

Alcohol Beverages Advertising Code

Australia’s Responsible Alcohol Marketing Scheme

2018 First Quarter Update

OVERVIEW

The ABAC Responsible Alcohol Marketing Code (the Code) sets standards for responsible alcohol marketing in Australia and regularly measures its determinations externally to ensure it is in line with community expectations. The Code regulates the content of alcohol marketing wherever it appears and, since 1 November 2017, has extended to include where advertising cannot be placed. The new Placement rules recognise that it is not possible in an open society to completely prevent those under 18 years of age from viewing alcohol marketing. For example, the aim of the Placement rules for digital platforms is to at best exclude, and at least restrict, the access of minors to alcohol marketing. Several of the ABAC rules set new international standards in this respect.

It is pleasing that marketers are meeting their obligations. Specifically, that advertising must not target minors. The ABAC Management Committee has noted recent instances where systems have broken down due to the fault of the media platform, however, marketers have been meeting media-specific code requirements, namely applying age restriction controls, ensuring the audience for their ads is at least 75% adult (this threshold is international best practice) and taking care that their marketing does not appear with any content that primarily is aimed at minors.

With any new regulation, it is important to track implementation to ensure the changes have the desired effect, that any unforeseen gaps or unintended consequences can be addressed quickly and that they are applicable to the scope of complaints. The ABAC Management Committee has committed to 12 monthly reviews of the new Placement requirements. Indeed, complaints enable the ABAC Complaints Panel to identify issues, particularly in emerging media. For example, during this first quarter of 2018 issues raised in complaints have resulted in ABAC attempting to resolve systemic failures at Instagram in relation to matching of profiles and also to extend its age restriction controls to private user posts promoting alcohol. Instagram have recently advised us they are changing their systems so alcohol advertisements will only be delivered to adult users that have explicitly confirmed their age profile and are considering other matters.

While providing the opportunity for marketers to adequately respond to complaints is very important, the timeliness and efficiency of the administration of the Code is also important. Throughout 2017, the average turnaround time from receipt of complaint to final determination of 15 business days has been an exceptional effort by the ABAC Complaints Panel.

KEY STATISTICS 1st QUARTER 2018

Complaints	48
Not raising Code issues*	28
Determinations	20
Upheld**	2
Upheld as No Fault Breach	1
Dismissed	9
Pending	8
Pre-vets	395
Rejected	49

* Complaints that did not result in a determination raised matters dealt with by other codes/legislation or bodies such as misleading conduct, discrimination/vilification, offensive to a sector in the community, was too loud, didn’t include a responsible drinking message or did not raise concerns about a particular ad.

** None of the upheld decisions were relevantly pre-vetted

RECENT ALCOHOL MARKETING COMPLAINTS

Breaches of ABAC standards

Heineken 3 (complaint regarding content)

Complaint: The Instagram post is suggesting that Heineken 3 will help “impress on your first date” and “stay on top of your game”.

ABAC standard: Alcohol marketing cannot show alcohol as causing or contributing to the achievement of personal, social or sexual success.

Decision: While the company’s intention was to promote the low-alcohol nature of the product and present it as a responsible choice on a date, the test the ABAC Complaints Panel applies is how a reasonable person viewing the material would understand the advertisement. The Panel held that the advertisement breached the Code as a reasonable interpretation of the text, combined with the image of the use of the product, could be seen as depicting alcohol as contributing to social success by impressing a partner on a date... assisting a person to “stay on top of their game”. As a result, the Instagram post has been removed.



Liquorland (complaint regarding content)

Complaint: Advertisements on Spotify suggesting you should drink alcohol to overcome embarrassment or mental health issues.

ABAC standards: Alcohol marketing cannot suggest alcohol may create or contribute to a significant change in mood or offers a therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel held that two of the advertisements met the ABAC standards, but that one breached the standards:

- The advertisement that breached the standards was described as an ‘awkward moment’ in a scenario where a person says something awkward when the surrounding party fell silent, which would generally make that person feel awkward or embarrassed about the incident;
- Alcohol is then introduced in response to the embarrassing scenario with the tagline “We’ve got a drink for that at Liquorland”; and
- The reasonable implication is that alcohol consumption will be an aid in overcoming the tense moment.

In response, the advertisement has been withdrawn.

Moon Dog Brewery (complaint regarding content)

Complaint: In store promotion strongly appeals to children.

ABAC standards: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel held that the promotion as whole breached the standard noting:

- The inflatable palm tree is reminiscent of children’s toys;
- It is brightly coloured and eye catching in a manner likely to appeal to children;
- It has a novelty value that would appeal to children; and
- The placement of a frisbee (not a frisbee of the type used for Extreme Frisbee) within the installation would add to the appeal to children.



The promotion has been removed.

No Fault Breaches

Carlton Draught (complaint regarding placement)

Complaint: Alcohol advertising with 'Rodeo Stampede Sky Zoo Safari' app/online children's game.

ABAC standard: Alcohol marketing cannot be placed with programs or content primarily aimed at minors.

Decision: The Panel held that the app/game was primarily directed at under 18-year-olds and is, therefore, a clear breach of the placement rules. However, it was deemed a 'No Fault Breach' due to the cause being incorrect coding of the game by the media platform provider. This meant that the selection of appropriate categories of content did not filter the game from being used for alcohol marketing. Coding decisions rest with controllers of the content, not advertisers. In this instance, the advertiser demonstrated that they had, in fact, applied the restricted alcohol category to the advertisement so it would not appear with unsuitable content, including content for under 18-year-olds. The media platform provider was asked to address their error. As a secondary measure to cover publisher error the advertiser has put in place additional measures.



VB (complaint regarding placement)

Complaint: A VB advertisement appearing in a 15-year-old girl's Instagram newsfeed.

ABAC standard: Available age restriction controls must be utilised by alcohol marketers.

Decision: The Panel noted that the company and complainant both agree that the alcohol ad should not have appeared in a minor's newsfeed and that Instagram has age restriction controls that should have been utilized. In this case, the company did apply the available age restriction controls and data from Facebook business manager shows that the ad did not reach any under 18-year-olds. However, the complainant confirmed that the child's account was set up with her correct date of birth and she sought to enter the brand's page, but was denied access on the basis she was under 18. The company has concluded that the delivery occurred due to a technical error that was the fault of the platform, Instagram. The Panel found there had been a breach of the placement rules but that as the company correctly applied available age restriction technologies a no fault breach occurred. ABAC has been communicating direct with Instagram in relation to the error and Instagram confirmed that the technical failure was due to a bug in the age verification system. Instagram advised ABAC that they are taking this issue very seriously and in addition to fixing the bug will be implementing a platform wide change so that only accounts that have been explicitly connected to an age verified Facebook account will be able to see sensitive material, including alcohol ads.

Marketing Consistent with ABAC Standards

BWS and Cellarbrations (three complaints regarding placement, one also regarding content)

Complaints: Radio advertisements broadcast between 3.45pm and 4.45pm would be heard by minors on their way home from school. One of the advertisements would appeal to minors due to the delivery by well-known hosts and the use of Christmas phrases like "sleigh bells jingling". The phrase "Get into it" when used in an alcohol advertisement was an inducement to drink alcohol.

ABAC standards: Alcohol marketing cannot:

- encourage excess consumption or misuse of alcohol.
- strongly or evidently appeal to minors.
- be placed where an audience is expected to be >25% minors.
- be placed with programs or content primarily aimed at minors.

Decision: The Panel held that the advertisement did not breach ABAC placement rules. Available ratings data demonstrated that the radio programs all had an audience of more than 75% adults. Further, drive-

time radio shows would have appeal across age groups and could not be said to be primarily aimed at minors. As to the content of the advertisement, the Panel did not believe that the reference to “sleigh bells” in the context of the advertisement would be strongly or evidently appealing to minors. The conversation was adult in nature and the voices of presenters would be recognisable to regular Nova listeners, but that does not mean they would be evidently appealing to minors. The expression “Get into it” referred to the caller having a night out with the girls and, while it may be reasonably implied that alcohol use will occur during the night out, there is no suggestion the use will be excessive.

Jim Beam & Johnnie Walker (complaint regarding placement)

Complaint: When travelling on public transport with children large alcohol advertisements could be seen in a train station and on a bus shelter.

ABAC standard: Fixed alcohol marketing cannot be placed within 150 metres sight line of a school.

Decision: The Panel held that the advertisements did not breach Part 3(b)(iv) of ABAC Placement rules as the advertisement was consistent with the Outdoor Media Association alcohol guidelines and was not located within 150 meters sight line of a primary or secondary school.

Strongbow Cider (complaint regarding content)

Complaint: Targeting pregnant women on the basis that Facebook knows the complainant is pregnant as the majority of Facebook advertising received is related to pregnancy and babies.

ABAC standard: Alcohol marketing cannot encourage irresponsible behaviour related to alcohol.

Decision: The Placement rules go to placement of advertisements that might have a significant audience of under 18-year-olds, but do not restrict the location of an alcohol advertisement so that it cannot be viewed by other groups, such as pregnant women. The Panel did not believe the content of the advertisement encourages pregnant women to consume alcohol, and noted that the Facebook targeting system does not enable either the exclusion or targeting of pregnant women.



Kiss The Girls Wine packaging/ALDI Catalogue (complaint regarding content)

Complaint: The wine products name and imagery invites sex or sexual assault.

ABAC standard: Alcohol marketing cannot:

- encourage irresponsible or offensive behaviour related to alcohol.
- show alcohol as causing or contributing to the achievement of sexual success.

Decision: The Panel held that the products (and catalogue) did not breach the ABAC standards noting:

- The women on the label are reminiscent of 1940s-style pin-up girls in terms of clothing and appearance. While the poses are mildly provocative, by contemporary standards the poses are not shocking or particularly risqué.
- Animations, rather than actual pictures of women, are used and this would lend to the interpretation that the women are caricatures and do not represent actual behaviours.
- The name ‘Kiss the girls’ would not be reasonably taken as suggesting that it is appropriate to make unwanted sexual advances to a woman.
- As a whole, the labels could not be taken to be promoting irresponsible or anti-social behavior, nor be taken as implying that the use of the product will lead to the achievement of sexual success.

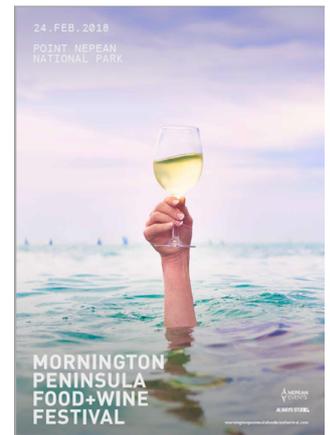


Mornington Peninsula Food & Wine Festival (complaint regarding content)

Complaint: Advertisements promote alcohol with swimming in a coastal location.

ABAC standards: Alcohol marketing cannot show consumption of alcohol before or during an activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel held that Nepean Events, the promoter of the festival, is not a retailer within the intended scope of the ABAC Scheme. While it obtained a temporary liquor licence for the event, there would need to be a relationship between the sale of alcohol and the entity holding the licence and, in this case, Nepean Events is not selling alcohol. Rather third parties are renting space at the event to sell their products.



XXXX (complaint regarding placement)

Complaint: Advertisement was shown during a One Day International cricket match that children and teenagers view.

ABAC standards: Alcohol marketing must meet the Commercial Television Industry Code of Practice and cannot:

- be placed where an audience is expected to be >25% minors.
- be placed with programs or content primarily aimed at minors.

Decision: The Panel held that the marketer complied with the Placement rules as:

- The placement complied with the Commercial Television Industry Code of Practice standards.
- The audience composition of a One Day International cricket match broadcast prior to 8:30pm is 9% minors, putting the adult viewership at 91%, well above the 75% threshold.
- While cricket is played and followed in Australia across all age groups and will be watched by some under 18-year-olds, cricket on television has a general appeal tending toward an older focus. It is not primarily aimed at, nor watched by, under 18-year-olds.

Wolf Blass (complaint regarding content and placement)

Complaint: Advertisement with Christmas themes in a shopping centre that would appeal to and be seen by minors.

ABAC standards: Alcohol marketing must:

- not have strong or evident appeal to minors.
- meet the Outdoor Media Association (OMA) Alcohol Guidelines and cannot be placed on a fixed sign within 150 meters of a school.

Decision: The Panel held that the marketer complied with the content and Placement rules as:

- The image of a Christmas tree obscured by a depiction of the product in a passive scene with no activities or characters associated with children's engagement in Christmas (i.e. giving of presents or Santa Claus) does not have strong or evident appeal to minors.
- The ad was not located within 150 meters of a school and, therefore, met the OMA alcohol guidelines.



Smirnoff (complaint regarding content and placement)

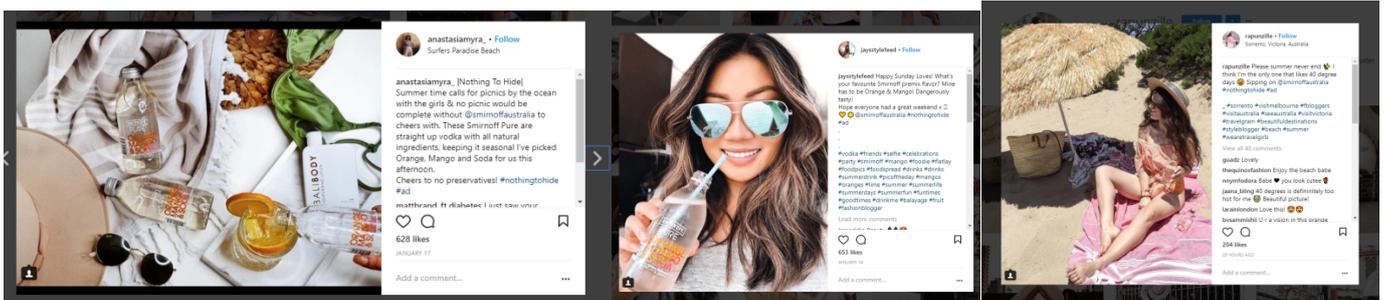
Complaint: Promotion of Smirnoff on Instagram by social media influencers that look under 25 on private accounts that aren't age restricted.

ABAC standards: Alcohol marketing must:

- not include images of adults under 25 (except in limited circumstances that do not apply).
- utilise available age restriction controls to exclude minors from the audience or, if unavailable, ensure the audience is at least 75% adult.

Decision: The Panel held that the marketer complied with the ABAC standards as:

- The social media influencers promoting the product are aged 25, 33 and 26.
- The social media influencers are private account holders and not able to age restrict their Instagram accounts or posts, so age restriction technologies are not available for their posts promoting the product.
- The audience of the three social media influencers ranges from 83% to almost 92% adults which is over the 75% threshold.
- The Panel referred the interplay of the Placement rules with social media influencers to the ABAC Management Committee to examine when it reviews the new Placement rules after 12 months of operation. As a first step, discussions are to be held with Instagram to pursue the extension of age restriction controls to private accounts when such accounts are used to promote alcohol.



Canadian Club, Jacobs Creek & Liquorland (complaint regarding placement)

Complaint: Advertisements shown during 2018 Australian Open that children view.

ABAC standards: Alcohol marketing must:

- meet the Outdoor Media Association Alcohol Guidelines and not be placed on fixed signs within 150 meters of a school.
- meet the Commercial Television Industry Code of Practice which restricts viewing times.
- not be placed where a television audience is expected to be >25% minors.
- not be placed with programs or content primarily aimed at minors.

Decision: The Panel held that the marketer complied with the Placement rules as:

- The placement of advertising during television broadcasts of the Australian Open complied with the Commercial Television Industry Code of Practice.
- The placement of outdoor advertising in the grounds of Melbourne Park Tennis Centre complied with the Outdoor Media Association Alcohol Guidelines.
- The adult audience composition of Australian Open broadcasts are in excess of 90% - well above the 75% adult benchmark.
- Tennis on television has a broad appeal tending toward an older focus as opposed to being primarily aimed at under 18-year-olds.

Liquor Barons (complaint regarding placement)

Complaint: Advertisements for alcohol should not be placed on buses.

ABAC standards: Alcohol marketing must meet the Outdoor Media Association Alcohol Guidelines and not be placed on fixed signs within 150 meters of a school.

Decision: The Panel held that the marketer complied with the Placement rules as the rules do not prevent the placement of advertising on public transport.



VB (complaint regarding placement)

Complaint: Advertisement shown at 12:26pm.

ABAC standards: Alcohol marketing must:

- meet the Commercial Television Industry Code of Practice which restricts viewing times.
- not be placed where a television audience is expected to be >25% minors.
- not be placed with programs or content primarily aimed at minors.

Decision: The Panel held that the marketer complied with the Placement rules as the placement of advertising during Dr Phil in an M classification time zone on a school day complied with the Commercial Television Industry Code of Practice and the Dr Phil program did not breach audience and content restrictions.

The ABAC Complaints Panel is headed by Chief Adjudicator Professor The Hon Michael Lavarch AO. For more information on ABAC, visit: <http://www.abac.org.au>.