

Annual Report 2015



THE
ABAC
SCHEME
LIMITED

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Report from the ABAC Management Committee

This year saw the implementation of a number of new initiatives arising from an independent review of ABAC's governance and operations in 2014. The review recommendations were considered carefully by the ABAC Management Committee (the Management Committee) and implemented throughout 2015.

The first initiative was the appointment of an inaugural independent Chair to the Management Committee via an external, transparent recruitment process. The Management Committee comprises representatives from the alcohol and advertising peak industry associations together with a Commonwealth Government representative. The role of Chair had, to date, rotated annually among industry members of the Management Committee. This appointment provides a fresh perspective while providing ongoing continuity and independence.

The ABAC Rules and Procedures were significantly overhauled to improve operations. Changes included clear rules surrounding timeframes for removal of marketing material found to breach the ABAC Code, greater consistency and clarity in mandatory pre-vetting, improvements to Panel procedures, the appointment of Debra Richards as deputy Chief Adjudicator to the Panel and clarity around qualification, appointment and renewal of both panelists and pre-vetters.

Communication and strategic planning were areas identified for improvement during the review of ABAC and in 2015 a strategic plan and a communications strategy were developed. The communications strategy focused on improving awareness and knowledge of ABAC within the industry and the wider community and it will result in more extensive reporting to the alcohol and advertising industries on Scheme changes, areas of concern and recent adjudication decisions. Also, providing more information to the community through the ABAC website and the media.

The Management Committee continues to actively encourage non-signatories to use the AAPS service and become signatories to the Scheme. Various media associations actively promote the use of the AAPS service by alcohol marketers and in 2015 non-signatories were responsible for 9 per cent of all pre-vetting applications. While they have used the AAPS service and cooperated with the Scheme, we were pleased to welcome Campari Australia and Lion Cider as a new signatory to the ABAC Scheme in 2015.

The ABAC Adjudication Panel continues to operate in an independent and professional manner under the leadership of its Chief Adjudicator, Professor Michael Lavarch, AO. Panelists and pre-vetters are involved in annual workshops with Professor Lavarch, and these are valuable in ensuring consistency of decision-making and a strong understanding of the Code provisions. I would like to thank all the panelists and pre-vetters for their valuable input over the past two years during the review of both the ABAC Code and the Scheme's operations and governance.

This year we were again pleased to see full and timely compliance with ABAC Panel decisions by both signatory and non-signatory companies.

Finally, I would like to thank Denita Wawn, the outgoing ABAC Chair, who has managed the important new initiatives outlined in this report over the past few years and also Jayne Taylor, the ABAC Executive officer, for the outstanding support she provides to the ABAC Management Committee and the Scheme.

The Hon Alan Ferguson

Chair, ABAC Management Committee

*Report from
the ABAC
Management
Committee
(continued)*

The ABAC Scheme Management Committee



**The Hon Alan
Ferguson**
(ABAC Chair)



**Gordon
Broderick**



Paul Evans



Linda Young
(to September
2015, image
not available)



**Denita
Wawn**



Tony Hale

Overview of alcohol marketing regulation in Australia

The ABAC Responsible Alcohol Marketing Code (the ABAC Code) and the associated Pre-vetting and Complaints Management Systems form the quasi-regulatory ABAC Scheme.

The Scheme was developed in agreement with all major Australian alcohol beverage manufacturing and marketing industry associations and key advertising, media and consumer bodies. The Federal Government is also a key stakeholder and is represented on the Management Committee of the Scheme along with a Professor of Public Health, nominated by government, who is part of all adjudication panels.

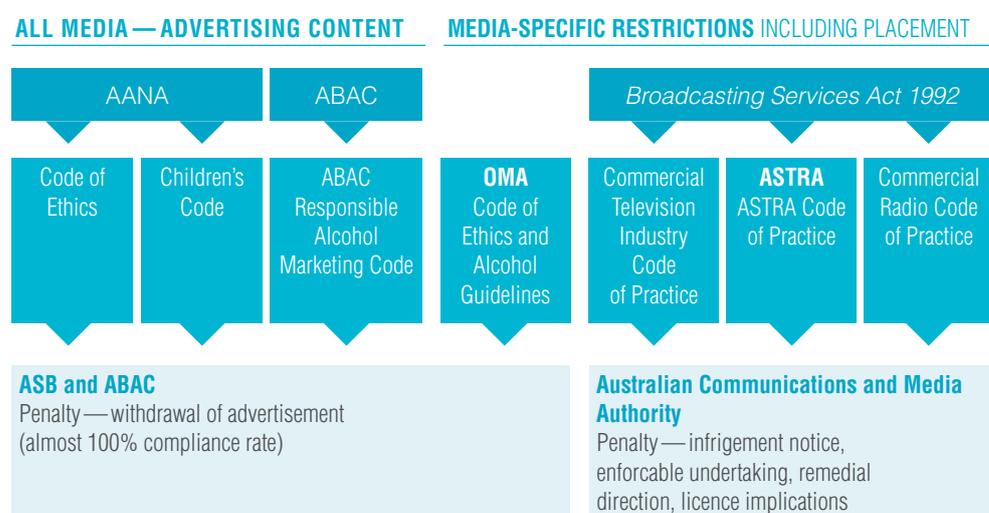
The ABAC Scheme is the centrepiece of alcohol advertising regulation in Australia. It is administered by the Management Committee which along with government includes representatives from industry and advertising.

Under the Scheme, guidelines for marketing including packaging, have been negotiated with government, consumer complaints are handled independently, and all costs are borne by industry.

The ABAC Scheme is not the only set of rules affecting advertising in Australia. Alcohol beverage advertising must also be consistent and comply with other applicable laws and codes, for example:

- the Federal Competition and Consumer 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 Code of Practice
- the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

Alcohol Advertising Regulation in Australia



Source: Australian Association of National Advertisers

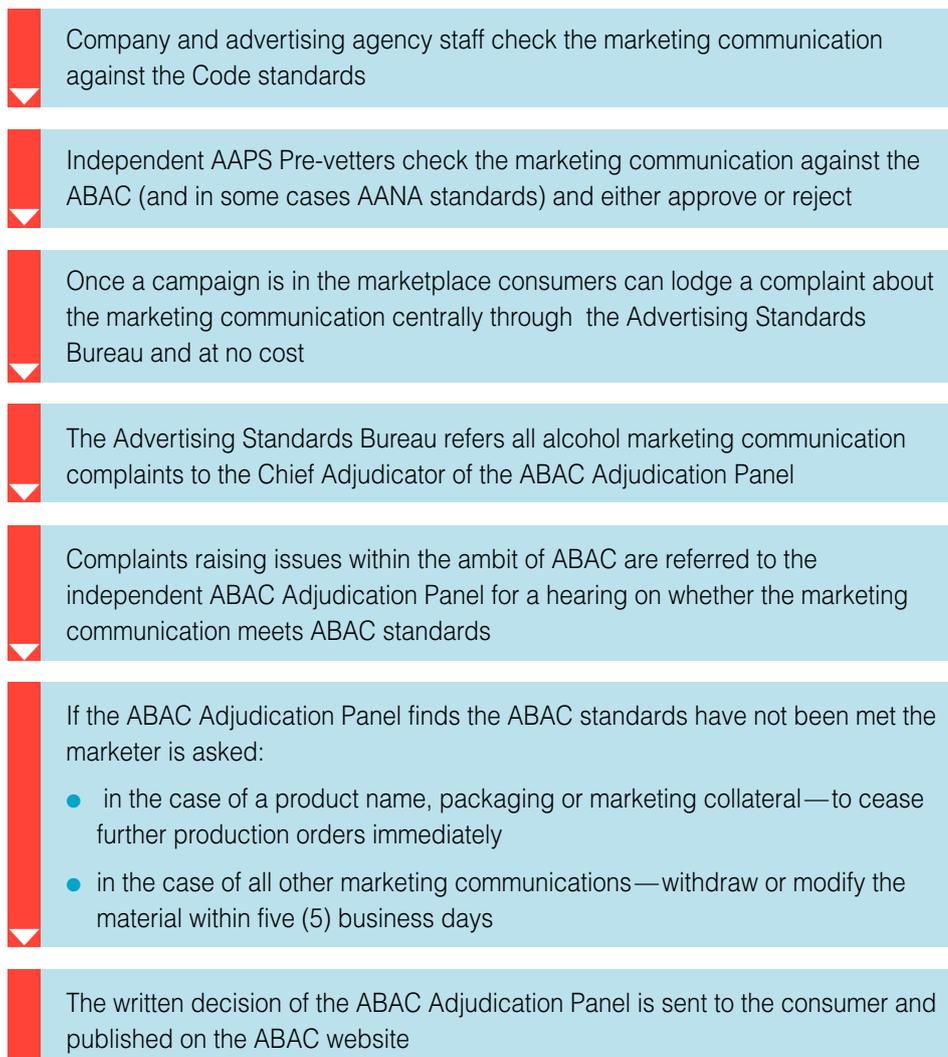
Operation of the ABAC Scheme

The ABAC Scheme is responsible for:

- **The ABAC Responsible Alcohol Marketing Code (first introduced in 1998 and substantially updated in 2004, 2009 and 2014)**(Annexure A) which regulates the content of alcohol marketing communications (including packaging) in Australia. Subject to regular reviews, the ABAC Code reflects community expectations and changes in the media and advertising industries. It applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol beverage marketing communications in emerging digital and social media, user-generated content on alcohol company controlled digital and social media, point-of-sale advertisements and surrogate marketing over which an alcohol company has control. The ABAC Guidance notes (Annexure B) have been developed to assist advertisers and agencies in interpreting the Code.
- **The Alcohol Advertising Pre-vetting Service (AAPS)** provides confidential advice to marketers on whether proposed alcohol marketing communications comply with the Code. This service is offered on a 'user pays' basis.
 - AAPS pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting.
 - AAPS has the support of media associations that encourage their members to check that an alcohol marketing communication has AAPS approval prior to placement of the communication.
 - Many alcohol beverage marketing communications are considered by AAPS each year. In 2015 AAPS considered 1,589 marketing communications.
 - AAPS Pre-vetters are independent of the alcohol beverage industry.
- **The ABAC Adjudication Panel (the Panel)**, headed by Chief Adjudicator Professor Michael Lavarch, AO, considers public complaints about alcohol marketing communications that fall within the ambit of the Code.
 - The Advertising Standards Bureau (ASB) accepts complaints in relation to all types of marketing communications at no cost to the consumer. This streamlined process ensures all relevant Codes are triggered and reduces the risk of duplication and double handling. All alcohol-related complaints received by the ASB are provided to the ABAC Adjudication Panel and the Panel considers all complaints that raise ABAC Code issues subject to the exceptions set out in Part 4.3(a)–(d) of the ABAC Rules and Procedures (Annexure C).
 - The ASB considers complaints insofar as they raise AANA Code of Ethics issues. The AANA Code of Ethics aims to ensure that all marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society. This ensures there is a consistent standard for issues such as discrimination, violence, sexual imagery, obscene language, health and safety across all marketing for every type of product.
 - The ABAC Panel reports its decisions to the ASB, the ABAC Management Committee, the marketer and the complainant. Decisions are published on the ABAC website.
 - The Panel and its deliberations are conducted independently of the ABAC Management Committee and the broader alcohol and advertising industry. The Panel comprises:
 - the Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise (or if unavailable, the deputy Chief Adjudicator, Debra Richards),
 - a health sector panelist, Professor Richard Mattick or Professor Louisa Jorm (both were appointed from a shortlist of health sector professionals provided by the relevant Federal Minister responsible for alcohol issues or his or her nominee); and
 - a panelist with market research, media or advertising expertise, Jeanne Strachan or Debra Richards.

- Each quarter the Chief Adjudicator reports to the ABAC Management Committee on the operation of the Panel and the Chief Adjudicator submits an annual report on the Panel's operations to the ABAC Management Committee for inclusion in its annual report.
- **Best Practice Guide for Industry on Digital Marketing** (Annexure D). It was recognised that while ABAC, as an industry content code, covered the content of digital marketing, there was no guidance to advertisers on how to best manage the placement of alcohol marketing in digital media. In response, ABAC developed best practice guidelines to assist the alcohol industry maintain high standards of social responsibility in the management of digital marketing. The guide is intended to assist alcohol advertisers and agencies in the management of their digital marketing particularly relating to age-affirmation and moderation of user-generated content. It is recognised that digital marketing and social media are evolving rapidly and the best practice guide will therefore be reviewed regularly and updated where necessary.

How the ABAC Scheme interacts with alcohol marketing communications — an example



Management of the ABAC Scheme

The Management Committee manages and reviews the operations of the ABAC Scheme and considers amendments to the ABAC Code and Scheme procedures with a view to:

- encouraging industry members, large and small, to participate in the quasi-regulatory system
- ensuring an effective quasi-regulatory system
- monitoring ABAC operations and improving them where necessary
- managing AAPS as an effective mechanism to support and strengthen the aims of ABAC and encouraging participation by industry members in AAPS; and
- coordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy, the ASB, other key stakeholders and published online to ensure its public availability.

During 2015 the ABAC Management Committee comprised:

- an independent Chair, The Hon Alan Ferguson
- the Chief Executive of the Brewers Association of Australia and New Zealand, Ms Denita Wawn
- the Executive Director of the Distilled Spirits Industry Council of Australia Inc, Mr Gordon Broderick
- the Chief Executive of the Winemakers' Federation of Australia, Mr Paul Evans
- the Chief Executive of the Communications Council Limited, Mr Tony Hale
- the Assistant Secretary responsible for alcohol issues at the Commonwealth Department responsible for health policy as the representative of Australian Governments, Ms Kathy Dennis, followed by Ms Linda Young.

The Management Committee is supported in its role by the ABAC Executive Officer, Ms Jayne Taylor.

Each member of the Management Committee represents a group of stakeholders in alcohol beverage marketing regulation.

Any member of the Management Committee may raise issues for consideration by the Committee and the Committee in practice operates on a consensus basis.

The Management Committee meets at least four times a year and any issues raised by any member or referred by the Panel or pre-vetters receive full consideration.

ABAC Scheme coverage

- Membership and compliance with the Scheme is voluntary. However, the individual members of the Brewers Association of Australia and New Zealand, Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia have agreed to be bound by the Scheme. This means the great majority of alcohol marketing in Australia is regulated by the Scheme.
- Other companies that market alcohol are encouraged to become direct signatories and to utilise the pre-vetting service. Both Woolworths Liquor and Coles Liquor joined the Scheme as direct signatories during 2013, and Campari Australia and Lion Cider became direct signatories in 2015.
- Many non-signatories currently use the pre-vetting service and the Scheme has the support of media associations. In 2015, 9 per cent of pre-vetting applications were from non-signatories.
- The alcohol industry (both signatories and non-signatories) and advertising agencies have access to annual training sessions held with the ABAC Chief Adjudicator and a pre-vetter in Sydney and Melbourne where all aspects and obligations of the Code, pre-vetting service and complaints processes are explained. In addition, the ABAC pre-vetters, alcohol beverage industry associations and ABAC Executive Officer are all available to explain the Code and the Scheme to alcohol beverage marketers and their agencies.
- The ABAC Adjudication Panel made 29 determinations in 2015, of which seven upheld complaints. In every case the advertiser agreed to withdraw or modify an advertisement or packaging so as to comply with the ABAC standards, as required by Part 4.9 and 4.13 of the ABAC Scheme Rules and Procedures.
- Five of the seven upheld complaints related to non-signatory advertisers that all cooperated with the Scheme. Three of the upheld complaints related to an advertisement that had received pre-vetting approval. All adjudication decisions are published on the ABAC website.

Recent ABAC Initiatives

The appointment of the Hon Alan Ferguson as the inaugural independent Chair to the ABAC Management Committee.

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- The ABAC Management Committee comprises representatives from the alcohol and advertising peak industry associations together with a Commonwealth Government representative. The role of Chair had previously rotated annually among industry members of the Management Committee. Mr Ferguson is a former Commonwealth Senator who served three terms and was President of the Senate for one year. He was also Deputy President of the Senate and Chair of Committees for three years and served on numerous Senate Committees, notably a longstanding Chair of the Joint Standing Committee for Foreign Affairs, Defence and Trade.

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- Implementation of recommendations from the review of the ABAC Scheme governance and operations in 2014 by independent consultant, Directors Australia:
 - appointment of an independent Chair to the Management Committee, the Hon Alan Ferguson
 - appointment of a deputy Chief Adjudicator, Debra Richards
 - development of a Strategic Plan
 - development of a Communications Strategy
 - redrafting of the ABAC Rules and Procedures to increase clarity and to improve ABAC operations, in particular:
 - clear rules surrounding timeframes for removal of marketing material found to breach the ABAC Code
 - greater consistency and clarity as to mandatory pre-vetting
 - improvements to Panel procedures
 - clarity as to qualification, appointment and renewal of both panelists and pre-vetters.

2015 ABAC Statistics

| Pre-vetting | | 2013 | 2014 | 2015 |
|--|---|------|------|------|
| Number of advertisements, names and packaging pre-vetted | | 1394 | 1571 | 1589 |
| Of the advertisements pre-vetted: | Number that were accepted | 1144 | 1298 | 1318 |
| | Number that were accepted subject to conditions | 39 | 61 | 67 |
| | Number that were rejected | 211 | 212 | 204 |

| Complaints | | 2013 | 2014 | 2015 |
|--|--|------|------|------|
| Number of complaints received | | 182 | 94 | 133 |
| Number of marketing campaigns these complaints referred to | | 78 | 53 | 71 |
| Number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel (i.e. complaints that resulted in a Panel determination) | | 69 | 35 | 35 |
| Number of determinations from complaints received that year | | 36 | 27 | 29 |
| Number of complaints upheld (at least in part): | | 20 | 8 | 8 |
| Number of determinations upholding complaints | | 4* | 8 | 7 |

*In 2013 and 2015 there were multiple complaints in relation to one or more determinations upholding complaints.

Observations

- Marketing complaints resulting in a determination took an average of 22 business days to be completed (target of 30 business days).
- All companies agreed to withdraw or modify marketing communications referred to in upheld complaints.
- Complaints about appeal to minors and irresponsible or offensive alcohol-related behavior significantly decreased, while complaints about excessive consumption of alcohol and alcohol as a cause of success both increased.
- Complaints about television advertisements decreased while complaints about outdoor and digital marketing increased.
- Of the 29 determinations made, 16 related to advertisements that were pre-vetted. Of the seven determinations upholding complaints, three related to advertisements that were pre-vetted.
- Detailed ABAC statistics are included in Annexure E of this report.

Report from the Chief Adjudicator



Two thousand and fifteen was a steady year for the ABAC adjudication process with 29 determinations made from 133 individual complaints received. The Panel was able to make decisions within the target timeframe of 30 business days with the average timeframe from receipt of the complaint to the publication of a determination being 22 business days.

The year saw an increased number of determinations made in relation to marketing communications by non-signatories to the ABAC Scheme (12 of 29 determinations). In each of these cases the non-signatory marketer provided good cooperation through the supply of relevant materials and where a determination upheld a complaint in each instance the marketer removed the material found to be in breach of an ABAC standard.

The panel and pre-vetters met with the scheme's Chief Adjudicator and the Executive Officer in a session to discuss the operation of the Scheme and the interpretation of Code standards between the pre-vetting and adjudication processes. The aim of these sessions is to assist in the consistent interpretation of code provisions and to fully canvass significant Panel decisions which go to the ongoing understanding of the code standards.

The year witnessed an increase in the number of complaints raising concerns about marketing encouraging the excessive consumption of alcohol or suggesting that alcohol is a cause of the achievement of success. For the first time in some years the number of complaints relating to the appeal of alcohol marketing to under 18 years declined. Given the volatility of year-on-year comparisons however it is difficult to assess at this point as to whether these results in 2015 reflect a shift in community concerns or are a one-off experience.

I wish to extend my thanks to my fellow Panel members for their cooperation and contribution to the Scheme during the year and to Ms Jayne Taylor, the Scheme's Executive Officer, for her outstanding support with the logistics and operation of the Panel's processes.

In July 2014 the current version of the ABAC came into operation and with 18 months experience, enough time has elapsed to be able to reflect on how the new Code provisions have impacted on Panel decisions and where issues have arisen which may require the consideration of the ABAC Scheme's Management Committee. While the new Code retained the basic structure of its predecessor in terms of the standards applying to good alcohol marketing practice, the Code has provided clarity on how standards are to be applied and importantly has expanded the reach of the Scheme. The following issues for consideration arose in Panel decisions during 2015.

Alcohol retailer marketing

A major extension of the reach of the 2014 Code was its coverage of retail advertising. In essence this has expanded the Scheme from its origins in covering the direct advertising of alcohol beverage producers and distributors to also include marketing at the retail end of the alcohol industry.

In Determination 14/2015 the Panel considered a television advertisement from the Adelaide Casino. The significance of this decision is that the Panel accepted that the post-July 2014 Scheme covers the marketing of entities whose business is not solely or even primarily concerned with the sale of alcohol, for example a bottle shop. Rather the Scheme now captures the marketing of entities where alcohol retailing was but one of several components of the entity's business model, for example a restaurant or café.

Clearly this extension of the Scheme means that on the face of it, the Code standards capture the marketing of many thousands of businesses that were not necessarily caught by the reach of the earlier versions of the Code. The full impact of this expansion is yet to play out, but is potentially very significant.

In Determination 101/2015 the Panel considered the linkage within the content of a marketing communication from an alcohol retailer and alcohol as a product. In other words the question was whether all marketing from a retailer such as a café would be subject to ABAC processes or was the coverage constrained.

The Panel determined that for an advertisement by an alcohol retailer to be considered an alcohol beverage marketing communication and hence within the scope of the Scheme it must either directly or by necessary implication relate to alcohol as a product. This relationship need not be the primary purpose of the ad—in other words, the ad could be promoting the attractions of a restaurant or café more broadly—but there must be a discernible link to alcohol as a product for the advertising to fall both within the letter and the spirit of ABAC Scheme.

Nonetheless, the implications of the expansion of the Scheme as confirmed in the Panel's 2015 decisions raise the need of greater awareness building amongst a larger segment of the business community of the Code standards.

Product placement

The marketing technique of product placement involves a commercial relationship between the owner or promoter of a particular product brand and the use of that product or brand within the context of an apparently unrelated broadcast controlled by a third party. In its determination concerning a complaint about a music video clip from the American Music Production House Play–N–Skillz, the alcohol brand Birthday Creek Wines was prominently featured.

The Panel's determination established that for the purposes of the new Code product placement is a marketing communication capable of falling within the ABAC Scheme and being subject to ABAC Standards. This can be contrasted with the position under the previous Code that did not capture this form of marketing

Unlike the United Kingdom, the use of product placements to market alcohol products has not become a major policy issue in Australia. The implications of the Panel's decision means that Code standards are to apply to alcohol brand owners using this marketing approach. The adequacy of the standards and the Scheme to deal with this marketing practice should be monitored by the Management Committee.

Placement

Both the July 2014 ABAC and predecessor versions of the Code have been concerned about the content of alcohol marketing rather than where an alcohol marketing communication might be placed. This means that an alcohol marketing communication will not be found in breach of a Code standard simply because it might be in a location or transmitted via a medium which can be accessed and viewed by under 18-year-olds. By the same token marketing which is otherwise inconsistent with Code standards, particularly relating to appeal to under 18-year-olds, will not be saved even if the audience reach of the marketing communication is predominately 18-year-olds and over.

During 2015 a number of complaints were received which specifically raised the issue of the placement of alcohol marketing communications and the accessibility of these communications to under 18-year-olds. In most instances these complaints related either to:

- outdoor advertising such as that appearing on a roadside billboard or within a shopping centre or at a railway station
- or
- on digital platforms that are able to be accessed by children or adolescents.

As a whole, the Australian regulatory system regarding alcohol marketing has tended to deal with restrictions on where advertising might appear through media specific Codes of Practice. For instance, the Outdoor Media Association restricts the proximity of alcohol marketing to schools whereas the Code applying to free-to-air television restricts alcohol marketing generally to timeslots after 8.30pm (noting the significant carve out that is allowed for alcohol marketing to be shown in conjunction with the broadcast of the live sporting events).

The design of the ABAC Scheme and how placement concerns should be treated is a policy issue rather than a matter for the Panel. The issue is raised simply because of the number of times it is raised in public complaints. Whether it is feasible or desirable to incorporate some provisions on placement within the substantive standards (as opposed to the Best Practice guide for Digital Marketing) is a question for the Management Committee.

Professor The Hon Michael Lavarch AO

Chief Adjudicator, ABAC Adjudication Panel

Most complained about alcohol advertisements in 2015

Canadian Club “Wake up Call”

For the second consecutive year, the most complained about advertisement in 2015 was the Canadian Club ‘Wake Up Call’ television advertisement. The ad featured a woman going into a bar for a refreshing drink and select Canadian Club and Dry. A fantasy scene follows where an attractive man dressed in alpine clothing throws a snowball at the woman after she takes a sip of her drink accompanied by the voiceover, “Canadian Club tastes refreshing like a snowball in your face from a sexy person”. The woman then says, “You don’t get that from a beer”.



Twenty separate complaints were made about this advertisement in 2015, however each complaint raised issues that had been previously considered by the Panel in one of two separate determinations made in 2014. The key concerns raised across the complaints in 2015 were:

- the throwing of a snowball at the woman’s face shows violence toward women and offensive behaviour
- the fantasy scene showing a ‘sexy person’ walking toward the woman after she has consumed the product suggests that alcohol consumption leads to sexual success.

The Panel had previously found that the advertisement did not breach the ABAC provisions raised as:

- the scene where the man throws the snowball at the woman is established as a fantasy that does not actually occur (i.e. the woman imagines the event as a reaction to the consumption of the product)
- the woman’s reaction to being hit by the snowball does not indicate any sign of distress or alarm that would be occasioned by an unexpected and random violent act—in fact, the impact of the snowball is shown as having been welcomed by the woman
- taken in the full context of the advertisement, the snowball scene is illustrative of the brand feature of refreshment and would not be taken as actually condoning violence towards women
- there was no suggestion that the man or woman will be sexually successful because of the product.

*Most complained
about alcohol
advertisements
in 2015
(continued)*

**Lowenbrau Keller
outdoor & digital
campaign**

Fourteen complaints were made about advertisements by Lowenbrau Keller that featured women in traditional Bavarian costume with prominent cleavage. The majority of the complaints raised concerns that the advertisements promoted objectification of women. This is not an ABAC issue but rather an issue for the Advertising Standards Board. However, several of the complaints raised ABAC issues.



The key concerns raised in the complaints were that the advertisements:

- Promote sexual harassment by:
 - depicting a close up picture of one of their waitresses breasts, next to the caption “We’ve got big beers, big meals and ... big fun” which practically invites punters to come to Lowenbrau to touch their employees inappropriately
 - promoting a sexist view of women as sexual objects for men’s pleasure, inviting men to ogle women’s breasts while drinking beer
- depict a girl that either is or looks like she is under 18 years of age in an image that has been photoshopped to provide the girl with large breasts.

The Panel found that the outdoor ads did not breach the ABAC Standard relating to alcohol-related offensive behavior noting that excessive alcohol consumption is not depicted, the ads were contextual and the models were not shown interacting with anyone and no offensive behavior is depicted. However the Panel did consider that the digital advertisement was in breach of this ABAC Standard, noting that a combination of the accompanying text that drew an association between the model’s breasts and alcohol consumption, the image not showing the woman’s face thereby reducing the image to her body parts and the partially consumed stein depicted can reasonably be taken as encouraging a disregard for the woman as a person and the promotion of alcohol-fuelled sexual harassment.

The Panel also considered the second complaint that raised a concern that the models in the second outdoor advertisement are or appear to be minors. The test in the ABAC Code requires models to be at least 25 years of age and appear adult. The advertiser did not respond to the complaint and therefore the actual age of the models was unknown. The Panel in those circumstances must make an assessment of the age of the models. The Panel believed it likely that one of the models in the second outdoor advertisement was under the age of 25 and the ad was found to breach the ABAC Standard.

Alcohol advertisements found by the Panel to breach the ABAC Code

During 2015 the Panel made seven (7) determinations that upheld public complaints about alcohol marketing communications.

Little Fat Lamb Hard Apple Cider packaging by Fluid Beverages

The Panel decided that the label had strong or evident appeal to minors as the lamb was drawn in a cartoon style reminiscent of that used in materials directed to children, the colours used for the lamb and scenery would be particularly appealing to children, the font used for the name and description of the product is reminiscent of a childish style of writing and appears to be 'coloured in' as might take place with a children's colouring in book and the combination of the label with the plastic bottle used creates confusion with a soft drink.



The distributor of Little Fat Lamb Cider in Australia advised that the product in its current packaging would no longer be produced.

Facebook drinks promotion by Soho Bar

The ABAC Panel found the ad could be interpreted as promoting excessive consumption and irresponsible or offensive behaviour related to alcohol use by displaying a woman affected by alcohol use lying in an alley together with a drinks promotion.

The post was removed prior to the complaint being notified to Soho Bar.



Jack Daniels Youtube advertisement by Brown Forman

The Panel decided that the ad created an impression that the product was not only present at a number of historic music events but was a contributor to the success of the events and the artists who are depicted.



The advertisement was removed within five business days of the determination.

Alcohol advertisements found by the Panel to breach the ABAC Code (continued)

XXXX Television advertisement by Lion

The Panel decided that the depiction of alcohol being consumed by the main character while tending to a barbecue (an activity which requires alertness and awareness of the inherent risk) where the barbecue had caught fire (elevating the inherent risk), breached the ABAC Standard as to safety and alcohol use.



The advertisement was removed within 48 hours of the determination.

Advertisements by Urban Purveyor Group

Lowenbrau Keller outdoor and digital

The Panel decided that one of the models in the 'Make Mein a Dubbel' ad looked to be under 25 years of age and that the social media post promoted alcohol-related offensive behaviour, namely sexual harassment of women.



The advertisements found to breach the ABAC were removed on or prior to notification of the determination.

Bavarian Bier Café outdoor advertisement

The Panel decided that the ad is suggesting that alcohol is at least a cause of 'Steve' achieving confidence and success, namely overcoming his shyness.



The outdoor advertisement was removed within 16 days of the determination.

Bavarian Bier Café outdoor advertisement

The Panel decided that the ad encouraged excess consumption and suggested alcohol could be a cause of a change in mood by the use of the phrase 'Get Oktoberfested' and the depiction of a group of people, holding alcohol beverages and shown in a highly animated and boisterous state consistent with excess consumption.



The advertiser removed the ads prior to the determination being made.

Annexure A ABAC Responsible Alcohol Marketing Code

1 Preamble

The ABAC Responsible Alcohol Marketing Code (the Code) is designed to ensure that alcohol is marketed in a responsible manner. Signatories to the Code are committed to ensuring that their marketing complies with the Code's spirit and intent.

The Code complements Australian legislation, the AANA Code of Ethics and media-specific codes relevant to the placement of marketing.

From time-to-time, the ABAC Scheme may publish best practice advice to industry. That advice does not form part of the Code but complements it by assisting industry to achieve high levels of responsibility in the management of its marketing.

2 Application

- a** The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
- brand advertising (including trade advertising)
 - competitions
 - digital communications (including in mobile and social media and user-generated content)
 - product names and packaging
 - advertorials
 - alcohol brand extensions to non-alcohol beverage products
 - point-of-sale materials
 - retailer advertising
 - Marketing Collateral.
- b** The Code does NOT apply to:
- (i) materials or activities whose sole purpose is to educate about misuse or abuse of alcohol beverages and which do not include a company's product branding;
 - (ii) information in company annual reports, corporate public affairs messages or internal company communications;
 - (iii) the name or packaging of a product, including the use of a trademark on a product which a 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 Australia prior to 31 October 2009;
 - (iv) point-of-sale Marketing Communications initiated by Alcohol Beverage retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol Beverages has no control over the point-of-sale Marketing Communication;
 - (v) Sponsorship;
 - (vi) the placement of a Marketing Communication, except to the extent that placement may impact on how the Marketing Communication is understood in accordance with section 4.

3 Standards to be applied

a Responsible and moderate portrayal of Alcohol Beverages

A Marketing Communication must NOT:

- (i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
- (ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
- (iii) challenge or dare people to consume an Alcohol Beverage;
- (iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.

b Responsibility toward Minors

A Marketing Communication must NOT:

- (i) have Strong or Evident Appeal to Minors;
- (ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol; *or*
- (iii) depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - A they are not visually prominent; *or*
 - B they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age-Restricted Environment.

c Responsible depiction of the effects of alcohol

A Marketing Communication must NOT:

- (i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
- (ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
- (iii) if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement; *or*
- (iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

d Alcohol and Safety

A Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

4 Interpretation

Compliance of a Marketing Communication with the Code is to be assessed in terms of the probable understanding of the Marketing Communication by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole.

Capitalised terms have the meanings set out in section 5 below.

Headings do not expand the Code.

5 Definitions

In this Code:

AANA Code of Ethics means the Australian Association of National Advertisers Code of Ethics.

ABAC Scheme means The ABAC Scheme Limited.

Adjudication Panel means the panel convened to adjudicate a complaint received by the ABAC Scheme.

Adult means a person who is of legal purchase age in Australia.

Age-Restricted Environment means:

- licensed premises that do not permit entry by Minors; *or*
- a non alcohol-specific age-restricted digital platform (including, for example, a social media website or application) which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; *and*
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as being 18 years of age or over.

Alcohol Beverage means a beverage containing at least 0.5% alcohol by volume.

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 1st January 2010.

Code means this ABAC Responsible Alcohol Marketing Code.

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Collateral means material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point-of-sale materials, retailer advertising and Marketing Collateral.

Minor means a person who is under 18 years of age and therefore not legally permitted to purchase an Alcohol Beverage in Australia.

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; *or*
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

Annexure B Guidance Notes ABAC Responsible Alcohol Marketing Code

Overview

The ABAC Scheme is an initiative in quasi-regulation funded by industry and administered with the support of government. The key components of the Scheme are the ABAC Responsible Alcohol Marketing Code (the Code), the Alcohol Advertising Pre-vetting Service (AAPS) and the ABAC complaints handling process, the ABAC Adjudication Panel (the Panel).

All advertisements for alcohol beverages are required to comply with the ABAC as well as the Australian Association of National Advertisers' (AANA) Code of Ethics. In addition, where appropriate, alcohol advertisements must comply with other Codes of Practice such as the Commercial Television Industry Code of Practice, the Codes for Commercial Radio and the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

Purpose of the Guidance Notes

The ABAC Management Committee has developed the following Guidance Notes to assist advertisers and agencies in interpreting the essential meaning and intent of the Code by providing clarification through definition, explanation or example. The Guidance Notes are not intended to replace or extend the provisions of the Code itself.

The Guidance Notes represent the opinions of ABAC's administrators and are based in part on previous decisions made by the independent ABAC Adjudication Panel. The ABAC website—www.abac.org.au—includes an advanced search facility that enables all adjudication decisions relating to a particular issue or provision to be located and accessed and may be useful in providing further understanding of the issues involved in a particular clause of the Code. Insofar as the Code contains new or amended provisions untested by the Panel, these Guidance Notes will evolve as those provisions are interpreted by the ABAC Adjudication Panel and precedent is set.

Notwithstanding the content of these Guidance Notes, the AAPS Pre-vetter remains the final arbiter on how the Code should be interpreted and applied at the pre-vetting stage. Likewise the ABAC Adjudication Panel remains the final arbiter on how the Code should be interpreted and applied at the complaints adjudication stage.

Whilst AAPS Pre-vetters undertake to provide the best possible advice, any complaint regarding an alcohol advertisement will be assessed through the ABAC complaints handling process. It should be noted that successful pre-vetting does not serve as a guarantee or an argument that a complaint should be dismissed. The ABAC complaints handling process and the AAPS are conducted separately by independent experts.

Preamble

The ABAC Responsible Alcohol Marketing Code is designed to ensure that alcohol is marketed in a responsible manner. Signatories to the Code are committed to ensuring that their marketing complies with the Code's spirit and intent.

The Code complements Australian legislation, the AANA Code of Ethics and media-specific codes relevant to the placement of marketing.

From time-to-time, the ABAC Scheme may publish best practice advice to industry. That advice does not form part of the Code but complements it by assisting industry to achieve high levels of responsibility in the management of its marketing.

Guidance note: Section 1

Users of these Guidance Notes are strongly encouraged to work within both the spirit and the letter of the Code as it stands. Advertisers are reminded that examples, real or perceived, of attempts to circumvent the provisions of the Code threaten the industry's reputation for responsible regulation and are in direct conflict with the interests of industry and the wider community.

Application

- a** The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
- brand advertising (including trade advertising)
 - competitions
 - digital communications (including in mobile and social media and user-generated content)
 - product names and packaging
 - advertorials
 - alcohol brand extensions to non-alcohol beverage products
 - point-of-sale materials
 - retailer advertising
 - marketing collateral
- b** The Code does NOT apply to:
- i** Materials or activities whose sole purpose is to educate about misuse or abuse of alcohol beverages and which do not include a company's product branding;
 - ii** information in company annual reports, corporate public affairs messages or internal company communications;
 - iii** the name or packaging of a product, including the use of a trademark on a product which a 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 Australia prior to 31 October 2009;
 - iv** point-of-sale Marketing Communications initiated by Alcohol Beverage retailers (as these are regulated by liquor licensing legislation), provided that a producer or distributor of Alcohol Beverages has no control over the point-of-sale Marketing Communication;
 - v** Sponsorship;
 - vi** the placement of a Marketing Communication, except to the extent that placement may impact on how the Marketing Communication is understood in accordance with section 4.

Guidance note: Section 2

Remit

The remit of the Code is set out in section 2 and must be read together with the section 5 definitions. The ABAC applies to marketing communications in Australia generated by or within the reasonable control of an alcohol beverage producer, distributor or retailer apart from the exceptions specified in Section 2(b).

Reasonable control

This term has been included in recognition that a brand may be included in a communication that is not generated by the brand owner and is not in the reasonable control of a brand owner.

Examples of marketing communications that are not likely to meet the reasonable control test are:

- unauthorised product fan sites
- product placement over which a brand owner has no reasonable control
- user profiles of Facebook fans that appear on a brand owners Facebook page, as they are automatically updated on the brand owner's page whenever a user changes their profile

Examples of marketing communications that are likely to meet the reasonable control test are:

- brand extension (use of a brand on a non-alcohol beverage product)
- marketing communications by an agent or employee of a brand owner
- user-generated content on a brand controlled social media site or page

Exceptions

Part (b) sets out clearly the limited circumstances in which the Code will not apply to a marketing communication by an alcohol beverage producer, distributor or retailer.

Placement exception

The ABAC is a code which principally deals with the content and not the placement of advertisements within a particular medium, location or timeslot. This can be contrasted with the Commercial Television Industry Code of Practice and the Outdoor Media Association Alcohol Guidelines which do contain provisions that restrict when an alcohol beverage advertisement can be broadcast or where it can be placed. The Interpretation section does however indirectly raise the placement of advertising by reference to 'the class of persons to whom the material is likely to be communicated'.

Standards to be applied

- a** Responsible and moderate portrayal of Alcohol Beverages
A Marketing Communication must NOT:
 - i** show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - ii** show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
 - iii** challenge or dare people to consume an Alcohol Beverage; or
 - iv** encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.

Guidance note: Section 3(a)**Responsible and Moderate Portrayal of Alcohol Beverages**

Alcohol marketing cannot show or encourage:

- excessive or rapid consumption of alcohol
- misuse or abuse of an alcohol beverage
- alcohol-related irresponsible or offensive behaviour (for example, violence, vandalism)
- a challenge or dare to consume alcohol
- emphasising the strength or intoxicating effect of an alcohol beverage to encourage consumption of a higher than typical strength alcohol beverage

Australian Alcohol Guidelines

The 2010 Australian Guidelines to Reduce Health Risks from Drinking Alcohol advise that to reduce the lifetime risk of harm from alcohol-related disease or injury, healthy men and women should drink no more than two (2) standard drinks on any day and to reduce the risk of alcohol-related injury arising from a single occasion of drinking healthy men and women should drink no more than four (4) standard drinks on a single occasion. There can be no encouragement of consumption contrary to these guidelines.

b Responsibility toward Minors

A Marketing Communication must NOT:

- i** have Strong or Evident Appeal to Minors;
- ii** depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol; or
- iii** depict an Adult who is under 25 years of Age and appears to be an Adult unless:
 - A** they are not visually prominent; or
 - B** they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age-Restricted Environment.

Guidance note: Section 3(b)**Strong or evident appeal to Minors**

There can be no strong or evident appeal to Minors. This is defined in Section 5 as meeting any one or more of the following tests. To breach section 3(b)(i) only one of these tests must be met.

- likely to appeal strongly to Minors
- specifically targeted at Minors
- having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult
- using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks
- using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors

Whether material is in breach of any one of the above sub-points is determined looking at the material as a whole. Assessment requires a weighing up of factors such as the visual techniques, themes, age of actors and characters and overall look and feel.

Images of Minors

People who are or look under 18 may only be shown where:

- they are in an incidental role only
- they are in a natural situation (for example, a family socialising responsibly) and
- there is no implication they will consume or serve alcohol.

Images of 18–24-year-olds

There are restrictions on the use of images of 18–24-year-olds that appear to be over 18 years of age that need to be considered carefully. The images may only be shown in marketing communications in the following circumstances:

- if the images are not visually prominent they may be shown in any medium; or
- if the image is visually prominent and is of a real person in a real scenario, rather than an image of a paid model or actor, it may appear in a marketing communication placed in either:
 - licensed premises that do not permit entry by Minors or
 - in a non-alcohol specific age-restricted digital platform. This is a digital platform that meets all of the following criteria:
 - non-alcohol specific—this is a digital platform that has not been set up for the purpose of promotion of an alcohol beverage, but for a wide variety of uses. Examples of non-alcohol specific digital platforms are Facebook, Youtube or Twitter. Examples of alcohol specific digital platforms are alcohol company or brand websites, and
 - requires users to register by provision of date of birth and then login to use the platform, and
 - is also able to hide the existence of alcohol pages from those registered as under 18 years of age—Facebook pages can use age restriction settings so that the page is not visible to users under the age of 18.

Facebook pages **that elect to use all available age restriction controls** currently qualify as a non-alcohol specific age-restricted digital platform as defined in the Code and therefore allow the use of images of visually prominent 18–24-year-olds on their websites. Alcohol brand websites which require entry of a date of birth to enter the site do not fall within this narrow exception and may not include images of visually prominent 18–24 year olds.

The apparent age of the talent in an advertisement will often be a subjective test. To avoid ambiguity, the pre-vetter will always take a conservative view of the apparent age of the talent. Therefore agencies should do likewise, irrespective of the actual age of the talent.

c Responsible depiction of the effects of alcohol

A Marketing Communication must NOT:

- i suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
- ii show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
- iii if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement; or
- iv suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Guidance note: Section 3(c)

There can be no portrayal of the presence of alcohol as having any causal relationship with mood change, a celebration, success of any kind, a therapeutic benefit or being necessary to relax.

There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success. Similarly there is no intention to restrict the depiction of alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion that it has caused or contributed to their circumstance. It is also possible to depict the presence of alcohol in a romantic situation provided there is no suggestion it has caused or contributed to the achievement of sexual or other success.

It should be noted that the presence of alcohol includes any elements of the product or brand (such as packaging or brand marks) intended to represent the product.

d Alcohol and Safety

A Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

Guidance note: Section 3(d)

There is no intention to exclude every association between alcohol and activities that, for safety reasons, require a high degree of alertness or physical coordination; however any such association must not depict the consumption of alcohol taking place before or during the engagement in any such activities.

Showing consumption of alcohol is more than just actual drinking and includes language and images which invoke consumption.

Interpretation

Compliance of a Marketing Communication with the Code is to be assessed in terms of the probable understanding of the Marketing Communication by a reasonable person to whom the material is likely to be communicated, and taking its content as a whole.

Capitalised terms have the meanings set out in section 5 below.

Headings do not expand the Code.

Guidance note: Section 4

For the purposes of the ABAC Code, and as it is applied in Australian law, the test of the reasonable person is intended as a reflection of the standards and attitudes of contemporary Australian society. The test of the reasonable person exists specifically to ensure the perceived views and standards of the broader community prevail over those of any individual or minority group. In relation to the context in which alcohol is presented in advertising, we have adopted the test of the reasonable person as it is reflected in widely observed and accepted practice and public opinion, to determine where, when, by whom and how alcohol consumption is portrayed.

The headings in section 3 are not separate standards but only instructive as to the aims of each set of standards.

Definitions

In this Code:

AANA Code of Ethics means the Australian Association of National Advertisers Code of Ethics.

ABAC Scheme means The ABAC Scheme Limited.

Adjudication Panel means the panel convened to adjudicate a complaint received by the ABAC Scheme.

Adult means a person who is of legal purchase age in Australia.

Age-Restricted Environment means:

- licensed premises that do not permit entry by Minors; or
- a non alcohol-specific age-restricted digital platform (including, for example, a social media website or application) which:
 - requires users to register and login to use the platform, including the provision of their full date of birth; and
 - is able to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who has registered on the platform as being 18 years of age or over.

Alcohol Beverage means a beverage containing at least 0.5% alcohol by volume.

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 1st January 2010.

Code means this ABAC Responsible Alcohol Marketing Code.

Marketer means a producer, distributor or retailer of Alcohol Beverages.

Marketing Collateral means material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point-of-sale materials, retailer advertising and Marketing Collateral.

Minor means a person who is under 18 years of age and therefore not legally permitted to purchase an Alcohol Beverage in Australia.

Strong or Evident Appeal to Minors means:

- i** likely to appeal strongly to Minors;
- ii** specifically targeted at Minors;
- iii** having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- iv** using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- v** using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors

Sponsorship means any agreement or part of an agreement involving payment or other consideration in lieu of payment by a Marketer to support a sporting or cultural property, event or activity, in return for which the sponsored party agrees to be associated with or promote the sponsor's Alcohol Beverage or outlet. Sponsorship also includes naming rights of events or teams and the inclusion of a brand name and/or logo at an event venue or on uniforms of participants (excluding branded merchandise).

Annexure C

The ABAC Scheme: Rules and Procedures

1 Management Committee

- 1.1** The management and operation of The ABAC Scheme will be undertaken by a Management Committee consisting of —
- a** the Executive Director of the Brewers Association of Australia and New Zealand Inc or their nominee ('Brewers Association');
 - b** the Executive Director of the Distilled Spirits Industry Council of Australia Inc or their nominee ('DSICA');
 - c** the Chief Executive of the Winemakers Federation of Australia or their nominee ('WFA');
 - d** the Chief Executive of The Communications Council Limited or their nominee.
 - e** the Assistant Secretary responsible for alcohol issues at the Commonwealth Department responsible for health policy, or their nominee, as a representative of Australian governments.
- 1.2** An Independent chair may be appointed to the Management Committee by the Directors of The ABAC Scheme Ltd, who have been appointed by the members that fund the appointment, following a recommendation by the Management Committee. The position of deputy chair (or chair in the absence of the appointment of an independent chair) will rotate between the Brewers Association, DSICA and WFA representatives on an annual basis.
- 1.3** To manage and review the operation of The ABAC Scheme and to consider amendments to the ABAC Responsible Alcohol Marketing Code ('the Code') and to the voluntary system of compliance with a view to:
- encouraging industry members, large and small, to participate in the quasi-regulatory system
 - playing an active role to ensure an effective quasi-regulatory system
 - monitoring the implementation of the ABAC Scheme and improving it where necessary
 - coordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy and the Advertising Standards Bureau ('ASB'), and
 - managing the Alcohol Advertising Pre-Vetting Service ('AAPS') as an effective mechanism to support and strengthen the aims of the ABAC Scheme and to encourage participation by industry members in AAPS.
- 1.4** The Management Committee must meet at least four (4) times a year.
- 1.5** Any of the members of the ABAC Management Committee may convene a meeting of the Management Committee which, if not a telephone meeting, must be held by giving not less than fourteen (14) days prior written notice of the meeting to the other members of the Management Committee.

2 Board of Directors

- 2.1** The Directors of The ABAC Scheme Ltd have a responsibility to ensure that the company is adequately funded.

3 Adjudication Panel

- 3.1** An ABAC Adjudication Panel ('the Panel') will be formed to adjudicate upon complaints concerning alcohol beverage marketing communications in accordance with the procedures set out in Part 4 below.
- 3.2** Adjudication by the Panel will be in addition to any other legal right or remedy which may exist.
- 3.3** All Code Signatories, including members of Brewers Association, DSICA and WFA will be asked to comply with any recommendation of the Panel.
- 3.4** Non-members are strongly encouraged to become Direct Code Signatories, by applying to the ABAC Executive Officer, which application will be submitted for approval by the ABAC Management Committee.
- 3.5** The Chief Adjudicator of the Panel must prepare a report on the Panel's operations and recommendations made during the preceding year and provide a copy of that report to the Management Committee for inclusion in the ABAC Annual Report.
- 3.6** ABAC Adjudication Panelists ('Panelists') will be appointed by the Management Committee and will consist of:
- One (1) Panelist appointed as Chief Adjudicator. The Chief Adjudicator will have legal qualifications and experience.
 - At least two (2) Panelists appointed as Health Sector Panelists. The relevant Federal Minister with responsibility for alcohol issues, or his or her nominee, will be invited to nominate a shortlist of candidates with public health expertise to the Management Committee for consideration.
 - At least two (2) Panelists appointed as General Panelists. General Panelists will have a minimum of ten (10) years experience in the marketing, market research or media industries.
 - One of the Panelists will be appointed by the ABAC Management Committee as deputy Chief Adjudicator to act as Chief Adjudicator if the Chief Adjudicator requests or is unavailable.
- 3.7** No Panelist may, at the time of or during the term of his or her appointment to the Panel –
- be a current employee of a participant or member of the alcohol beverages industry; or
 - have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.
- 3.8** Each of the Panelists will be appointed for an initial three (3) year term. The ABAC Management Committee may exercise its discretion to renew the appointment for a further period of time subject to assessment of skills fit and performance.

4 Panel Procedures

- 4.1** The ABAC Management Committee has a duty to oversee that the process for handling complaints is running efficiently, and in performing this duty must have regard to:
- i** A target of 30 business days on average for the handling of complaints, and
 - ii** A need to ensure privacy, where required by law, and
 - iii** Any natural justice considerations.
- 4.2** All complaints received from the ASB will be considered within the ABAC complaints procedure and all decisions must be recorded in writing for statistical purposes and communicated to the complainant.
- 4.3** The Chief Adjudicator will consider all complaints received from the ASB and when interpreting a complaint will use his or her discretion to identify all possible Code provisions raised. If the Chief Adjudicator decides that a complaint raises issues under the Code the complaint will be referred to the Panel unless the Chief Adjudicator decides that the complaint:
- a** raises issues fully considered and determined in an earlier determination in relation to a particular advertisement; or
 - b** raises issues consistently dismissed by the Panel as not being in breach of the Code; or
 - c** clearly falls outside the scope of the Code; or
 - d** relates to a product's name or packaging that has been certified pursuant to paragraph 4.16–18.
- 4.4** The Panel will have no role in the adjudication of a complaint by an alcohol beverage producer, distributor or retailer about the advertising of a competitor. Such competitive complaints will be referred to the Advertising Claims Board established by the AANA.
- 4.5** The Panel shall consist of three (3) Panelists, one (1) of whom must be a Health Sector Panelist.
- 4.6** Panel decisions will be by a simple majority vote and no member of the Panel will have a casting vote.
- 4.7** Where a complaint is referred to the Panel for consideration, the Chief Adjudicator will, prior to consideration of the complaint by the Panel, notify the company responsible for the marketing communication ('the Marketer') of its referral to the Panel.
- 4.8** When the Panel considers a complaint, it should have before it:
- a copy of the complaint
 - a copy of the marketing communication (in the case of product names and packaging either a sample or picture of the product or a fair description)
 - any correspondence from the Marketer, either in response to the complaint, or any questions/issues raised with it by the Chief Adjudicator
 - any other materials the Chief Adjudicator deems fit.

4.9 If the Panel upholds a complaint about a marketing communication (excepting product names, product packaging and marketing collateral (as defined in the Code)) the Marketer must:

- withdraw, discontinue or modify the marketing communication as soon as possible and no later than five (5) business days after the determination (noting that published print material is not able to be withdrawn but must be discontinued or modified prior to further publication and that a widespread outdoor campaign may take longer than five (5) business days to withdraw but will be withdrawn as quickly as possible);
- advise the Panel within five (5) business days of their intended action and timeframes in respect of the marketing communication; and
- not reinstate the unmodified marketing communication at any time.

4.10 If the Panel upholds a complaint about a product's name or packaging, then a provisional determination must be provided to the Marketer, who will be able to seek a rehearing of the provisional determination, by providing a formal written response and further submission within ten (10) business days of receipt of the provisional determination. All or part of this appeal period may be waived by the Marketer, and will be deemed to have been waived upon receipt of a formal written response to the provisional determination.

4.11 The onus is on the Marketer to demonstrate to the Chief Adjudicator that a product name or trademark was in use in the Australian market prior to 31 October 2009. The Marketer may do so at any stage of the process prior to the end of the period the Supplier has to seek a rehearing of a provisional determination

4.12 After considering any material provided by the Marketer, or after the elapse of ten (10) business days from the date that the provisional determination is provided to the Marketer, the Panel is free to issue a final determination whenever it deems fit.

4.13 If the Panel makes a final determination upholding a complaint about a product name, product packaging or marketing collateral (as defined in the Code), the Marketer must:

- cease further orders for production of the product name, product packaging or marketing collateral immediately
- advise the Panel within five (5) business days as to their intended action and timeframes in respect of the product name, product packaging or marketing collateral; and
- not reinstate the unmodified product name, product packaging or marketing collateral at any time.

4.14 Decisions of the Panel, and the response (if any) of the Company, must be advised to the ASB and the Management Committee, within five (5) business days after –

- i in the case where the Panel has not upheld the complaint, the date of the Panel decision; or
- ii in the case where the Panel has upheld the complaint, the date the response is received (or due) from the marketer pursuant to paragraphs 4.9 and 4.13.

- 4.15** A record of all decisions must be maintained to assist with establishing statistical patterns over time for use in drafting the Annual Report etc.
- 4.16** Where a Marketer has agreed to modify the affected product, then it may put proposals for doing so before two pre-vetters for consideration. The pre-vetters must ensure that any such proposal(s) are dealt with in a timely and confidential manner.
- 4.17** The pre-vetters shall determine whether the proposed modifications bring the product name and/or packaging into line with the Code (not just the section(s) on which the original complaint and determination hinged). Where the pre-vetters do not both agree that the proposed modifications bring the product name and/or packaging in line with the Code certification may not be given for that name and/or packaging.
- 4.18** Where the pre-vetters have certified that modifications to naming and/or packaging are sufficient to bring it in line with the Code, then the Panel will not consider any further complaints against the product so modified. Any minor modifications to the packaging (e.g. bar codes, use-by dates, date or place of manufacture, grape sources etc.) will be deemed to not alter the compliant status of the product. Complaints in respect of marketing communications in which the name and/or packaging is featured will still be considered by the Adjudication Panel.

5 Alcohol Advertising Pre-Vetting Service (AAPS)

- 5.1** The Alcohol Advertising Pre-vetting Service (AAPS) assesses whether alcohol beverage marketing communications conform to either or both of the ABAC Responsible Alcohol Marketing Code ('the ABAC Code') and/or the Australian Association of National Advertisers Code of Ethics ('the AANA Code of Ethics').
- 5.2** Signatories to the ABAC Scheme and their agencies must pre-vet specific categories of marketing communications against the ABAC Code as set out in the following table. The table also sets out those categories for which pre-vetting is optional, although encouraged. Signatories may also choose to request the AAPS to assess their marketing communications against the AANA Code of Ethics.

| Media Category | ABAC Pre-vetting requirements |
|---|-------------------------------|
| TV | Must pre-vet |
| Outdoor | Must pre-vet |
| Cinema | Must pre-vet |
| Radio | Must pre-vet |
| Print | Optional |
| Digital | Optional |
| Point-of-sale | Optional |
| Marketing Collateral | Optional |
| Names & Packaging | Optional |
| Retail Price Advertisements (refer paragraph 5.2) | Optional for all media |
| AANA Code of Ethics | Optional for all media |

- 5.3** Non-Signatories to the ABAC Scheme and their agencies may use the AAPS to assess whether marketing communications conform to either or both of the ABAC Code or the AANA Code of Ethics.

5.4 Retail Price Advertisements must comply with the spirit and intent of the ABAC Code and the AANA Code of Ethics but are not required to be pre-vetted. Retail Price Advertisements are marketing communications by retailers which contain no material relating to or concerning the attributes or virtues of alcohol beverages or the retail outlet except –

- i** the name of a retailer or retailers offering alcohol beverages for sale,
- ii** information about the price or prices at which those beverages are offered for sale,
- iii** the brand name or names of alcohol beverages offered for sale;
- iv** the type and/or style of the alcohol beverages offered for sale;
- v** 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;
- vi** the location and/or times at which the alcohol beverages are offered for sale; and
- vii** such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

In addition, where a retailer has received pre-vetting approval for a marketing communication template they may change the name, image and price of a product featured in that communication without requiring pre-vetting approval for that limited change.

5.5 Pre-vetters have no public role in representing the Scheme. Their role is to provide pre-vetting services. Any inquiries or correspondence from third parties to pre-vetters must be referred on to the ABAC Executive Officer or ABAC Management Committee to be dealt with.

5.6 To encourage the frank exchange of views within the ABAC Scheme, any opinion expressed by a pre-vetter in respect to a matter which is submitted for pre-vetting is confidential to the producer, the pre-vetter, the ABAC Executive Officer and the representative of their respective industry association.

5.7 There will be a minimum of two (2) pre-vetters within the AAPS, appointed by the Management Committee.

5.8 No pre-vetter may, at the time of or during the term of his or her appointment –

- be a current employee of a participant or member of the alcohol beverages industry; or
- have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.

5.9 Pre-vetters must have a minimum of ten (10) years marketing communications experience in brand management or promotion.

5.10 Each of the pre-vetters will be appointed for a three (3) year term. The ABAC Management Committee may exercise its discretion to renew the appointment for a further period of time.

5.11 Where appropriate, all services provided by AAPS Pre-vetters (including pursuant to paragraphs 4.16–18) are to be funded on a user-pays basis by those industry members seeking pre-vetting of alcohol marketing communications.

5.12 The ABAC Directors are to be responsible for the setting of any retainers and hourly rates for pre-vetters and approving any related expenses. Further, the Directors are to ensure that a system is in place for the orderly collection of debts incurred through use of the pre-vetting service.

Annexure D Best Practice for the Responsible Marketing of Alcohol Beverages in Digital Marketing

Introduction

The Alcohol Beverages Advertising (and Packaging) Code (the Code) sets high standards for the content of alcohol marketing including the content of alcohol advertising in digital marketing including social media. Alcohol advertising in digital marketing has been the subject of a number of ABAC adjudication decisions.

Digital marketing means advertising through digital platforms including social media, applications, blogs, brand websites, Instant Messaging, livecasting, microblogs, mobile communications and messaging, online/banner advertising, online gaming, photo sharing, Pinterest, podcasts, proximity marketing, QR codes, relationship marketing, RSS feeds, search engine marketing and optimisation, social networking, social news sites, user-generated content, video sharing, and wikis.

Standards for the placement of alcohol advertising are covered by complementary media specific industry codes of practice. However, there is no specific code of practice for the placement of alcohol advertising in digital marketing.

In response, ABAC has developed this best practice advice to assist the alcohol industry in maintaining high standards of social responsibility in the management of alcohol advertising in digital marketing. This advice is non-binding and is not intended to replace or extend the provisions of the Code. Rather, it is intended as guidance to assist advertisers and agencies.

It is recognised that digital marketing is evolving rapidly and therefore the best practice advice will be reviewed on a regular basis and updated where necessary.

Interaction with other regulation

- 1 All digital marketing communications must comply with the Alcohol Beverages Advertising (and Packaging) Code and the Australian Association of National Advertisers Code of Ethics.
- 2 All digital marketing communications must comply with guidelines for digital marketing published by the Australian Association of National Advertisers and the Communications Council.
- 3 All digital marketing communications must respect user privacy and laws governing the collection of personal information.
- 4 All digital marketing communications must comply with all other relevant laws in Australia.

Responsible drinking message

- 5 All websites and social media forums controlled by alcohol beverage advertisers should include a responsible drinking message. Advertisers should also identify to users an appropriate responsible drinking website.

Age affirmation

Age affirmation is a process by which users provide their full date of birth and country of access to affirm they are of legal purchase age.

- 6 **Age restriction, targeting or affirmation technologies** should be used, where available, for all digital marketing controlled by alcohol beverage advertisers, to restrict access to users of legal purchase age or over.

Examples of how to use these techniques to meet best practice include:

- 6.1 **Direct marketing communications** directed to a specific person, for example email, SMS and Twitter, should only be directed to consumers who have provided an age affirmation that they are of legal purchase age or over.

- 6.2 **Download advice, forwarding notices, responsible drinking messages or age affirmation** mechanisms should, where possible, be included on all digital marketing communications that are intended to be shared, such as with a 'share', 'download' or 'email' option.

Download advice and forwarding notices are instructions to individuals forwarding or downloading the content that they should not forward the material to individuals below the legal purchase age.

- 6.3 **Website age affirmation pages** (website landing pages that require visitors to confirm they are of legal purchase age before they can enter a website) should be used on all websites controlled by alcohol beverage advertisers.

It is recommended that the following age affirmation measures be adopted:

- Users should be required to input their date of birth and country of access to affirm they are of legal purchase age (for example, from a drop-down menu) rather than being allowed access through clicking a default option.
- If a user enters a birth date that equates to being under legal purchase age they should be given an appropriate alcohol social responsibility message, or redirected to an appropriate responsible drinking website.
- Repeat users may be invited to set up a 'remember me' option but the invitation should warn on the appropriateness of this option if the computer may be used by someone under the legal purchase age.
- Users that have affirmed their age on a site may access a related site without being required to re-affirm their age.
- Corporate websites with a primary purpose of communicating company information do not require an age affirmation page.

- 6.4 Digital marketing communications on a site or web page controlled by the brand advertiser that involve **direct interaction with a user** should require age affirmation by the user prior to full user engagement of that communication to determine that the user is of legal purchase age or over.

Direct interaction is a two-way communication between the user and the advertiser on a site or web page controlled by the advertiser.

- 6.5 A **nanny tag** should be placed on all websites controlled by alcohol beverage advertisers. A nanny tag describes the site's content in a format that parental control software detects.

- 7 **Proximity marketing** should only be used in situations where people will be of legal purchase age or over, for example, in age-restricted venues such as nightclubs or when directed to users who have been verified as legal purchase age or over.
Proximity marketing is a digital communication directed to recipients in a particular proximity via SMS or MMS.
- 8 **Digital marketing communications should be placed** only in media where at least 75% of the audience is reasonably expected to be of legal purchase age or over.
- 9 **Downloadable applications** should only be made available where at least 75% of the audience is reasonably expected to be of legal purchase age or over.

User-generated content

User-generated content (UGC) is material that has not been created by or for a brand owner but by a person interacting on the digital platform.

- 10 **UGC** within digital platforms, controlled by an alcohol beverage advertiser is within the scope of the ABAC.
- 11 To contribute UGC a user must affirm by their date of birth that they are legal purchase age or over.
- 12 House rules should be accessible to registered users and clearly set out what is and isn't acceptable UGC. Attachment A is a sample set of house rules that cover the ABAC standards, which should be adapted into the style/voice of the brand to encourage uptake.
- 13 Where possible, a mechanism should be available to provide users with an opportunity to notify the advertiser of any content they consider is unacceptable (such as 'report inappropriate content' links, 'alert administrator' buttons or the provision of contact details).
- 14 Moderation of UGC within a digital platform, controlled by alcohol beverage advertisers, should be carried out by either pre-moderation or post moderation.
 - 14.1 Pre-moderation is where UGC is approved before it appears on brand controlled digital platforms.
 - Where possible, automated software should be used to identify and remove inappropriate content.
 - 14.2 Post-moderation is where UGC is checked by an alcohol advertiser after it appears and is removed if considered to be in breach of the ABAC Code or the AANA Code of Ethics.
If post-moderation is used the following measures should be taken:
 - Where possible, automated software should be used for identifying and removing inappropriate content.
 - The site should be moderated at least once every business day and also on non-business days if the brand undertakes activity on the site during those non-business days.
 - The site should be moderated immediately after the brand posts or engages and for at least two hours following the post.

For more information please contact ABAC Administrator at info@abac.org.au

Attachment A: Sample user-generated content house rules

[This sample set of House Rules address compliance with the ABAC Responsible Alcohol Marketing Code only. A company may expand its guidelines to address other issues, including legal obligations and other relevant codes of practice and use its own language designed to encourage users to engage with the House Rules.]

All content on our website, including content posted by users of the site, must comply with the ABAC Responsible Alcohol Marketing Code to ensure all our marketing communications are socially responsible. Accordingly all content posted by users of this site must comply with the following rules. Any content that does not comply with the Rules will be removed and may result in de-registration from this site.

- It must not encourage the excessive or rapid consumption of an alcohol beverage, misuse or abuse of an alcohol beverage or consumption inconsistent with the Australian Alcohol Guidelines
- It must not encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage
- It must not challenge or dare people to consume an alcohol beverage
- It must not encourage the choice of a particular alcohol beverage by emphasising its alcohol strength or intoxicating effect
- It must not have strong or evident appeal to minors
- It must not show minors unless they are shown incidentally in a natural situation where there is no implication they will consume or serve alcohol
- It must not show visually prominent 18–24 year olds [Note: if these house rules are within an age restricted environment as defined in the Code this rule can be removed]
- It must not suggest that the consumption or presence of alcohol beverages can change a mood or environment;
- It must not show the consumption or presence of alcohol beverages as leading to personal, business, social, sporting, sexual or other success;
- It must not imply or suggest that an alcohol beverage shown as part of a celebration was a cause of the success or achievement;
- It must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- It must not show the consumption of alcohol beverages before or during any activity that for safety reasons requires a you to be alert or physically co-ordinated, such as the control of a motor vehicle, boat or machinery or swimming.

Annexure E

ABAC statistics

| | | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------------------|--|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| AAPS Pre-vetting | Ads pre-vetted | 754 | 761 | 936 | 1,267 | 1,110 | 1,369 | 1,050 | 1,059 | 1,229 | 1,394 | 1,571 | 1,589 |
| | Ads rejected | 84 | 86 | 182 | 293 | 232 | 238 | 77 | 82 | 192 | 211 | 212 | 204 |
| | Ads accepted with conditions | 63 | 34 | 53 | 61 | 29 | 85 | 44 | 39 | 59 | 39 | 59 | 67 |
| Complaints | Total complaints received | 212 | 105 | 53 | 87 | 162 | 117 | 87 | 119 | 98 | 182 | 94 | 133 |
| | Number of ads and packaging to which the complaints relate | 23 | 29 | 26 | 38 | 44 | 42 | 38 | 74 | 63 | 78 | 42 | 71 |
| | Complaints considered by Panel | 8 | 29 | 13 | 25 | 49 | 47 | 41 | 63 | 53 | 69 | 35 | 35 |
| | Determinations made by Panel | 5 | 12 | 10 | 22 | 36 | 39 | 31 | 45 | 36 | 36 | 27 | 29 |
| | Complaints upheld (at least in part) | 3 | 2 | 3 | 8 | 12 | 12 | 15 | 20 | 7 | 20 | 8 | 8 |
| | Determinations upheld | 3 | 2 | 2 | 8 | 7 | 10 | 11 | 15 | 7 | 4 | 8 | 7 |
| | Average business days— Panel determinations | 35.1 | 33 | 78.6 | 29.3 | 19.8 | 22.5 | 26.5 | 25 | 20 | 26.3 | 19.7 | 21.6 |

Percentage of complaints relating to each ABAC standard

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|------|------|------|
| Excessive or rapid consumption, misuse or abuse | 26% | 35% | 22% | 11% | 44% | 22% | 28% |
| Irresponsible or offensive behaviour related to alcohol | 26% | 35% | 20% | 14% | 50% | 55% | 33% |
| Challenge or dare to consume alcohol | - | - | - | - | 6% | 4% | - |
| Emphasising strength/intoxicating effect of alcohol | - | - | - | - | - | - | - |
| Appeal to minors | 53% | 45% | 49% | 44% | 28% | 56% | 38% |
| Alcohol cause of change in mood | 13% | 29% | 16% | 19% | 31% | 30% | 21% |
| Alcohol cause of success | 13% | 29% | 16% | 19% | 31% | 26% | 38% |
| Alcohol cause of celebration | 3% | 3% | - | - | 8% | 4% | - |
| Therapeutic benefit | 5% | 16% | - | 6% | 8% | 11% | 10% |
| Alcohol use with activities requiring alertness/physical coordination | 15% | 13% | 9% | 25% | 17% | 11% | 7% |
| Naming and packaging | N/A | 2% | 7% | 3% | - | 4% | 3% |

Percentage of determinations relating to different media/product material

| | 2009 | 2010 | 2011 | 2012 | 2013* | 2014 | 2015 |
|---------------|------|------|------|------|-------|------|------|
| Outdoor media | 5% | 23% | 16% | 22% | 19% | 22% | 40% |
| Digital media | 21% | 16% | 31% | 22% | 11% | 15% | 24% |
| Television | 41% | 61% | 27% | 31% | 50% | 70% | 38% |
| Cinema | - | 3% | 4% | 3% | 6% | - | 3% |
| Radio | 3% | 3% | 2% | 3% | 3% | - | - |
| Print | 23% | 32% | 22% | 19% | 14% | 4% | 10% |
| Point-of-sale | 5% | - | - | - | - | - | - |
| Packaging | 3% | 3% | 6% | 3% | - | 4% | 3% |

1 In 2013 there were multiple complaints in relation to several of the determinations upholding complaints

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