



ABAC Adjudication Panel Determination No 102/23

Product: BWS
Company: Endeavour Group
Media: Digital – YouTube and Twitch.tv
Date of decision: 31 July 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 21 June 2023 in relation to digital marketing for BWS (“the Product”) by Endeavour Group (“the Company”) on YouTube and Twitch.tv.
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 21 June 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 (Approval Number 5867).

The Placement

10. The complaint relates to alcohol marketing placed on YouTube and Twitch.tv, in particular with Minecraft gaming content.

Complaint

11. The complainant objects to the marketing as follows:
 - *I object to advertisements from a single brand being constantly pushed upon myself, especially alcohol related adverts. This specific run of ads has been the only advertisements I have seen recently, with up to five BWS adverts being run consecutively at a time.*
 - *I find that it is offensive to push adverts for a product that has immeasurably destroyed many Australian and worldwide communities. It also goes against having a competitive market as it is the only advert being presented.*
 - *To also allow alcoholic beverage ads on both Twitch and YouTube actually breaks the ABAC Responsible Alcohol Marketing Code Part 3.b Responsibility toward Minors - as it is the responsibility of the Marketer 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); which it does not.*
 - *I have noticed a prevalence of them particularly when viewing gaming content like Minecraft which is a game that has a large younger audience. Many creators I watch also advertise as family friendly content creators, in which they refrain from mature content, offensive language, gambling and other illicit activities.*

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 Response

14. The Company responded to the complaint by letter emailed on 19 July 2023. Its primary comments 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.

Alcohol Advertising Pre-vetting Service Approval

- BWS received Alcohol Advertising Pre-Vetting Service Final Approval (Final Approval) for the Advertisement on 28 April 2023, pursuant to approval number 5867.

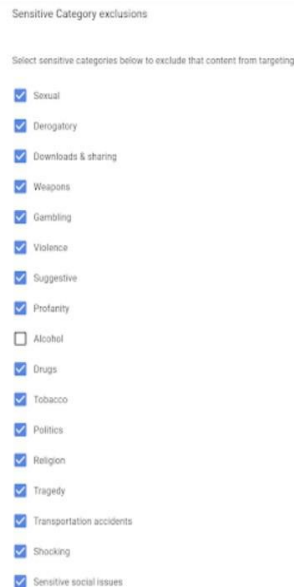
Responsibility toward Minors

Available Age Restriction Controls

- YouTube and Twitch.tv each have Available Age Restriction controls which can be utilised to exclude Minors from viewing the Advertisement.
- These controls include the following:
 - Twitch.tv: An advertiser can target activity to people 18+ as well as time-target the advertisements. We are instructed that the targeting is

probabilistic but derived from both first party (for those who have signed up) and 3rd party (Nielsen DCP, GWI) data sources. This informs how the platform is able to apply a combination of time-targeting and contextual environments for the parameters to be applied. The contextual and age indicators are based on content consumed and are curated/segmented using sampled data and modelled from deterministic 3rd party data providers, and assigned based on confidence levels of where each age range indexes against consumption of the content.

- YouTube: Similar to Twitch.tv, an advertiser can target its ads to people within a specific age range (ie, 18+). In addition, advertisers can employ additional brand safety targeting measures which allow the advertiser to opt out of showing its ads alongside certain categories.
- In this case, all the controls set out above were applied to the Advertisement. In particular:
 - Twitch.tv: The Advertisement was targeted to people 18+ and time-targeted to between 9pm and 6am.
 - YouTube: The Advertisement was targeted to 18+ and excluded from content directed to 'teens and older audiences' as well as content inappropriately categorised as per the below screenshot.



Audience Composition Data

- Audience composition data is not applicable. As noted in our response above, YouTube and Twitch.tv each have Available Age Restriction controls which were implemented in relation to the Advertisement.

Programs or content primarily aimed at Minors

- We understand that the Advertisement was placed amongst Minecraft content and that Minecraft is popular with Minors. We also understand that the Panel's usual approach in such circumstances is to make a "no fault" breach finding. However we would strongly recommend that this practice be reviewed in circumstances like this where the breach only arises because of third party actions that circumvent applicable age restriction controls and/or requirements of the relevant platform. Namely where:
 - content creators and the relevant platforms have not appropriately tagged/ categorised the content;
 - users may have registered an account with an inaccurate date of birth; or users may have logged into another person's account (e.g. a Minor logging into a parent's account). We query how this would be different to a child staying up late at night and seeing an alcohol advertisement on TV.
- BWS does not seek to diminish the Complainant's concerns, however we feel the appropriate actions were taken to market the Advertisement consistently with BWS's obligations under the Code.

The Panel's View

Introduction

15. This determination has arisen from a complaint about marketing for BWS seen on both YouTube and Twitch.tv. The concerns expressed are twofold. Firstly the complainant argues that the BWS ad is shown repeatedly and this sheer volume is offensive given the harm alcohol can cause. Secondly it is contended that alcohol advertising should not be placed on YouTube and Twitch.tv as the platforms have less than 75% adult audiences. It was also noted the ad was seen while viewing gaming content such as Minecraft which is popular with minors.
16. On the first concern regarding the frequency of the screening of the ad, the ABAC does not purport to regulate this aspect of alcohol marketing. The Australian Communications and Media Authority (ACMA) has some requirements on the number of advertisements that can be screened on free to air TV each hour, but there does not appear to be any direct regulation of the volume of marketing placed on online or social media platforms. Further the regulation that does go to volume on free to air TV does not limit a single ad being shown repeatedly.

17. The second aspect of the complaint does raise issues under the ABAC. A core policy aim of the ABAC Scheme is that alcohol marketing should not have strong or evident appeal to minors. This aim is progressed by a standard going to the content of alcohol ads and secondly rules that seek to have alcohol ads placed where they will have an adult audience and to the extent possible, will not be seen by minors.

The Placement Rules

18. The ABAC Placement Rules consist of five separate, but interrelated obligations imposed on alcohol marketers:
- Rule 1 - the placement of marketing must comply with codes published by the Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy);
 - Rule 2 - available age restriction controls are used by the marketer to exclude minors from viewing alcohol marketing;
 - Rule 3 - if a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding minors, then alcohol marketing may only be placed where the audience is reasonably expected to comprise 75% adults;
 - Rule 4 - irrespective of the utilisation of available age restriction controls and the expected audience, alcohol marketing must not be placed with programs or content primarily aimed at minors; and
 - Rule 5 – a marketing communication must not be sent to a minor via electronic direct mail.
19. The complainant contends that the audience of material on YouTube and Twitch.tv would be over 25% minors and Placement Rule 3 would be breached. Further it is noted the ads were seen with content such as the game Minecraft and this content is popular with minors.
20. The second and third Placement Rules are related. Rule 2 requires the use of Available Age Restriction Controls, the Code definition of which refers to “age restriction, targeting or affirmation technologies available...” This means for social media platforms such as YouTube and Twitch.tv, the primary obligation for an alcohol marketer is to use age restriction controls, and for the technical operation of the controls to exclude minors from being served with alcohol marketing.
21. Rule 3 does most work when there are no age restriction controls, such as when accessing broadcast media such as free to air TV or public radio. Both

YouTube and Twitch.tv have age restriction controls, so the obligation of the Company is to have applied these controls.

22. In relation to Placement Rule 2, the Company has advised that:
 - YouTube and Twitch.tv each have Available Age Restriction controls which can be utilised to exclude minors from viewing the Advertisement.
 - Twitch.tv: The advertisement was targeted to people 18+ and time-targeted to between 9pm and 6am.
 - YouTube: The advertisement was targeted to 18+.
23. The age restriction controls of the platforms are robust. Further the platforms collect considerable data on their users and are able to identify which users have been served individual advertisements. While this does pose some broader public policy questions about personal privacy, it does enable checks to be done if a concern is raised about a person under 18 being served with an alcohol ad if accessing social media via an account held in the name of a minor.
24. In the current case, the complainant does not allege that the BWS ads were served over the account of a particular minor using the social media platforms but that the general audience of the platforms makes them unsuitable for alcohol marketing. The ABAC obligation does not prohibit any particular media platform from carrying marketing and in reality a platform like YouTube comprises an enormous volume of content some of which is directed towards minors and much which is clearly adult in nature. Further each account holder receives a curated feed of material which is dependent on the operation of the platform's algorithm. Further at a high level, public data indicates the actual overall audience of both YouTube and Twitch.tv exceeds the 75% adult benchmark.
25. Drawing this together, there has been no breach of the ABAC obligations by the Company simply using YouTube and Twitch.tv as a platform over which its ads have been served. The use of the age restriction controls should see ads only being served to registered adult users of the platforms.
26. The complainant also noted that the ads were seen with gaming content such as Minecraft. The Company did not dispute that the ad might have been placed with content such as Minecraft, but contends the ads would not have been seen by minors if:
 - a minor was accessing the sites via their own account ie not using an account held in the name of an adult; or

- content creators and the platforms have appropriately tagged/categorised the content.
27. Essentially the Company is arguing it has taken the steps available to it to restrict minors from seeing the ads, and if a minor does see an ad while on YouTube or Twitch.tv, then this must arise from actions or failures outside the reasonable control of the Company.
 28. Minecraft is one of the world's most successful video games. It is popular across age groups and is played and would be recognised by many children. While it is a more balanced question as to whether the game can be said to be aimed primarily at minors (for instance the game's owners' note the 'average' Minecraft player is a 24 year old male), the game certainly has strong appeal to minors.
 29. It is not possible without further information to determine if Placement Rule 4 has been breached. To assess this question it would be needed to know the actual content the ads were placed with and the circumstances by which the ads came to been seen with the content e.g. how was the content categorised by the platform over which it was served and was the categorisation accurate so that alcohol marketing should not have been placed with the content due to it being primarily aimed at minors.

Conclusion

30. It is acknowledged that the complainant has raised genuine points about the obligations to market alcohol responsibly. The frequency of alcohol ads (and competition issues) are outside the ABAC remit. Alcohol ads should not be directed towards minors, and the ABAC Placement Rules lay out requirements to further that policy aim. The Rules however do not preclude marketing over social media platforms provided age restrictions are used to exclude minors from receiving the ads.
31. The 75% adult audience requirement applies when there are no available age restriction controls. In any event, the overall demographic profile of both YouTube and Twitch.tv exceeds 75% adult, although that of itself is not greatly helpful as the content on the platforms varies considerably from material that is clearly targeted at minors and other content which is clearly adult in nature. It seems the Company met its obligations and used available age restriction controls, and the complaint does not suggest that the content was served to a specific individual under the age of 18 as such.
32. Alcohol marketers also have an obligation to not place ads with content or programs that are aimed primarily at minors. In the present case, more detailed information would be needed to properly assess this although the Company contends if material is properly categorised, its instructions as to where its ads

where to be served would have avoided placement with material primarily aimed at minors.

33. The complaint is dismissed.