

The ABAC Scheme

Annual Report 2010

presented by the
Management Committee of The ABAC Scheme

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Report from the ABAC Management Committee

As with any robust regulatory process, the Alcohol Beverages Advertising (and Packaging) Code (ABAC) Scheme is subject to regular review and evaluation. Over the last 12 months, the issue of alcohol use in Australia has been the subject of continuing debate among government and industry associations. Playing a leading role, our management committee has ensured that these discussions are reflected in the running of the scheme and that the services provided by the scheme have continued to evolve in-line with community and government expectations.

In 2010, 87 complaints were referred to ABAC's Chief Adjudicator, Professor the Hon Michael Lavarch, who manages the independent complaints process. Of the 31 determinations made, 11 resulted in at least part of the complaint upheld. Of these 11, eight related to companies that were not members of the scheme and whose advertisements had not been assessed by the Alcohol Advertising Pre-Vetting Service (AAPS). With only one exception, all advertisers communicated their willingness to comply with decisions made by the adjudication panel. In relation to the one exception, while the advertiser did not respond to the panel's decision, the advertisement in question was withdrawn from the print media.

Only two media campaigns received more than seven complaints and the adjudication panel was tasked, for the first time, to review a complaint with reference to the new provisions of the code relating to naming and packaging. Of note is the efficiency with which each of the complaints was dealt. It is a credit to the Scheme Administrator and members of the adjudication panel that, of the complaints upheld, final determination was reached (on average) within 23 business days, compared to 31 in 2009.

The issues of advertising campaigns that use multiple media and 'new media' were challenges to the scope of ABAC's jurisdiction in 2010 with social media being reviewed by the adjudication panel for the first time. Recognising the flexibility of the scheme, the panel held that promotional material offered through social media such as facebook, could be defined as 'advertising' and, therefore, was subject to the

existing code. This precedent goes a long way to assuring the longevity of the scheme in a constantly-changing advertising environment.

Another significant indicator of the scheme's present and future value to the community is its acceptance by non-member signatories to the scheme. Over the course of 2010, dialogue with retailers began with a view to encourage wider recognition of the scheme. This dialogue will continue over 2011. It should be noted that in 2010, all complaints with regard to retailer advertising were addressed by the retailers and full cooperation given.

Transparency is at the heart of any regulatory system and the management committee welcomes Government input and suggestions for improvement. In April 2009, the Ministerial Council on Drug Strategy (MCDS) issued a communiqué that called for strengthened alcohol advertising regulation. This document contained a number of proposals including an extension of the scheme to include 'emerging media', point-of-sale and naming and packaging. Over 2010, the management committee worked to amend the scheme's Constitution and Rules and Procedures, enabling satisfactory implementation of these proposals.

Further amendments to the code were made to ensure alignment with the National Health and Medical Research Council alcohol guidelines, released in 2009. These amendments reflect current guidelines and extend coverage to producer-generated point of sale material.

The continued value of the Alcohol Advertising Pre-Vetting Service has, again, been evidenced over 2010 with the major media sector associations strengthening their support for ABAC pre-vetting and adjudication services.

The Outdoor Media Association (OMA), Free TV Australia and the Australian Subscription Television and Radio Association (ASTRA) have advised that they will not place advertisements that have not been pre-vetted through the AAPS. The Publishers' Advertising Advisory Bureau (PAAB) and Commercial Radio Australia have also amended their requirements to formalise their support of the service. Members of these two bodies will, in future,

Report from the ABAC Management Committee (continued)

be asked for pre-vetting approval numbers prior to advertisement placement. In addition, Free TV agreed to withdraw CAD numbers, required by all TV advertisers, for advertisements that are the subject of an upheld determination by the ABAC Adjudication Panel. This is an important step for both the scheme and the panel as it strengthens sanctions for upheld determinations.

The ABAC Scheme Rules and Procedures mandate a regular turnover of members of the pre-vetting team and 2010 saw the loss of Ms Victoria Rubensohn, AM. Ms Rubensohn's depth of experience with the scheme will be greatly missed. Two new pre-vetters were appointed to fill existing vacancies—Ms Jacqui Binder who brings substantial experience as a qualitative market researcher and Mr Martin Salkild with extensive experience in the advertising industry.

In changes to the membership of the adjudication panel, Ms Elizabeth Dangar, a member since the inception of the scheme, retired this year. We thank her for her long-standing service and we welcome new panelist, Ms Debra Richards. Mr Mark Champion, the advertising industry representative on the management committee, has also stepped down and has been replaced by Mr Daniel Leesong.

The management committee would like to thank Mr Leesong for hosting the ABAC information sessions that were run in 2010. These sessions are invaluable in increasing the knowledge and understanding of both the scheme and the code amongst advertisers and agencies.

With these changes to various elements of the scheme, 2010 was an opportune time for the management committee to focus on improvements in corporate governance processes. Existing governance structures were strengthened with the roles, conditions and expectations for pre-vetters, panelists and the scheme's administrator being reviewed and formalised.

I would like to take this opportunity to sincerely thank those who have, once again, worked so hard to maintain and build upon the strengths and successes of the ABAC Scheme. It is this effort that ensures a strong, flexible, regulatory system; one that is evidence of the alcohol industry's commitment to socially responsible advertising and serves a practical purpose to the community of which we are all a part.

Stephen Strachan
ABAC Chair 2010

Management Committee, The ABAC Scheme



Stephen Strachan
Winemakers' Federation
of Australia Inc
ABAC Chair 2010



Gordon Broderick
Distilled Spirits
Industry Council
of Australia Inc



Mark Champion
Advertising Federation
of Australia (until
28 February 2010)



Simon Cotterell
Australian Government
Department of Health
and Ageing



Daniel Leesong
Communications
Council (from
1 March 2010)



Stephen Swift
Brewers Association of
Australia & NZ

Overview

Australia has a quasi-regulatory system for alcohol advertising. Guidelines for advertising have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry. The ABAC Scheme is the centrepiece of Australia’s quasi-regulatory system and is administered by a management committee which includes industry, advertising and government representatives.

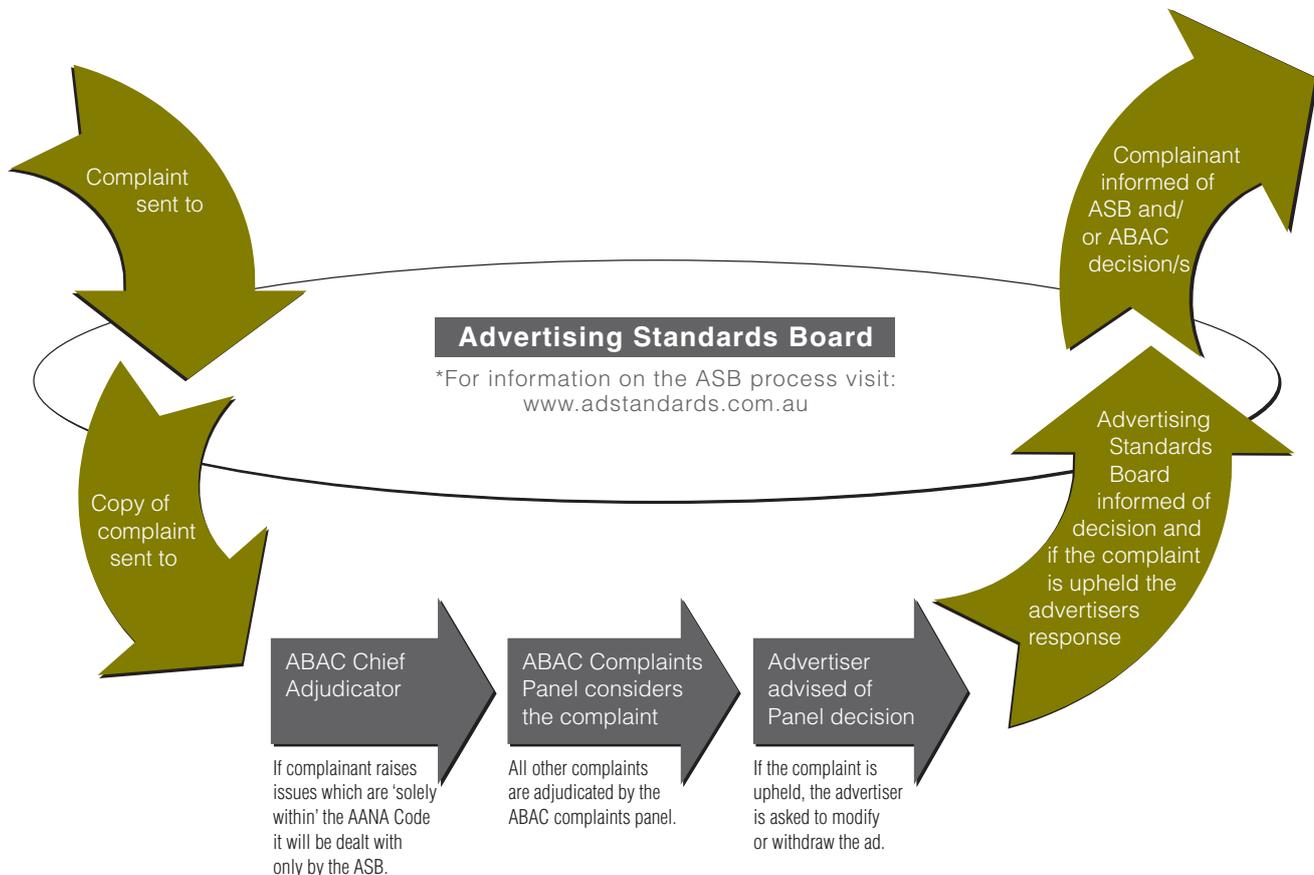
From the consumer’s perspective

Australia has one of the most accessible complaints systems in the world, accepting complaints via email, letter or fax with no costs to the consumer. There is just one ‘doorway’ for complaints—through the

Advertising Standards Bureau (ASB)—which triggers two independent but parallel processes. Complaints received from the ASB are all assessed by the chief adjudicator under The ABAC Scheme.

In turn, complaints are referred on to the full Alcohol Beverages Advertising Adjudication Panel unless they relate solely to the Australian Association of National Advertisers (AANA) Code of Ethics or other regulatory regimes which have a system for resolution of consumer complaints. Complainants are informed of the referral or otherwise and sent a copy of the final determination. Complainants who request confidentiality will be granted it and members of the alcohol beverage industry are barred from adjudicating and submitting complaints.

Figure 1: ABAC Complaint Management System



From the companies' perspective

There are four potential decision points for alcohol beverage producers undertaking advertising, as outlined in Figure 2 below.

These include internal company checks, independent pre-vetting of advertisements, assessment of any complaints under The ABAC Scheme and, if complaints are upheld, modification or withdrawal of advertisements. The ABAC Scheme is not the only set of rules affecting advertising in Australia. Alcohol beverage advertising must also be consistent with other applicable laws and codes, for example:

- the Trade Practices Act and state fair trading legislation
- the Australian Association of National Advertisers Code of Ethics
- the Commercial Television Industry Code of Practice
- the Commercial Radio Codes of Practice
- the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

Figure 2: Four decision points for companies

1 st decision point	2 nd decision point	3 rd decision point	4 th decision point
Checked by company and advertising agency staff against the code	Pre-vetted by non-company assessors using the AAPS service	Any complaints are referred (via the ASB) to the ABAC Chief Adjudicator	Where a complaint is upheld, company asked to withdraw or modify an advert within five business days

2010 – some numbers compared

Pre-vetting		2008	2009	2010
Number of alcohol advertisements pre-vetted		1110	1369	1050
	Number that were accepted	849	1046	929
Of the advertisements pre-vetted:	Number that were accepted subject to conditions	29	85	44
	Number that were rejected	232	238	77

Complaints		2008	2009	2010
Number of complaints received:		162	117	87
Number of advertisements these complaints referred to:		44	42	38
Number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel*: (i.e. complaints that fell within the code—all others fell solely within the Australian Association of National Advertisers Code of Ethics covering general advertising issues or another regulatory regime. See www.adstandards.com.au for further information)		49	47	41
Number of determinations from complaints received that year		36	39	31
Number of complaints upheld (at least in part)		12	12	15
Number of determinations upholding complaints		7	10	11

Observations

- Two advertising campaigns attracted 31 of the 87 complaints received in 2010 (36%), all other campaigns received no more than 7 complaints.
- Complaints resulting in a determination took, on average, 27 business days to be completed (last year 23).
- Upheld complaints were dealt with, on average, within 23 business days (last year 31).

Report from the Chief Adjudicator

Introduction

Social media networks such as facebook and twitter are challenging and changing our understanding of how communication and marketing can operate. This is certainly the case with alcohol marketing and invariably interaction between social media and activities to build alcohol brands are raising issues for the ABAC scheme.

One indication of the transformative potential of social media and its accompanying technology is the take up rate of the technology by the community. For instance, it is estimated that it took 38 years for radio to reach a world audience of 50 million people. It took television 13 years to reach an audience of that size. The internet reached 50 million users after four years; the iPod, three years; and facebook, only two years. The first “tweet” was sent on 21 March 2006 and now over 140 million tweets are sent each day.

The ABAC Scheme was introduced in 1998 based upon a model of an execution of an individual alcohol advertisement being broadcast on television, radio or cinema, or being published in a newspaper or magazine. While the scheme was extended to the internet in 2004, it is apparent that the expansion in marketing and advertising options opened by new media is testing the capacity of regulatory schemes.

For instance, social media provides advertisers with the opportunity to build a direct relationship with an individual consumer in a much more effective manner than is possible by broadcast media such as television or print. It can facilitate an exchange between the advertiser and the product user by mechanisms such as user-generated content on advertisers’ websites, or through direct exchanges between consumers over mediums such as facebook fan sites.

For the ABAC adjudication processes, these developments and their use by alcohol companies raise obvious challenges. In part, these go to assessing whether a particular promotional activity is in fact “advertising” for ABAC purposes. If the activity does fall within the scope of the ABAC Scheme, then the highly dynamic nature of the medium can make even basic requirements, such as locating the actual images and text which have drawn a complaint, quite problematic.

In 2010 the panel approached these issues on a case-by-case basis with individual determinations raising various policy and practical issues. Where “whole-of-scheme” issues have been raised, the policy questions have been drawn to the attention of the scheme’s management committee. While it is fair to say that the scheme is coping with the challenges of new media, it would be desirable in the near future for an holistic examination of the scheme and its interaction with new media to be undertaken.

In operational terms, the adjudication process proceeded successfully during 2010. The panel was able to process the vast majority of complaints in a timely fashion. The critical working relationship with the ASB functioned well and the overall governance of the scheme provided by the management

committee provided appropriate monitoring and support of the panel's operation, while fully respecting the independence of the panel's decision-making processes.

One of the panel's original members, Elizabeth Dangar, resigned in September 2010, and was replaced by Debra Richards. Debra is the CEO of Ausfilm and is a former CEO of ASTRA, and brings to the panel very strong public policy experience of Australia's media. As Chief Adjudicator, I wish to record my appreciation to Elizabeth for her work on the panel since its inception in 1998.

The terms of the ABAC itself were amended in two respects during the year. Firstly, the effective "carve out" from ABAC provisions given to point-of-sale advertising material was narrowed, while the definition of National Health and Medical Research Council guidelines was updated to acknowledge the release of new guidelines by the council. Further, the panel considered for the first time a complaint under the naming and packaging provisions which were inserted into the ABAC in 2009.

The naming and packaging provisions will have importance over time as new products with their accompanying labels and packaging material are released on to the market. Product names and packaging in use as at the commencement of the new provisions are protected by a "grandfathering" clause.

During the year the panel considered 87 complaints referred to it by the ASB. These complaints related to 38 separate advertising campaigns and resulted in the panel making 31 new determinations. Of these determinations, 11 resulted in complaints being upheld in whole or in part.

In recent years, it has been notable that a high proportion of complaints which have been upheld by the panel relate to advertising by companies that are not signatories to the ABAC scheme and, as a result, use ads which have not been pre-vetted. This demonstrates the value of pre-vetting in promoting consistency of advertising with ABAC standards.

An increasing number of determinations have related to advertising by alcohol retailers. The ABAC Scheme does not have coverage of all alcohol retailers. In practice, the panel has gained good cooperation from most retailers in its processes; however, it would be highly desirable for retailers as a group to be covered by the scheme and hence to run major advertising campaigns through the pre-vetting process.

Substantive issues considered by the panel ranged across the various standards contained in the ABAC, with a number of determinations in 2010 going to section (a) (ii) and (b) relating to the appeal of alcohol advertising to children and adolescents. It is difficult to detect any discernable pattern in the types of issues raised in complaints from one year to another, given that a particular advertising campaign might attract a large number of complaints and, as a result, somewhat askew figures for comparative purposes. One thing that remains consistent is that invariably the panel is called upon to make difficult decisions concerning advertising which may attract quite different reactions from various audiences.

Finally, can I express my appreciation to Ms Jayne Taylor, the Executive Officer for the ABAC scheme. Jayne has provided a high level of support to the panel in its work and has been instrumental in the adjudication process operating in an efficient and timely manner.

Alcohol Beverages Advertising (and Packaging) Code

Preamble

Brewers Association of Australia and New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia other than point of sale material produced by alcohol beverage retailers, comply with the spirit and intent of this code.

The code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement with this code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

Definitions

For the purpose of this code –

adult means a person who is at least 18 years of age

alcohol beverage includes any particular brand of alcohol beverage

adolescent means a person aged 14–17 years inclusive

Australian Alcohol Guidelines means the electronic document *Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)* published by the National Health and Medical Research Council (NHMRC) as at 1 January 2010

child means a person under 14 years of age

low alcohol beverage means an alcohol beverage which contains less than 3.8% alcohol/volume

Part 1 — Standards to be applied to advertisements for alcohol beverages

Advertisements for alcohol beverages must:

- a) Present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - i) must not encourage excessive consumption or abuse of alcohol
 - ii) must not encourage underage drinking
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages
 - iv) must only depict the responsible and moderate consumption of alcohol beverages.
- b) Not have a strong or evident appeal to children or adolescents and, accordingly:
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene.
- c) Not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly:
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.
- d) Not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly:
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices and
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate.
- e) Not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content
- f) Comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) Not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) Not refer to the ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Internet advertisements

The required standard for advertisements outlined in (1)(a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.

Retail advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except:

- i) the brand name or names of alcohol beverages offered for sale
- ii) the type and/or style of the alcohol beverages offered for sale
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged
- iv) the location and/or times at which the alcohol beverages are offered for sale and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published

must comply with the spirit and intent of the code but are not subject to any process of prior clearance.

Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- all promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard
- alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons)
- promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines
- promotional staff do not misstate the nature or alcohol content of a product
- promotional staff at events are of legal drinking age
- promotional materials distributed at events do not clearly target underage persons
- promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success

- promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success
- promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

Third parties

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

Public education

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.

Part 2—Standards to be applied to the naming and packaging of alcohol beverages

1 The naming or packaging of alcohol beverages (which is also referred to within these standards as “product material”) must:

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly:
 - i) must not encourage excessive consumption or abuse of alcohol
 - ii) must not encourage under-age drinking
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages
 - iv) must only depict the responsible and moderate consumption of alcohol beverages
- b) not have a strong or evident appeal to children or adolescents and, accordingly
 - i) adults appearing in product material must be over 25 years of age and be clearly depicted as adults
 - ii) children and adolescents may only appear in product material in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly:
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly:
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content
- f) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- g) not refer to the ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

- 2 These standards, (Part 2 (1) (a)–(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the adjudication panel, had been supplied for bona fide retail sale in the ordinary course of business in a state or territory of Australia prior to 31 October 2009.**

