



## ABAC Adjudication Panel Determination No. 14/20

**Product:** Vodka Cruiser  
**Company:** Asahi Premium Beverages  
**Media:** Digital  
**Date of decision:** 4 March 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the placement of an Instagram advertisement for Vodka Cruiser by Asahi Premium Beverages (“the Company”) and arises from a complaint received on 4 February 2020.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC”) – which is an alcohol specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics – which places restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
5. The complaint is independently assessed by the Chief Adjudicator and the ASB and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 4 February 2020.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was determined within this timeframe.

### **Pre-vetting**

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage

marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the advertisement.

### **The Placement**

10. An advertisement for Vodka Cruiser was seen by the complainant's 15 year old daughter in her Instagram feed at 11pm on 3 February 2020.

### **The Complaint**

11. The complainant is concerned that Vodka Cruiser is being advertised directly to minors in Instagram feeds.

### **The ABAC Code**

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:  
(b)(iv) be directed at Minors through a breach of any of the Placement Rules.

13. Part 4 of the ABAC Code provides:

A breach of this Code that is reasonably unforeseeable by or outside the reasonable control of the Marketer or their agency will be classified as a no fault breach.

14. Part 6 of the ABAC Code includes definitions including:

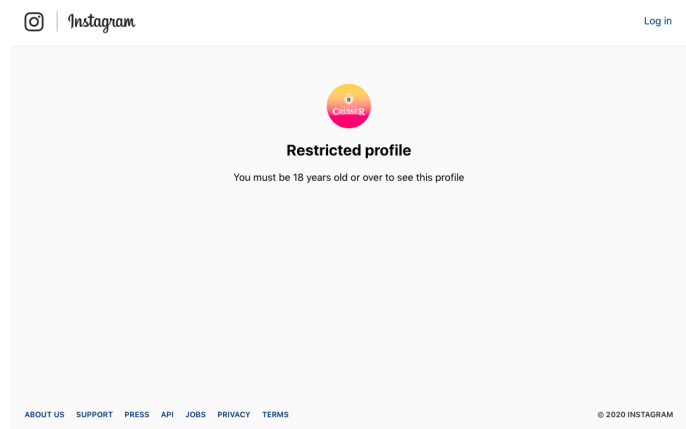
Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines)
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available)
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors

- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age)

## The Company's Response

15. The Company responded to the complaint by letter dated 14 February 2020. The principal points made by the Company were:
  - a) Asahi Premium Beverages Pty Ltd (**APB**) takes the responsible advertising of alcohol seriously. We are aware of the ABAC Code requirements and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines. In addition, Asahi is a member of the *International Alliance for Responsible Drinking*, and a signatory to the 'Actions to accelerate reductions in underage drinking' commitment which is designed to protect minors from alcohol advertising. To help ensure that minors are not exposed to alcohol advertising online, we have also implemented the World Federation of Advertisers 5 digital guiding principles across each of our brand social media platforms, including Vodka Cruiser. We take great care in all our advertising to ensure that we are only targeting those of a legal drinking age, particularly in the social media landscape where we take all measures to ensure our advertising is promoted towards minors.
  - b) In accordance with the ABAC Code, social media content is not required to be pre-vetted. However, APB has an internal sign off process which ensures all posts are reviewed and approved internally before proceeding to post any content.
  - c) Instagram features age-gating which restricts minors from sharing and seeing content that is not appropriate for their age. The Vodka Cruiser Instagram account (along with all other Vodka Cruiser social media channels) features an age-gate which blocks its content from those who are under the age of 18. The below screenshot will appear for any user who is under 18 or those trying to access the account via Incognito on Google Chrome. This ensures that we cover off those who have not made their age clear (via their Facebook profile or Instagram account).



- d) In addition to our restricted profile, we ensure all of our sponsored content is targeted towards those who are 18+. Please find a breakdown of all audiences that we were targeting on February 3rd at 11pm below:

Audience profile 1:

Custom Audiences ⓘ

- Engagement - Instagram  
**RT Instagram Engagement - 60 Days**
- Engagement - Page  
**RT Facebook Engagement - 60 Days**
- Add a previously created Custom or Lookalike Audience

Exclude | [Create New](#) ▼

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Locations ⓘ **People living in or recently in this location** ▼

Australia  
📍 **Australia**

📍 Include ▼ | Type to add more locations | [Browse](#)

[Add Locations in Bulk](#)

Age ⓘ **18** ▼ - **44** ▼

Gender ⓘ **All** Men Women

Audience profile 2:

Custom Audiences ⓘ

- Engagement - Video  
**Engaged Audience Past 365 Days (Video Views) So mersby**
- Add a previously created Custom or Lookalike Audience

Exclude | [Create New](#) ▼

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Locations ⓘ **People living in or recently in this location** ▼

Australia  
📍 **Australia**

📍 Include ▼ | Type to add more locations | [Browse](#)

[Add Locations in Bulk](#)

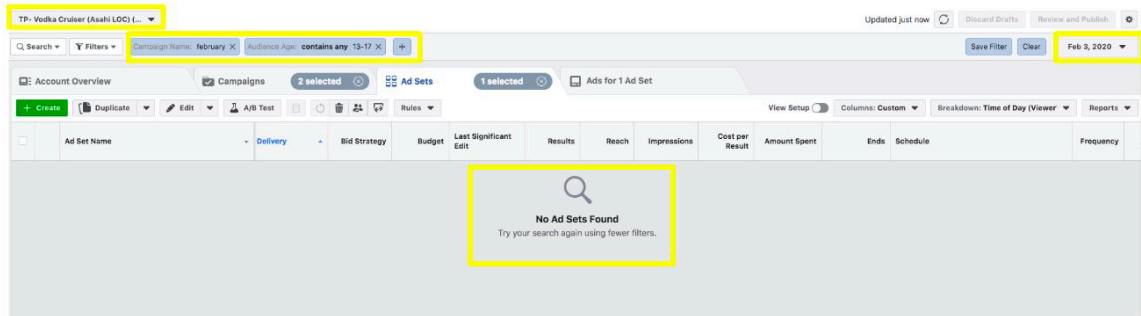
Age ⓘ **18** ▼ - **44** ▼

Gender ⓘ **All** Men Women

As shown in the above screenshots, all sponsored content is targeted towards those aged 18-44.

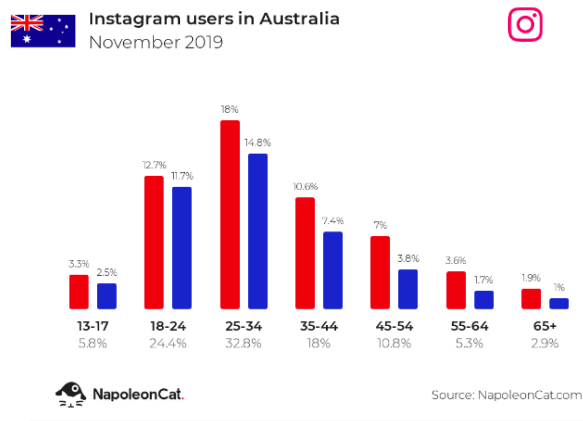
- e) Through the Facebook Ads Manager tool, we have the ability to confirm if anyone under the age of 18 viewed any Vodka Cruiser advertisements on

Monday 3rd of February, 2020. Results showed that no Vodka Cruiser advertisements were shown to those under 18. Please see screenshot below.



- f) In our view, the three most likely explanations for a minor having viewed content relating to Vodka Cruiser:
  - i. The Vodka Cruiser content may have appeared on the minor’s feed through an Instagram account that is not owned by or controlled by Vodka Cruiser, and does not have age-gating in place, but has featured the Vodka Cruiser brand in its content.
  - ii. The minor may have an incorrect age for their Instagram account, which may be linked to their personal Facebook page.
  - iii. The minor was using another person’s profile when they viewed the content.
- g) Please find the most up to date Instagram audience data outlined below:

### Instagram users in Australia – November 2019



As shown, 94.2% of Instagram users are 18 and over.

- h) We are committed to ensuring our brand advertising is only targeted to consumers who are 18+ and are confident that we have the correct metrics in place to ensure all advertising placed adheres to this.

## The Panel's View

16. The Complainant's 15 year old daughter is the holder of an Instagram account. Instagram is a photo and video sharing digital platform owned by Facebook. The platform is monetised in part through the sale of advertising and the Company uses Instagram as one of its channels to promote its vodka cruiser range of pre-mixed alcohol drinks.
17. The ABAC Placement Rules have the policy aim of directing alcohol marketing towards adults and away from minors. The rules seek to achieve this aim via the imposition on alcohol marketers of a series of requirements which are related to the technical capacity of different communication mediums to target audiences based on age. Placement Rule 2 provides that if an alcohol marketing communication is conveyed via a media platform which has available age restriction controls, then these controls must be utilised to exclude minors from the audience.
18. The complainant advises that on 3 February her 15 year old daughter was accessing Instagram when an advertisement from the Company entered her feed. It is a common position between the Company and complainant that this should not have happened. Equally on its face, as Instagram does have age restriction controls, advertising going to the account of a 15 year old Instagram user is a breach of ABAC Placement Rule 2. The question which is difficult to answer is why did it happen.
19. The Company has provided detailed information as to its targeting of advertising to age groups over 18 years old. Further its data analytics show no person under 18 was served an advertisement on Instagram on 3 February. The complainant advises that her 15 year old has had an Instagram account since she was 12 and that the account is in her daughter's name. Apparently, the account was established independently of a Facebook account and it is possible that Facebook/Instagram may not hold data on the daughter's actual date of birth.
20. The Panel's Executive Officer has sought information from Instagram in an attempt to gain further insight as to what may have happened. Unfortunately, as at the date of this Determination, no response has been received from Instagram. It has been the Panel's experience on past occasions that the major digital platforms are not particularly helpful in responding to requests for advice.
21. In these circumstances the Panel is obliged to accept that the alcohol ad was served to the 15 year old's account but the Company appears to have taken the available steps open to it to use age restriction controls. This means the complaint is dismissed as the placement rule requires available age restriction controls to be utilised and on current information available to the Panel the Company appears to have met this obligation.
22. Although the complaint is dismissed, the Panel's executive officer will work with the complainant, the advertiser and Instagram to identify the cause of the apparent failure of the age restriction controls on this occasion.