

Australia's Responsible Alcohol Marketing Scheme

2022 First 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.

The first quarter of 2022 has seen a sharp decrease in consumer complaints about alcohol marketing with around half the complaints and a quarter of the determinations of the previous quarter. This is the lowest number of complaints and determinations in a quarter since 2019.

Importantly, pre-vetting demand has continued to remain high with 782 requests last quarter, as alcohol producers and retailers continue to use this service as an important independent check that their marketing communications and packaging meet responsible alcohol marketing standards. This year has seen changes to the ABAC pre-vetting service. We welcome Sally Walsh, who has extensive experience in advertising account management and teaches marketing at UTS Business School. We also take this opportunity to express our gratitude to Martin Salkild on concluding over 11 years of service as an ABAC pre-vetter. In addition, we are in the process of transitioning to a new upgraded pre-vetting lodgement system. The new system will bring many efficiencies for both users and ABAC and full transition to the new system is almost complete.

A reminder that compliance with the ABAC Placement Rule that requires available age restriction controls to be applied to restrict alcohol marketing on social media to adults is currently being monitored. As previously highlighted, the ABAC website includes links to a range of resources, and the following 'how to' guides can assist companies check that age restrictions are in place and if not, provide step by step instructions on how they can be activated:

Brand accounts: [Facebook](#) [Instagram](#) [Youtube](#) [Twitter](#)

Individual Influencer and Brand Partner posts: [Facebook](#) [Instagram](#)

This quarter we draw everyone's attention to the 'How to Guide' in respect of Youtube Channels. In addition to videos uploaded, Youtube channels created by alcohol producer and retailer brands can be restricted so that they are not visible to and cannot be followed by under 18s. **This is a simple restriction to set up and the process is explained step by step [here](#).**

KEY STATISTICS

Complaints	27
Raising Code issues and referred for determination	12
Not raising Code issues*	11
Raising an issue previously considered by the Panel	4
Complaint withdrawn	0
Determinations	11
Upheld	6
Upheld as a No Fault Breach	0
Dismissed	5
Pre-vets	782
Rejected	124

* Complaints that did not raise Code issues either fell outside the scope of the scheme as they did not relate to a specific alcohol ad; or raised concerns outside ABAC standards such as a failure to reference alcohol content or include a warning, frequency of ads, misleading, offensive language, discrimination, sales techniques, offering alcohol discounts, time of advertising and offering competition prizes which can fall within the scope of other regulators, including Ad Standards.

RECENT ALCOHOL MARKETING COMPLAINTS

Breach of ABAC Standards

The Good Life West Coast DIPA (complaint regarding content)

Complaint: Concern that packaging appeals to minors through its font, colours, design and lack of identification as alcohol.

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

Decision: The Panel believed that, taken as a whole, a reasonable person would probably understand the product packaging had strong or evident appeal to minors, noting:

- the labelling fails to unambiguously establish the product as an alcohol beverage and relies on the descriptor 'DIPA' that is not widely recognised beyond dedicated craft beer consumers;
- that said the packaging does not resemble well recognised soft drink designs eg bold block colours are not used and this reduces the likelihood of confusion with a soft drink;
- a number of design elements create a relatable imagery for minors, such as the use of cartoon style imagery of a teddy bear head and the solar system; and
- bright and playful colours are used which are likely to be eye-catching for minors.

The Company advised the packaging had ceased being sold at the time of responding to the complaint, would not be made again and their designer had been briefed on ABAC for future designs.



Basic Babe Instagram Post (complaint regarding content)

Complaint: Concern that an Instagram post is marketing alcohol to minors as the girls pictured in the ad barely look 18.

ABAC standard: Alcohol marketing cannot:

- depict a person who is or appears to be a minor unless they are shown in an incidental role in a natural situation and where there is no implication they will consume or serve alcohol; or
- depict a visually prominent adult under 25 years of age.

Decision: The Panel found that in the absence of any information about the actual age of the women featured in the post, the Panel is obliged to make an assessment of their apparent age. While assessing age is no easy task, the Panel believed the women are almost certainly under the age of 25 and quite possibly not 18. Accordingly, the post was found in breach of the Part 3 (b) standard.

The company removed the post prior to responding to the complaint.



Subtle Tea Facebook Posts (complaint regarding content)

Complaint: Concern that packaging and Facebook posts appeal to minors and suggest a therapeutic benefit as they could be interpreted as promoting non-alcoholic iced tea and the use of hashtags such as #hydrate create an illusion of therapeutic benefit as a result of consumption.

ABAC standard: Alcohol marketing cannot:

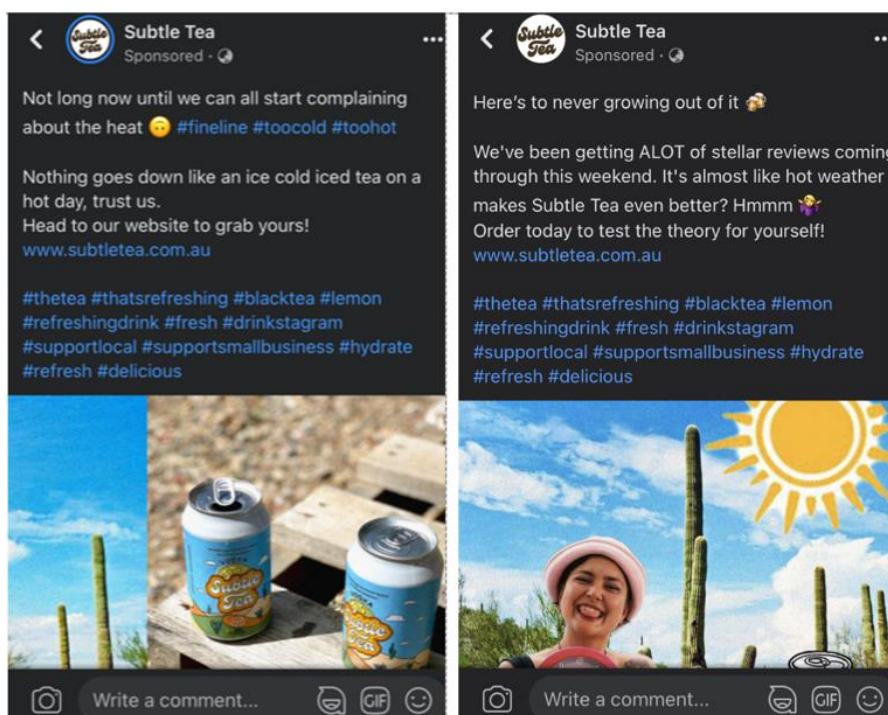
- have strong or evident appeal to minors; or
- suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel did not believe that the product packaging or Facebook posts had strong or evident appeal to minors, noting:

- while tea as a beverage is more associated with non-alcoholic products, the labelling does clearly use the term 'vodka' and this with other cues about alcohol content means a reasonable person would likely understand the product is an alcohol beverage;
- the design does not resemble well recognised soft drinks eg bold block colours are not used, and it is unlikely the packaging would be confused with a soft drink;
- the packaging adopts a design with a scene not likely to resonate particularly with minors;
- the colours used are not bright or likely to be eye-catching to minors; and
- the Facebook posts refer to hot weather being a good occasion to drink the product, provide a link to the Company's website from where the products can be ordered and neither the subject matter of the posts, nor the images seem likely to be strongly attractive to minors.

The Facebook posts seek to establish the product as a good choice on a hot day, which is not of itself a message inconsistent with the Code requirement. However, given that a reasonable person would probably believe the posts were referring to a non-alcoholic iced tea and the use of the hydrate hashtag implies the drink will provide the benefit of hydration, on balance the Panel found the posts suggest consumption of the product offers a therapeutic benefit.

The Facebook posts were removed on notification of the complaint.



Hello Drinks Facebook & Instagram Posts (complaint regarding content)

Complaint: Concern that various Facebook & Instagram posts promoted an irresponsible approach to alcohol consumption.

ABAC standard: Alcohol marketing cannot:

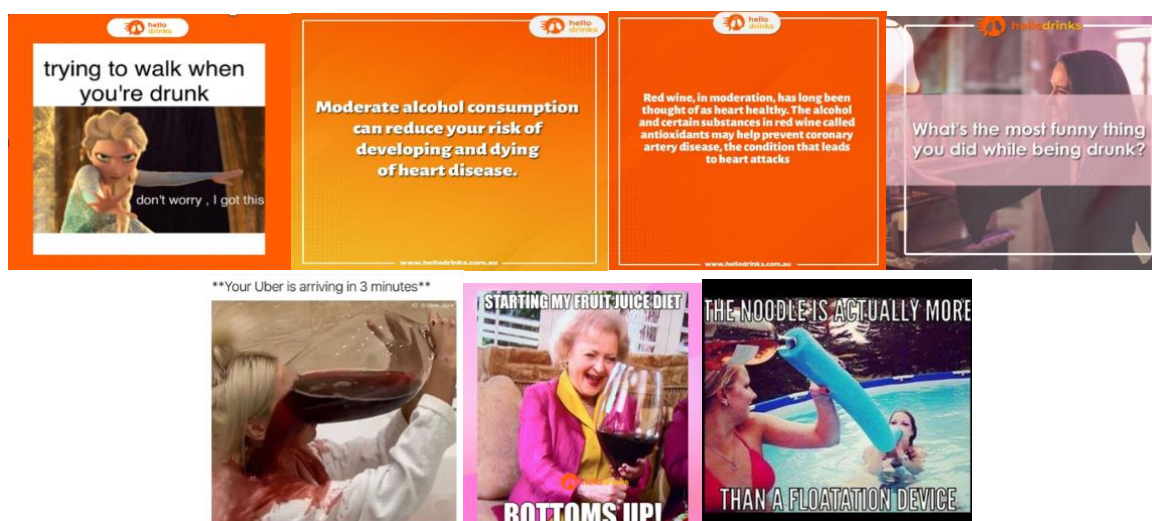
- directly imply or encourage excessive or rapid consumption or misuse or abuse of alcohol;
- have strong or evident appeal to minors;
- depict an adult under 25 years of age;
- suggest the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment or contribute to the achievement of success;
- suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation; or
- show or directly imply the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel held the view that 7 of the 9 posts referenced in the complaint were inconsistent with ABAC standards, noting:

- an image of 'Elsa' from the movie, Frozen, with the caption "trying to walk when you're drunk" would have strong or evident appeal to minors and references excess consumption of alcohol;
- posts stating antioxidants in red wine 'may help prevent coronary artery disease' and moderate alcohol consumption can reduce the risk of developing and dying of heart disease would be reasonably understood as suggesting alcohol offers a positive health benefit;
- a post with the caption 'What's the most funny thing you did while being drunk' and two posts featuring oversized wine glasses with suggestions of rapid consumption use humour which assumes it is acceptable and common to drink excessively or rapidly; and
- a meme showing two women using a pool noodle (floatation device) as a straw to consume a liquid from a large bottle while in a swimming pool with text - 'The noodle is actually more than a flotation device' suggests alcohol consumption while swimming.

The Panel dismissed concerns about the age of a woman the Panel believed looked 25 or over and a group consuming alcohol while on a balcony or flat rooftop area on the basis that a reasonable person would not understand the scene as depicting alcohol use in an inherently dangerous situation.

The posts found to breach ABAC standards were removed on notification of the determination.



Juice Bar Triple Fruited Gose (complaint regarding content)

Complaint: Concern that the packaging would appeal to minors and may be confused with a soft drink.

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

Decision: The Panel held the view that the packaging, taken as a whole, would have strong or evident appeal to minors, noting:

- there is the potential for the product to be confused with a non-alcohol beverage as the front of the labelling fails to unambiguously establish the product as an alcohol beverage;
- the name Juice Bar is far more associated with a non-alcohol product than an alcohol beverage;
- the prominent and repeated imagery of a fruit juice container with a straw is highly suggestive of a non-alcohol beverage available to minors; and
- the overall impact of the packaging creates relatable imagery for minors inclusive of the product name and fruit and fruit juice container decoration pattern.

The product was sold out at the time of the complaint and the company advised they will no longer produce or promote the product and will brief their packaging designer on Code standards.



Expedited Determination

The Young Street Hotel (complaint regarding content)

Complaint: That an Instagram post encourages excessive consumption and is directed to those in a vulnerable state of mind due to the current state of the world.

ABAC standard: Alcohol marketing cannot:

- show or encourage excessive consumption of alcohol; or
- suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment.

Company Action: The Company accepted the breach and removed the post.

Nature of Breach: An Instagram post promoting the consumption of 7 schooners of beer to cure feelings of sadness is an alcohol marketing communication that encourages the excessive or rapid consumption of an Alcohol Beverage and suggests that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.



Marketing Consistent with ABAC Standards

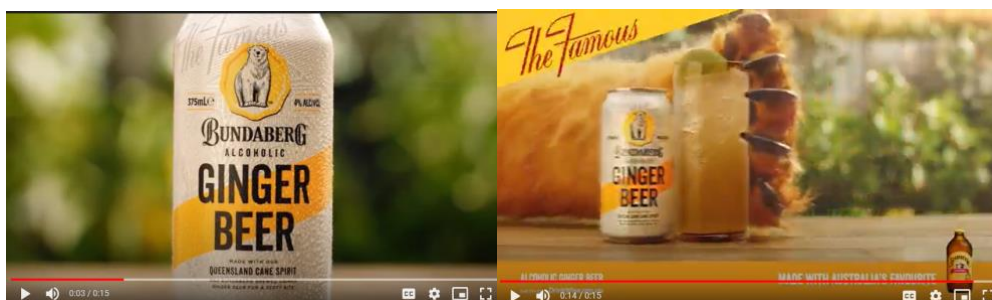
Bundaberg Alcoholic Ginger Beer (complaint regarding content)

Complaint: Concern that the television ad is aimed at youth, shows a bottle of non-alcoholic ginger beer and could be confusing for kids.

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

Decision: The Panel did not believe ads had strong or evident appeal to minors, noting:

- the ads establish the product being marketed as an alcohol beverage through:
 - the voiceover identifying the product as ‘new Bundaberg Alcoholic ginger beer’;
 - the images of the product can which identifies the product as alcoholic; and
 - the use of the Bundy Bear character that is commonly associated with the alcohol spirit of rum and not soft drinks.
- while an image of the Bundaberg ginger beer soft drink is displayed during part (the 15 second execution) or all (the 6 second executions) of the ads, the image is placed in the corner of the frame and a reasonable person would likely understand that this is conveying that the alcohol beverage contains the soft drink but not that the product itself is a soft drink;
- the overall tenor of the ads are light-hearted but mature and cannot be regarded as having an attraction to minors greater than that for adults and the ads cannot be fairly said to be targeted at minors; and
- taken as a whole, any appeal of the ads to minors is incidental and not strong or evident.



Peroni & Corona Television Placement (complaint regarding content)

Complaint: The segment glorified and glamourised alcohol, was deceptive if it was a paid promotion and is poor when Ash Barty is a role model for many girls.

ABAC standard: Alcohol marketing cannot:

- show or encourage irresponsible behaviour related to the consumption or presence of alcohol; or
- have strong or evident appeal to minors.

Decision: The Panel decided that the segment was not a marketing communication for ABAC purposes and the Panel had no jurisdiction to make a decision as:

- there was no direct relationship between the 9 Network and the Company, with the Company’s relationship with the Australian Open arising from its commercial sponsor arrangement with Tennis Australia;
- the Company did not arrange for its products to be used in the interview and it was unaware that the interview would feature its products; and
- the decision to introduce alcohol into the interview was taken by 9 Network.

Coco-Ho Website (complaint regarding content)

Complaint: Insinuates sexual success from drinking the product and promoting it as dangerous due to its alcohol strength.

ABAC standard: Alcohol marketing cannot:

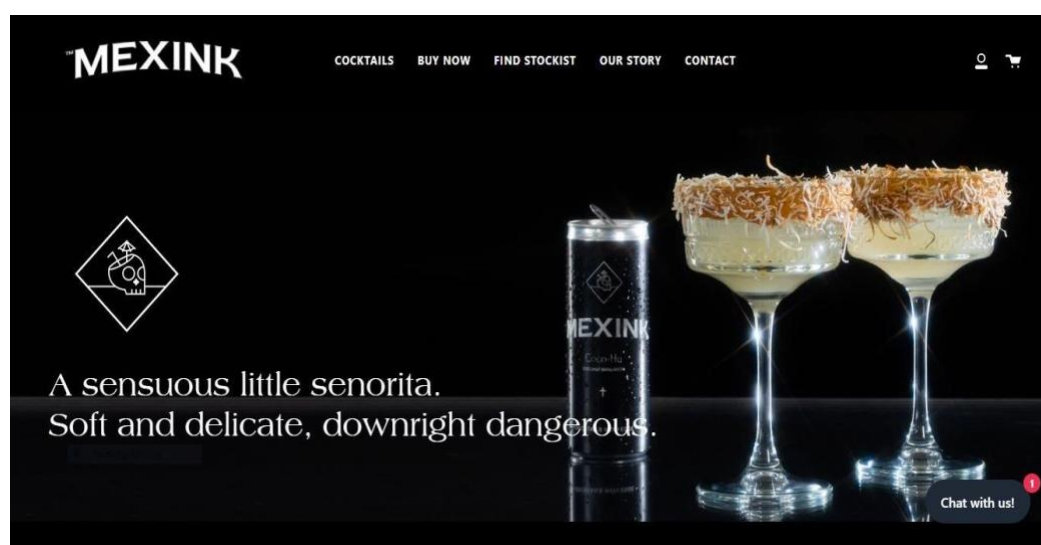
- encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength; or
- show the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of sexual or other success.

Decision: The Panel did not believe the website entry encourages the choice of the product due to its alcohol strength, noting:

- neither the text description nor the images make a reference to the alcohol strength of the product;
- the information about the alc/vol content of the product is not prominently displayed on the can label and in any event, the image of the can on the website is not of a size that makes finding the strength of the product easy;
- given this, there is no context to interpret the word ‘dangerous’ as referring to the alcoholic strength of the product; and
- rather the text would likely be regarded as puffery often used in marketing and would be understood by a reasonable person in this light.

On balance, the Panel also did not believe the website entry breached the Part 3 (c)(ii) standard. The Panel noted:

- the product name itself is not likely to be taken as suggesting sexual success, with the ‘Coco’ term referencing the coconut flavour and ‘Ho’ most likely taken as being used for the rhyme than seriously suggesting a sexual meaning;
- that said, the ‘Ho’ term could in particular contexts give rise to an implication of sexual activity;
- for instance, if the product was placed with say a couple interacting in a romantic setting or placed with sexually suggestive imagery, then the product name could contribute to an understanding about the product leading to sexual success; and
- in the current context, the website entry would most probably be understood as marketing puffery rather than a suggestion that the use of the product will lead to a sexual outcome.



Woodstock Bourbon Television Advertisement (complaint regarding content and placement)

Complaint: The advertisement would have undue influence on young people as it was shown at 12:30pm during Ashes coverage, heavily emphasises 'Cola', viewers may not be aware that it is an alcohol beverage and associates itself with backyard cricket.

ABAC standard: Alcohol marketing cannot:

- have strong or evident appeal to minors; or
- be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel decided there was no breach of the ABAC Placement Rules as it is permitted to broadcast alcohol ads during live sport, test cricket attracts a predominately adult audience and cricket has wide appeal but is not primarily aimed at minors. The Panel also found the ad did not have strong or evident appeal to minors, noting:

- the core of the ad is not the cricket game as such but the relationship between the two adult men, who are seen on a rider mower and then a cricket pitch roller and then finally sharing the wicket keeper position in the game by each sharing one of the keeper's gloves;
- the ad is humorous in a 'daggy dad' style and is considered unlikely to be a humour strongly appealing to minors;
- all characters depicted in the ad including the cricket game are clearly adult and no minors are shown in incidental or other roles;
- the song and music featured in the ad is adapted from a song (Escape - the Pina Colada Song) made popular in 1980 and is likely to resonate more strongly to middle aged adults than under 18 year olds; and
- taken as a whole, the ad is unlikely to appeal strongly to minors.



Johnnie Walker Television Advertisement (complaint regarding placement)

Complaint: The advertisement was placed during the 2022 Winter Olympic broadcast before 8pm.

ABAC standard: Alcohol marketing cannot be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel decided there was no breach of the ABAC Placement Rules, noting:

- alcohol advertising is permitted before 8:30pm during a live sport broadcast;
- the audience for the broadcast was predominantly adult and more than the 75% threshold; and
- The Winter Olympics has appeal across age groups, including minors, but the broadcast cannot be said to be aimed primarily at minors, and the audience data suggests the appeal of the Games was primarily to adults.

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>.