



ABAC Adjudication Panel Determination No 9/24

Product: Squealing Pig
Company: Treasury Wine Estate
Media: Digital TV
Date of decision: 6 February 2024
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 10 January 2024 in relation to advertising for Squealing Pig (“the product”) by Treasury Wine Estate (“the Company”), seen when watching Pagan Peak on SBS On Demand.
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 10 January 2024.
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 complaints were completed in this timeframe.

Pre-vetting Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the placement of the marketing.

The Marketing Placement and Complaint

10. The complaint relates to the placement of the advertisement on SBS On Demand during Pagan Peak, when minors may be watching.

The ABAC Code

11. Part 4 of the Code provides that:

...

- (b) Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.
- (c) If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults (based on reliable, up-to-date Australian audience composition or social media follower data, if such data is available).
- (d) An Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication must not be placed with programs or content primarily aimed at Minors.

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The Company Response

12. The Company responded to the complaints by letter emailed on 25 January 2024. Its primary comments were:
- TWE is committed to the ABAC Scheme and takes its obligations to responsibly promote its products very seriously. For the reasons set out below, TWE submits there has been no breach by TWE of Part 3(b)(i) or Part 4 of the ABAC Responsible Alcohol Marketing Code (ABAC Code) and accordingly, requests that the Complaint be dismissed by the Panel.
 - TWE periodically partners with SBS to broadcast advertisements only for the SBS On-Demand environment, as the relevant audience is comprised of a higher percentage of adults than free-to-air television and is therefore more suitable for TWE's campaigns. As part of the process of launching a new TVC campaign, TWE provides mandatory targeting parameters to SBS prior to launch. For this Advertisement, TWE specified the following parameters:
 - over 18 years of age;
 - exclude content aimed primarily at children;
 - exclude livestreams, including sport; and
 - excluded any content SBS deems to contain more adult and/or sensitive topics, for example, programs that involve illegal drugs or alcohol addiction.
 - It is TWE's view that the Advertisement complies with the Placement Standards for the following reasons:
 - TWE directly communicated to SBS specific targeting parameters for the Advertisement, which included a restriction for viewers to be above 18 years of age;
 - To access SBS On-Demand content, users are required to set up a SBS On-Demand account whereby user's must provide their date of birth, which then allows advertising on the platform to be restricted based on the age of users. SBS has further confirmed that the age restriction control was applied from the time the Advertisement went live;
 - Pagan Peak is a German-language crime thriller series (rated MA15+) which includes themes of murder, serial killers, violence, torture, and other illegal activity. Therefore, the series is more likely to have a predominantly adult audience. Based on internal

research, IMDB suggests that the series genre is classified as crime, drama, mystery and thriller, which are all more mature themes and would not ordinarily be of particular appeal to minors;

- SBS has also confirmed that the audience composition for Pagan Peak on SBS On-Demand across December 2023 was approximately 89.5% adults (over the age of 18 years); and
- In addition to the above, SBS has provided data which demonstrated that 97% of impressions for Advertisements to date have been delivered to people over the age of 35 years, noting the age control limits have been applied from the beginning.
- The placement of the Advertisement during a screening of the Pagan Peak series on SBS On Demand did not breach of Part 4 of the ABAC Code as appropriate age restriction controls were in place at all times, the audience could not reasonably be expected to comprise less than 80% Adults, and Pagan Peak is a series that is unlikely to have strong or evident appeal to those under 18 years of age.
- The expected audience composition data received for Pagan Peak on Broadcast Video On Demand is approximately 89.5% adults (over the age of 18 years). The series did not play on any linear or Free-To-Air channels.
- Further to the above, the Advertisement is not currently running on any free-to-air television channels. SBS has now also applied time-parting to the Advertisement, which was a requirement of TWE's original brief to SBS but was inadvertently overlooked by SBS at the time of the first broadcast on 8 January 2024. This error was identified on 11 January 2024, and was immediately rectified by SBS at TWE's request.
- TWE understands that under ABAC's revised Responsible Digital Marketing Guidelines, connected television advertisements should not be screened before 12 noon. As a result of this, our time parting restrictions for CTV have been updated as follows: between Monday and Wednesday from 12pm to 5am, and between Thursday and Sunday from 6pm to 5am.
- As a responsible marketer, TWE has demonstrated a long-standing commitment to upholding both the letter and the spirit of the ABAC Code, including by actively engaging in the pre-vetting process on a regular basis. TWE also maintains strict internal and external processes, including internal guidelines (in the form of a detailed marketing checklist, Responsible Marketing Handbook and Guidelines which all specifically refer to the Code) to assist our marketing and communication teams to develop campaigns that strictly adhere to the requirements of the Code. These teams are also trained regularly on the responsible marketing of alcohol.

The Panel's View

13. This determination arises from a complaint about the placement of an advertisement for Squealing Pig Wine accessed on SBS On Demand while the complainant was watching the program Pagan Peak. The concern expressed by the complainant is that minors may be watching the program at the time the ad was seen.
14. The ABAC consists of both Content Standards and Placement Standards. The policy aim of the Placement Standards is that alcohol marketing should, to the extent possible, be directed towards adults and away from minors. It seeks to achieve this aim by creating a cascading series of requirements on alcohol companies to utilise the technical capacity of the mediums by which marketing communications are carried to direct the marketing to adults.
15. SBS On Demand is a digital TV platform. Programs available on the platform include shows that were broadcast over SBS's free to air primary channels and other programming only available via the On Demand platform. The Company advises that the German language program Pagan Peak was not shown on free to air channels but is only accessible via the On Demand service.
16. The ABAC Placement Standards applicable to marketing carried over digital TV platforms are as follows:
 - Available age restriction controls must be applied to exclude minors from viewing an alcohol marketing communication and an alcohol alternative marketing communication – Part 4 (b).
 - If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding minors from the audience, an alcohol marketing communication... may only be placed where the audience is reasonably expected to comprise at least 80% adults (based on reliable, up-to-date Australian audience composition, if such data is available) – Part 4 (c).
 - An alcohol marketing communication and an alcohol alternative marketing communication must not be placed with programs or content primarily aimed at minors – Part 4 (d).
17. In response to the complaint, the Company has advised that:
 - To access SBS On-Demand content, users are required to set up a SBS On-Demand account whereby user's must provide their date of birth, which then allows advertising on the platform to be restricted based on the age of users. SBS has confirmed that the age restriction control was applied from the time the advertisement went live;

- the audience composition data received for Pagan Peak on Broadcast Video On Demand is approximately 89.5% adults (over the age of 18 years); and
 - Pagan Peak contains more mature themes that would not ordinarily be of particular appeal to minors.
18. The standard in Part 4 (b) requires that age restriction controls should be used when available. The complainant accessed the program via SBS On Demand and this service does have an age restriction capacity. This arises because SBS On Demand requires an account to be opened and the account holder to provide a date of birth. With this information, both SBS and alcohol marketers can exclude account holders aged under 18 years old from being served alcohol ads. The Company confirmed this facility was used for their advertising.
19. It is fair to say that the impact of Part 4 (b) is more meaningful when social media is accessed via internet-connected devices such as smartphones 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.
20. When watching TV at home, 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. This reduces the practical effectiveness of the age restriction controls, but the available controls were applied by the Company and hence the Part 4 (b) standard has not been breached.
21. The standard in Part 4 (c) goes to the expected audience of a program. It provides that an alcohol ad may only be placed where the audience is reasonably expected to comprise at least 80% adults. It is possible to assess the 'reasonably expected' audience of TV programs through the ratings system and the Company has supplied ratings data.
22. This data shows that the audience for Pagan Peak on SBS On Demand exceeds the 80% adult benchmark. In fact it seems the vast majority of the audience seeing the ad were adults aged over 35. On this basis, Part 4 (c) has not been breached.
23. The standard in Part 4 (d) goes to the content of programs and raises the question of whether Pagan Peak 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.

24. The Panel is of the view that placement of alcohol advertising with Pagan Peak would not breach Part 4 (d) after considering that:

- Pagan Peak is an Austrian-German television crime drama series, with a MA15+ rating, indicating that it contains adult themes, language and potentially violence and the portrayal of sexuality;
- it is in German, with English subtitles, therefore is less likely to attract and retain the attention of minors; and
- the central characters are adults, and the actors are not recognised as children's entertainers in Australia;

25. Drawing all this together, there has not been a breach of the ABAC Placement Standards by showing the ad with Pagan Peak via SBS On Demand given:

- the age restriction controls available on SBS On Demand were utilised to exclude account holders who are minors from being served with alcohol ads;
- the audience for Pagan Peak fell comfortably over the 80% adult requirement of the Placement Standards; and
- Pagan Peak cannot be said to be primarily aimed at minors.

26. The complaint is dismissed.