



## ABAC Adjudication Panel Determination No 183/24

**Product:** Uber Eats Delivery Service  
**Company:** Uber Eats  
**Media:** Billboard at Railway Station  
**Date of decision:** 6 December 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 a complaint received on 19 November 2024 about advertising for Uber Eats at the Adelaide CBD railway 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 19 November 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

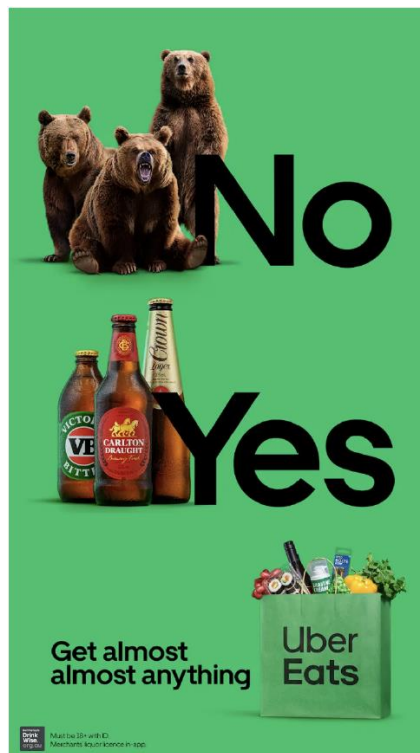
materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

## 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 obtained for the content of the advertisement (Approval Number 9115).

## The Placement

10. The complaint relates to advertising for Uber Eats at the Adelaide CBD railway station.



## Complaint

11. The complainant objects to the marketing as follows:
  - *Picture of multiple brands of beer at 11am in the morning in Adelaide station.*

## **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).

## **The Company Response**

13. The Company responded to the complaint by email on 3 December 2024. Its primary comments were:
  - Uber Eats takes its obligations to the community to market its services in a responsible manner very seriously. We have processes in place which are consistent with industry practices, and are designed to ensure that our alcohol delivery advertisements are broadcast responsibly.
  - Uber Eats considers it has met all of its obligations under the Code (including the Outdoor Media Association Placement Policy) regarding the placement of the relevant Advertisement.
  - The relevant Advertisement was intended to be displayed in cities where Uber Eats currently delivers alcohol. As Uber Eats does not currently deliver alcohol in South Australia, the billboard should not have been displayed in Adelaide. In our brief to our media agency, EssenceMediaCom (EMC), we expressly instructed them that no alcohol-related collateral be displayed in South Australia. Unfortunately, due to an error on their part, EMC had incorrectly arranged for the relevant advertisement to be displayed in Adelaide. As soon as we became aware of this error, we instructed EMC to remove the relevant advertisement immediately. We continue to discuss with EMC opportunities to improve their processes.

### **Response to specific questions**

- Uber Eats received Alcohol Advertising Pre-vetting Service Approval in relation to the Advertisements under application number 07881-2024, with approval number 9115.
- The relevant advertisement was placed on a billboard inside the train station and there is not a school within 150 metres of the train station. It is reasonable to expect that the audience for the billboard in the Adelaide train station would comprise at least 80% adults and therefore comply with

section 4(c) of the Code. For these reasons, Uber Eats considers it has met all of its obligations under the Code including the requirements set out in the Outdoor Media Association Placement Policy, in regard to the placement of and time that the billboard was viewed.

### **The Panel's View**

14. The ABAC Code comprises two sets of standards with which alcohol marketers must comply. The Content Standards go to the messaging conveyed by an alcohol marketing communication irrespective of the medium by which the marketing item is carried. A core content standard is that alcohol marketing must not have strong or evident appeal to minors.
15. The second set of standards in the Code is the Placement Standards that have a policy goal that alcohol marketing should be directed towards adults and to the extent reasonably possible away from minors. The standards do this by imposing on marketers a series of obligations to target their marketing based on the technical capacity of the medium used to carry the marketing.
16. The complainant raises a billboard for alcohol delivery by Uber Eats located at the Adelaide railway station. The concern is not the content of the ad, but its location where minors will see it. Hence the Placement Standards are brought into play.
17. Outdoor marketing (also known as Out Of Home advertising (OOH)) is a broadcast medium and there is no direct means to target an ad placed on a billboard towards only adults. Rather the standards use a proxy measure for OOH advertising of excluding the placement of alcohol ads within a 150 metres sightline of a primary or secondary school.
18. The 150 metres sightline requirement is based on the readability of a sign which is generally only 140 metres even with a large sign such as a billboard. Accordingly, it is contended that if a school is more than 150 metres away from a sign, students on the school grounds will not be able to make out the messaging on the sign.
19. The database for the location of OOH sites is held by the Outdoor Media Association (OMA) and is contained in the Measurement of Outdoor Visibility and Exposure (MOVE) tool. This tool lists 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.
20. The Company explained that the ad at the Adelaide railway station was placed in error as Uber Eats do not deliver alcohol to homes in South Australia. As a result, the sign has now been removed. That said, the ABAC Placement

Standards do not prohibit railway stations as the location for an alcohol ad unless site was within 150 metres of a school.

21. The Panel dismisses the complaint as the ad is positioned outside of the 150 metres radius of a school as required by the relevant Placement Standard.