



ABAC Adjudication Panel Determination Nos 214, 221 & 226/21

Products: Actual Vodka Seltzer and Smirnoff Vodka
Companies: CUB Premium Beverages and Diageo
Media: TV - On Demand
Date of decision: 11 October 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from three complaints received in relation to both the placement of alcohol marketing during The Voice, when watched via on-demand television (7 Plus), and the content of the alcohol marketing communications seen. The following is a summary of the complaints received:

| Complaint # | Date Received | Company | Product |
|-------------|-------------------|--|---|
| 214/21 | 6 September 2021 | <ul style="list-style-type: none">• CUB• Diageo | <ul style="list-style-type: none">• Actual Vodka Seltzer• Vodka Smirnoff |
| 221/21 | 15 September 2021 | <ul style="list-style-type: none">• Diageo | <ul style="list-style-type: none">• Vodka Smirnoff |
| 226/21 | 21 September 2021 | <ul style="list-style-type: none">• Diageo | <ul style="list-style-type: none">• Vodka Smirnoff |

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 Code”) – 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 and Policies – which place 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 marketing 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, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad

Standards, 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 Ad Standards 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 Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 6, 15 and 21 September 2021.
8. The Panel endeavours 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 complaints were completed in this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the advertisements:

| Description | Approval Number |
|----------------------------------|-----------------|
| Actual Vodka Sritz advertisement | 18819 |
| Smirnoff Vodka advertisements | 19181 |

The Marketing Communications and Placement

10. The complaints relate to advertisements for Actual Vodka Seltzer and Smirnoff Vodka, seen during The Voice, when watched via on-demand television (7 Plus).
11. The advertisement for Actual Vodka Seltzer is as described in Determination 31/21, at the following link:

<http://www.abac.org.au/wp-content/uploads/2021/04/31-21-Determination-Actual-Vodka-Seltzer-13-4-21.pdf>

12. Two different 30 second advertisements for Smirnoff Vodka were being broadcast at the time of the complaints, both part of the “Infamous Since 1864” campaign. These advertisements are briefly described below.

Both of the advertisements are set to a soundtrack of Shimmy Shimmy Ya (Remix – Philip Kay and El Michels Affair). They both commence as follows, but then diverge to show different scenes, before coming to an identical conclusion.

Common introduction:

The advertisements both start with a picture of Vodka Smirnoff, with the following words superimposed:

“The Secret Story of Smirnoff”



A hand reaches out to take a bottle of Smirnoff Vodka, and the person is then chased along a station platform before boarding a moving train. The Smirnoff trademark and the words “Fled from Russia” are superimposed.



Alternative 1 - Rome and Plane TVC:

A person is shown being chased, as they run alongside a taxiing plane and throw a bag to a person reaching out of the plane’s door.



From inside the plane, the contents of the bag are revealed to be a bottle of Smirnoff Vodka. The Smirnoff trademark and the words “Exiled to France” are superimposed.



A person is shown looking through a camera with a large telescopic lens.



They are shown to be surreptitiously taking long distance photographs of a person holding a bottle of Smirnoff Vodka, which is partially shielded by a newspaper. The Smirnoff trademark and the words "Traded in Secret" are superimposed

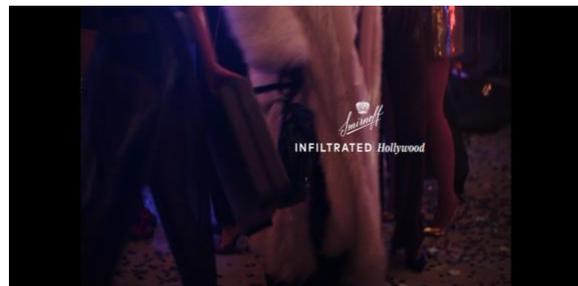


Alternative 2 - Speakeasy and Hollywood TVC:

In a large gathering, a person removes their artificial leg, in which they have secreted a bottle of Smirnoff Vodka. The person holds up the bottle as the Smirnoff trademark and the words "Hidden in America" are superimposed on the screen.



Two people are shown at a gathering where people are dancing. As they pass one another they swap bags. The Smirnoff trademark is shown and the words "Infiltrated Hollywood" are superimposed.



Common conclusion:

Both of the advertisements conclude as follows:

A person carrying a small case climbs through a hole in a wall. The Smirnoff trademark and the words “Current Whereabouts Known” are superimposed.



The person is shown walking along a corridor and then through what appears to be a bar area where people are holding drinks. The words “By Rascals Everywhere” are superimposed.



The word “Rascals” is then blanked out as the person lifts the case towards the camera.

The advertisements close with a picture of a bottle of Smirnoff Vodka. The following words are superimposed:



“Infamous since 1864. There's vodka, then there's Smirnoff”.

The Complaint

13. The complainants object to the marketing as follows:

| Complaint # | Product | Concern |
|-------------|--|--|
| 214/21 | <ul style="list-style-type: none"> Actual Vodka Seltzer Vodka Smirnoff | <ul style="list-style-type: none"> The ads glamorize vodka to my kids. [The Voice] is a family show with a tween to teen audience, it's obvious alcohol should not be advertised |
| 221/21 | <ul style="list-style-type: none"> Vodka Smirnoff | <ul style="list-style-type: none"> The Voice is a family show, rated PG. We were watching it with our two young children while they ate dinner (maybe around 6pm). They should not be advertising alcohol in a family show. |
| 226/21 | <ul style="list-style-type: none"> Vodka Smirnoff | <ul style="list-style-type: none"> Children should be able to watch television with their family without being exposed to advertising for products that are harmful to them, like alcohol. This alcohol advertisement immediately grabbed my 6-year-old daughter's attention when she first saw it while we were watching The Voice Australia as a family. She was completely focused on the advertisement. The imagery including the adventurous story line and catchy tune are enough to make this a particularly attractive and memorable advertisement to my daughter. My daughter immediately recognises it and sings along to the song in the ad which has played in every ad break of the show. It is evident that this alcohol advertisement is of great appeal to my 6-year-old daughter. Alcohol advertisements should not be shown during family shows with a PG or lower. |

The ABAC Code

14. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (b)(i) have Strong or Evident Appeal to Minors;
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules.

15. Part 6 of the ABAC Code provides that:

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 Placement Policy).
- (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.

Strong or Evident Appeal to Minors means:

- (i) likely to appeal to strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minors 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.

The Companies Responses

16. CUB Premium Beverages responded to complaint 214/21 by letter emailed on 23 September 2021. The principal points made by the Company were:

Alcohol Advertising Pre-vetting Service Approval

- The marketing communication received Alcohol Advertising Pre-vetting Service Approval. It was approved on 15 October 2020 with approval number 18819.

Responsibility toward Minors

- We have controls in place that ensure our advertisements are only shown to people over the age of 18 on 7 Plus.
- CUB purchases BVOD advertising instances through our programmatic partner Adobe. Adobe provides the capability to access video inventory across a range of environments; CUB uses Adobe services to access inventory with the major TV networks' catch-up/streaming services in desktop/mobile/tablet environments or via connected TV.
- We apply 18+ targeting instructions to Adobe, ensuring our advertisements are shown to people who have positively identified they are over the age of 18 and are logged into their accounts.
- We have also confirmed with Seven that all Actual Seltzer activity running is only served to logged in users who have confirmed they are over the age of 18.
- Please refer to the following data tables showing up-to-date age of audience composition data for The Voice:

| | Source: 7REDiQ logged-in users |
|--------|--------------------------------|
| P18-24 | 11.0% |
| P25-39 | 34.7% |
| P40-54 | 36.9% |
| P55-64 | 12.3% |
| P65+ | 5.0% |

| | Source: OzTam BVOD |
|-------------|--------------------|
| All 0-17 | 9.1% |
| Males 18-39 | 11.8% |

| | |
|---------------|-------|
| Females 18-39 | 24.8% |
| Males 40-54 | 11.8% |
| Females 40-54 | 17.8% |
| Males 55+ | 9.2% |
| Females 55+ | 13.2% |

| | |
|-----------|--------------------------------|
| | Source: <i>OzTam Broadcast</i> |
| All 0-17 | 11.7% |
| All 18-24 | 4.6% |
| All 25-39 | 11.8% |
| All 40-54 | 24.5% |
| All 55-64 | 19.4% |
| All 65+ | 28.0% |

- OzTam reports a median broadcast viewer age of 53.0 across the series. Channel 7 data reports a median age of 40.8 for 7Plus viewers.
- The Voice is not primarily aimed at and does not have content aimed at Minors. The Voice is a long-running PG-rated reality television program in which aspiring singers compete for a recording contract and \$100k in prize money. There is nothing in the format of content of the program that holds greater appeal for a minor vis a vis an adult, and there is no content aimed primarily at minors. The program is intended for a general audience; it is not designated as children’s content by 7Plus, and is tagged under ‘Reality’ on the 7Plus app.
- CUB Premium Beverages is committed to ensuring our promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to the placement and content of our advertising.

17. Diageo responded to complaints 214/21, 221/21 and 226/21 by letter emailed on 29 September 2021. The principal points made by the Company were:

- We refer to your letter dated 15 September 2021, concerning complaint 214/21, as well as subsequent complaints 221/21 and 226/21 (Complaints), received by ABAC in relation to advertising for Smirnoff Vodka, seen during The Voice when watched on demand on 7 Plus.
- Thank you for inviting us to provide comments for the Panel’s consideration in determining these complaints. We wish to confirm our longstanding support and commitment to upholding the ABAC Responsible Alcohol

Marketing Code (ABAC), as well as our best-practice global marketing standards, the Diageo Marketing Code (DMC) and Diageo Digital Code.

- The DMC supports our approach to innovative marketing, while at the same time ensuring we stay true to our core values and pro-actively market responsibly to adults. At the heart of the DMC, is our commitment to ensuring all our activities depict and encourage only responsible moderate drinking, and never target those who are younger than the legal purchase age (LPA) for alcohol.
- Compliance with the DMC is mandatory for all employees of Diageo, our subsidiaries and joint ventures where Diageo has a controlling interest. It also applies to third-parties engaged by Diageo who help market our brands. DMC review and sign-off must be included at each key stage of the innovation process and archived on our online approval tool, the Diageo Content Hub. The DMC applies to all activities intended to market our beverage brands, including the Smirnoff Vodka advertisement referred to in the Complaints.
- In addition, our Diageo Digital Code ensures that we have the right governance, risk and compliance structure necessary to safeguard our reputation and leadership in the digital space. As part of the Diageo Digital Code, at a global level, we work with digital partners to tackle current and emerging digital challenges. In 2018, we built and implemented an industry-leading approach to digital marketing, called the Trusted Marketplace, which amongst other elements ensures compliance by digital publishers with our 75% LPA+ control.

Placement

- In partnership with our media agency, Foundation, we have conducted a thorough review into our advertising activities for Smirnoff Vodka. The placement of Diageo advertisements with the 7Plus on-demand platform takes into consideration the following controls:
 - Use of age-verification & targeting: As per Diageo's Digital Code, Diageo only places advertisements where the audience is 75%+ above the LPA and where demographic targeting of all placements to people above the LPA can be applied. 91.7% of 7Plus's audience is 18+, above our 75% minimum. According to OzTAM VOD data from September 2021, The Voice on 7Plus achieved an audience of 88% 18+, with 91% of total minutes of The Voice viewed on 7Plus being 18+.
 - Avoiding programs 'primarily aimed at minors': Diageo does not purchase media space where our advertisements are placed next

to or within programs primarily aimed at children. This would not only breach ABAC, but our own DMC and Diageo Digital Code. Programming that is deemed to be primarily aimed at children is classified by 7Plus in a 'kids' category. Diageo does not purchase any media within this category nor does 7Plus allow any alcohol advertiser to purchase media against this category. 7Plus also have a category labelled Family Entertainment, The Voice program does not appear in this category.

- Diageo builds an approved list of programs to be included in its online 'Video On-Demand' media buys, based on both the ABAC Code principles and the DMC. This review takes into consideration viewership data, where we will only select programs that adhere to our 75% LPA+ control. The Voice was included in this approved list, due to the online and FTA demographic being above 75% 18+. Alongside our ability to apply 18+ targeting based on logged-in data by 7Plus.
- For noting, as a precaution and until we reached a determination, we removed the Vodka Smirnoff advertisement from The Voice on 7Plus as of 15 September 2021. Channel 7 has confirmed that no airing of the advertisement has taken place since this date. See attached a letter from Channel 7, confirming the removal of The Voice from our BVOD buy.
- We believe all due diligence has been taken in ensuring adherence to the ABAC Code during the making and placement of this advertisement. Below is our response to the specific questions outlined in your email.

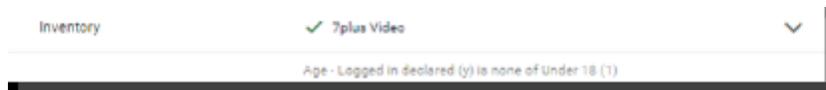
Advertising Pre-vetting Service Approval

- The alcohol marketing communication referred to in the complaint received Alcohol Advertising Pre-vetting Service Approval. The video creative was originally submitted on 22 October 2020 with a successful interim approval. After local mandatories were added and creative optimisations were made to the communications, it was re-submitted and successfully approved on 21 January 2021 (ABAC approval 19181).

Responsibility toward Minors

- The advertisements do not breach Part 3 (b)(i) of the Code by having Strong or Evident Appeal to Minors and do not make alcohol appear glamorous to Minors.
- The two 30-second advertisements referenced in the Complaints tell the story of Smirnoff Vodka, which isn't a glamorous story, but a true story. The advertisement contains historical references of the brand, including its Russian origins, prohibition and the product's export from Europe.

- The style of the advertisements are dark, with no use of bright or colourful motifs, and feature a talent casting of adults aged 25 years or older in adult scenes, to appeal to adult spirit drinkers. The advertisements end on a frame with the words, “There’s Vodka, then there’s Smirnoff – Infamous since 1864”, which appear after the footage of historic Smirnoff events. The purpose of this frame is to manifest that Smirnoff has a unique history that spans over 155 years, making it different to other vodka brands.
- Available Age Restriction Controls were utilised to exclude Minors from viewing the television commercial.
- Our media agency Foundation purchased the media, whereby 18+ demographic targeting was selected utilising 7Plus first party data based on logged in user information. Please see below screenshot evidence of the exclusion of all logged in users under the age of 18, it is now mandatory to log into 7Plus.



Audience composition data

- Registered logged in users on 7Plus, watching The Voice was 95% 18+ (841k) (7Plus First Party Data) over the period 8 August to 19 September.
- 88% of logged in users that watch The Voice are 18+, according to OzTam data over the period 8 August to 19 September. Which sits above the 75% 18+ threshold.
- 91% of consumption of The Voice, which is total minutes viewed, are 18+, according to OzTam data over the period 8 August to 19 September.
- Please see below the consumption breakdown for BVOD total minutes viewed.

| Series ID | OzTAM Demo | Total Viewing Minutes |
|-----------|------------|-----------------------|
| VOIC10 | C00-04 | 6,888,916 |
| VOIC10 | C05-12 | 11,650,541 |
| VOIC10 | C13-17 | 12,213,601 |
| VOIC10 | F18-24 | 22,748,091 |
| VOIC10 | F25-39 | 60,135,347 |
| VOIC10 | F40-54 | 59,320,105 |
| VOIC10 | F55-64 | 25,006,359 |

| | | |
|-------------|--------|-------------|
| VOIC10 | F65+ | 18,347,677 |
| VOIC10 | M18-24 | 11,105,062 |
| VOIC10 | M25-39 | 35,656,806 |
| VOIC10 | M40-54 | 39,142,282 |
| VOIC10 | M55-64 | 16,033,604 |
| VOIC10 | M65+ | 14,076,122 |
| Grand Total | Total | 332,324,512 |

- 89% of FTA viewers that watch The Voice are 18+ according to OzTam data over the period 8 August to 19 September. Which sits above the 75% 18+ threshold.
- Please see below the demographic breakdown for broadcast.

| The Voice - Broadcast | |
|-----------------------|-----|
| 0-17 | 11% |
| 18-24 | 61% |
| 65+ | 28% |

- The Voice is not primarily aimed at and does not have content that is aimed at Minors. As described above, all content that is aimed at minors is categorised by 7plus as 'Kids' and 7Plus does not sell any alcohol advertising within this category. 7Plus also have a category labelled Family Entertainment, The Voice program does not appear in this category. Diageo does not purchase media against content or programs that are primarily aimed at minors, as this would breach our own DMC as well as the ABAC Code.

The Panel's View

18. This determination arises from three complaints relating to television advertisements for Actual Vodka Seltzer and Smirnoff Vodka seen while the complainants used the 7Plus service to access the entertainment program, "The Voice". Each of the complainants contends that alcohol advertising (of any type) should not be placed with The Voice because the program is a family show watched by minors. Further, it is argued that the content of the two advertisements is strongly appealing to minors.
19. The ABAC contains standards of good practice for alcohol marketing. A key standard is that alcohol marketing should not be strongly appealing to under 18-year-olds. To achieve this policy goal, the ABAC contains both a standard going to the content of alcohol marketing and a set of rules which aim to have alcohol marketing (irrespective of its content) directed towards adult audiences and to the extent possible away from minors. This means the issues for consideration for this determination is whether:
 - Does the placement of the advertisements with 'The Voice' breach the ABAC Placement Rules?
 - Does the content of the Smirnoff Vodka and Actual Vodka Seltzer television advertisements have strong or evident appeal to minors in breach of the ABAC content standard?

The Voice and the ABAC Placement Rules

20. The complainants have all argued that The Voice is a family show which is being watched by children and it is inappropriate for alcohol advertising to be included with the show. This concern requires an assessment of the ABAC Placement Rules.
21. The ABAC includes five Placement Rules which impose obligations on marketers, four of which are potentially relevant in the current case namely:
 - relevant media codes of practice must be complied with such as the Commercial Television Industry Code of Practice - Rule 1
 - if a media platform on which the ad appears has age restriction controls to exclude minors, then these controls must be used - Rule 2
 - if age restrictions controls cannot exclude minors, then an ad can only be placed where the audience is reasonably expected to comprise at least 75% adults - Rule 3

- an ad must not be placed with programs or content primarily aimed at minors - Rule 4
22. The first question is to identify the media platform over which the advertising was accessed. This is important because the obligations under both Placement Rules 1 and 2 are directly linked to the media platform over which the marketing is transmitted. While The Voice is broadcast over the primary free to air Channel 7, each of the complainants accessed the program via the 7Plus Broadcast Video on Demand (BVOD) service. This means Placement Rule 1 and the Commercial Television Industry Code of Practice does not apply as it relates only to free to air television.
 23. Placement Rule 2 requires that alcohol marketers use available age restriction controls provided by a media platform to exclude minors from a viewing audience. Digital transmissions via 7Plus do have an age restriction capacity. This arises because to access 7Plus, an account has to be opened and the account holder provides a date of birth. With this information, both the 7 Network and alcohol marketers can exclude account holders aged under 18 years old from being served alcohol ads. Both alcohol companies advised this facility was used.
 24. It is fair to say that the impact of Placement Rule 2 is more meaningful when social media is accessed via internet-connected devices such as phones and tablets. This is because many people including minors have a personal device and personal social media accounts on platforms such as Instagram. These platforms now have quite effective age restriction controls to exclude minors from seeing alcohol marketing. In contrast, 7Plus has an age restriction capacity, but in practical terms the account will be held by an adult and the shows will be co-viewed by all people in the household including children.
 25. Placement Rules 3 and 4 go to the reasonably expected audience and the nature of the program with which the alcohol ad was placed. Rule 3 provides that an alcohol ad may only be placed where the audience is reasonably expected to comprise at least 75% adults. It is possible to assess the audience of TV programs through the ratings system and each of the Companies has supplied ratings data. This data reveals that the audience for The Voice over both linear free to air TV and accessed 'on demand' on 7Plus meets the 75% adult benchmark. The highest audience of minors reported was 11.7% for the linear free to air broadcast of the program. The data for 'on demand' indicates a smaller audience of minors for the program.
 26. Rule 4 provides an alcohol ad must not be placed with programs or content primarily aimed at minors. 'Primarily aimed' means the program must be more than being of interest to minors or even that the program has evident appeal to minors. It means that the program has minors as its primary focus. This can be assessed by considering factors such as:

- the subject matter of the program and whether the subject matter has themes likely to predominately appeal to children or adolescents;
 - the use of familiar children's characters or the use of children and adolescents within the program;
 - the storyline and whether the complexity of the plot suggests its target audience is adult;
 - the use of language and the presence of adult themes such as violence and the portrayal of sexuality; and
 - the actual audience of the program.
27. The Voice is an entertainment program. Performers give a blind audition before a group of celebrity judges who can only assess the performer based on their voice. The show then moves into subsequent rounds where the judges become coaches of the performers they have selected. The program commenced in the UK and now has many national versions. It has been a longstanding and popular show on Australian TV. There is no doubt the show has appeal across age groups, but the show cannot be fairly said to be primarily aimed at under 18-year-olds.
28. Drawing all this together, there has not been a breach of the ABAC Placement Rules by showing alcohol ads with The Voice given:
- the age restriction controls available on the 7Plus BVOD platform were utilised to exclude account holders who are minors from being served with alcohol ads;
 - the audience for The Voice did not exceed 11.7% under 18 which is within the 75% adult requirement of the Placement Rules; and
 - The Voice has wide appeal, including to minors, but the program cannot be said to be primarily aimed at minors.

Smirnoff Vodka and Actual Vodka Seltzer advertisements and Strong Appeal to Minors

29. Beyond the question of the placement of the ads with The Voice, it was argued that the content of the two ads drew the attention of children. The relevant content standard is contained in Part 3 (b)(i) of the Code and provides that an alcohol ad must not have strong or evident appeal to minors. This might be breached if the ad:
- specifically targets minors;

- has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors.
30. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.
31. The Panel has previously considered the consistency of the Actual Vodka Seltzer ad with Part 3 (b)(i) of the ABAC Code in Determination No 31/21, finding that the ad does not have Strong or Evident Appeal to Minors.
32. Two complainants raised a concern about the content of the Smirnoff Vodka advertisement, arguing that the ad was engaging for their children. The Company, submitted that the ad was consistent with ABAC standards arguing:
- the two 30-second advertisements tell the story of Smirnoff Vodka, which isn't a glamorous story, but a true story;
 - the advertisements contain historical references of the brand, including its Russian origins, prohibition and the product's export from Europe;
 - the style of the advertisements are dark, with no use of bright or colourful motifs, and feature a talent casting of adults aged 25 years or older in adult scenes, to appeal to adult spirit drinkers; and
 - the advertisements end on a frame with the words, "There's Vodka, then there's Smirnoff – Infamous since 1864", which appear after the footage of historic Smirnoff events to manifest the product's unique history spanning over 155 years.
33. The Panel has considered the factors that might give rise to a strong or evident appeal to minors on previous occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - illusion of a smooth transition from non-alcoholic to alcoholic beverages;

- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
34. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.
35. The Panel does not believe the ads breach the ABAC standard. It was noted:
- the characters shown are all clearly adults;
 - historic settings are used for most of the advertisement; and
 - the dark style and tone of the ads is mature and not considered highly relatable to children or adolescents.
36. Accordingly, the complaints are dismissed.