



## ABAC Adjudication Panel Determination No 190/24

**Products:** Dan Murphy's  
**Company:** Endeavour Group  
**Media:** Newspaper – Herald Sun  
**Date of decision:** 12 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 25 November 2024 about marketing for Dan Murphy’s (“the product”) by Endeavour Group (“the Company”) on the front page of the Herald Sun.
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 places 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, and 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 is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 25 November 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target 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 before 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 marketing item.

## The Marketing

10. The complaint relates to advertising for Dan Murphy's on the front page of the Herald Sun.



## Complaint

11. The complainant objects to the marketing as follows:
- *This small but prominent ad for whiskey (a very high-percentage alcohol) appears on the very front page of the newspaper, directly below the masthead. This gives it great prominence and importance.*
  - *It appears atop a sports headline about cricket and associates drinking with sporting achievements.*
  - *Furthermore, there is impetus in the ad, as a 'Today Only Black Friday Deal!' and pressures people to buy quickly, a large bottle for \$55.00 (price displayed prominently also).*
  - *It is really unacceptable and certainly not front-page worthy. Herald Sun should consider the impact of this kind of alcohol advertising on the very communities they serve in their readership, especially as they often report on crime, domestic violence and health and well-being in their newspaper and lift-outs.*

## The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;
  - (c)(ii) show the consumption or presence of Alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success

## The Company Response

13. The Company responded to the complaint by letter emailed on 4 December 2024. Its primary comments were:
- Endeavour thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. As a signatory to ABAC, Endeavour commits to the objectives of the Code and prepares all marketing material within its reasonable control, in accordance with the Code.
  - Dan Murphy's as part of Endeavour, is committed to maintaining its position as industry leader in the responsible service of alcohol. This is highlighted by the fact that Endeavour 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 ABAC Responsible Alcohol Marketing Code (the Code). As a signatory to ABAC, Endeavour commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption or suggest that consuming alcohol can result in or contribute to the achievement of sporting or other success.

- 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 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 Endeavour with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.

### **Background**

- As part of its "Black Friday" sales campaign, Dan Murphy's launched a "12 days of deals" promotion under which a limited set of particular products would be offered for sale at "one day only prices" for each of the 12 days commencing on Friday 22 November 2024.
- One of the products available on Sunday 24 November 2024 was featured in a small advertisement on the front page of the print version of the Herald Sun newspaper.
- The marketing referred to in the complaint was not submitted for Alcohol Advertising Pre-vetting Service Approval.

### **Responsible and moderate portrayal of Alcohol**

- We believe the Content does not show or encourage excessive or rapid consumption, misuse or abuse of alcohol or irresponsible behaviour related to the consumption or presence of alcohol in breach of Part 3(a)(ii) of the Code. The Content makes no suggestion (expressly or implicitly) in relation

to the speed with which a person should consume the particular product featured but rather, a call to action in relation to the limited time frame of Dan Murphys' "Black Friday" sale, which is customary for these types of sales.

- Like the "Boxing Day" sales, "Black Friday" sales have become widely known in Australia and globally as a time when retailers offer significant discounts on their products prior to Christmas. In this particular case, not only was Dan Murphy's indicating that it was running a "Black Friday" sale in general, but also that on each of the 12 days starting on Black Friday, it would feature a range of "one day only" deals for consumers to purchase. The Content in question was advertising the "one day only" deals available on 24 November 2024.

### **Responsible depiction of the effects of Alcohol**

- In isolation, the Content does not offend Part 3(c)(ii) of the Code. It is merely a picture of a bottle of whiskey, a price and text stating, "Black Friday one day only deals".
- Other than the creative representation of the Content, Dan Murphys had no control over:
  - Where exactly on the front page of the Herald Sun the Content would feature vis a vis articles or pictures that NewsCorp chose to publish that day;
  - what events would take place in the world and therefore what events NewsCorp would consider "front page" news that day.
- Since Dan Murphy's had no control over where the Content would appear on the front page of the Herald Sun that day nor what other material NewsCorp would publish that day and where, absent the prominent picture of an Indian cricket player, there would be no complaint under this Part, it cannot be held liable for breaching Part 3(c)(ii) of the Code.
- We respectfully submit that for the reasons above, the Panel should dismiss the complaint in full.

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

14. On Sunday 24 November 2024 the front page of the print edition of Melbourne's Herald Sun newspaper ran front page photographs of the first cricket test between Australia and India. Positioned next to the photographs of triumphant Indian cricketers was a small ad for a Black Friday special from the alcohol retailer Dan Murphy's. It is the positioning and messaging of this ad that has attracted the complaint.

15. The ad is a relatively small green circle, the periphery of which is coloured purple and contains the words "Today Only Black Friday Deal!". Within the circle, \$55 is shown, alongside a bottle of whiskey. In smaller font at the bottom of the circle are the words "Nobody Beats", beneath which are the logo and name "Dan Murphy's".
16. As mentioned in paragraph 2, oversight of alcohol marketing is a shared responsibility between direct government regulation and industry led codes of practice. The concerns raised by the complaint straddle different aspects of this regulatory landscape with only part of the points made falling within the domain of the ABAC standards.
17. The complainant's concerns are a combination of:
  - the location of the ad on the front page and its juxtaposition to the photographs and story about the cricket match that are argued to give the ad importance and associate the consumption of the product with sporting achievement; and
  - the prompt to secure the discounted price and buy the product quickly.
18. The ABAC standards intersect only partially with these concerns. The Code does deal with the placement of alcohol marketing but as part of its key objective that alcohol marketing should not strongly appeal to minors and to the extent reasonably possible, be directed towards adult audiences and away from minors.
19. The complainant's point about the front-page placement of the ad was not about minors seeing the ad as such. It was a different point, namely that alcohol marketing should not have great prominence and should not be on the front page of a newspaper. While this is a valid view to advocate at a public policy level about the overall regulation of alcohol, it is not an issue within the remit of the ABAC or the Panel.
20. As a general proposition the ABAC Placement standards don't prohibit alcohol ads within print media, nor do they specify where in a printed publication an ad might be placed. The ABAC Placement standards would not permit an ad to be placed within a printed publication that was directed towards minors and where the expected readership of the publication exceeded 20% minors, e.g. a children's comic book.
21. In contrast, newspapers have a predominantly adult readership and while a minor might see an ad in a newspaper, the expected readership of the Herald Sun would comfortably exceed the 80% adult threshold required by the ABAC standard. In any event, the complainant's point was not about minors.

22. The two potential ABAC standards enlivened by the complainant's concerns are that an alcohol marketing communication must not:
- show, encourage, or treat as amusing, rapid alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of alcohol – Part 3 (a)(ii); and
  - show the consumption or presence of alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success – Part 3 (c)(ii).
23. Assessment of the consistency of a marketing communication with a Code standard is from the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and attitudes found commonly in the community is the benchmark. A person who takes a different interpretation from an item of marketing is not 'unreasonable' but possibly their understanding of the marketing message would not be shared by most members of the community.

### **Responsible and moderate portrayal of Alcohol**

24. The complainant is concerned that the marketing pressures people to buy quickly, a large bottle of alcohol for \$55. This is because of the time limited period the discounted price for the product is available.
25. In response to the complaint, the Company argued that the marketing makes no suggestion (expressly or implicitly) in relation to the speed with which a person should consume the product featured but rather, the ad is a call to action in relation to the limited time frame of Dan Murphys' 'Black Friday' sale.
26. The Part 3 (a) standard is directed towards marketing that encourages the rapid consumption of alcohol. The ad can be said to encourage a consumer to act quickly to purchase the product to gain the benefit of the discounted price, but it doesn't convey a message about the subsequent consumption of the product.
27. Alcohol by its nature has a long shelf life. A bottle of whiskey can be purchased and stored for many years and opened and consumed gradually over time. Equally the product can be shared by multiple people. It does not follow that an ad encouraging action to secure the product within the limited time window to get the better price means the product will be consumed rapidly, excessively or irresponsibly.
28. In making this point, the Panel is not saying price is not an important driver of consumer behaviour. But within the shared regulatory environment applying to alcohol as a product and alcohol marketing, the regulation of the price of alcohol rests directly with government and not the ABAC Scheme.



29. The Panel does not believe that the marketing breaches Part 3 (a) of the Code.

**Responsible depiction of the effects of Alcohol**

30. The complainant's second concern within the scope of the ABAC standards is the contention that the juxtaposition of the ad with a story about the success of the Indian cricket team associates the consumption of alcohol with sporting achievement. Part 3 (c)(ii) of the Code provides that an ad must not show alcohol use as a cause or contributor of sporting success.

31. The Company argued that Dan Murphy's had no control over where the marketing would appear on the front page of the Herald Sun nor what the lead news story might be. In short, it was by chance and not design that the ad was next to a sports story.

32. It might be said that the readers of the Herald Sun, highly likely being supporters of the Australian cricket team would not consider a story about the Australians being thoroughly outplayed in the test match as associating the product with sporting success. But more seriously, the Code standard is directed at the implication that alcohol use contributes to success in life. A reasonable person would not understand the ad is making this claim given:

- ads are often placed alongside newspaper stories, but this does not necessarily mean that the two are related;
- the alcohol ad does not contain any reference to cricket and would not likely be associated with cricket; and
- the ad does not depict consumption but goes to the price of the product as a Black Friday special.

33. The complaint is dismissed.