



ABAC Adjudication Panel Determination No 1/23

Products: Hahn Beer and Uber Eats Alcohol Delivery
Companies: Lion - Beer Spirits & Wine Pty Ltd and Uber Eats
Media: TV – Digital
Date of decision: 13 February 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 2 January 2023 and firstly concerns a television commercial for Hahn Beer by Lion, and secondly an ad from Uber Eats. The marketing was seen on 7Plus during “Carols in the Domain”, at approximately 7pm on Saturday 24 December 2022.
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 2 January 2023.
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 not obtained for the placement of the marketing.

The Marketing Communication

10. The complaint relates to television commercials for Hahn Beer and Uber Eats alcohol delivery, seen while watching “Carols in the Domain” on 7Plus.

The Complaint

11. The complainant objects to the marketing as follows:
 - *We are watching Carols in the Domain on 7plus with my two daughters aged 7 and 4 years old and in the first ad-break we were served two ads for Sportsbet and the next ad-break it was Hahn Beer and an Uber ad about alcohol delivery.*
 - *I understand that it might be under my user profile but this type of programming which is aimed towards families and children should not have this type of advertising played during it. Something needs to be done to control streaming advertising placement.*

The ABAC Code

12. Part 2 of the ABAC Code provides that it APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b).
13. 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.
14. Part 6 of the ABAC Code provides that:

Marketer means a producer, distributor or retailer of Alcohol Beverages.

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 Companies Responses

15. Lion responded to the complaint by letter emailed on 12 January 2023. The principal comments made by the Company were:

- Thank you for raising this complaint and providing the opportunity for us to respond to the issues raised by the complainant. Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously.
- For the reasons set out below, and with respect to the complainant, we submit:
 - that there has been no breach by of Part 3(b)(iv) of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel; or
 - in the alternative, that there has been a no-fault breach under Part 3(b)(iv) of the ABAC Code.

Alcohol Advertising Pre-vetting Service

- The Advertisement received approval through the Alcohol Advertising Pre-Vetting Service (AAPS).

Responsibility toward minors

- For the following reasons, we do not consider that the placement of the Advertisement breaches 3(b)(iv) of the ABAC Code:
 - in order to set up a 7Plus account, users are required to provide their date of birth and Seven has confirmed that advertising on the platform is restricted based on the date of birth provided by users.

- advertising via 7Plus can only be purchased based on a target audience and not for specific content. On this basis, the content that is paired with advertising is not within Lion’s control.
- The following is an extract of Lion’s purchase order for the target audience for the Advertisement (please note the user age range is between 18 to 55+):

All orders > SWM - Lion Pty Ltd > 18207_SWM | Lion Hahn | How Good Summer | Dec - Feb > 98173-1_7Plus Video :15 | 400x300v Delivering Run report ☆ ⋮

Settings Creatives (1) Forecast Troubleshooting

Inventory	✓ 7plus Video	▼
Customised targeting	<small>seriesid (CMS) is none of wcdm AND Audience segment is any of TEG AU - flybuys - Transact - Retail - Tier 3 - Beer Active (19710086) -- OR -- Age - Logged in declared (y) is any of 55+ (9), 30 - 34 (4), 25 - 29 (3), 18 - 24 (2), 50 - 54 (8), 40 - 44 (6), 45 - 49 (7), 35 - 39 (5)</small>	▼

- As the live broadcast of the Program aired on 23 December 2022, we understand the Complaint relates to an on-demand replay of the Program. Seven have provided the following breakdown of impressions, based on the account user’s age, for the Advertisement played during the on-demand replay of the Program:

Age - Logged in declared	Total impressions
18-24	526
25-29	1437
30-34	2728
35-39	3139
40-44	2176
45-49	1548
50-54	1176
55+	3897

- Seven have provided the following VPM and Oztam data for the audience that viewed the Program, which confirms:
- 94.9% of the BVOD audience was over the age of 18:

VPM	BVOD audience	BVOD %
C00-04	1,153	1.3%
C05-12	1,745	2.0%
C13-17	1,589	1.8%
F18-24	4,640	5.3%
F25-39	19,413	22.2%
F40-54	13,800	15.8%
F55-64	7,118	8.1%
F65+	5,503	6.3%
M18-24	2,484	2.8%
M25-39	11,072	12.7%

VPM	BVOD audience	BVOD %
M40-54	10,371	11.9%
M55-64	4,496	5.1%
M65+	4,093	4.7%
TTPL	87,477	

- 89.4% of the linear audience of the live broadcast was over the age of 18:

FTA	Linear Audience	Linear %
CH 0-4	18,446	3.35%
CH 5-12	26,217	4.77%
T13-17	13,432	2.44%
W 18-24	12,618	2.29%
W 25-39	37,196	6.76%
W 40-54	47,850	8.70%
W 55-64	49,036	8.91%
W 65+	151,271	27.50%
M 18-24	6,844	1.24%
M 25-39	21,925	3.99%
M 40-54	39,443	7.17%
M 55-64	33,308	6.05%
M 65+	92,516	16.82%
TTPL	550,102	100.00%

- we note the Program was classified as PG, which means it is not recommended for viewing by persons under the age of 15 without guidance from parents, teachers, or guardians. The Program is not classified as 'C' or 'P' under the Australian Communications and Media Authority (ACMA) content standards:
 - 'C' programming is made specifically for children of school age (under 15 years); and
 - 'P' programming is made specifically for preschool children (i.e. children who have not started school).
- While Lion acknowledges the Program is family-friendly, we submit that it is not primarily aimed at minors and does not contain content primarily aimed at minors.
- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance.

16. Uber Eats responded to the complaint by letter emailed on 25 January 2023. The principal comments made by the Company were:

- We have reviewed the copy of the complaint provided in the letter from ABAC. The complainant does not appear to have a complaint about the content of the Uber Eats Advertisements referred to in your letter (Advertisements) but is concerned about placement of the Advertisements on the 7plus streaming service, specifically during the "Carols in the Domain" program.
- Uber Eats has processes in place which are consistent with industry practices and are designed to ensure that our alcohol advertisements are not broadcast to minors. In relation to the Advertisements, our media agency briefed our broadcast video on demand (BVOD) partners with the following criteria:
 - Time targeting, only running between 12pm – 9pm;
 - Markets restricted to only New South Wales, Victoria and Queensland;
 - Demographic targeting of people aged 18–54 years; and
 - Clearly outlined that we will be supplying a creative asset containing alcohol content.
- Uber Eats does not have direct control over the placement of the Advertisements within the specific TV shows played on BVOD channels. To ensure that the Advertisements are not broadcast during programs containing children's content, Uber Eats' media agency flags that the Advertisements contain "alcohol content". It is then within the control of the BVOD provider to ensure the Advertisements are not broadcast during programs with a strong or evident appeal to minors.
- We understand from the complaint that one or more of the Advertisements were shown during a live streaming of "Carols in the Domain" on 7plus at 7pm on 24 December. BVOD advertising does not replicate free-to-air advertising, even when the program is being live streamed, as BVOD advertising has the ability to target a demographic of 18 years of age and above and can broadcast different advertisements to different users at the same time. For example, at 7pm when some advertisement slots may have commenced, there could have been 10,000 different users all around the country logged into 7plus and they all may have been broadcast different advertisements. That is, at the same time one user may have been broadcast one of the Advertisements, another user may have been shown an advertisement from another company or organisation. The Advertisements were only broadcast via the 7plus on demand services to users that had logged into this service via age restriction controls and only to those individuals aged 18 and over. This means that the complainant or another adult in the household must have been the registered user of the on-demand service.

We understand this system makes no allowance for co-viewing occurring in a household where there are both adults and minors.

- The ABAC Code does not specifically address the placement of advertisements on BVOD channels such as 7plus. The time restrictions for alcohol advertising contained in other Codes also have no application to BVOD channels, even where the programs are live streamed on the BVOD channels.
- In the case of this complaint, the following are also relevant:
 - 7plus applied available age restriction controls so the Advertisements were only broadcast to households where there was an adult registered user of the on-demand service;
 - The expected audience of “Carols in the Domain” on digital TV exceeds 75% adults; and
 - “Carols in the Domain” is not a program that is aimed primarily at minors.
- Uber Eats takes seriously its obligations to the community to market its services in a responsible manner. We are very conscious of ensuring any marketing involving alcohol delivery is not targeted at minors in any way. Uber Eats requires, where applicable, age restriction controls to be in place for all its alcohol delivery advertisements which are broadcast via BVOD services, such as 7plus.
- Uber Eats considers it has met all of its obligations under the Code regarding the placement of the Advertisements.

Alcohol Advertising Pre-vetting Service Approval

- Uber Eats received Alcohol Advertising Pre-vetting Service Approval in relation to the Advertisements under application number 941-2022 with approval numbers 4443, 4478, 4527 and 4561.

Scope of the ABAC Code

- Uber Eats does not hold a liquor licence in Australia and is not a producer, distributor or retailer of alcohol items. Rather, Uber Eats supports liquor licence holders who want to sell and deliver their products by providing a platform that can connect them with customers.
- Under our Marketplace model:
 - Merchants engage Uber Eats to provide lead generation and other related services;
 - Customers use the Uber Eats platform to request the purchase of food, alcohol and other items from licensed merchants, and to request the purchase of delivery services from Uber Eats; and

- Uber Eats engages delivery persons to provide delivery services as requested by the customer.
- The ABAC Adjudication Panel in Determination 109-22 dated 4 January 2023 came to the view that “on the available information, Uber Eats is not itself an alcohol retailer within the intended scope of the ABAC. That said, it is now a participant in the alcohol industry and it is fully appropriate that its operations reflect that fact.”
- As stated by the Panel in Determination 109-22 the Code does not endeavour to precisely define a ‘marketing communication’ and a common sense approach is to be applied and not technical interpretation of a ‘marketing communication’ which then enables the Code to adapt to changes in marketing techniques and the emergence of new mediums.
- Even though Uber Eats is not a producer, distributor or retailer of alcohol items, it has stringent processes in place to help ensure that it and its merchant partners are able to meet the requirements of the applicable legislation and the Code. Specifically, in this case, Uber Eats sought and obtained pre-vetting service approval for the Advertisements and considers it has met all of the obligations under the Placement Rules in the Code, in particular the following:
 - Para (ii) - that available age restriction controls were utilised to exclude minors;
 - Para (iii) - if there are no age restriction controls, then an alcohol advertisement can only be placed where the audience is reasonably expected to comprise at least 75% adults; and
 - Para (iv) - alcohol advertisements must not be placed with programs or content primarily aimed at minors.
- The Advertisements are designed to show the various alcoholic products that are available to purchase for delivery through the Uber Eats app and are not designed to promote any particular retailer. No liquor retailer partner branding is included in the Advertisements.
- Some of our major alcohol retail partners were made aware of the campaign but had no input as to where and when the Advertisements would be displayed and in many cases did not see the advertising materials in advance.

Age Restriction controls

- For the broadcasting of the Advertisements, our media agency briefed our BVOD partners with the following criteria:
 - Time targeting, only running between 12pm – 9pm;
 - Markets restricted to only New South Wales, Victoria and Queensland;
 - Demographic targeting of people aged 18–54 years; and
 - Clearly outlined that we will be supplying a creative asset containing alcohol content.
- The Advertisements were only broadcast via the 7plus on demand services to users that had logged into this service via age restriction controls and only to those individuals aged 18 and over. The advertisements also featured a “must be 18+ with ID” disclaimer.
- Uber Eats has no direct control over the placement of the Advertisements within the specific TV shows played on BVOD channels.

Viewer data

- The data set out below was obtained by our media agency from Channel 7 and provided to Uber Eats.

Network data on age of logged in users

- 5% of the total audience that watched via 7plus were under 18 years of age. The Table below provides the breakdown of ages and gender.

	BVOD	BVOD %
C00-04	1,153	1%
C05-12	1,745	2%
C13-17	1,589	2%
F18-24	4,640	5%
F25-39	19,413	22%
F40-54	13,800	16%
F55-64	7,118	8%
F65+	5,503	6%
M18-24	2,484	3%
M25-39	11,072	13%

M40-54	10,371	12%
M55-64	4,496	5%
M65+	4,093	5%

VPM data for the age of the audience of “Carols in the Domain”

- 94% of the audience of “Carols in the Domain” were aged 18 or over.

Series and Episode	BVOD Audience	Length	Minutes	BVOD Reach	Posted Date
Woolworths Carols in the Domain 2022	20,000	120.7	2,377,000	41,000	23/12/2022

Adult Female (%)					Adult Male (%)				Child (%)			
18-24	25-39	40-54	55-64	65+	18-24	25-39	40-54	55-64	65+	00-12	13-17	
5%	26%	16%	8%	6%	2%	12%	11%	4%	4%	4%	2%	

Ozdam data on the age of audience of “Carols in the Domain”

- The median age for the audience that watched the “Carols in the Domain” free-to-air broadcast was 61 years of age. Viewers aged 18 or younger made up 10% of the total audience, whilst 66% of the total audience was represented by viewers aged 50 years old or older.

Not primarily aimed at minors

- We do not believe that “Carols in the Domain” is primarily aimed at Minors. The program and its content is designed to appeal to a wide section of the community.
- In support of this, Channel 7 has provided the following response to our media agency:
 - “Confirming that this program is not primarily targeted nor made specifically for minors. Carols In The Domain is classified as PG, and entertainment/light entertainment. It is of course family friendly content however not specifically targeting children. Programs that would be primarily targeted to minors would include the likes of our ‘kids’ category for example, Jays Jungle or Flushed, etc and is of course programming that would be excluded within our age targeting of P18+/alcohol category.”

The Panel's View

Introduction

17. Carols in the Domain is an annual public Christmas concert held at the Domain Gardens in Sydney. The concert features live music and singing performances by popular Australian artists, TV personalities and local choirs. There is also a fireworks display. In addition to those attending the concert in person, the audience for Carols in the Domain are viewers of a live broadcast on free to air television. The concert then can also be watched via Broadcast Video on Demand (BVOD).
18. In 2022 the concert was held on 23 December and was initially broadcast live to air by the 7 Network. Subsequently, the broadcast could be accessed by subscribers of the 7 Network's digital channels via the 7Plus app and streaming service. The complaint concerns advertising accessed with a BVOD viewing of the concert at approximately 7pm on Saturday 24 December 2022. This was almost 24 hours after the original live broadcast.
19. The complainant watched the concert with their children and was disturbed to see advertising for the gambling company Sportsbet, the alcohol product Hahn beer and the food and drink home delivery service Uber Eats. The Uber Eats ad was specifically for the delivery of alcohol products. The complainant contended that Carols in the Domain was programming aimed towards families and children and advertising of this nature was inappropriate.

ABAC Placement Rules

20. The point made by the complainant is not about the content of the advertisements but the placement of the alcohol ads with Carols in the Domain. This brings into play the ABAC Placement Rules. The Rules have the policy aim that to the extent possible alcohol advertising should be directed towards adult audiences and away from minors.
21. There are four rules which could be of relevance to the complaint namely:
 - have media industry codes regulating placement been complied with - Rule 1;
 - does the media platform on which the ad appeared have age restriction controls to exclude minors, and if so, were they used - Rule 2
 - was the audience of the program with which the ad was placed in excess of 75% adult - Rule 3; and
 - can the program i.e. the Carols in the Domain be regarded as being 'primarily aimed' at minors - Rule 4.

22. Before turning to a consideration of these rules, it should be noted that Uber Eats is not strictly a 'alcohol beverage producer, distributor or retailer' to which the ABAC Scheme applies. Rather Uber Eats is a service that provides technology platforms to match retailers including alcohol retailers with customers and delivery contractors. That said, Uber Eats has accepted through both the agreements it has reached with alcohol retailers and its own corporate responsibility commitments that it will market its services regarding alcohol as a product consistently with the ABAC standards.
23. The complainant acknowledged that the Carols in the Domain was accessed through a subscription to 7Plus and as a result the program was seen via a service with an adult's profile information. That said, it is of course a common practice in most households with children that streaming services will be held in an adult's name and programs will be commonly co-viewed by all family members including minors.
24. Rule 1 requires that all media codes applying to alcohol placement be complied with. The live free to air broadcast of Carols in the Domain commenced at 7:30 pm. The requirements in the Commercial Television Industry Code of Practice (CTICP) meant that for the first hour of the concert it would not have been permitted for alcohol ads to be broadcast. After 8:30 pm, alcohol ads could have been seen with the program.
25. There are no equivalent time of day restrictions applying to when alcohol ads can be shown on BVOD over 7Plus. As it turned out, the complainant and family viewed the program at around 7:00pm but it could have just as easily been watched at 7:00am. As there are no time-of-day restrictions applying to alcohol ads inserted in BVOD, Rule 1 has not been breached.
26. Rule 2 requires that age restriction controls should be used when available. The complainant accessed the program via 7Plus and this service does have an age restriction capacity. This arises because 7Plus requires an account to be opened and the account holder to provide a date of birth. With this information, both the 7 Network and alcohol marketers can exclude account holders aged under 18 years old from being served alcohol ads. Both Lion and Uber Eats confirmed this facility was used for their advertising.
27. It is fair to say that the impact of Placement Rule 2 is more meaningful when social media is accessed via internet-connected devices such as phones and tablets. This is because many people including minors have a personal device and personal social media accounts on platforms such as Instagram or YouTube. These platforms have quite effective age restriction controls to exclude minors from seeing alcohol marketing that rely not only on date of birth information but also analytic data on the patterns of an account holder's use of the platform.
28. In contrast, 7Plus has an age restriction capacity, but in practical terms the account will be held by an adult and the shows will be co-viewed by all people in the household including children. This means that Rule 2 has not

been breached as Carols in the Domain was accessed via an account held in an adult's name and not an account held by a minor.

29. Rule 3 goes to the audience of a program. It provides that an alcohol ad may only be placed where the audience is reasonably expected to comprise at least 75% adults. It is possible to assess the 'reasonably expected' audience of TV programs through the ratings system and both Lion and Uber Eats have supplied ratings data.
30. This data shows that the audience for Carols in the Domain when broadcast initially on free to air TV and then subsequently accessed 'on demand' on 7Plus comfortably exceeds the 75% adult benchmark. The program seems to have appeal amongst older adults and then the age group of adults most likely to have children. While there is an audience amongst minors, it seems at its highest to be in order of 10% of the total audience of the program.
31. Rule 4 goes to the content of programs and raises the question of whether Carols in the Domain can be said to be primarily aimed at under 18 year olds. Some factors to be considered in assessing this question include:
 - the actual audience composition of a program;
 - the subject matter of the program and whether the subject matter has themes likely to predominantly appeal to children or adolescents;
 - the use of familiar children's characters or the use of children and adolescents within the program;
 - the storyline and whether the complexity of the plot suggests its target audience is adult; and
 - the use of language and the presence of adult themes such as violence and the portrayal of sexuality.
32. It can be accepted that Carols in the Domain is a family friendly event. However, whether the televised program is primarily aimed at children, and therefore in breach of the Code, is a more nuanced decision.
33. In making this decision, the Panel applies the Code from the standpoint of the probable understanding of a reasonable person. The reasonable person concept means the benchmark is the attitudes, opinions, values and life experiences shared commonly in the community.
34. There are a number of features of Carols in the Domain which a reasonable person would understand as having clear appeal to children:
 - it has a Christmas theme and Santa Claus makes an appearance;

- Christmas carols with which children would be familiar and would find relatable, are performed;
 - children perform in the concert, including the Australian Girls Choir, the Janice Breen Performers and 10-year-old Virginia Bocelli, who performs a duet with her father Andrea;
 - entertainers or children's characters with strong or evident appeal to minors perform in the concert, including The Wiggles, the cast from Cinderella and Mickey & Minnie Mouse.
35. On the other hand, the program is clearly not directed solely towards minors. Its hosts David Koch and Natalie Barr are Network 7 personalities from adult programs. Equally many of the performers would be better known to adults, such as Leo Sayer, Rhonda Birchmore, Tom Burlinson, Lachie Gill and Todd McKenney.
36. Lion submitted that while Carols in the Domain is family friendly, it is not primarily aimed at minors. It was pointed out that the program was classified as 'PG' meaning it is not recommended for viewing by persons aged under 15 without guidance from an adult.
37. Uber Eats argued the program is designed to appeal to a wide section of the community. It pointed to the view of Network 7 that the program is not primarily targeted at nor made specifically for minors. Network 7 contends its classification reflects that Carols in the Domain is in the entertainment/light entertainment category and not the children's category.
38. Both Lion and Uber Eats made the point that there was no conscious decision on their part to actually select the program for advertising as such. Rather the Companies place advertising to target an audience of specified demographic features and not exact programs or content. Reliance is placed on the television network to properly classify programs and match advertising to the marketer's desired audience.
39. The Panel believes that while the Carols in the Domain contains individual performances that are primarily aimed for children's entertainment such as The Wiggles, the concert as a whole cannot be fairly regarded as being primarily aimed at minors. The concert is directed towards families with children and the audience profile suggests older adults are also drawn to the concert.
40. Drawing all this together, there has not been a breach of the ABAC Placement Rules by showing alcohol ads with Carols in the Domain given:
- the age restriction controls available on the 7Plus BVOD platform were utilised to exclude account holders who are minors from being served with alcohol ads;
 - the audience for Carols in the Domain fell comfortably within the 75% adult requirement of the Placement Rules; and

- while Carols in the Domain has wide appeal, including to minors, it cannot be said to be primarily aimed at minors.

Conclusion

41. It is acknowledged that the complainant has raised a genuine concern regarding the placement of the ad with Carols in the Domain. The program is not 'primarily aimed at minors' but it can be fairly recognised that the performers who are under 18 years old, and specific children's entertainers, such as The Wiggles, will be highly relatable to minors.
42. The complaint also rightly draws attention to the overall regulatory regime regarding advertising and digital TV such as the channels accessed over 7Plus and the equivalent service available on each of the other television networks. It is notable that alcohol advertising is not permitted on the free to air broadcast of the concert at 7:30 pm but there would have been no time restriction on alcohol advertising for the live streaming of the concert via 7Plus.
43. It is noted that ACMA, the government communications regulator has flagged a review of the Codes approved by it including the CTICP. It is overdue for the interplay between the CTICP and rules applying to online and streaming platforms to be properly examined and modernised.
44. Further alcohol companies and marketers such as Uber Eats should specify in their instructions to agencies that a program such as Carols in the Domain be expressly excluded from the possible placement of ads featuring alcohol products. It is a somewhat unsatisfactory answer to merely say there is 'no control' over which individual programs an ad will be placed.
45. The complaint is dismissed.