



ABAC Adjudication Panel Determination No 99/22

Product: Archie Rose Single Malt Whisky
Company: Archie Rose Distilling Co
Media: Qantas Inflight Entertainment
Date of decision: 13 December 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”) concerns video advertising for Archie Rose Single Malt Whisky (“the Product”) by Archie Rose Distilling Co (“the Company”). It arises from a complaint received on 8 November 2022 that the advertisement was seen during episodes of Bluey when watched on Qantas Inflight Entertainment.
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 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 8 November 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 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 content of the advertisement (Approval Number 3330).

The Marketing

10. The complaint relates to an advertisement for the Product, seen during episodes of Bluey on Qantas Inflight Entertainment.

The Complaint

11. The complainant objects to the marketing as follows:
 - *The children's channel on Qantas inflight entertainment contains a pre-roll of ads for every episode of a children's show. One the ads played before every episode was for a Whiskey brand.*
 - *The program was Bluey.*

- *My children were definitely watching through the Kids channel of the inflight system and the ad roll was run in before each episode.*
- *I believe it is against Australian broadcasting law to advertise alcohol directly to children. Part 4, section 37 in this document:*

https://www.legislation.gov.au/Details/F2020L01653/Html/Text#_Toc58939680

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 emailed letter on 2 November 2022. The principal points made by the Company were:

- This complaint was escalated to Qantas and oOh! Media via our media agency Speed.
- oOh! Media has advised that they have been investigating how and if this incident happened and after speaking with the 3rd Party business that Qantas uses to schedule Inflight content (based in the USA), it appears as though this was in fact human error.
- oOh! Media Further advised that:
 - We never normally assign ads to Kids content and it is part of our workflow to ensure this doesn't happen, but unfortunately they were assigned by accident in this instance. I have spoken to the team and we are working on ways to ensure it does not occur again.
 - Due to the systems used on-board the Qantas aircraft, the scheduling of content does require some manual handling. oOh! has had the IFE contract with Qantas since 2018 and this is the first time something like this has happened. We have processes in place that ensure this doesn't happen at our end as do the 3rd Party, but it seems that in this isolated instance there was human error.
 - Please accept our deepest apologies, we take these situations extremely seriously as do Qantas and we will do everything we can to ensure this type of incident doesn't happen again.

The Panel's View

15. This determination arises from a complaint relating to an advertisement for Archie Rose Single Malt Whisky seen by the complainant's children while they were watching the popular ABC TV children's entertainment program 'Bluey' on Qantas inflight entertainment.

16. Qantas is Australia's largest airline and operates a fleet of 124 aircraft of various types. Each of the aircraft types have a different inflight entertainment system

often related to the age of the plane. Some aircraft have individual entertainment units for each seat, while others have a wifi based system accessible by a Qantas entertainment app (some aircraft have both options). It is not clear which style of entertainment system was present on the flight taken by the complainant, but the system had a channel directed towards children entertainment.

17. The ABAC contains standards of good practice for alcohol marketing. A key standard is that alcohol marketing should be directed towards adult audiences and to the extent possible away from minors. The ABAC includes five Placement Rules which impose obligations on marketers, three of which are potentially relevant in the current case namely:
 - if a media platform on which the ad appears has age restriction controls to exclude minors, then these controls must be used - Rule 2;
 - if age restrictions controls cannot exclude minors, then an ad can only be placed where the audience is reasonably expected to comprise at least 75% adults - Rule 3; and
 - an ad must not be placed with programs or content primarily aimed at minors - Rule 4.
18. The Company has not provided information about the availability and use of age restriction controls on Qantas inflight entertainment but has agreed that the advertisement should not have been placed with Bluey. In Determination 85/19, the Panel considered advertising over the Qantas inflight entertainment system, and at that time the position was that age restriction controls were available on the 'Kids Zone' channel. It is assumed this is still the case.
19. Bluey is an Australian preschool animated television series that premiered on ABC Kids on 1 October 2018 and is also now watched by an international audience. The show follows Bluey, an anthropomorphic six-year-old Blue Heeler puppy and contains characters, storylines and concepts that are primarily aimed at minors.
20. In the circumstances, it is reasonable to conclude that each of Placement Rules 2, 3 and 4 have been breached by the placement of the ad with Bluey. It is noted that the Company explains the placement occurred due to human error and that steps will be taken to avoid a repeat of the mistake in the future.
21. Accordingly, the complaint is upheld.