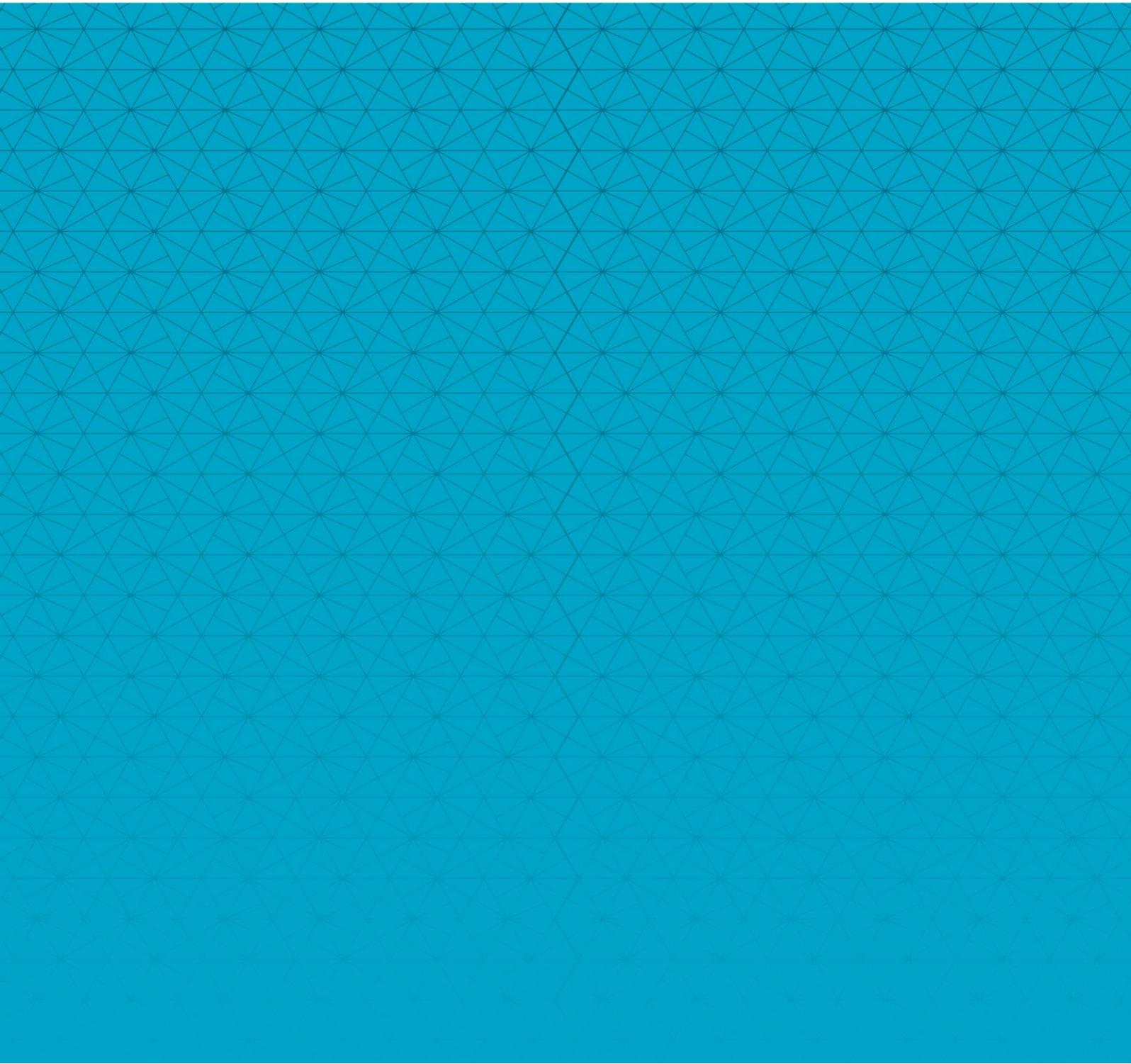


Australia's Responsible Alcohol Marketing Scheme

2019 Third Quarter Report



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 both the content and placement of alcohol marketing across all advertising mediums.

Ad Standards offers the public an opportunity to complain about any advertising that concerns them at <https://adstandards.com.au/lodge-complaint> and all complaints relating to alcohol are passed on to ABAC.

The third quarter of 2019 saw higher complaint and determination levels and a continued increase in packaging complaints. ABAC has received more packaging complaints raising ABAC issues this quarter, than are generally received in a single year. Most of the packaging complaints are currently pending, although there have already been two breaches this quarter. The ABAC pre-vetting system, which involves ABAC checking marketing material for compliance with its standards prior to the material reaching the market, significantly reduces the risk of breaching the ABAC standards. In light of the increase in complaints about alcohol product packaging, we encourage alcohol producers to utilise this valuable service to have their labels checked for compliance.

ABAC held its annual compliance training webinar in September. The webinar had over 300 participants, including many from small independent alcohol companies, and provides a valuable opportunity for alcohol companies and their agencies to receive free education on ABAC compliance by the ABAC Chief Adjudicator, Professor Michael Lavarch AO and one of our senior pre-vetters, Ross Moyle. If anyone missed the webinar and would like to access a recording, email info@abac.org.au.

ABAC welcomes Independent Brands Australia (IBA) as a new signatory to the Scheme. The IBA banner group supports over 2,700 independent alcohol retail stores including Cellarbrations, The Bottle O, IGA Liquor, Duncans, Thirsty Camel, Big Bargain and Porters.

Finally, AANA is conducting a [review](#) of the AANA Code of Ethics and is seeking submissions by 18 October 2019.

KEY STATISTICS

Complaints	27
Raising Code issues and referred to the Panel for determination	17
Not raising Code issues*	7
Raising a consistently dismissed issue	3
Determinations	13
Upheld**	6
Upheld as No Fault Breach	0
Dismissed	7
Pre-vets	654
Rejected	107

* Complaints that did not raise Code issues either fell outside the scope of the scheme as they were not promoting an alcohol product, raised concerns outside ABAC standards or raised matters such as the ad being in poor taste or discriminatory which fall within the scope of the AANA Code of Ethics which is administered by Ad Standards.

** Upheld decisions related to marketing that was not pre-vetted

RECENT ALCOHOL MARKETING COMPLAINTS

Breach of ABAC Standards

Royal Hotel Bottleshop Drouin (complaint regarding content)

Complaint: Facebook post stating Divas Gems are now in stock and are ‘8% which is double the standard drink of cruisers’ uses the alcoholic content of the product as a selling point.

ABAC standard: Alcohol marketing cannot encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless lower than typical).

Decision: The Panel found that the phrase ‘double the standard drink of cruisers’ within the context of the post as a whole would be taken as meaning that the higher than typical strength of the product is an attribute in favour of choosing the product over other products.

The Company removed the advertising prior to responding to the complaint.



Cellarbrations (complaint regarding content)

Complaint: The advertisement contains drunken antics.

ABAC standard: Alcohol marketing cannot show (including by direct implication) or encourage:

- excessive or rapid consumption of alcohol, misuse or abuse of alcohol or consumption inconsistent with Australian Alcohol Guidelines; or
- irresponsible or offensive behavior related to the consumption or presence of alcohol.

Decision: The Panel found that scenes in the advertisement reasonably imply that some characters are affected by alcohol use and a reasonable person could take the ad as encouraging excessive consumption and quite likely drunken behavior.

The Company discontinued the advertising immediately on receipt of the complaint and has reviewed its internal processes.



Skinny Freezers (complaint regarding content)

Complaint: Packaging of Skinny Freezers is likely to strongly appeal to minors and create confusion with the popular children’s treat, Zooper Dooper iceblocks. Facebook posts promoting Skinny Freezers similarly appeal to minors and also promote consumption of the product before or during swimming.

ABAC standard: Alcohol marketing cannot:

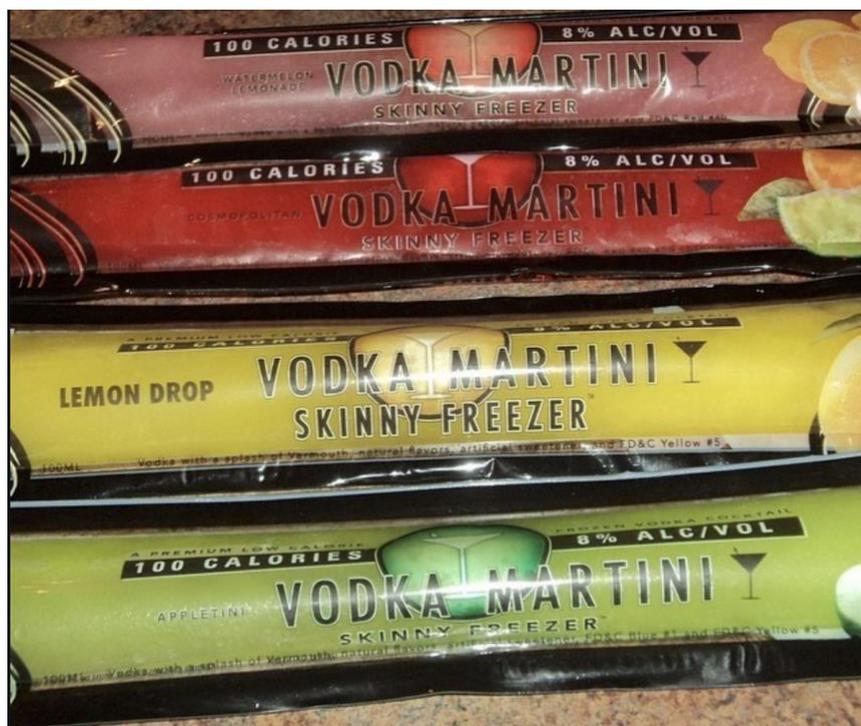
- have strong or evident appeal to minors; or
- show (including by direct implication) the consumption of an alcohol beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

Decision: The Panel found that the packaging has strong or evident appeal to minors, noting:

- use of clear plastic gives prominence to the bright colours of the product and this combined with the fruit depictions are highly likely to attract the attention of children;
- the packaging is similar to that commonly used for icy poles and a reasonable person would likely draw a ready comparison of the packaging with that used on icy poles popular with children;
- some of the range uses terms like lemonade and lemon which is commonly employed on non-alcoholic children’s soft drinks; and
- each of these elements in combination would lead a reasonable person to probably understand that the packaging has an evident appeal to minors.

Depictions of the product on the Company’s Facebook posts similarly breached the strong or evident appeal standard. A user comment with a Facebook post ‘we need to find these (the product) and float in the pool’ was found to depict alcohol consumption while swimming, inconsistent with the ABAC ‘alcohol and safety’ standard.

The Company has not responded to the Panel’s decision and the complainant’s concern has been referred to Victorian Commission for Gambling & Liquor Regulation



Jedi Juice (complaint regarding content)

Complaint: Packaging of Jedi Juice is attractive to under 18 year olds.

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

Decision: The Panel found that the packaging has strong or evident appeal to minors, noting:

- The Jedi Juice name and Princess Leia sourced image on the packaging would be taken by a reasonable person as a clear play on the Star Wars movie;
- Star Wars has appeal across demographic groups and the Star Wars brand has been exploited through merchandising collateral items, notably children's toys and clothing lines;
- While the appeal of Star Wars is broad based there can be no doubt that Star Wars does have strong or evident appeal to under 18 year olds, as demonstrated, for instance, through the amount of Star Wars toys and children's merchandise purchased each year;
- The product name and imagery would be highly recognised by under 18 year olds and a reasonable person would probably understand the product name and packaging as having strong appeal to minors flowing from its referencing to Star Wars.



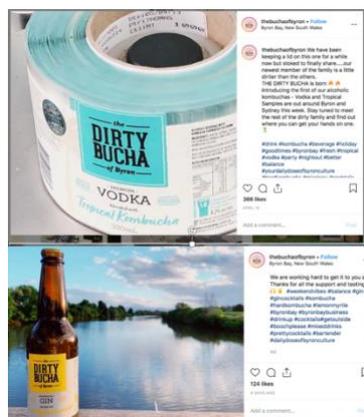
Hop Nation agreed not to order any further packaging until it had been modified to meet the ABAC standards.

Dirty Bucha (complaint regarding content and placement)

Complaint: Posts on the Bucha of Byron Instagram account promoting Dirty Bucha promote an alcoholic product alongside non-alcoholic existing products and images of children, raising both content and placement concerns.

ABAC standard: Alcohol marketing cannot:

- have strong or evident appeal to minors;
- show under 18s unless they are shown in an incidental role in a natural situation where there is no implication they will consume or serve alcohol; or
- be directed at minors through a breach of any of the placement rules; ie:
 - must apply all available age restriction controls;
 - must only place where 75+% of the audience is reasonably expected to be over 18 years of age; and
 - must not place with content aimed primarily at minors.



Decision: The Panel found that the content of the Instagram posts did not breach ABAC standards but that the Company failed to seek to apply available age restriction controls in breach of the placement rules.

The advertiser has:

- removed all Dirty Bucha posts from the Bucha of Byron Account;
- set up a stand-alone Dirty Bucha Instagram account @dirtybucha; and
- requested Instagram age gate the Dirty Bucha account.

Birdees (complaint regarding content)

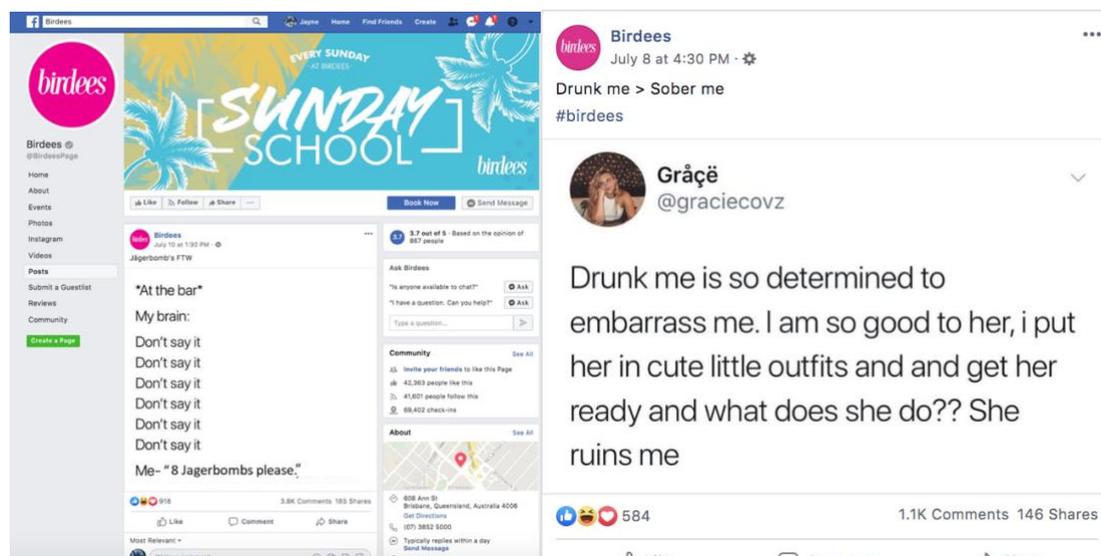
Complaint: Birdees' Facebook posts do not promote responsible drinking.

ABAC standard: Alcohol marketing cannot show or encourage:

- excessive or rapid consumption of alcohol;
- misuse of abuse of alcohol;
- consumption inconsistent with the Australian Alcohol Guidelines; or
- irresponsible or offensive alcohol related behaviour

Decision: The Panel found that the posts were based on a 'shared' experience from which the humour draws upon, namely engaging in excessive alcohol consumption or taking unwise decisions influenced by alcohol use. It is this assumption that it is common, and as a result implicitly acceptable, to consume alcohol to excess that makes a number of posts breach the ABAC standards.

Birdees removed the posts identified prior to responding to the complaint.



Marketing Consistent with ABAC Standards

James Squire One Fifty Lashes Television Advertisement (complaint regarding placement)

Complaint: Concern that the television advertisement was broadcast on SBS during the US Open Men's Tennis semi-final when kids are watching at 8:20am.

ABAC standard: Alcohol marketing must not be targeted at minors through a breach of the ABAC placement rules, relevantly alcohol ads must only be placed:

- in accordance with the Commercial Television Industry Code of Practice (CTICP);
- where the audience is reasonably expected to comprise at least 75% adults; and
- outside of programs or content primarily aimed at minors.

Decision: The Panel found that the placement of the television advertisement did not breach the ABAC noting:

- the CTICP limits alcohol advertising to particular times of day, but permits the showing of an alcohol ad with live sports events including at 8:20am;
- data from ratings indicate the audience demographics exceed 85% adults and are often over 95% adults and therefore the broadcast of the ad with the men's semi-final was reasonably expected to have an audience which was overwhelmingly adult and in excess of the 75% adult benchmark; and
- tennis has broad appeal across age groups and it can't be reasonably believed that the TV broadcast of Gran Slam tennis championships is 'primarily aimed at minors'.

Bluey Beer Packaging (complaint regarding content)

Complaint: Concern that the product's name and packaging have strong or evident appeal to minors as the product has the same name as the principal character and title of the current hit children's TV program, Bluey, and includes a dog motif.

ABAC standard: Alcohol marketing must not have strong or evident appeal to minors.

Decision: The Panel found that the marketing was not in breach of the ABAC noting:

- the name 'Bluey' has a long and varied history of use in Australia and cannot reasonably be confined to relate solely to the current TV animated series;
- the depiction of a blue heeler dog on the packaging does not resemble the TV animated character either in appearance or colouring;
- the packaging is typical of that employed on beers and would not be confused with a soft drink; and
- taken as a whole the packaging does not have features likely to be strongly or evidently engaging to children or adolescents.



Jack Daniels Brand Extension (complaint regarding content and placement)

Complaint: Concern that Jack Daniels branded products (grill kit and basting pack) and non-branded products that refer to alcohol (stubbie holder and beer stein) are on display in the direct sight line of children in a Big W store and that alcohol consumption should not be promoted as a Father's Day message.

ABAC standard: Alcohol marketing must not have strong or evident appeal to minors or be targeted at minors through a breach of the ABAC placement rules.

Decision: The Panel found that the marketing was not in breach of the ABAC noting:

- non-branded products that reference alcohol are outside the scope of ABAC;
- the Jack Daniels brand extensions are consistent with an appeal to older adults and they do not include any eye catching designs or thematic which are likely to draw the attention or engagement of under 18 year olds; and
- Big W is not an alcohol producer, distributor or retailer and therefore not captured by ABAC and Jack Daniels had no control over the staging of the promotional display.



Jack Daniel's Barbecue Glaze and Brush Set

Byron Bay Brewery (complaint regarding content)

Complaint: Concern that the loud and frequent promotion of beer on BayFM under the guise of promoting music gigs at Byron Bay Brewery targets the sale of alcohol to young people (and backpackers) and promotes Byron Bay as a party town.

ABAC standard: Alcohol marketing must not have strong or evident appeal to minors.

Decision: The Panel found that the ad is not in in breach of the ABAC, noting:

- the ads would be taken as appealing to a younger rather than an older audience given the messaging about bands playing and the general pace and style of the ad, however the likely audience would be younger adults in their early to late 20's;
- the focus of the ads is on the Brewery as an entertainment venue in which the availability of alcohol is one factor among food and music; and
- taking the content of the ad as a whole it would not be considered that minors are being targeted or that the ads would have more than an incidental appeal to minors as opposed to a strong or evident appeal to minors.

Glass Brasserie (complaint regarding content)

Complaint: Concern that the promotion which offers unlimited drinks within a fixed time frame encourages excessive consumption.

ABAC standard: Alcohol marketing must not show or encourage excessive consumption of an alcohol beverage.

Decision: The Panel found that the ad is not in breach of the ABAC, noting:

- the ad is promoting a brunch with the principal selling point being a meal curated by a 'celebrity chef' rather than the availability of alcohol;
- the term 'bottomless' in relation to the availability of a particular alcohol beverages raises the prospect of excessive consumption;
- this prospect is mitigated by the time of day, the defined period to which the alcohol is available, the limited types of beverages to which the offer applies and the association with the serving of the meal; and
- taken as a whole the ad would not be taken by a reasonable person as encouraging excessive consumption.



Liquorland (complaint regarding content)

Complaint: Concern that the promotion encourages excessive consumption by offering a financial reward for bulk purchases of alcohol made over a sustained period.

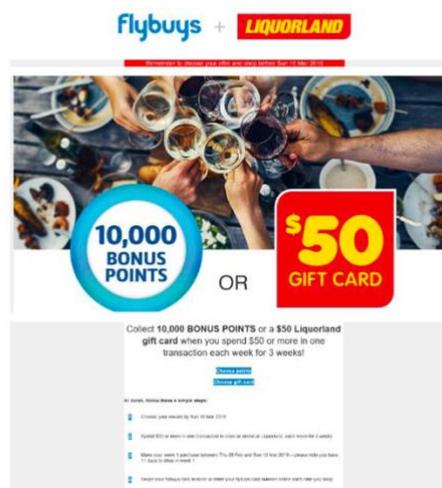
ABAC standard: Alcohol marketing must not show or encourage excessive consumption of an alcohol beverage or consumption inconsistent with Australian Alcohol Guidelines.

Decision: The Panel found that the ad is not in breach of the ABAC, noting:

- there is an evident distinction between the purchase of an alcohol product from an off-premise retailer and its subsequent pattern of consumption;
- alcohol has a long shelf life and it can be purchased and stored for many months, or in the case of wine and spirits, many years before it is consumed;
- an incentive to purchase may have an impact on a consumer's buying choice but it is harder to conclude that the subsequent consumption pattern will veer towards excessive consumption due to the purchase incentive;
- the marketing communication says nothing about consumption; and
- the argument that the promotion embeds a pattern of regular alcohol purchase and that this is irresponsible cannot be accepted as a breach of a Code standard.

Electronic Direct Mail (EDM) received 7 March 2019 in ACT

Subject: Choose 10,000 BONUS POINTS or a \$50 gift card with Liquorland



Carlton Zero (complaint regarding content & placement)

Complaint: Concern that the ad promotes drinking beer in highly inappropriate and irresponsible scenarios and was broadcast on radio on a Sunday at 12pm when children and young people are likely to be listening to the radio.

ABAC standard: Alcohol marketing must not:

- encourage irresponsible or offensive behaviour related to the consumption or presence of an alcohol beverage;
- show consumption before or during an activity that, for safety reasons, requires a high degree of alertness or physical co-ordination;
- be placed where the audience is not reasonably expected to be over 75% adults; or
- be placed with programs or content primarily aimed at minors.

Decision: The Panel found that the ad is not in breach of the ABAC, noting:

- Carlton Zero is a non-alcoholic product and a reasonable person would not take the ad as promoting the use of alcohol in unsafe circumstances which is the policy aim of Part 3(d);
- past radio station ratings data showed the broadcast was consistent with the 75%+ adult requirement; and
- the two relevant afternoon time slots reflect the 25-39 year old target demographic of the stations and are not aimed primarily at minors.

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>.