



ABAC Adjudication Panel Determination Nos 101 & 103/24

Product: Hahn Ultra Zero Carb
Company: Lion Beer Australia
Media: Free to Air TV
Date of decision: 29 July 2024
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 two complaints received on 5 July and 8 July 2024. Both complaints relate to free-to-air television advertising for Hahn Ultra Zero Carb (“the product”) by Lion Beer Australia (“the Company”). The advertising was seen on Channel 7 when watching Sunrise breakfast television.
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 are accordingly within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 5 and 8 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 complaint was 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 placement of the marketing.

The Marketing

10. The complaint relates to advertising on free-to-air Channel 7, during Sunrise breakfast television, which appeared as part of an interview of Buddy Franklin (recently retired AFL player) by Mark Baretta (sports reporter on Sunrise). A summary of the interview is provided below.

| | | |
|--|--|---|
| <p>The Sunrise hosts introduce the interview.</p> |  <p>EXCLUSIVE BUDDY FRANKLIN ON SUNRISE The AFL legend sat down with Baretta to talk life since retiring sunrise SYD 10' 7:51</p> | |
| <p>There was vision of AFL and Buddy Franklin's (BF's) family and also BF and Mark Baretta (MB) as they spoke about retirement, BF spending time with his family, BF's previous AFL career and State of Origin.</p> <p>BF and MB were pictured with two bottles of Hahn Ultra.</p> |  <p>EXCLUSIVE BUDDY FRANKLIN ON SUNRISE The AFL legend sat down with Baretta to talk life since retiring sunrise BRI 21' 7:32</p> |  <p>EXCLUSIVE BUDDY FRANKLIN ON SUNRISE The AFL legend sat down with Baretta to talk life since retiring sunrise CAN 14' 7:32</p> |

The topic of the interview then turns to BF's role with Hahn Ultra.

MB: *Although he's for it, he'll still be watching from the sidelines. Instead, he's lacing up his boots to give carbs the boot, teaming up with Aussie brewer Hahn.*



MB: *Buddy, this has got to be every guy's dream to be working with a beer. Tell us about Hahn Ultra.*

And low on carbs too so if you're an athlete or ex-athlete, ah this is the beer.



BF: *Ah yeah, its zero carbs and I think that is important I think if you like to have a beer now and again I think having zero carbs is really important.*

There was footage of Hahn Ultra being shared and consumed by others.



MB: *Now, has he scored with this one?*

So Buddy, final tough question, I mean you're an expert on this. This is your beer pretty much.



When is the best time to enjoy a Hahn Ultra?



BF: *(unintelligible) We can go right now. It is 4:30pm on a Thursday. I think we can go right now.*

BF and MB opened the Hahn Ultras that had been sitting in front of them, and had a drink.



| | | |
|--|---|--|
| <p>MB: <i>Mate, congratulations on all you've achieved.</i></p> <p>BF: <i>Thank you. Thank so much.</i></p> <p>MB: <i>Ooh – she's good</i></p> <p>BF: <i>She's good. She's very nice.</i></p> <p>MB: <i>You've done well.</i></p> |  | |
| <p>We then see MB in the studio with the Sunrise hosts and another presenter as they close out the interview.</p> |  | |

Complaint

11. The complainants object to the marketing as follows:
- *Product placement for Hahn beer under the guise of a story, on Channel 7 during Sunrise at 8:00am.*
 - *The advertisement was hidden within an interview of Buddy Franklin by Mark Baretta. During the interview the two people sat behind strategically placed bottles of Hahn beer. Then the screen showed a large image of a bottle of Hahn Ultra Zero Carb on ice, followed by both persons taking a drink of the beer.*
 - *Sunrise aired an interview featuring Buddy Franklin and Mark Baretta which advertised Hahn beer at 7:55am whilst our family including my child were eating their breakfast.*

The ABAC Code

12. 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).

- (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.

The Company Response

13. The Company responded to the complaint by letter emailed on 18 July 2024. Its primary comments were:
 - We refer to your letter dated 10 July 2024 (Letter) in relation to two complaints received by ABAC about the interview of Lance 'Buddy' Franklin (Buddy Franklin) in relation to the launch of Hahn Ultra Zero Carb* (*<0.5g carbs per bottle serve) that was broadcast during the Sunrise program on Channel 7 at around 7:50 AM on Friday 5 July 2024 (Interview).
 - Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of 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.
 - Lion's creative and PR agency, Thinkerbelle arranged for Seven Network's access to Buddy Franklin for the Interview as an unpaid editorial opportunity, which included the Hahn Ultra Zero Carb* (*<0.5g carbs per bottle serve) products and display of the promotional video / static footage. However, Lion had no control over what Seven Network included in the Interview segment or when it aired.
 - Lion has engaged Buddy Franklin as a brand and product ambassador for Hahn Ultra Zero Carb* (*<0.5g carbs per bottle serve), which includes

appearing in promotional content, acting as a Lion spokesperson and participating in PR interviews.

- Thinkerbell arranged Seven Network's access to Buddy Franklin for the Interview as an unpaid editorial opportunity, and representatives from Thinkerbell and Lion were present during its filming, which occurred at around midday on Thursday 4th July (as stated by Buddy Franklin during the Interview).
- Lion and Thinkerbell were aware of the placement and consumption of the two bottles of Hahn Ultra Zero Carb* (*<0.5g carbs per bottle serve) in footage captured during the filming of the Interview.
- Lion was aware of the Interview, however, as an unpaid editorial segment, Lion and Thinkerbell did not approve or have control over the edited story or when the segment was aired by Seven Network. The promotional video and static footage were provided to Seven Network as supplementary materials and there was no pre-agreed requirement for them to be used in the Interview segment.
- As the Interview was an earned editorial feature, Seven Network and the reporter did not receive any payment to feature or promote Hahn Ultra Zero Carb* (*<0.5g carbs per bottle serve). As confirmed above, Buddy Franklin is engaged by Lion as a brand / product ambassador.
- As a news, sport, entertainment and weather program, the Sunrise program is aimed at an adult audience. OzTAM data for Friday 5 July confirms Sunrise had a total TV national reach of 908,000 viewers and 730,000 viewers (80.4%) were in the demographic of grocery shoppers above the age of 18.
- For the following reasons, and with respect to the complainants, we submit that there has been no breach of Part 4 of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel (the responses correspond with the question numbers in the Letter):
 - the Free TV Commercial Television Industry Code of Practice confirms news and current affairs programs do not require classification and may be shown at any time provided care is exercised in selecting material for broadcast, having regard to the likely audience of the program and any identifiable public interest for presenting the program (see section 2.3.3).
 - Sunrise is a news, sport, entertainment and weather program, and therefore primarily aimed at an adult audience.

- Otherwise, to the best of our knowledge, the Interview was not placed with or around segments or content primarily aimed at minors.
- OzTAM data for Friday 5 July confirms Sunrise had a total TV national reach of 908,000 viewers and 730,000 viewers (80.4%) were in the demographic of grocery shoppers above the age of 18.
- We also respectfully submit that the Interview and its contents were beyond Lion's reasonable control, and any finding against Lion based on this Complaint should be a no-fault breach under Part 6 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 its compliance.

The Panel's View

Introduction

14. On 5 July 2024 a segment on the 7 Network's breakfast Sunrise program featured an interview between 7's Mark Baretta and the AFL great Lance 'Buddy' Franklin. The interview reflected on Franklin's football career and his time in retirement. What has brought this ostensible human interest/sports story to the ABAC Panel is the overt positioning and referencing of the alcohol product Hahn Ultra throughout the segment.
15. The two complainants essentially submit that the interview was little more than an ad for Hahn Ultra and as such it was inappropriate for an alcohol ad to be shown with a breakfast TV show at 7-50 am when children will be watching. For its part, the Company argues that the interview is not an alcohol ad as such and accordingly it was not subject to the regulatory requirements on the broadcast of alcohol marketing on television.
16. The concerns bring into focus the ABAC Placement Standards and the Commercial Television Industry Code of Practice (CTICP). The issues that need to be determined are:
 - the interview and alcohol marketing communications for ABAC purposes;
 - the interplay between the ABAC and CTICP; and
 - whether the ABAC Placement Standards have been breached.

The interview and ABAC alcohol marketing communications

17. The Company's basic submission is that the interview was an 'earned editorial feature' and is not subject to the rules and restrictions that govern alcohol marketing on television. The Company's contention draws on the different ways in which a marketer might seek to use media to build brand awareness of a product and can be understood by reference to the so-called 'PESO model' of media. This model categorises the use of media into four groups, namely:
 - Paid Media - including ads on TV, radio and digital channels etc that the medium (eg TV Network) is paid to carry;
 - Earned Media - content about the product but which is unpaid eg references to product during a 'news' story;
 - Shared Media - content carried on social media platforms which is shared between users on the platform such as Instagram; and
 - Owned Media - the brand owner's controlled social media accounts and websites etc.
18. Using this model, the Franklin interview is 'earned media', which came about not because Channel 7 were paid, but because the Sunrise program believed its viewers would be interested in Buddy Franklin and in return Mr Franklin is given the opportunity to promote the product as a brand ambassador. The key defining factor is that no payment is made to Channel 7 for the segment which is notionally about Mr Franklin and not the product as such.
19. While the PESO model has its place in understanding marketing approaches, the ABAC Code does not adopt the presence or absence of payment as the decisive basis of determining if a promotional activity falls within the ambit of the ABAC Code. Rather ABAC applies to a 'marketing communication' if the communication has been generated by or is within the reasonable control of a producer, distributor or retailer of alcohol. (Part 8 - Code definitions)
20. Further, the Code adopts an expansive scope to the types of marketing and promotional activities which are captured by the notion of a marketing communication with a non-exhaustive list of examples contained in Part 2 (a) of the Code which includes:
 - product names and packaging;
 - brand advertising including influencer marketing, and marketing arising from a sponsorship;
 - product placement;
 - marketing collateral;

- competitions and other brand activations;
 - cross brand category brand promotions; and
 - advertorials.
21. The Code also captures all mediums by which marketing might be conducted such as television, radio, print, digital or other direct to the consumer media. There are some limited express exclusions to which the Code does not apply listed in Part 2 (b), but these are not relevant in the current case.
 22. Hence the question to be answered is not whether the segment can be described as 'earned media' or whether Channel 7 was paid to broadcast the Franklin interview. Rather the question is whether the Company generated the interview and/or had a reasonable measure of control over the interview's conduct and content at least as far as it came to the depiction of Hahn Ultra.
 23. The background to the interview is that the Company has entered into a commercial relationship with Mr Franklin for him to act as a brand and product ambassador for Hahn Ultra. Being an ambassador entails Mr Franklin appearing in promotional content, acting as a Lion spokesperson and participating in PR interviews.
 24. The Company via its media agency secured the interview. It presumably offered the opportunity for the interview and secured Channel 7's agreement that brand promotional elements would be part of the segment. This included the placement of bottles of the product on the desk so they were visible during the interview and that Mr Franklin's role as a brand ambassador would be raised.
 25. In the large majority of cases it is immediately clear whether the marketing item raised in a complaint falls within the ambit of the ABAC Scheme. On occasion however, it requires assessment if the alcohol company can be fairly said to have generated or had reasonable control over the item which has attracted the public complaint.
 26. In Determination 16/19 the Panel considered a relationship between an alcohol company and an environmental movement 'Parley for the Oceans' that involved beach clean up activities being conducted. One activity resulted in a beach clean up day in Cairns being covered by a local TV News station and within the broadcast images were shown company branding on signs and on the shirts of volunteers.
 27. The Panel found that the news broadcast was not an ABAC marketing communication as the alcohol company did not have reasonable control over the news story or the images that would be used by the station.

28. Determination 10/22 concerned TV coverage of the 2022 Australian Open tennis tournament. An alcohol company was the 'official beer partner' of the tournament. The 9 Network broadcast the tournament and in a segment after she had become the women's champion, Ash Barty was given a beer by a TV presenter.
29. It was established that the beer company had no relationship with Channel 9, it had not supplied beer to Channel 9 as such and it had no prior knowledge that the TV presenter was going to introduce the beer into the interview with Ms Barty. In the circumstances the Panel found the alcohol company had not generated the segment nor did it have any control over the use and depiction of its beer. Hence the segment was not an alcohol marketing communication to which the ABAC standards applied.
30. Determination 3/20 considered a TV segment called 'Backyard Banter' which screened during the lunch break of a test cricket match. The segment had former test cricketers discussing aspects of the game at a backyard table and on the table were cans of a beer brand. While the alcohol company had no editorial control over the segment, it was clearly involved in the segment through the placement of its products and its branding. The Panel treated the segment as an alcohol marketing communication that was subject to the requirements of the ABAC Placement Standards.
31. In the current case, the Company had considerable influence on the interview and had a reasonable measure of control over the depiction of its products. For instance:
 - the interview was organised by the Company via its media agency and the Company staff and media agents were present during the interview;
 - the products were supplied by the Company and displayed and consumed as part of the interview; and
 - the Company supplied Channel 7 with its promotional video for the product and a snippet of the video played as part of the interview.
32. It is accepted that the Company did not have editorial control over how the interview would be cut, nor whether part of the promotional video would be used. That said, it set up the interview, it had the full intention of advancing Mr Franklin's role as its product brand ambassador, it supplied the product shown and consumed in the interview and it supplied the promotional video obviously hoping and reasonably expecting that it might be used.
33. This means at a minimum the positioning of the bottles of the product on the desk as the interview occurred can be regarded as product placement which is a type of alcohol marketing communication expressly mentioned in Part 2 (a) (iii) of the Code. It is also highly arguable that the interview as a whole had a

dual purpose as a human interest/sports story and also being an alcohol marketing communication.

34. Accordingly, the Panel believes the segment contains elements which are captured by the concept of an alcohol marketing communication for ABAC purposes and as a result the ABAC standards are applicable.

ABAC and the CTICP

35. As mentioned in paragraph 2 above, the codes and standards applying to alcohol marketing will go to either the content of the marketing or the placement of the marketing or both aspects. When it commenced in 1998, the ABAC was a content only code. This changed in 2017 when the ABAC Placement Standards were added to the Scheme.
36. In contrast, the CTICP in relation to alcohol advertising is a placement code and creates time of day restrictions as to when alcohol advertising can be shown on linear free to air TV (this means TV accessed via an aerial as opposed to TV accessed via the internet). These requirements are long standing, and in their current form have been in place since 1986.
37. When the ABAC Placement Standards commenced, it took the pre-existing placement requirements contained in the CTICP as the starting point and built upon them. Importantly, the ABAC standards extended to mediums like radio and print that up to that time had no placement restrictions for alcohol marketing. Further, the standards applied to digital platforms and channels including those over which TV was being broadcast and streamed.
38. The ABAC Placement Standards have the policy aim that alcohol marketing be directed towards adults and to the extent reasonably possible away from minors. The standards approach this goal by creating a series of obligations on alcohol marketers related to the technical capacity of various transmission mediums to target the potential audience of an item of marketing.
39. The interaction between the ABAC and CTICP arises because of the ABAC Placement Standard at Part 4 (a) of the Code. This standard provides that an alcohol marketing communication must comply with the code provisions regulating the placement of alcohol marketing that have been published by Australian media bodies. Free TV Australia is the peak media body representing commercial television broadcasters and is the publisher of the CTICP.
40. The net effect of Part 4 (a) is that the time of day restrictions for the broadcast of alcohol marketing communications on linear free to air TV contained in the CTICP are incorporated into the ABAC. And mostly this works seamlessly as the alcohol marketing communications seen on TV fall within the notion of paid media and the ABAC and CTICP codes work in alignment.

41. There is however misalignment between the ABAC and the CTICP when it comes to the definitions of alcohol marketing. The CTICP uses a definition of 'commercial' that means any advertising for a product which is scheduled within a program or between programs for which the licensee receives payment. In other words, the ads which all viewers of TV are familiar with.
42. Further, the CTICP has a definition of 'commercial for alcoholic drinks' which means a commercial that directly promotes the use or purchase of alcoholic drinks. The definition goes on to list matters which are not a commercial for alcoholic drinks including:
 - program sponsorship announcements;
 - a commercial which does not directly promote an alcoholic drink for an entity that participates in the manufacture, distribution or sale of alcoholic drinks;
 - a commercial where alcohol or a brand associated with alcohol is incidental and any alcohol consumption is responsibly depicted; and
 - a commercial for a licensed restaurant or club, entertainment venue, tourist attraction or dining establishment.
43. For several reasons the Sunrise interview would not be captured by the CTICP as a commercial for alcoholic drinks, namely:
 - there was no payment to Channel 7 for the interview; and
 - the interview was the 'program' and there was no separate 'ad' placed within the program as envisaged by the CTICP definition of a commercial.
44. The treatment of the difference between the codes in their scope was considered by the Panel in Determination 56/18. This determination involved an AFL themed panel show on Channel 7 called 'The Front Bar'. The set of the show resembles a public bar and contains various branding and product placement for a beer brand.
45. The specific issue for consideration was a Channel 7 promotion for the Front Bar program shown at 7-30 pm which showed alcohol product branding. The Panel found the promotional spot was an alcohol marketing communication for ABAC purposes while acknowledging the promotion did not meet the definition of a commercial for alcoholic drinks under the CTICP.
46. The Panel held that the Placement Standard 4 (a) is to be understood as requiring all alcohol marketing communications to meet the placement and location restrictions as detailed in the relevant media codes such as the CTICP. The fact that the other codes adopt different definitions as to what is included within the scope of alcohol marketing for the purposes of those

particular codes should not be taken as reading down the meaning of a marketing communication for ABAC purposes. In other words, the ABAC incorporates the requirements as to placement and location found in the other codes and applies those to ABAC marketing communications.

47. Following this decision, the Guidance Notes to the ABAC were revised to expressly draw alcohol marketer's attention to differences between the two codes as follows:

It is important to note that the definition of a Commercial for Alcoholic Drinks in the Commercial Television Industry Code of Practice (CTICP) is narrower than the definition of alcohol marketing communications in the ABAC Code. This means that commercial television stations may not automatically apply the alcohol restrictions to marketing that promotes alcohol in an incidental manner (for example, product placement, brand extensions to non-alcohol products or joint marketing for a variety of products including alcohol). As these forms of marketing are captured by the ABAC, alcohol marketers must ensure their placement agencies instruct commercial television stations to apply the alcohol restrictions to these forms of marketing.

Have the ABAC Placement Standards been breached

48. As the interview was seen on free to air television, the applicable ABAC Placement Standards require:
- compliance with the time of day restrictions within the CTICP code - Part 4 (a) – Placement Standard 1;
 - the use of available age restrictions controls to exclude minors being served with alcohol marketing where this is possible - Part 4 (b) – Placement Standard 2;
 - no alcohol marketing to be placed with programs and content where it is reasonably expected that the audience of minors would exceed 20% of the total audience - Part 4 (c) – Placement Standard 3; and
 - irrespective of the likely audience, alcohol marketing cannot be placed with programs or content primarily aimed at minors - Part 4 (d) – Placement Standard 4.
49. The CTICP provisions regarding time restrictions on free to air TV are somewhat involved, but broadly speaking, it permits alcohol advertising during live sporting events or at times when children would generally be expected to be in bed or at school (i.e. after 8:30pm and between 12 noon and 3:00pm on school days). The Franklin segment was screened at 7-50 am on Friday 5 July 2024. Alcohol marketing should not have been shown at this time and hence Placement Standard 1 has been breached.

50. Placement Standard 2 requires that age restriction controls should be used when available. Age restriction controls are available on most digital platforms such as Instagram and Facebook and can operate quite effectively to exclude minors being served with alcohol marketing. TV accessed over the internet using an app such as the 7 Plus app also has controls that enable alcohol ads not be inserted into digital broadcasts to accounts held by a minor. Free to air TV accessed via a TV aerial does not have age restriction controls, so in the current case Placement Standard 2 is not in play.
51. Placement Standard 3 goes to the audience of a program. It provides that alcohol marketing 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. The Company has advised that 80.4% of viewers were in the demographic of above the age of 18.
52. Clearly the audience of Sunrise on 5 July was very close to the 80% adult benchmark, but it seems the standard was not breached.
53. Placement Standard 4 goes to the content of programs and raises the question of whether the Sunrise program 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.
54. The Sunrise program combines news and human interest stories with sports and the weather. The program has numerous individual segments and stories and probably the appeal of some stories and elements of the program on a given day will have more appeal to minors than others. That said, taken as a whole, Sunrise would be primarily aimed at adults and families rather than being aimed primarily at minors. Placement Standard 4 has not been breached.
55. While arguing the Franklin interview was not alcohol marketing subject to regulatory restrictions as to when it was broadcast, the Company contended if

a breach of standards was found, then it should be treated as a no-fault breach. A no fault finding does not diminish that a complainant's concern was accepted, but it is appropriate if the breach was reasonably unforeseeable or outside the reasonable control of an alcohol marketer or its media agency.

56. The Panel recognises that the interplay between the ABAC and the CTICP is a bit complicated as detailed above. That said, it is the Company's responsibility to be aware of its regulatory obligations and the issue between the definitions used between the codes was drawn out in public guidance material on the ABAC. Further, the Company was clearly seeking to have its brand promoted via a segment to be shown on breakfast TV. A no fault finding is not warranted in this case.

Conclusion

57. The consideration of the complaints has raised technical issues about the regulatory scheme applying to alcohol marketing. Working through those issues the outcome reached by the Panel can be summarised as follows:
- Buddy Franklin is a brand ambassador for the alcohol product Hahn Ultra and part of this role involves him undertaking promotional activities for the brand including media interviews;
 - the Company via its media agency secured an interview for Mr Franklin on the Channel 7 breakfast program Sunrise that was broadcast on 5 July 2024 at 7-50 am;
 - amongst other things the interview canvassed Mr Franklin's role as a Hahn brand ambassador and included a snippet of a Hahn promotional video featuring Mr Franklin;
 - the segment featured product placement with bottles of Hahn being visible throughout the interview and the product was also seen being consumed by the interviewer and Mr Franklin;
 - the segment is captured by the notion of an alcohol marketing communication for ABAC purposes as:
 - (a) the segment was generated by the Company;
 - (b) the company had a reasonable measure of influence and control over the depiction of its brand in the interview including by way of product placement;
 - as a marketing communication for the purposes of the ABAC, the segment was obliged to meet the ABAC Placement Standards including the provisions of the CTICP;

- the segment would not be regarded as a commercial for alcoholic drinks under the CTICP, however as previously established and publicly advised by the ABAC Scheme:
 - (a) the narrower definition of a commercial for alcoholic drinks under the CTICP does not narrow the meaning of an alcohol marketing communication under the ABAC;
 - (b) alcohol marketers must comply with the ABAC standards;
 - (c) the ABAC standard in Part 4 (a) incorporates the time of day restrictions in the CTICP and applies to them to ABAC marketing communications;
- the broadcast of the segment at 7-50 am including the product placement was a breach of the time of day restrictions for alcohol marketing communications on linear free to air TV (Part 4 (a));
- the balance of the ABAC standards have not been breached as:
 - (a) there are no available age restriction controls for free to air broadcasts accessed by a TV aerial;
 - (b) the audience of the Sunrise program was 80% adult;
 - (c) Sunrise is not a program aimed primarily at minors;
- the breach is not suitable for a no fault finding as the Company had a responsibility to know and act consistently with the ABAC standards.

13. The complaints are upheld as a breach of Part 4 (a) of the Code.