



## ABAC Adjudication Panel Determination No 171/23

**Product:** Monkey Shoulder Whisky  
**Company:** William Grant & Sons  
**Media:** Outdoor Billboard - Bus  
**Date of decision:** 7 December 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 26 October 2023 in relation to outdoor marketing for Monkey Shoulder Whisky (“the product”) by William Grant & Sons (“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 26 October 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 6990).

## The Marketing Placement

10. The complaint relates to marketing for Monkey Shoulder Whisky on a bus:



## Complaint

11. The complainant objects to the marketing as follows:
- *The designated school bus (592n) had a full wrap around advertisement for whiskey - a drink that is 40% alcohol.*
  - *It is outrageous that school children are exposed to this type advertising - let alone on the very bus they take to and from school. Marketing is very influential.*
  - *The colour and imagery (cute monkey cartoons) used would be very appealing to children.*

## The ABAC Code

14. Part 3 (b) of the Code provides that a Marketing Communication must NOT:

- (i) have Strong or Evident Appeal to Minors, in particular;
  - (A) specifically target Minors;
  - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
  - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
  - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
  - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

15. Part 4 of the Code provides that:

- (a) An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing and an Alcohol Alternative Marketing Communication must comply with code provisions regulating the placement of Alcohol Alternative marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).

## The Company Response

16. The Company responded to the complaint by email on 1 November 2023 and further by letter emailed on 10 November 2023. The principal comments made by the Company were:

### Placement of the marketing

- We have conducted a review with our media agency iProspect (iPro) and their supplier JCDecaux's (JCD)
- Our aim is to ensure that we have followed all appropriate guidelines to code.
- The first of these being creative vetting through ABAC which has been completed / compliant (6990) on 4/09/2023.
- The information below confirms that we have followed all necessary guidelines to code.

### In summary and from the investigation and process to date:

- The issue appears to have been a result of the Bus Operator making the wrong decision at depot.
- WG&S have advertised in a placement that we are allowed to take up as per current guidelines.
- WG&S and their agencies have done the proper due diligence in booking alcohol compliant placements, but the issue arises at the depot level where there is a lack of operational control.
- While all reasonable measures are taken to avoid this (and it's not a common occurrence with many alcohol advertisers using the space), the bus operators' system for allocating buses and routes is based on factors ultimately outside our control.

### Some detail on the implementation:

- iProspect, working with our media partners (JCD), has planned the campaign using alcohol compliant placements.
- In addition to specifically seeking out alcohol compliant packs in fixed OOH placements, iProspect utilises the OMA's MOVE tool to check schedules shared with us and have flagged and rejected any instances where a site appeared outside compliance.

- iProspect have only purchased sites and placements that have been designated as alcohol compliant.
- The vast majority of the audience for JCDecaux's TRANSIT product is significantly made up of adults.
- This means that advertising on buses meets the ABAC Code overall.
- While JCD does ask bus operator partners not to display alcohol advertising on a school bus there is no way to provide a 100% guarantee.
- Bus operators ultimately prioritise the efficient operation of their bus fleet to ensure customer safety and efficiency and JCD does not have control of operations at the depots.
- Alcohol clients regularly advertise on buses – JCD has had at least 20 brands do so in the last 9 months within the same parameters as above.

Further action taken post the incident:

- The current bus schedule is set to run until 19 November.
- JCD has spoken to the operator (who is now aware of the issue) and the operator will avoid scheduling the bus on school routes / as a school bus.
- As above, they cannot issue a 100% guarantee – but we believe that this was an isolated incident and are satisfied that it has been addressed at source.

**Content of the marketing**

- The core orange colour and monkey iconography are a literal representation of the Monkey Shoulder brand and trademark used both domestically and globally.
- The colour scheme and iconography have precedence of ABAC approved use within advertising campaigns from 2021, 2022 and in the current 2023 campaign.
- Current creative/media was booked within alcohol compliant channels and placements.
- In summary, WG&S do not believe the creative in question breaches Part 4 (a) or Part 3 (b)(i) of the Code.

## **The Panel's View**

17. This determination arises from a complaint about the content of marketing for Monkey Shoulder Whisky, as well as its placement on a bus that was used for a school run. The complainant's specific concerns are:
  - It is outrageous that school children are exposed to this type advertising - let alone on the very bus they take to and from school. Marketing is very influential; and
  - The colour and imagery (cute monkey cartoons) used would be very appealing to children.
18. The ABAC Code 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.

## **The ABAC Placement Standards**

19. The ABAC Placement Standards require that marketing be directed towards adults and to the extent possible away from minors. The standard in part 4 (a) incorporates into the Code the requirements contained in media industry body guidelines including the Outdoor Media Association Placement Policy. This Policy in turn provides that alcohol advertising is not to be placed on signs located within 150 metres sightline from the boundary of a school.
20. The Policy however expressly provides that it does not apply to 'transit advertising' which includes buses, trains, trams and taxis. The result is the somewhat incongruous outcome that an alcohol ad cannot be placed on a bus shelter shed outside a school but it does not prohibit a bus carrying alcohol advertising being used on a run that has it servicing the bus stop outside the school.
21. The Panel has previously identified this undesirable outcome in earlier determinations. The explanation offered has been similar to that provided by the Company in this case, namely:
  - the Company's booking agency seeks to have the bus advertising placed on vehicles which are not used for school bus runs;
  - while in most instances this outcome is achieved, on rare occasions the operational requirements of the bus company means a bus with alcohol advertising is obliged to be used on a school run e.g. if the usual designated bus to do the run is undergoing unexpected maintenance;

- the Company and its booking agency do not have operational control of the buses and the bus operator will prioritise customer safety and efficiency;
  - in this particular case it seems the bus operator made a mistake at its depot.
22. The Panel fully accepts the concern expressed by the complainant on alcohol advertising irrespective of its content being placed on a bus used to service a school run. However, this occurrence is not a breach of the Outdoor Media Association Alcohol Policy and hence there is also no breach of the ABAC Placement Standards.

### **The ABAC Content Standards**

23. The complainant's second concern is that the advertising itself will appeal to children due to being bright orange and including cute monkeys. This raises Part 3 (b)(i) of the Code, which requires that an alcohol marketing communication must not have strong or evident appeal to minors. This might occur if the marketing:
- specifically targets minors;
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
  - uses imagery, designs, motifs, language, activities, interactive games, animations, or cartoon characters that are likely to appeal strongly to minors; or
  - creates confusion with confectionery, soft drinks or similar products, such that the marketing communication is likely to appeal strongly to minors.
24. 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.
25. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;



- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors;
- language and methods of expression used more by minors than adults;
- inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
- use of a music genre and artists featuring in youth culture.

26. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.

27. The ad has a bright orange background, and features repeated images of orange fruit slices, ice cubes and a side profile of three black monkeys. A bottle of Monkey Shoulder Whisky is shown on both sides of the bus. At the back of the left side of the bus, a tall glass of what is presumably Monkey Shoulder Whisky is shown, with a slice of orange in the top. Surrounding the front wheel arch on the right side of the bus is a top view of a record on a turntable. There is a hand on the record, along with the words 'Made for Mixing' in a relatively large white font. Around the rear wheel arch the advertisement depicts two ice cubes and a slice of orange in the top of a glass with swirling contents, that are splashing out of the glass.

28. The Company contends the ad is consistent with the ABAC standard, arguing that:

- the core orange colour and monkey iconography are a representation of the Monkey Shoulder brand and trademark used both domestically and globally; and
- it does not believe that it has strong or evident appeal to minors.

29. The Panel does not believe that the marketing breaches the Part 3 (b)(i) standard after taking the following into consideration:
- the monkeys depicted do not resemble any well-known children's characters and are not of themselves likely to have strong or evident appeal to minors:
    - their side profile is shown meaning they are not making eye contact with the viewer;
    - no facial expression can be seen;
    - they are entirely black; and
    - they are similarly depicted as sitting quietly, rather than engaging in any activity.
  - records on a turntable and mixing are more likely to resonate to older generations, rather than minors;
  - while the ad uses a bold colour there are no characters or themes that could be said to be particularly engaging to minors; and
  - taken as a whole the Panel does not believe the ad has strong appeal to under 18 year olds.
30. The complaint is dismissed.