



ABAC Adjudication Panel Determination No 22/22

Product: Johnnie Walker
Company: Diageo
Media: TV – Free to Air
Date of decision: 30 March 2022
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”) arises from a complaint received on 21 February 2022 and concerns television marketing for Johnnie Walker (“the Product”) by Diageo (“the Company”), seen by the complainant on Channel 7 before 8:00pm during the broadcast of the Winter Olympics.
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:
 - 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;
 - 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 21 February 2022.
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 obtained for the advertising (Approval Numbers 20441 and 20265).

The Placement

10. The complaint concerns the placement of an advertisement on free-to-air television during Channel 7's broadcast of the Winter Olympics before 8:00pm when children were watching.

The Complaint

11. The complainant is concerned about the advertising as it was seen by their children when watching the Winter Olympics before 8:00pm. They also believe that alcohol advertising should not be permitted, particularly following the broadcast of sports which promote a healthy lifestyle.

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 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).

The Company's Response

14. The Company responded to the complaint by letter emailed on 7 March 2022. Its principal comments were:

- We refer to your letter dated 24th February 2022 concerning a complaint received by ABAC on 19 February 2022, in relation to our Johnnie Walker TVC which aired on channel 7. We have reviewed placements back to the 1st of February as the complaint did not specify a date of airing.
- Thank you for inviting us to provide comments for the Panel's consideration. We would like to take this opportunity to make some general comments about the ad and respond to your specific questions. We also wish to confirm our longstanding support and commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as our best-practice global marketing standards, the Diageo Marketing Code (DMC).
- The DMC supports our approach to innovative marketing, while at the same time ensuring we stay true to our core values and pro-actively market responsibly to adults. At the heart of the DMC, is our commitment to ensuring all our activities depict and encourage only responsible moderate drinking, and never target those who are younger than the legal purchase age (LPA) for alcohol.
- Compliance with the DMC is mandatory for all employees of Diageo, our subsidiaries and joint ventures where Diageo has a controlling interest. It also applies to third-parties engaged by Diageo who help market our brands. DMC review and sign-off must be included at each key stage of the innovation process and archived on our online approval tool, the Diageo

Content Hub. The DMC applies to all activities intended to market our beverage brands, including the Bundaberg Alcoholic Ginger Beer advertisement referred to in the Complaints.

- This advertisement is a Johnnie Walker brand trademark ad which delivers Johnnie Walker's famous tagline "Keep Walking". It is a globally approved and used asset for Johnnie Walker and features heavily in the brands global roll out of the Keep Walking campaign. It's a celebration of culture, depicting people walking with momentum and gusto to a musical mashup of famous lyrics about walking.

Alcohol Advertising Pre-vetting Service Approval

- The TVC received final ABAC approval. The 15 second TVC on the 17th October 2021 under approval code 20441; and the 30 second TVC on the 20th October under approval code 20265.

Responsibility toward Minors

- The Free TV Commercial Television code of practice states under 6.2 Alcoholic Drinks 6.2.1 A: Commercial for Alcoholic Drinks may be broadcast as an accompaniment to a Sports Program on a Weekend or a Public Holiday. With the complaint made on Saturday February 19th it is our assumption that the ad was viewed on this day, however have also cross referenced our programming list and can confirm that none of our weekday programming fell before 8:30pm in accordance with the code. In addition to this, all of our paid TV commercial spots which aired on a weekend fell post 12pm which is an additional DMC measure that we implement on our buys.
- The audience profile of Winter Olympics is 92.8% P18+ across Linear TV which is considerably more than our 75% benchmark (as per ABAC and DMC policy) for programming / partners, suggesting that this environment is predominately made up of an age-appropriate audience for Alcohol advertising.
- We do not believe that the coverage of the Winter Olympics would be primarily aimed at minors, and this is affirmed by the over-index of P18+ audience.
- We are pleased to have had this opportunity to confirm our long-standing commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as our best-practice global marketing standards, the Diageo Marketing Code (DMC). We would be happy to provide you with any further information should you require.

The Panel's View

15. The concern expressed by the complainant was that an alcohol ad was screened during the Winter Olympics before 8 pm and this meant that the ad was seen by children in the family. While the ad was for Johnnie Walker Whisky, it is reasonable to assume that the complainant is making a more general point about minors being exposed to alcohol marketing and the incongruity of alcohol products being seen with sports.
16. The concerns raised are genuine and pose important issues of public policy that ultimately are matters for the Australian government. The Panel has a much more limited mandate however and that is to apply the rules contained in the ABAC. The applicable provisions are contained in the ABAC Placement Rules and have the policy aim of limiting the exposure of alcohol marketing to under 18-year-olds.
17. The 2022 Winter Olympics were broadcast in Australia over the 7 Network. The Network screened the Games over both its primary free to air station and related digital channels. In addition to linear free to air broadcasts, a viewer could have watched the Games as Broadcast Video On Demand (BVOD) via the 7 Plus app. The 7 Plus app also permits a viewer to access live stream programming on the primary free to air channel.
18. The purpose of giving this outline of the viewing options for the Winter Games is because different rules apply to the screening of alcohol advertising depending on the channel a viewer used to see a given program. The complainant advised that the Johnnie Walker ad was seen on free to air TV before 8 pm. Alcohol advertising on free to air TV is subject to the Commercial Television Industry Code of Practice (CTICP) which contains some time of day restrictions on when alcohol ads can be broadcast. There are no equivalent restrictions applying to BVOD or programs accessed live streamed over the 7 Plus app.
19. As a broadcast medium, it is not possible to exclude under 18-year olds from watching TV, so the ABAC rules seek to limit the exposure of advertising to minors through three stipulations on alcohol marketers namely:
 - all applicable media codes applying to alcohol advertising must be complied with i.e. the Commercial Television Industry Code of Practice (CTICP) - Placement Rule 1;
 - the advertisement may only be placed with programs where the audience is reasonably expected to comprise at least 75% adults - Placement Rule 3;
 - the advertisement must not be placed with programs or content primarily aimed at minors - Placement Rule 4.

20. Placement Rule 1 has not been breached. This is because the CTICP, while generally restricting the broadcast of alcohol advertising to after 8:30pm, does expressly permit alcohol advertising in conjunction with the broadcast of a live sport event. This means it was permitted to show alcohol advertising with the Winter Olympics prior to 8:30 pm.
21. Placement Rule 3 establishes the 75% adult audience benchmark for the placement of alcohol marketing. Information on the audience of TV programs is available through the ratings system. The Company supplied audience data which establishes that the Winter Olympics attracted a predominantly adult audience more than the 75% threshold. It is evident the placement rule has not been breached.
22. Placement Rule 4 provides that irrespective of the actual audience, alcohol ads cannot be placed with content aimed primarily at minors. While the Winter Olympics has appeal across age groups, including minors, the broadcast of the games cannot be said to be aimed primarily at minors. In fact, the audience data is highly suggestive that the appeal of the Games was primarily to adults.
23. It is appreciated that the complainant will find this outcome to be quite unsatisfactory. The regulation of advertising on TV rests with the Commonwealth Government and the media regulator, the Australian Communications and Media Authority (ACMA). The ABAC in Placement Rule 1 starts with the ACMA approved code and then adds the additional rules. Public policy postures on alcohol marketing over TV are accordingly set by the government.
24. The complaint is dismissed.