



ABAC Adjudication Panel Determination Nos 90 & 98/24

Products:	Dan Murphy's and Hard Rated
Company:	Endeavour Group and Carlton & United Breweries
Media:	Outdoor Billboards
Date of decision:	22 July 2024
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 two complaints received on 18 June and 2 July 2024. The first complaint relates to advertising for Dan Murphy's on the outside of a phone box by the Endeavour Group, while the second complaint relates to the placement of a poster advertising Hard Rated by Carlton & United Breweries at Sydney's Central Station.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 18 June and 10 July 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 obtained for the content but not the placement of the marketing items.

The Marketing

10. The first complaint relates to advertising on the outside of a phone box near a children's play area at Nicholson Street, Footscray, Melbourne:





11. The second complaint relates to a billboard advertising Hard Rated placed at Sydney's Central Station in a tunnel near Devonshire Street.

Complaint

12. The first complainant objects to the Dan Murphy's marketing as follows:
 - *The Dan Murphy's ad was placed on a Telstra phone/wifi box right next to a play area at Nicholson Street, Footscray.*
 - *The ad was in full view from the slide and play area filled with young children and teens while I was visiting on Saturday afternoon.*
13. The second complainant objects to the Hard Rated marketing as follows:
 - *A large billboard advertising this product is at Central Station, near the tunnel.*
 - *This tunnel is frequented by uni students going to UTS and Sydney Uni.*
 - *It's also the thoroughfare of a lot of school students including all students going to Sydney Boys and Girls, inner Sydney and International Grammar School where my daughter goes.*
 - *Loads of youth frequent this area and the ad is not appropriate for them under the advertising to youth laws.*

The ABAC Code

14. 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 Responses

15. **Endeavour Group** responded to the complaint by letter emailed on 28 June 2024. Its primary comments were:
- Dan Murphy's thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. Dan Murphy's understands that the Panel is considering whether or not the Advertisement breaches Part 4(a) of the ABAC Responsible Alcohol Marketing Code (the Code).
 - Dan Murphy's has a media agreement with Carat Australia Media Services Pty Ltd ABN 37 081 739 979 (Media Agency) (the Agreement) which governs the supply of certain media services to Dan Murphy's. Pursuant to the Agreement:
 - the Media Agency provides certain services to Dan Murphy's, including identifying media opportunities and master media buying and planning services;
 - the Media Agency is responsible for arranging the placement of Advertising Materials, which includes material that advertises, promotes or communicates Dan Murphy's, such as the Advertisement;
 - Dan Murphy's is ultimately responsible for the content of the Advertising Materials, however;
 - the Media Agency must ensure that the Advertising Materials comply with all laws and self-regulatory codes in Australia, including (but not limited to), the Code and the Outdoor Media Association (OMA) advertising codes of practice;

- more generally, the Media Agency must comply with all laws and self-regulatory codes of conduct related to the provision of the services under the Agreement.
- For the purposes of the Complaint, Dan Murphy's notes that the Media Agency was responsible for the placement of the Advertisement in accordance with the Agreement. The Media Agency, with the consent of Dan Murphy's, subcontracted the placement of the Advertisement to a third party marketing service provider (Media Provider).
- At the outset, we would like to note that upon receiving notice of the Complaint, Dan Murphy's instructed the Media Agency to arrange removal of the Advertisement. We confirm that removal of the Advertisement was completed on 19 June 2024.
- Dan Murphy's submits the following:
 - Dan Murphy's as part of Endeavour Group, is committed to maintaining its 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 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.
 - The importance of ensuring all necessary marketing communications (involving the Dan Murphy's brand name or logo) are reviewed from a Code compliance perspective (and pre-vetted where appropriate), has been reinforced with the marketing team, even in circumstances where that material is controlled by a third party.
 - Furthermore, Dan Murphy's 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 Dan Murphy's with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.
 - We confirm that the content of the Advertisement received Alcohol Advertising Pre-Vetting Service Approval (Pre-Vetting Approval) on 20 May 2024 pursuant to approval number 9169.
 - The Advertisement did not receive Pre-Vetting Approval in respect of its placement on the basis that placement of the Advertisement was determined by the Media Agency and the Media Provider.
- Dan Murphy's submits the following:
 - Part 4 of the Code prohibits a marketing communication from being directed at minors through a breach of any of the placement rules. In particular, Part 4(a) of the Code, requires that 'an Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing...that have been published by Australian media industry bodies (for example ... Outdoor Media Association Placement Policy).' The relevant provision of the OMA Placement Policy is that 'OMA members will not advertise alcohol products ... within a 150 metre sightline from the boundary of a school' (OMA Placement Policy, section 3.1).
 - As previously mentioned, the Media Agency and Media Provider were responsible for selecting the placement of the Advertisement. Dan Murphy's, having worked with the Media Agency on numerous occasions, can confirm that the Media Agency is fully aware of the Code's placement rules and ensures that all Advertising placements are in accordance with the Code.
 - Since being made aware of the Complaint, Dan Murphy's has consulted the Media Agency to understand the measures that were in place to ensure this particular Advertisement was placed in compliance with the Code.
 - We have been instructed that when deciding on sites for alcohol advertising, the Media Provider provides the Media Agency access to the Measurement of Outdoor Visibility and Exposure (MOVE) tool, which sets out advertising constraints of each site based on laws and self-regulatory codes, including the OMA Placement Policy.

- MOVE is owned by OMA and “is Australia’s premier quantitative audience measurement currency for Out of Home (OOH) advertising” used by media companies throughout Australia. The Media Agency has again inspected the constraints recorded by MOVE against the relevant Advertisement and has verified that there are no constraints in relation to alcohol advertising for this particular site.
 - The Media Agency confirms that should MOVE identify constraints on alcohol advertising for any selected sites, the placement booking does not proceed.
 - Importantly, Dan Murphy’s submits that the Advertisement being placed in a pedestrian shopping mall is not in breach of the Code or the OMA Policy as the Advertisement was not within 150 metres line of sight of a school. In particular, the nearest school, Footscray High School - Barkly Campus, is approximately 550 metres away from the Advertisement.
 - Nevertheless, although placement does not breach the Code or the OMA Policy, Dan Murphy’s is committed to upholding its high standards of responsible advertising and acknowledges that the complainant has raised a legitimate concern. As mentioned above, upon receiving notice of the Complaint on 19 June, Dan Murphy’s promptly ensured that the Advertisement was removed and this was completed later the same day.
- In view of the above, Dan Murphy’s respectfully submits that there is no breach of the Code as the Advertisement was not placed within 150 metres line of sight of a school for the purposes of the OMA Policy and therefore does not breach any placement rules.
 - Notwithstanding this, Dan Murphy’s does not seek to diminish the concerns of the complainant and would like to reiterate that we take our responsibility as an industry leader in the responsible service and marketing of alcohol incredibly seriously.
16. **Carlton & United Breweries** responded to the complaint by letter emailed on 4 July 2024. Its primary comments were:
- Thank you for your recent correspondence in relation to a complaint with reference number 98/24, and for the opportunity to respond.
 - Carlton & United Breweries (CUB) takes responsible advertising of alcohol seriously. We are aware of the Code requirements and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines.

- The Hard Rated billboard was submitted for pre-vetting under application number 06732-2023 and approved on 3 June 2024 (approval no. 9321).
- The placement of the Hard Rated billboards does not breach any codes or guidelines and is compliant with the ABAC standard.
- As part of our commitment to responsible advertising and compliance with the Code, it is our policy to only place alcohol advertising content in areas where an audience is reasonably expected to comprise at least 80% Adults.
- The applicable code for this outdoor advertisement is the Outdoor Media Association's Alcohol Advertising Policy. The Guidelines provide that alcohol advertising is not to be placed on signs located within a 150 metre sightline from the boundary of a school. Central Station is not within 150 metres of a school.
- We work closely with our media agencies to ensure that they understand the requirements of the Code and confirm their commitment to it. Our media agency, PHD, ensures that all sites chosen follow the requirements of the Code and the Outdoor Media Association's Alcohol Advertising Policy.
- CUB is committed to ensuring our promotional and marketing material, and that of our associated entities, does not promote or encourage any irresponsible or illegal consumption of alcohol. Our goal is for adults to enjoy our products responsibly and in moderation. Accordingly, we have taken all reasonable precautions to ensure that the marketing material produced is in compliance with the ABAC standard.

The Panel's View

Introduction

17. This determination considers the regulatory regime that covers the advertising of alcohol via outdoor or Out Of Home (OOH) sites. As will be explained, the two examples of OOH advertising raised in the two complaints do not breach the requirements of the Outdoor Media Association (OMA) Placement Policies and as a result the ABAC Placement Standards have also not been breached.
18. The two OOH sites raised in the complaints are:
 - a poster for the alcohol retailer Dan Murphy's placed on a public telephone box in the near vicinity of a children's playground in Footscray Melbourne; and

- a billboard for the product Hard Rated placed at one of the entrances of Sydney's Central Railway Station.
19. In both cases, the complainants contend the location of the advertising means it will be viewed by a large number of young children and/or school aged minors. It is argued this is inappropriate for alcohol marketing.
20. Recently the Panel considered the regulatory regime that governs alcohol marketing on OOH sites in Determination 78/24. The following explanation of the regime is drawn from that determination and is structured as follows:
- OMA Policies
 - ABAC Placement Standards
 - Have the OMA and ABAC requirements been breached
 - Observations on OOH Advertising.

The Outdoor Media Association (OMA) policies

21. The OMA is the peak industry body representing companies that place advertising for products and services of all types (including alcohol products and alcohol retailers) in a wide variety of out of home settings. This includes roadside billboards, signs on street furniture such as bus shelters, shopping centres, petrol stations and transport precincts. Additionally, signage on and inside buses, trams and trains fall within the scope of services provided by OMA members.
22. According to its 2022 Annual Report, the OMA endorses 17 different codes of practice and policies that govern the display of out of home advertising, with some being OMA policies as well as codes or policies from other bodies that intersect with out of home marketing. One of the 'external' codes referenced is the ABAC whereas the 8 policies developed by the OMA itself include the:
- OMA Code of Ethics;
 - OMA Alcohol Advertising Policy; and
 - OMA Placement Policy.
23. The OMA Code of Ethics might be considered the foundational statement of principles governing out of home marketing from which the other OMA policies provide more elaboration. It binds OMA members to uphold a system of self regulation and only endorse advertising that adheres to relevant codes and policies referenced in section 5 the Code of Ethics. In relation to alcohol advertising specifically, the OMA Code requires members to:

- support all ABAC determinations on complaints about out of home advertising and remove any content found by the ABAC Panel to be a breach of the ABAC (section 5.4)
- only endorse the display of advertising that adheres to various codes including the AANA Code of Ethics, the Children’s Advertising Code and the ABAC (section 5.6)
- commit to responsible advertising of alcohol beverages as outlined in its Alcohol Advertising Policy and Placement Policy and:
 - not display alcohol advertisements within 150 metres sightline of a primary or secondary school; and
 - only display alcohol advertising that has been approved by the ABAC pre-vetting service. (section 5.7).

24. The OMA Alcohol Advertising Policy builds upon the Code of Ethics and acknowledges that ‘extra care’ is required to ensure that alcohol advertising in the public domain meets community standards, especially when it comes to the exposure of children and young people to advertising. The Policy provides inter-alia:

- in accordance with the Placement Policy, advertising captured by the policy is not placed on signs within 150 metres sightline from the boundary of a school (section 3.1);
- under section 3.2, the advertising captured by the policy is for:
 - alcohol beverages
 - businesses that primarily sell alcohol beverages
 - advertising for a promotion involving alcohol products even if the advertiser does not primarily sell alcohol; and
- the policy does not apply to transit advertising e.g. signage on buses, trains and taxis (section 3.3) and to advertising located on premises that sell alcohol where the advertising relates directly to the business of the venue (section 3.4).

25. The policy goes on to state that OMA members should only accept advertising that has been given ABAC pre-vetting approval or been advised by a lawyer to comply with ABAC standards (sections 3.6 and 3.7). In the event of the ABAC Panel finding a breach of ABAC, OMA members are obliged to facilitate the removal of the offending advertisement (section 3.9). The balance of the Alcohol Policy contains a restatement of the ABAC content standards.

26. The final component of the OMA suite of policies directly relevant to alcohol marketing is the Placement Policy. This policy applies to advertising for certain products that are illegal to sell to minors as well as occasional food and drink products e.g. alcohol, gaming and gambling and sexual products and services. Essentially the policy provides that advertising for these products/services will not be located within a 150 metres sightline from the boundary of a school.
27. Supporting material published by the OMA explains the 150 metre delineation was selected because of the science behind how people look at signage and that for most people absorbing the message of a sign occurs within 100 metres of a sign and even large signs have a practical viewing distance of no more than 140 metres.
28. The implementation of the OMA policies regarding placement is via the Measurement of Outdoor Visibility and Exposure (MOVE) tool. This tool purports to provide audience measurement for some 77,500 out of home advertising sites within the five capital cities of Sydney, Melbourne, Adelaide, Brisbane and Perth. Attached to MOVE is the school mapping tool which according to the 2022 OMA Annual Report contains the boundary locations of some 12,185 schools in each Australian State other than Tasmania.
29. Drawing all this together, the position regarding out of home advertising and the OMA is as follows:
 - OMA members have access to and place advertising on many tens of thousands of OOH sites and settings around Australia;
 - in placing advertising, the OMA complies with government regulation and a series of industry based codes and policies; and
 - taken together the OMA regime requires that its members only place alcohol ads that:
 - in terms of content, are consistent with the ABAC standards and which have been confirmed as such via ABAC pre-vetting or legal certification;
 - are located on sites outside of 150 metres sightline of the boundary of a primary or secondary school unless positioned on premises actually selling alcohol; and
 - will be removed if determined by the ABAC Panel to be inconsistent with ABAC standards.
 - the implementation of the OMA policies is based upon the matching of OOH sites with the mapping of school sites through the MOVE tool.

ABAC Placement Standards

30. The ABAC consists of two parts, namely standards going to the content of alcohol marketing and standards going to the placement of alcohol marketing. While the Code content standards came into effect with the commencement of the ABAC Scheme in 1998, the placement standards were not added to the Code until 2017.
31. The Placement Standards have the policy aim for alcohol marketing to be directed to adults and to the extent reasonably possible away from minors. The standards create differing requirements on alcohol marketers related to the technical capacity of different communications mediums to effectively target marketing to audiences based on age.
32. At the time of the inclusion of the placement standards into the Code, there were two pre-existing regimes going to the placement of alcohol marketing namely an earlier version of the OMA requirements described above and the time of day restrictions on the broadcast of alcohol ads on 'traditional' free to air TV i.e. linear broadcasts that need a TV aerial to be received. The TV placement requirements are contained in the Commercial Television Industry Code of Practice (CTICP).
33. The ABAC Placement Standards adopted these existing regimes as a starting point and then created new requirements for alcohol marketers. The new requirements applied to communication mediums that had not previously been subject to any restrictions regarding the placement of alcohol ads e.g. print, radio, cinema and digital channels and created additional obligations on marketers to exclude minors from the audience of marketing communications where the available technology made this possible.
34. The placement standards are of most value for marketing transmitted via digital platforms as the technology and data analytics of these mediums permit targeting of marketing and in important instances the exclusion of minors from receiving alcohol marketing. Equally, the new standards were important because the utility of time of day restrictions on traditional television advertising had declined due to the introduction of digital TV channels and streaming services that were not subject to time of day advertising restrictions.
35. In response the ABAC Placement Standards introduced the 80% adult audience benchmark for programs with which alcohol marketing can be placed. This relies on the use of comprehensive ratings data and is a more direct means to limit the exposure of minors to alcohol advertising than the proxy measure of assuming minors will be a lesser component of an audience if a program is screened after 8-30 pm.
36. For outdoor advertising, the ABAC Placement Standards did not create new obligations but rather in effect incorporated the requirements of the pre-existing

OMA regime. This is done through the standard in Part 4 (a) of the Code which provides an alcohol marketing communication must comply with code provisions regulating the placement of alcohol marketing that have been published by Australian media industry bodies. The OMA policies are given as an example of such provisions.

37. This means that the ABAC placement limitation on outdoor alcohol advertising is in essence the 150 metres sightline exclusion zone from a primary or secondary school. In other words, an alcohol ad cannot be located within 150 metres of a school if the ad can be seen from the school.

Have the OMA and ABAC provisions been breached

38. The first complaint concerns the poster on the public telephone box in Nicholson Street in the Melbourne suburb of Footscray and its near vicinity to a children's playground. In the 1970's, Nicholson Street became one of the earliest pedestrianised malls in Australia. The playground is more recent, having been added to the mall during a re-development in 2022.
39. When the OOH advertising site was added to the public phone box is not known, but it could be surmised that it pre-dated the quite recent playground. The site would be used for the advertising of various products and the Dan Murphy's ad was placed on the phone box in June 2024.
40. The nearest school to the mall and the phone box OOH site is the Footscray High School approximately 550 metres away on Barkly Street. Accordingly the OMA Placement Policies and the ABAC Placement Standard in Part 4 (a) of the Code are not breached by the alcohol ad being placed on the phone box.
41. That said, Dan Murphy's accepts that the proximity of the playground makes the phone box an unsuitable site to locate its ad and it had the ad removed upon receiving the complaint.
42. The second complaint concerns a billboard at one of entrances of Sydney's Central Railway Station. Central Station is the largest and second busiest railway station in Australia being a hub for the Sydney suburban train network, light rail and the new metro services as well as inter-city and country trains. In 2023 over 45 million passenger trips went through Central and this amounts to 125,000 passengers moving through the station each day.
43. As pointed out by the complainant, amongst the weekday passengers using Central will be both university students and school students attending CBD adjacent schools. That said, as advised by CUB in its response to the complaint, no school is within 150 metres sightline of Central and the billboard upon which the Hard Rated product ad was placed.

44. Drawing this together, neither advertisement was within the sightline of a school. This means the OMA policies and hence the ABAC standard in Part 4 (a) have not been breached.

Observations on OOH Advertising

45. By its nature, outdoor advertising is not able to be specifically targeted at particular age groups in the way that narrowcast marketing via digital platforms can be. And while the MOVE tool apparently is able to produce audience measurement for OOH advertising, to date the available data has not been sufficient to assess the composition of minors reasonably expected to view a specific outdoor advertising site so as to use the data for regulatory benchmarks. Hence the proximity of OOH sites to schools is used as a proxy for limiting the exposure of minors to outdoor alcohol advertising.
46. It is noted that the 150 metre delineation for advertising placement is used on the argument that messaging from outdoor signs is not readily absorbed at this distance. This means if an ad is on a sign outside 150 metres from a school, then students while physically on the school grounds should not be impacted by the location of the sign. Equally, if the sign is closer than 150 metres but can't be viewed from the school, then the same contention applies.
47. But the schools are not the sole venue where the nature of the venue or the activity occurring will likely result in the potential audience of an ad including a significant number of minors. The playground in Nicholson Street raised in the first complaint is an example and it is noted that Dan Murphy's equally accepted it was not desirable that its ad should have been placed on the phone box, and it took swift action to have the ad removed upon receiving the complaint.
48. Advertising from major entities (not simply large alcohol companies but more generally) is often rolled out programmatically across a range of different communication channels. This method does not involve a company so much specifically choosing individual sites to place OOH ads but rather ads being placed on the 77,500 available sites in the MOVE stock used by OMA members according to various campaign metrics.
49. The OMA have announced that a new version of the MOVE tool will be released later in 2024 and possibly this updated tool will have enhanced capacity to use expected audience data to better refine where alcohol ads can be placed. The Panel recommends that the ABAC Scheme Management Committee engage with the OMA with the view of revising the relevant OMA policies so as to:
- exclude alcohol advertising being placed on bus shelters within 150 metres of a school irrespective if the bus shelter is within the sightline of a school or not;

- further exploration be taken as to use of all reasonable steps to exclude alcohol marketing from placement on buses used for school routes; and
- testing the MOVE data and technology as a potential basis to more precisely eliminate specific OOH sites for alcohol advertising if the reasonably expected audience of an alcohol ad exceeds 20% minors.