



ABAC Adjudication Panel Determination No 34/23

Products: Canadian Club, James Squire, Bailey's, BWS
Companies: Beam Suntory, Lion, Diageo, Endeavour Group
Media: OOH – Shopping Centre
Date of decision: 12 April 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 27 February 2023 and concerns digital out of home marketing (DOOH) at a shopping centre. The products advertised were:
 - Canadian Club by Beam Suntory;
 - James Squire Ginger Beer by Lion;
 - Bailey's by Diageo; and
 - BWS by Endeavour Group.
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:
 - (b) 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;

(c) 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 27 February 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 marketing.

The Marketing Communications

10. The complaint relates to the following digital billboard advertisements seen by the complainant at a shopping centre:

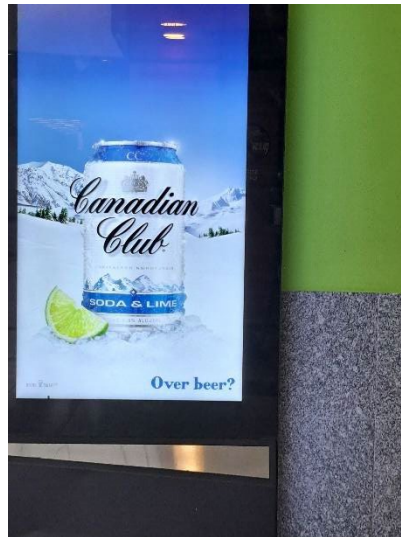
BWS by Endeavour Group



The BWS 10 second digital advertisement has a predominately bright orange and blue background. It commences by showing the words “Over 1.5 million prizes have been won”, above a bright orange cooler with BWS branding.

The words “There's still heaps more to win” then appear in smaller white font, as the cooler on its own slightly rises and shakes, before bursting open to reveal its contents, including bundles of cash, movie tickets, a bag which appears to contain tickets and a passport, tickets of various kinds and a petrol pump nozzle. The Menulog, Kogan.com, Hoyts and Aperol Spritz logos are shown, as are various bottles of what is presumably alcohol. A small red car with flashing headlights appears, as a plane flying overhead enters the scene, and a bundle of cash parachutes from the sky.

Canadian Club by Beam Suntory



This seven second digital advertisement for Canadian Club Soda & Lime commences by showing a snowy mountain scene. The words “Over beer?” are shown in the bottom right corner. A can of Canadian Club Soda & Lime drops from above along with a wedge of lime. Two circles with the words “Lower in Sugar” and “31 Calories per 100ml” appear in the bottom right of the ad. The words “Try” and “CC. Soda. Lime.” appear at the top of the ad.

James Squire Ginger Beer by Lion



The James Squire Ginger Beer ad shows three cans of the product positioned above what appears to be a moving ocean. The cans slowly rotate towards the camera.

The Complaint

11. The complainant objects to the marketing as follows:
 - *These electronic billboards are at floor height and roof top advertising from as early as 8am. Children can easily see and comment on the ads. They appear fun and look yummy to small 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.
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 Minors 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.

The Company Responses

14. **Endeavour Group (BWS)** responded to the complaint by letter emailed on 15 March 2023. The principal comments made by the Company were:
- BWS thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint which has been made pursuant to the ABAC Responsible Alcohol Marketing Code and Complaints Management System (ABAC).
 - At the outset, BWS would like to note the following:
 - BWS, as part of Endeavour Group, is committed to maintaining our position as an industry leader in the responsible service of alcohol. This is highlighted by the fact that Endeavour Group formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all advertising within its reasonable control in accordance with the ABAC Responsible Alcohol Marketing Code (the Code). As a signatory to ABAC, Endeavour Group commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.
 - Furthermore, BWS maintains strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Endeavour Group has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage the responsible consumption of alcohol. These include:
 - ID25; we ask for ID if a shopper looks under the age of 25;
 - Our Refusal of Service Policy (Secondary Supply, Intoxication and School Uniform); and
 - Staff training that exceeds legal requirements, including our 'Leading in Responsibility' training module, team talkers, regular refresher and reminder courses.

- The processes outlined above provide Endeavour Group with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.
- For the reasons outlined below, BWS respectfully submits that the Advertisement does not breach any Part of the Code and it therefore requests the Panel to dismiss the Complaint.

Alcohol Advertising Pre-vetting Service Approval

- BWS received Alcohol Advertising Pre-Vetting Service Final Approval (Final Approval) for the Advertisement on 14 March 2023, pursuant to approval number 5415. For completeness, we note that Final Approval was received on 18 December 2022 for similar collateral with different headlines pursuant to approval number 4666.

Responsibility toward Minors

- The Complainant's concern about the Advertisement raises Part 3(b)(i) of the Code which provides that a marketing communication must not have Strong or Evident Appeal to Minors.

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 confectionary or soft drinks; or
 - (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.
- In assessing the Advertisement's compliance with the Code, it must be considered from the perspective of a 'reasonable person to whom the material is likely to be communicated and **taking its content as a whole**' (Part 5 of the Code) (emphasis added).
 - As a starting point, BWS respectfully submits that the complainant's references to advertising relating to specific products, including Canadian Club and Bailey's has been misattributed to BWS. We are instructed that

BWS did not have any such advertisements live at the relevant time. The Advertisement was displayed on a digital screen which displays rotating advertising materials from a range of different advertisers, including BWS. For clarity, the BWS advertising material on this digital screen at the relevant time was as follows:



- The Advertisement promotes the BWS Cooler Consumer Promotion (Promotion), whereby eligible entrants who swipe daily via the BWS on tAPP (App), have a chance to win a share of prizes. Among other eligibility criteria, participants must be aged 18 or over in order to both download the App and enter the Promotion. BWS notes that such criteria is depicted in the terms & conditions (Promotion T&Cs) on the Advertisement.
- BWS does not believe that Part 3(b)(i) has been breached on the basis that:
 - a reasonable person would not, under any interpretation, consider that the Advertisement in relation to the Promotion makes alcohol appear “yummy”;
 - the prizes awarded as part of the Promotion (the subject of the Advertisement) appeal to adults, not minors.
 - For example, the prizes include the following (among others):
 - Kogan, Adrenaline, Menulog, Hoyts & Ampol e-Vouchers;
 - Free product liquor prizes and merch;
 - BWS’s SipCoin, a digital currency which can be redeemed for beer, wine, spirits and premix through the App; and

- Grand prizes (e.g., an Australian adventure holiday experience, a car; and \$30,000 cash).
 - If any of these prizes hold appeal to minors, such appeal would be incidental only and no greater than the general attractiveness they would have for an adult.
 - the Promotion T&Cs make it clear that the Advertisement is directed to Adults, by reference to the fact that entrants must be 18 years or over;
 - any brand identification (e.g., Kogan.com; Menulog, Hoyts, adrenaline, airtasker) depicted on the Advertisement cannot reasonably be said to be directed to minors; and
 - taken as a whole, the Advertisement is unlikely to appeal strongly to minors.
- For the reasons outlined above, BWS respectfully submits that the Complaint be dismissed on the basis that the Advertisement does not breach any Part of the Code.

15. **Beam Suntory (Canadian Club)** responded to the complaint by email on 9 March 2023. The principal comments made by the Company were:

- Whilst complaint references “CC Draft” only OOH media that was placed over summer was for CC Soda & Lime.

Alcohol Advertising Pre-vetting Service Approval

- The CC Soda artwork obtained ABAC pre-vetting approval – approval number 19895.

Responsibility toward Minors

- The communication in question is the CC Soda & Lime Can placed in the CC Snowy Vista.
- The communication clearly states “drinks mart” and due to the presence of the product, also communicates the ABV and that the product is alcoholic.
- There is nothing to suggest that this communication has strong or evident appeal to minors. There is:
 - No relation to confectionary or other products that minors consume
 - No one depicted under the age of 25
 - No particular attractiveness for a minor.

- As the billboard in question was also playing other brands, including ice cream, it is our belief that it is this advertisement that could be considered “yummy” to children, not Canadian Club.

16. **Lion (James Squire)** responded to the complaint by letter emailed on 16 March 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 of Part 3(b)(i) of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel.

AAPS Approval

- The Advertisement was submitted for review through the Alcohol Advertising Pre-Vetting Service (AAPS) and received approval number 5018 (AAPS Application No. 791-2022).

Responsibility toward Minors

- For the following reasons, we do not consider that the Advertisement breaches Part 3(b)(i) of the ABAC Code:
 - the Advertisement is an animation that starts with an angled shot and rotates to resolve with the following frame:
 - the Advertisement includes the statement “ALCOHOLIC GINGER BEER”:
 - under the “REFRESHINGLY DIFFERENT” tagline – notably, this text gives “ALCOHOLIC” equivalent weight and prominence to “GINGER BEER”; and
 - on the James Squire Ginger Beer product packaging,
 - (d) which makes it clear that the product is alcoholic and not a soft drink;
 - James Squire is a well-known alcohol brand, and the Advertisement prominently includes the brand both on the James Squire Ginger Beer product packaging and underneath the products;
 - the depicted James Squire Ginger Beer product packaging uses relatively muted colours (royal blue, light blue and black with

orange), and the background of the Advertisement uses black and dark purple colours; and

- collectively, these elements do not have “strong or evident appeal to minors”, namely they:
 - i. are not “likely to appeal strongly to minors”;
 - ii. are not “specifically targeted at minors”;
 - iii. do not “have...a particular attractiveness for a minor beyond the general attractiveness it has for an adult”;
and
 - iv. do not “use imagery, designs, motifs...that are likely to appeal strongly to minors or that create confusion with confectionary or soft drinks”.
- 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.

The Panel’s View

17. This determination arises from a complaint about digital out of home (DOOH) advertising seen at a shopping centre. The complainant’s concerns are two-fold, namely that:
 - the advertising was placed in a shopping centre environment where it would be seen by children; and
 - the content of the advertising would appeal to children.
18. In support of their concerns, the complainant submitted three photos showing advertising for James Squire Ginger Beer, Canadian Club Lime & Soda and BWS. A fourth ad for Baileys was also mentioned but the complainant did not have a photo of the ad or a description that could assist with the ad’s identification. Diageo (the producer of Baileys) advised that no advertising for the product had recently been at the shopping centre and given the difficulty in identifying the ad in question, the Panel is unable to deal with this aspect of the complaint.

Placement and content of the advertising

19. The ABAC goes to both the content of alcohol marketing (the ABAC content standards) and where alcohol marketing is located and placed (the ABAC Placement Rules). The placement rules have a policy aim that alcohol marketing (irrespective of its content) should be directed towards adult audiences and to the extent possible, away from minors.
20. Some mediums, such as digital platforms like social media are 'narrowcast' and enable marketing to be targeted to specific audience segments and it is feasible to largely exclude minors from receiving alcohol marketing communications. Other mediums are 'broadcast' by their nature and it is not possible to directly exclude minors from seeing alcohol ads carried over these mediums. Advertising on billboards is clearly the use of a broadcast medium.
21. The Placement Rules adopts the requirements in the Outdoor Media Association's Alcohol Advertising Policy in regard to where alcohol ads can be placed on billboards. In essence, this means that alcohol ads cannot be placed on fixed billboards within 150 metres of a school. There is no restriction on the use of billboards within a shopping centre.
22. While the Panel acknowledges the complainant's point about alcohol ads within shopping centres, there is no breach of the Placement Rules to use a digital billboard within a centre, just as there is no restriction on a liquor store being physically located in a shopping centre.
23. In addition to the complainant's concern about the placement of the advertising, it is further argued that the advertisements "appear fun and look yummy to small children". This concern raises Part 3 (b)(i) of the Code requiring that the content of alcohol advertising must not have strong or evident appeal to minors.
24. Alcohol marketing might have strong appeal to minors if it:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
25. The benchmark applied when assessing if an ABAC standard has been satisfied is the "reasonable person" test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly

held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.

26. The Panel will assess the identified advertisements against the Part 3 (b)(i) standard in turn below.

Endeavour Group - BWS

27. The BWS advertisement is a 10 second video. The predominant background colours are bright orange and blue. The video shows a bright orange illustrated BWS branded cooler which, of its own accord, rises up, starts shaking and then bursts open to reveal its contents, which are illustrated representations of the prizes that could be won in BWS's Cooler Consumer Promotion. Images shown include cash (including a bundle of cash parachuting into the scene), a hot air balloon, movie tickets, a small red car with flashing headlights, a petrol pump nozzle reaching out of the cooler and an aeroplane flying across the top of the advert. The words "Over 1.5M prizes have been won" and "There's still heaps more to win!" are shown at the top of the advert.

28. In response to the complaint, Endeavour Group argued that:

- children are not eligible to enter the competition;
- only adults are able to download the BWS app needed to enter the enter the competition;
- the promotion T&Cs make it clear that the advertisement is directed to adults, by reference to the fact that entrants must be 18 years or over;
- the prizes would appeal more strongly to adults than minors;
- if any of these prizes hold appeal to minors, such appeal would be incidental only and no greater than the general attractiveness they would have for an adult;
- taken as a whole, the advertisement is unlikely to appeal strongly to minors.

29. The Panel accepts that the actual competition is restricted to adults and the prizes feature items and brands not likely to appeal strongly with minors or at most would have only incidental appeal to minors. The issue however, is not the competition as such, but how the 10 second billboard display would probably be understood by a reasonable person and whether it would be considered as strongly appealing to minors.

30. On balance, the Panel does not believe the billboard ad breaches the Part 3 (b) (i) standard. In reaching this conclusion the Panel noted:
- the background colour of blue and orange is not dynamic or strongly eye catching;
 - the majority of the imagery used eg, an esky, a bundle of cash, a hot air balloon and a petrol bowser are not overtly items or activities likely to appeal strongly to minors;
 - some images eg the red car with flashing headlights is more akin to imagery used in children's materials and cartoons and would resonate with minors;
 - the text contained in the ad relating to the number of prizes won is more strongly adult focused; and
 - taken as a whole, the ad is not targeted at minors nor would it have greater attraction to minors than it would to adults. Its appeal to minors would most probably be understood as being incidental rather than strong or evident.

Beam Suntory – Canadian Club

31. This seven second digital advertisement commences by showing a snowy mountain scene. The words "Over beer?" are shown in the bottom right corner. A can of Canadian Club Soda & Lime drops from above along with a wedge of lime. Two circles with the words "Lower in Sugar" and "31 Calories per 100ml" appear in the bottom right of the ad. The words "Try" and "CC. Soda. Lime." appear at the top of the ad.
32. In response to the complaint, Beam Suntory argued that:
- the communication in question is the CC Soda & Lime Can placed in the CC Snowy Vista;
 - the communication clearly states "drinksmart" and due to the presence of the product, also communicates the ABV and that the product is alcoholic;
 - there is nothing to suggest that this communication has strong or evident appeal to minors. There is:
 - no relation to confectionary or other products that minors consume;
 - no one depicted under the age of 25; and
 - no particular attractiveness for a minor.

- As the billboard in question was also playing other brands, including ice cream, it is our belief that it is this advertisement that could be considered “yummy” to children, not Canadian Club.
33. Taking the contents of the marketing as a whole, the Panel does not believe that the Part 3 (b)(i) standard has been breached, noting that:
- a realistic snowy scene is shown, as is a realistic depiction of the product and a lime wedge;
 - apart from the can and lime dropping into the ad, there is little movement;
 - the predominant colours are a blue sky and white snow. The colours used are realistic, not contrasting, and would not heighten the appeal to minors; and
 - the scene and objects shown would not have a specific appeal to minors.

Lion – James Squire Ginger Beer

34. The ad for James Squire Ginger Beer shows three cans of the product. At the top of the ad are the words “Refreshingly Different” in larger font, below which in smaller font are the words “Alcoholic Ginger Beer”. At the bottom of the ad are the words “James Squire” in larger font, below which in smaller font are the words “Ordinary Be Damned”.
35. When responding to the complaint, Lion asserted that:
- it is clear that the product is alcoholic and not a soft drink;
 - the depicted James Squire Ginger Beer product packaging uses relatively muted colours (royal blue, light blue and black with orange), and the background of the advertisement uses black and dark purple colours; and
 - collectively, these elements do not have “strong or evident appeal to minors”,
36. Taking the contents of the marketing as a whole, the Panel does not believe that the Part 3 (b)(i) standard has been breached, noting that:
- realistic images are shown;
 - there is very little movement; and

- the predominant colours used are dull and muted, rather than bright and contrasting.

Conclusion

37. The complaint is dismissed.