



ABAC Adjudication Panel Determination 33, 34 & 43/25

Determination Date	14 April 2025
Brand/Company	Jameson Irish Whiskey/Pernod Ricard Australia
Media	TV – Pay - Fox Footy and Kayo Sports
ABAC Code provisions	Part 4 (a), (b), (c) & (d)
Outcome	Dismissed

Part 1 - Determination Overview

Complaint:

Three complainants were concerned about segments during the broadcast of AFL games foreshadowing a post-match wrap-up while heavily promoting Jameson Irish Whiskey. The concern was primarily that minors would be exposed to alcohol marketing and that alcohol should not be marketed in conjunction with sports.

Key findings:

The Panel dismissed the complaints, finding that:

- The underlying concern about alcohol marketing with the broadcast of sports is a question of public policy to be determined by the government.
- As it stands, there is no regulatory prohibition on alcohol being advertised with sports.
- The ABAC Placement Standards aim for alcohol marketing to be directed to adults and, to the extent reasonably possible, away from minors. The standards have not been breached given:
 - time of day restrictions on when alcohol ads can be shown on TV do not apply to subscription services, such as Foxtel and in any event the applicable media code (CTICP) permits alcohol ads with live sports broadcasts;
 - ratings data indicate the reasonably expected audience for AFL broadcasts easily exceed the 80% adult threshold; and
 - AFL broadcasts are not primarily aimed at minors.

Marketing Communications:

The complaints concern segments at quarter-time of two different AFL matches that promote the post-match panel discussion while featuring brand promotion for Jameson Irish Whiskey.



Part 2 - The Panel's View

1. This determination concerns the marketing technique of product placement, which involves the integration of a product's branding into ostensibly non-advertising media. Occasionally, a product placement can be subtle, for example, a brand being shown with characters eating or drinking in a scene within a TV drama series. In this instance, the placement is a straightforward promotion of Jameson Irish Whiskey within a segment aired during a break in the TV coverage of AFL games.
2. As Pernod Ricard (the Company) explained, the product placement arose from a commercial arrangement between Foxtel, the broadcaster with rights to the AFL. The segment features two Foxtel presenters standing with and referencing Jameson products while advising that the broadcast coverage will include an end-of-game wrap-up. There is no question that the segment is a marketing communication for the Company.
3. The three complainants were each concerned about the marketing, raising issues that included:
 - There was no warning that the advertisement was coming, so we couldn't choose to change channels.
 - I do not want my children being introduced to alcohol products while watching sports at family time.
 - This blatant alcohol promotion during a live sports event undermines efforts to reduce alcohol-related harm and should not be allowed.
 - I am deeply concerned about the blatant promotion of alcohol during an AFL broadcast that is widely watched by young men, who are statistically the most likely demographic to be involved in alcohol-related violence.
 - This type of advertising normalises and glorifies alcohol consumption in a setting where sports fans, including minors, are engaged; and
 - Stricter regulations should be enforced to prevent similar incidents in the future.

4. Essentially, the complainants contend that it is irresponsible and undesirable for alcohol marketing to be permitted during sports broadcasts. While this is a legitimate public policy issue, the extent (if at all) to which alcohol should be allowed to be promoted in conjunction with sports is ultimately a question for the government to determine. The Panel has a more confined role: to assess if the placement of the alcohol marketing within the broadcast of AFL games was consistent with the ABAC Code.
5. The ABAC contains standards for alcohol marketing and its placement, irrespective of its content. The placement standards aim to direct alcohol marketing towards adults and, to the extent reasonably possible, away from minors. The complaints do not suggest that the content of the alcohol marketing was inappropriate; instead, they argue that alcohol should not be promoted through a broadcast of the AFL. This means the issue to be examined is whether the ABAC Placement Standards have been complied with.
6. The starting point is that the ABAC does not prohibit alcohol marketing with television broadcasts of sports. Instead, the Placement Standards create a series of requirements that seek to have alcohol marketing directed to adults and, to the extent reasonably possible, away from minors. For a TV broadcast, potentially four standards are applicable:
 - All applicable media codes applying to alcohol advertising must be complied with, i.e. the Commercial Television Industry Code of Practice (CTICP) - Placement Standard 1;
 - Available age restriction controls must be applied to exclude minors from viewing an alcohol marketing communication – Placement Standard 2;
 - The advertisement may only be placed with programs where the audience is reasonably expected to comprise at least 80% adults - Placement Standard 3; and
 - The advertisement must not be placed with programs or content primarily aimed at minors - Placement Standard 4.
7. The Commercial Television Industry Code of Practice (CTICP) is a longstanding code that regulates advertising. As a general proposition, alcohol advertising is restricted on linear free-to-air TV (i.e., 'traditional' TV transmission received by way of an aerial) to particular times of day and, in the evenings, to slots after 8:30 pm. One of the complainants noted that Jameson's promotion was shown between 8:10 and 8:15 pm.
8. However, the CTICP has not been breached for two reasons. First, alcohol advertising time-of-day restrictions do not apply to subscription services such as Foxtel or internet-delivered TV programming accessed on smart TVs using apps like 7 Plus and 10 Play. Second, the CTICP has always contained a carve-out for alcohol advertising if broadcast with live sports. Placement Standard 1 has not been breached.

9. Given the CTICP's more limited utility in the changed broadcast media environment and the emergence of social media channels, the ABAC Standards adopted additional requirements to direct alcohol advertising away from minors. Placement Standard 2 requires that alcohol marketers apply available age restriction controls to exclude minors.
10. The age restriction controls are effective when minors typically have an individual internet-capable device like a smartphone or tablet. This is because the minor will have an account in their name. The standard is less effective in the case of a family internet-connected TV because the account will generally be in the name of a parent or other adult, and the family co-view shows rather than the one-on-one viewing that occurs with a phone or tablet.
11. To view Foxtel and Kayo Sports, a customer must have a Foxtel account or join another subscription service and open an account. An adult must hold this subscription account. There is no information before the Panel suggesting that a minor with an account in any of the complainant's households has been served an alcohol ad.
12. This means Placement Standard 3 does most of the work when a subscription service can be co-viewed within a family. The standard establishes the 80% adult audience benchmark for the placement of alcohol marketing. Information on the program audience is available through the ratings system. Data from Nielsen obtained by the Company before placing the marketing showed that adults comprised over 96% of Kayo's and Foxtel's AFL audience. Therefore, the requirements of Placement Standard 3 have been met.
13. Placement Standard 4 states that alcohol ads cannot be placed with content aimed primarily at minors, irrespective of the audience. While the AFL appeals to all age groups, including minors, its broadcast cannot be said to be aimed primarily at minors. The audience data strongly suggests that the AFL appeal is primarily to adults.
14. The complaints are dismissed.

Part 3 - Supporting Information

Panel Process

This complaint was received from Ad Standards (the common entry point for all marketing complaints by members of the Australian community). The Chief Adjudicator referred it to the ABAC Adjudication Panel for consideration against the ABAC Responsible Alcohol Marketing Code. The complaint process is explained [here](#).

The Panel operates following the [ABAC Rules & Procedures](#) and has regard to the principles of procedural fairness.

The Panel comprised Chief Adjudicator Professor the Hon Michael Lavarch AO, Health Sector Panelist Louisa Jorm and Panelist Jeanne Strachan.

Applicable ABAC Responsible Marketing Code Standards

Code Part 4:

- (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.*

Company Response

The Company was provided with an opportunity to respond to the complaint, and its principal comments were:

- The complaints relate to segments aired on Fox Footy and Kayo Sports that included the placement of Jameson product and branding (Advertisement).
- Jameson's media agency engaged Foxtel to procure product placement and branding within the segments. We consider these alcohol marketing communications within Pernod Ricard Australia's reasonable control.
- Part 4 of the Code requires compliance with code provisions regulating the placement of alcohol marketing published by Australian media industry bodies (for example, the Commercial Television Industry Code of Practice (the **CTICP**)).
- The Advertisement aired on Foxtel and Kayo Sports. As the Panel noted in Determination 67/24 about advertising via Kayo Sports during an NRL match:
 - *"The Commercial Television Industry Code of Practice applies to what might be called 'traditional' TV, i.e. the free-to-air networks and transmissions requiring an aerial to be picked up and relayed to a TV. The Subscription*

Broadcast Television Codes of Practice apply to subscription services such as Kayo Sports that rely on cable, satellite or broadband technology.

- *While the CTICP contains time-of-day restrictions for airing alcohol ads, there are no such restrictions in the Subscription Broadcast code. In any event, the CTICP permits alcohol advertising in conjunction with live sports broadcasts. Accordingly, there is no media code provision prohibiting alcohol ads from being shown with the NRL game and the Part 4 (a) standard has not been breached.”*
- We submit that there is no media code provision prohibiting alcohol ads from being shown with the AFL game on Foxtel or Kayo Sports, so Part 4 (a) has not been breached.
- Even if the Advertisement had been subject to the CTICP, the placement of the Advertisement would not have breached the CTICP as the Advertisement appeared “*as an accompaniment to a Sports Program on a Weekend or Public Holiday*” which is a timeslot permitted by section 6.2.1 of the CTICP. “Sports Program” is defined in CTICP as “a Program predominantly consisting of (a) coverage of a sporting event (whether live, replay or highlights); (b) sporting commentary, analysis, interviews and news; and (c) presentations/awards and ceremonies associated with a sporting event.” Foxtel’s coverage of the AFL’s Round 1 match between Collingwood and Port Adelaide, specifically the quarter time commentary segment featuring the Jameson branding and product placement, falls within this definition.
- The segment was available through live subscription TV broadcast on Foxtel and on-demand via streaming service Kayo Sports.
- Age restriction controls are unavailable on subscription TV broadcasts, so none were applied to the Foxtel broadcast.
- Customers must hold a subscription and an associated account to access Kayo Sports. An adult must hold subscriptions and associated accounts. Minors cannot subscribe to Kayo Sports or hold a Kayo Sports account. In addition, our media buyer for Kayo Sports specified that the Advertisement was to target individuals aged 18+ and over only as a secondary measure, excluding minors.
- Pernod Ricard Australia sought audience composition data for broadcasts of AFL matches from our media agency before booking the Advertisement to air to ensure that the audience at that time was reasonably expected to comprise at least 80% adults, as required by the Code.
- We were provided with audience data for the broadcast of AFL matches which aired in the previous year, 2024, which showed that:
 - 96.92% of the audience of Foxtel’s AFL broadcast in 2024 was over the age of 18; and

- 96.64% of Kayo's AFL stream audience in 2024 was over 18. (Source: Nielsen CMV Survey 08 2024)
- AFL matches in 2024 would be the same or similar to those for the programs in 2025.
- Foxtel has provided us with composition data for their live broadcast and Kayo Sports stream audience of the Round 1 AFL match between Collingwood and Port Adelaide on 15 March 2025, when the first Advertisement aired. This data shows that during the game between Collingwood and Port Adelaide:
 - 94% of the Foxtel broadcast audience was over the age of 18; and
 - 94% of the Kayo streaming audience was over the age of 18. (Source: Kantar)
- This demonstrates that not only was the audience reasonably expected to comprise at least 80% adults at the time the Advertisement was booked to air, but the data confirms that the audience did comprise at least 80% adults. As such, the placement of this advertisement complies with this Code requirement.
- The program during which the Advertisement was shown (Fox Footy's broadcast of an AFL match) is not aimed primarily at minors, given its nature as a live panel discussion of a sporting match. While AFL has broad appeal across all groups, an AFL game broadcast cannot be regarded as primarily directed at minors. The hosts featured in the Advertisement are also middle-aged, with a conversational and mature tone of humour. The studio and the Jameson bar pictured in the Advertisement also have a mature look and feel, and should not instantly attract minors, nor have appeal to minors.

Marketing Best Practice

The Company was asked how it demonstrates a commitment to best practices for alcohol marketing. It advised:

- Pernod Ricard Australia is committed to responsible marketing best practice. We are an ABAC signatory via Spirits & Cocktails Australia, and we are committed to meeting ABAC Code Standards and complying with Panel determinations. We strive to foster a culture of responsible alcohol marketing compliance by, for example, implementing the following practices:
 - All marketing staff have been directed to complete the ABAC online training course. In addition, marketing staff are directed to attend the annual ABAC Industry Briefings, sign up to receive ABAC email updates, and ask their agency contacts to do the same.
 - All Pernod Ricard staff globally must comply with the Pernod Ricard Code for Commercial Communications (the Pernod Ricard Code) when marketing or communicating about our products and brands. This code sets out

responsible alcohol marketing requirements that largely mirror or complement the ABAC Code (noting the Pernod Ricard Code stipulates that local codes prevail to the extent of any inconsistency). All marketing, communications, legal, public affairs and communications staff must complete internal training on the Pernod Ricard Code. This training is also made available to marketing agencies.

- Pernod Ricard Australia's legal team provides an induction programme for all new marketing staff, which covers the ABAC Code and responsible alcohol marketing obligations.
- Pernod Ricard Australia has contractual terms with our marketing agencies requiring compliance with the ABAC Code.
- Concerning this Advertisement specifically, all marketing team members involved in the Advertisement have undertaken the ABAC online training course and other internal responsible marketing training from time to time. We have been informed that the agency team members accountable for the Advertisement had not completed the ABAC course before broadcasting the Advertisement (two of three joined the team within the past three months). We have been informed that the entire team has completed the training.
- Pernod Ricard Australia had engaged pre-vetters on other aspects of a broader partnership with Foxtel but did not obtain pre-vetting approval for this specific advertisement. The segment was a last-minute opportunity for live broadcast and due to human error, prevetting submission was regrettably overlooked. As there was potential for this live segment to continue during the AFL season, the segment was submitted for pre-vetting following the live broadcast but before receiving notification of the complaints. The pre-vetter has confirmed that pre-vetting approval cannot be given on a live read or live segments before airing. Pernod Ricard Australia will continue to work with ABAC pre-vetters on other aspects of its partnership with Foxtel, including similar live TV segments. We have implemented, and will continue to implement, all feedback received.
- Going forward, Pernod Ricard Australia commits to:
 - Embedding the ABAC online training course into an agency personnel onboarding program; and
 - Conduct regular audits to ensure new agency personnel have completed the training and existing personnel have completed the most current training.
- We confirm that Pernod Ricard Australia is committed to responsible product marketing and compliance with the Code. Australia maintains strict internal and external processes to help ensure compliance, which we will continue to review and improve.