC throughout the design process to align on a colour palette which was not deemed likely to appeal to children. The blue of the sky & green of the hill utilised in the mural are a realistic depiction of these natural elements rather than a means to be eye-catching. Additionally, the use of yellow in the BoozeBud logo and delivery box was utilised as this is our primary brand colour. We purposefully utilised warmer colours elsewhere on the mural to ensure adult appeal (black door and doorstep, red brick building, deep blue esky, navy thongs, black and white animals i.e. Magpie and Ibis). These warmer colours account for the majority of the mural.

- The domestic scene depicted does not include any elements which appeal to children, nor any children's items to spark appeal – specifically, we showcase a BBQ, esky, adult-sized cricket set and adult-sized thongs.
- We do not believe the Magpie stealing a sausage resonates more with children than adults. The Magpie is a classic Australian bird with no greater appeal to adults nor children, and the activity of BBQ'ing is solely an adult activity hence only having adult appeal.

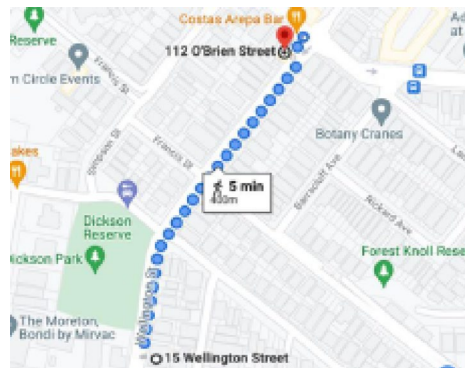
Placement

- Apparition Media (the facilitators of the mural) abide by the OMA Alcohol and Placement Guidelines. The mural does not break the Placement Rules as it is not within 150m line of sight of a school. Specifically:

1. The mural is 550m away from the entrance of Bondi Public School.



2. The mural is 400m away from the Bondi Public School boundary.



The Panel's View

15. This determination relates to an outdoor mural advertising BoozeBud at the corner of Wellington and O'Brien Streets in Bondi, New South Wales. The mural is a depiction of a stereotypical Australian backyard scene. It shows a door and wall of a house, a Hills hoist, BBQ, cricket bat, ball and stumps, thongs, garden hose, and an esky containing ice and drinks. A magpie is shown taking a sausage from the BBQ and the cricket ball is breaking the window. A speech bubble coming from within the house says, 'BARBIE'S ON!', and there is a box by the door with the words 'BoozeBud' and 'We know you're excited for a scorcher' printed on it. The words 'BoozeBud' are shown in large yellow letters in the top left of the mural, beneath which are the words 'Bondi, Discover Australia's best range of booze!'
16. The complaint raises two concerns. Firstly, it is pointed out that the mural is located on the same street as a school, with many children passing it each day. Secondly, it is argued the imagery of the mural is appealing to children. Combined it is concluded the marketing is in the wrong location for the style adopted.
17. Assessment of the consistency of a marketing communication (including outdoor installations) with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by most of the community are to be the benchmark. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their understanding would not be shared by most people.

Placement of the Mural

18. The concern about the proximity of the outdoor mural to a school raises the ABAC Placement Rules. The rules have the policy aim that alcohol marketing should be directed towards adults and away from minors. For outdoor installations, the relevant rule incorporates the provisions of the Outdoor Media Association Placement Policy which in effect prohibits placing alcohol advertisements on billboards or buildings within 150 metres line of sight of a school.
19. As identified by the complainant, the mural is on the same street as Bondi Public School. From the information provided by the Company however, it is clear that there are more than 150 metres between the mural and the school. The ABAC Placement Rules have therefore not been breached.

Strong or Evident Appeal to Minors

20. The complainant believes the style of the mural 'looks exactly like a children's cartoon'. This brings into play Part 3 (b) of the Code which provides that alcohol marketing must not have strong or evident appeal to minors.

21. The Code definitions explain that a marketing communication might have strong or evident appeal to minors if it:
- specifically targets minors;
 - has an attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionery or soft drink.
22. The Company contends the mural meets the ABAC standard and points out:
- the Company chose an illustrative rather than photorealistic style for the mural so as to align with Bondi Beach's iconic graffiti wall;
 - when developing the mural, it worked collaboratively with ABAC pre-vetting service to seek compliance with the Code;
 - the colour palette is not eye-catching and appealing to children, in particular:
 - the blue of the sky and green of the hill are a realistic depiction of these natural elements;
 - the yellow in the BoozeBud logo and delivery box is the Company's primary brand colour; and
 - the majority of the mural is not in bright colours, for example, the black door and doorstep, red brick building, deep blue esky, navy thongs, and black and white magpie and ibis.
 - The domestic scene showcases a BBQ, esky, adult-sized cricket set and adult-sized thongs, which do not appeal to children. The mural does not include any items, elements or activities with specific appeal to children.
 - The humour of a magpie stealing a sausage does not resonate more with children than adults.
23. When assessing strong and evident appeal to minors, some factors to consider include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;

- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors; and
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults).

24. While recognising the points made about the style of the mural by the complainant and its potential appeal to minors, on balance, the Panel believes the marketing does not breach the Part 3 (b) standard. In reaching this conclusion the Panel noted that:

- the scene depicted draws on outdoor/summer themes and would be familiar across age groups including but not specifically minors;
- the written messages relating to the Company name and its range of booze is directed towards adults and would not have a strong appeal to minors;
- the BBQ depiction and the magpie taking a sausage would more strongly resonate with a person most likely to operate a BBQ namely an adult rather than a minor;
- the backyard cricket imagery would resonate with minors and adults, although the broken window trope is generally more associated with a children's mishap;
- the colours employed on the whole are deeper and richer rather than bright and contrasting; and
- overall the illustrative style would have some appeal to minors but this is considered to be incidental rather than strong or evident.

25. The complaint is dismissed.