



## ABAC Adjudication Panel Determination No 34/22

**Product:** UDL  
**Company:** Diageo  
**Media:** Outdoor Bus Shed  
**Date of decision:** 30 May 2022  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) relates to a complaint received on 9 May 2022 and concerns the placement of alcohol advertising on a bus shelter shed located near a school. The billboard was marketing UDL (“the Product”) by Diageo (“the Company”).
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 9 May 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.

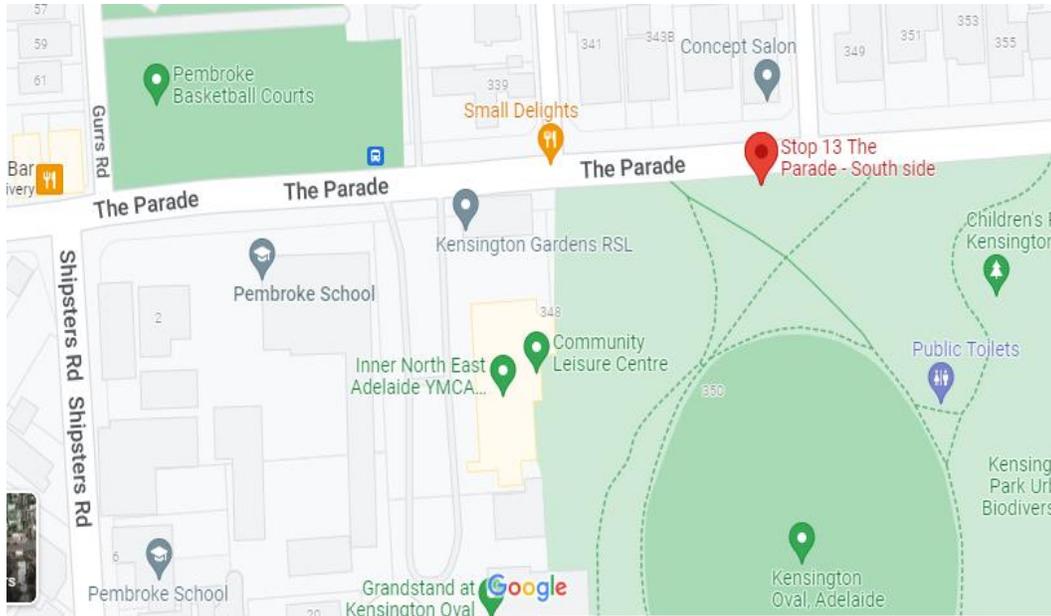
## Pre-vetting Clearance

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 content of the ad but not for placement of the marketing.

## The Marketing and Placement

10. The advertising billboard was placed at Bus Stop 13 on the southern side of The Parade, Kensington, South Australia (near Kensington Oval). The advertising was shown on both sides of the billboard, so that it was visible from both the west and east.





## The Complaint

11. The complainant has the following concern about the marketing:
  - *There is a large poster ad on the bus stop wall. Whilst this is not a designated school bus stop, it is adjacent to Pembroke school and is the main bus stop used by students attending that school. These “ready to drink” vodkas are sweet and appealing to many underage teenagers.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (b)(iv) be directed at Minors through any breach of the Placement Rules.
13. Part 4 of the ABAC Code provides that a breach of this Code that is reasonably unforeseeable by or outside the reasonable control of the Marketer or their agency will be classified as a no-fault breach.
14. 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).

## The Company's Response

15. The Company responded by letter emailed on 13 May 2022 and by email on 24 May 2022. The principal comments made were:

- 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.
- This advertisement is a UDL brand trademark ad which communicates the new cocktail flavour from UDL, Margarita. It is a locally approved and used asset for UDL and follows the previously ABAC approved visual design of static advertisements for UDL cocktail flavours.

### **Alcohol Advertising Pre-vetting Service Approval**

- The OOH advertisement received final ABAC approval. The static image, along with a 6 second video and 6 second gif on the 3rd August 2022 under approval code 20905.

### **No Fault Breach**

- Diageo requests that this complaint be dealt with as a no-fault breach based on the evidence and process provided.

## Responsibility toward Minors

- Diageo and Ooh! are committed to compliance with ABAC and OMA regulation and believe that in this instance the software that is used to map and plan campaigns did not detect the Pembroke school sporting groups as part of the school area – a shortcoming that has since been rectified. Below is the process in which Diageo and Ooh! worked through in this instance.
- Diageo provides Ooh! (media buyer) with ABAC and DMC implementation guidelines, which specify that advertising is not placed on fixed signs located within a 150 metre sightline of an Australian primary or secondary school, except where a club, pub or alcohol retail outlet is located between the school and the advertising sign (in line with AMAC and our DMC guidelines). In this case, using the software provided to Ooh!, and developed by OMA, the school in question was more than 150m away, and an RSL is located in between bus stop and school. The sports fields were not identified as a secondary school in this software and as such, the location was approved as appropriate and compliant. After learning that the sports fields are included, the site has been removed from list of possible buys so that this does not occur in the future.
- The school mapping is automatically loaded into MOVE (the system that Ooh! provides to plan campaigns). The government data used in this does not include the sports fields, although it has been removed from the system now so we won't show there again.
- The OMA developed a mapping tool within MOVE using PSMA Australia's government data which maps all schools in the five key Australian markets (Adelaide, Brisbane, Melbourne, Perth, and Sydney). By using MOVE, Ooh! can determine compliance with the OMA Placement Policy, which enshrines the ABAC code and requires certain advertisements to be outside a 150 metre sightline from the boundary of a school. The OMA performs annual updates to this data, and in consultation with the OMA, oOh! regularly updates its list of panels to ensure they are appropriately coded for compliance.

## The Panel's View

16. Pembroke is an independent school located in Kensington Park South Australia. The school comprises two campuses within five minutes walk of each other connected by the Kensington Park Reserve Oval. Access to the school via public buses is along a public road - The Parade. This determination relates to alcohol

advertising placed on a bus shelter shed at stop 13 on The Parade and adjacent to the school.

17. The complainant points out that advertising for the alcohol product UDL was placed on the bus stop 13 shelter shed. This advertisement was on both sides on the shed billboard and hence could be seen approaching the bus stop from the direction of the school. The complainant contends the placement was inappropriate given the proximity to the school. Also, the complainant noted that UDL is a ready to drink product that is 'sweet and appealing to many underage teenagers'.
18. The ABAC Placement Rules have the policy aim that alcohol marketing should be directed towards adults and to the extent possible away from minors. Placement Rule 1 provides that advertising must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies. For outdoor installations, the relevant media industry code is the Outdoor Media Association Placement Policy. This policy prohibits placing alcohol advertisements on billboards or buildings within 150 metres line of sight of a school.
19. The Company has accepted that the Placement Rule has been breached. It explains its agency was instructed to only place its advertising on outdoor sites consistent with the obligations in the Outdoor Media Association Placement Policy but there was an error in the database recording the location of the school vis-à-vis the distance to the bus shelter shed. It seems the database kept by the Outdoor Media Association had not identified the school's sports fields as part of the school.
20. Given these circumstances the Company requests that a 'no-fault' breach finding be made. A no-fault finding is appropriate if an alcohol marketer has acted properly and diligently in seeking to comply with its ABAC obligations, but a failure has occurred that was outside the reasonable control of the marketer or their advertising agency. It should be stressed that a no-fault finding in no way diminishes that the concern raised by the complainant has been vindicated or that the Company must act immediately to remove the offending advertising.
21. By way of completeness, the Panel notes the point raised about UDL being a product that may be more appealing to a younger person as opposed to say a whiskey or a stout beer. While this is a fair observation, the Placement Rules don't purport to apply differential obligations based on the type of alcohol product marketed. All alcohol advertising irrespective of the product type must comply with the ABAC standards.
22. The Panel upholds the complaint and makes a no-fault finding.