



## ABAC Adjudication Panel Determination No 74/23

**Product:** Tooheys New  
**Company:** Lion – Beer, Spirits & Wine Pty Ltd  
**Media:** Billboard  
**Date of decision:** 2 June 2023  
**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”) arises from a complaint received on 1 May 2023 and concerns billboard advertising for Tooheys New (“the Product”) by Lion (“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 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 1 May 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 obtained for the content of the marketing.

## The Marketing Placement

10. The complaint relates to billboard advertising for Tooheys New seen at the Castletown Shopping Centre in Townsville.

## The Complaint

11. The complainant objects to the marketing as follows:
  - [The marketing was an] *electronic billboard at the entrance (2m high) playing a 6 second video of Tooheys New beer commercial continuously.*
  - *Such advertising I have no issue with at appropriate times of the day. However, the promotion of such products (given the significant health, social and economic harms that is incurred due to alcohol) where children are exposed to, and potentially influenced by, is not appropriate nor acceptable. Not even sure how this is even legal.*

## 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 11 May 2023. The principal comments made by the Company were:

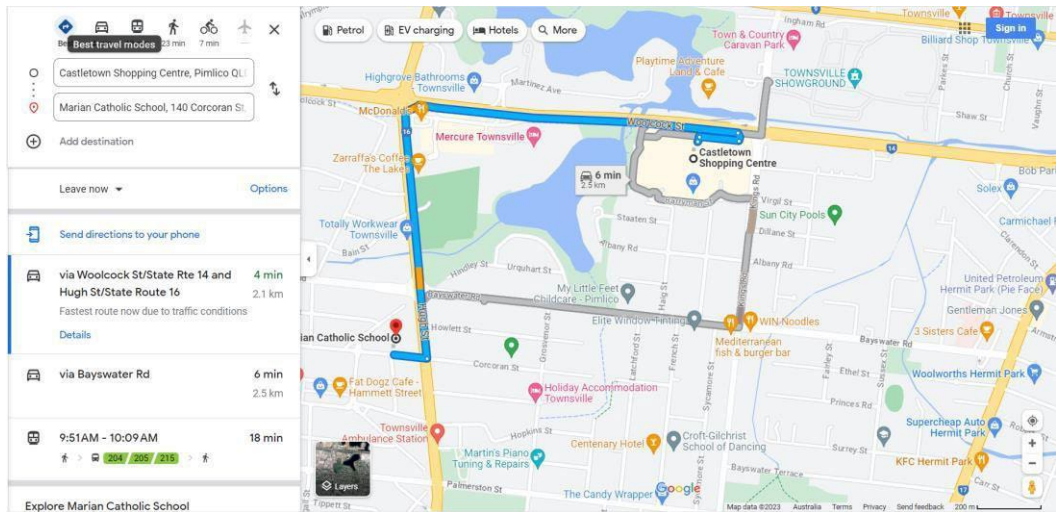
- Thank you for raising this complaint and providing the opportunity for us to respond to the issues raised by the complainant. Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously.
- For 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.

### **AAPS Approval**

- Yes – all options that could've been used in the Advertisement were submitted for review through the Alcohol Advertising Pre-Vetting Service (AAPS) and received the enclosed certificates of final approval (AAPS Approval No. 5017, 5020, 5652, 5653 and 5673).

### **Placement Rules**

- For the following reasons, we do not consider that the Advertisement breaches Part 3(b)(iv) of the ABAC Code:
  - the Advertisement was placed at Castletown Shopping Centre in Pimlico / Townsville, which is 2.1 kilometres away by car (and 850m away directly) from Marion Catholic School, the nearest school:



- irrespective of whether the Advertisement was visible from outside the Shopping Centre, the location is considerably more than 150 meters away from the nearest school and we respectfully submit that there has been no breach of the Outdoor Media Association Placement Policy, and therefore the Placement Rules under Part 3(b)(iv) of the ABAC Code.
- 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

15. The Castletown shopping centre is located within the Townsville suburb of Pimlico. Within the shopping centre there are electronic billboards, and this determination concerns the use of a billboard to screen an ad for Tooheys New beer.
16. The point made by the complainant is not about the content of the marketing, but about its placement. It is contended that alcohol ads should not be permitted in shopping centres where minors will be exposed to them. This brings into play the ABAC Placement Rules which have the policy aim that, to the extent possible, alcohol advertising should be directed towards adult audiences and away from minors.
17. The Placement Rules recognise that different mediums used to carry marketing have quite different technical capability to target audiences. Digital media such as social media platforms e.g. Facebook and Instagram can effectively exclude minors from receiving alcohol communications. For free to air television, there are time of day restrictions on when alcohol ads can be shown. The ability to restrict minors from seeing ads placed on billboards is much more limited.

18. There is a restriction on alcohol ads being placed on billboards positioned within 150m sightline of a primary or secondary school. There is however no restriction as such on billboards within a shopping centre carrying an alcohol ad. Further it is common for alcohol retailers to be located within shopping centres, with Castletown having a BWS outlet. Presumably this store has signage and advertising which is visible to passing shoppers in the centre.
19. So, while the Panel acknowledges the point the complainant has made, there is no breach of the ABAC by the playing of an alcohol ad on the billboard within the shopping centre.
20. On this basis, the complaint is dismissed.