



ABAC Adjudication Panel Determination Nos 26/22 & 28/22

Products: Crafters Union Wine and BWS
Companies: Constellation Brands and Endeavour Group
Media: Spotify and YouTube
Date of decision: 3 May 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns two complaints from two different complainants, summarised as follows:

	Complaint 1	Complaint 2
Complaint number	26/22	28/22
Date received	17 March 2022	4 April 2022
Company	Constellation Brands	Endeavour Group
Product	Crafters Union Wine	BWS
Media	Spotify	YouTube

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 the 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 meet 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 17 March 2022 and 4 April 2022.
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 an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the content of the advertising. The Spotify audio advertisement referred to in complaint number 26/22 did not receive pre-vetting approval. Pre-vetting approval was obtained for the YouTube advertisements referred to in complaint number 28/22 (Approval Number 1676)

The Marketing

10. The first complaint (number 26/22) refers to advertising on Spotify, as described below:
 - The following 30 second script is read by a female sounding voice, in an upbeat, friendly manner, as though they are chatting with a close friend. There is accompanying background instrumental is fun and upbeat.

You're a creative force...

...cool and innovative in everything you do.

Including the wine you choose to drink.

Bring imagination to every moment with Crafters Union...

...wine in a new seductive tactile bottle to get your hands on

From bright Pinot Gris to brilliant Rosé...

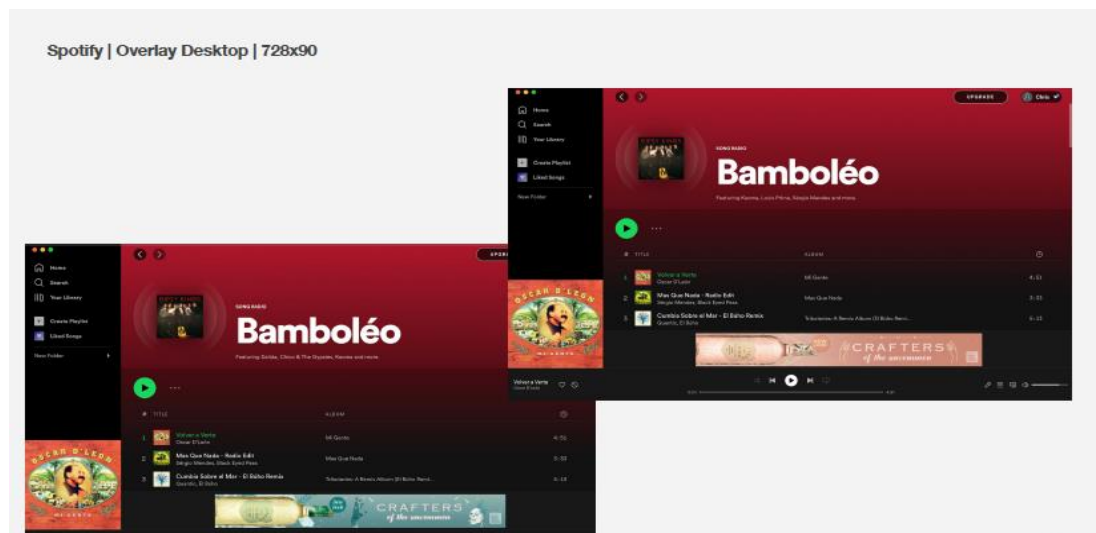
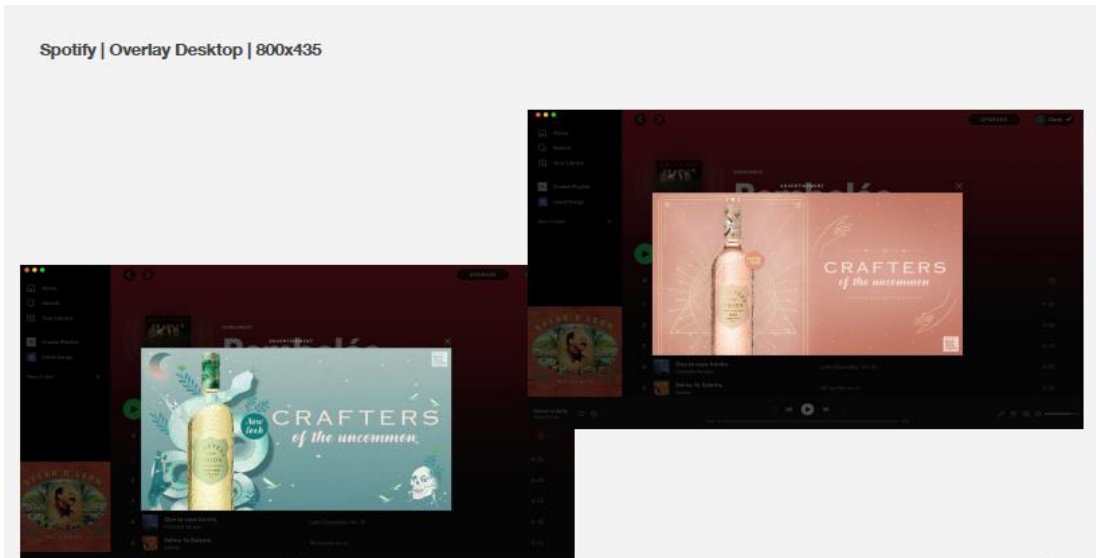
...Crafters Union is the wine to celebrate what makes you, uniquely you.

Crafters Union. Crafters of the Uncommon.

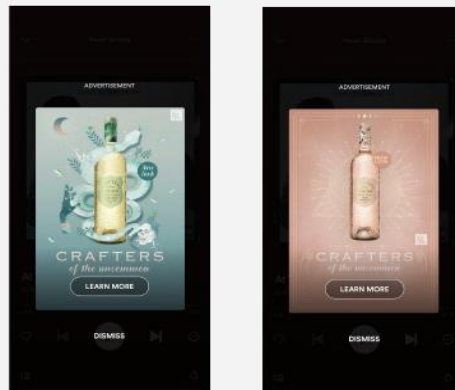
Available at your local B-W-S.

Click or tap the banner to buy now.

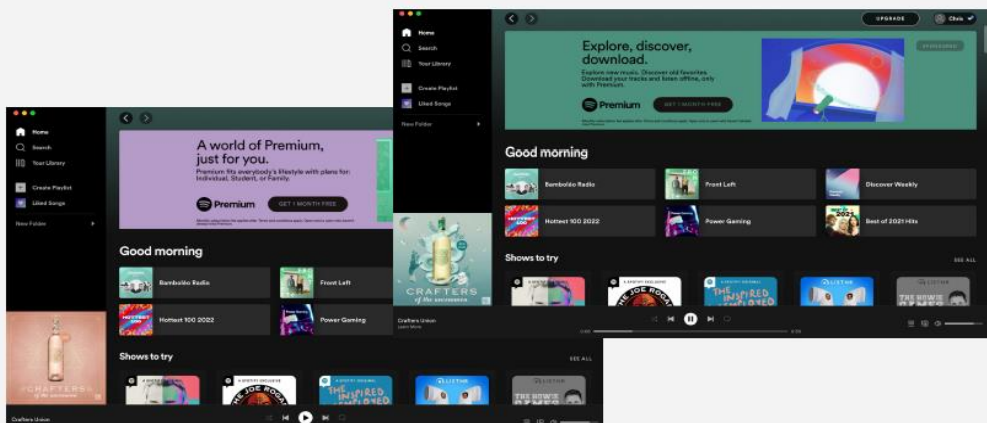
- The following are visual ads displayed on Spotify, but not necessarily at the same time that the above audio was played:



Spotify | Overlay Mobile | 630x920



Spotify | Audio Everywhere | 640x640



11. The second complaint (number 28/22) refers to advertising for BWS on YouTube. The Company has advised that six different advertisements were being played at the time of the complaint being made. Links to each of the advertisements on YouTube are provided below, and in general, each follows the following formula:

- A series of bright orange screens, with the BWS logo in the top left and the words “How Convenient” in the bottom left. The screens are accompanied by upbeat music and various sound effects including:
 - Bottles, glasses and ice clinking
 - A cork popping or can opening
 - A drink pouring
 - A car beeping and the sound of a car engine
 - A drinker expressing satisfaction after consumption by saying “Aaaah”.

- The first screen shows three items of product moving in from the bottom of the screen (depending on the range being advertised) along with the words:
 - “Sparkling, fruity or fresh” (for the wine range)
 - “Like beer but better” (for the beer/cider range)
 - “Over ice or straight out of the can” (for the spirits/premix range)
- The next screen says either “Plus 1 hour delivery” or “Plus 30 minute pickup”. The three products remain shown on the screen.
- The three products then move to the left, and off the screen, depicted as being transported by either a stylised car (for delivery) or a BWS shopping bag (for pickup).
- The words “You can’t go wrong” are then shown on the screen.
- The final scene shows the BWS logo and the words “How convenient” growing in size and coming together in the centre of the screen. The words “Choose to DrinkWise” are shown in the bottom left of the screen.

Range Message 1 - Wine



<https://www.youtube.com/watch?v=tBOwJ6dvg7E>



<https://www.youtube.com/watch?v=2nir-U-plqw>

Range Message 2 – Beer/Cider



<https://www.youtube.com/watch?v=ASTFbLpTLIk>



https://www.youtube.com/watch?v=NEQ_oYZuDI
A

Range Message 3 – Spirits/Premix



<https://www.youtube.com/watch?v=AtIHGm1stKc>



<https://www.youtube.com/watch?v=Mu6QWvUxjbI>

The Complaints

12. The complainants are concerned about the marketing as follows:

Complaint	Concern
26/22 (Advertising for Crafters Union Wine on Spotify)	<ul style="list-style-type: none"> • <i>The advert tells you - "The wine you chose to drink"</i> • <i>I am a recovering alcoholic, and this sort of subliminal message is incredibly damaging. Myself and thousands of other people do not need an alcohol company profiteering off their destruction by tempting them by telling them they chose to drink. Say anything else but do not tell consumers what they chose to do when it concerns alcohol.</i>
28/22 (Advertising for BWS on YouTube)	<ul style="list-style-type: none"> • <i>[The ad consists of] Bright orange of the BWS and the loud sound of bottles being open, fizzy alcohol drinks etc.</i> • <i>As I Bluetooth with headphones 80% of the time and being a reformed drinker, I don't have to see the ad for the sound of champagne and other drinks being open to make me want to go and drink to excess and the sound in the ad should be removed.</i>

The ABAC Code

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

- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage.

The Companies Responses

14. **Constellation Brands** responded to the complaint about advertising for Crafters Union Wine on Spotify by letter emailed on 5 April 2022. The principal points made by the Company were:

- Firstly, thank you for raising this complaint with us and providing us with the opportunity to respond to the matters raised by the complainant. Constellation New Zealand Brands Limited (Constellation) takes its obligations to responsibly promote its products very seriously and is committed to ensuring its marketing communications are compliant with the Code.
- We confirm that Constellation will accept the decision of the Panel in relation to this complaint.
- For the reasons set out below we submit that there has been no breach by Constellation of Part 3(a)(ii) or any other provision of the Code and complaint 26/22 should be dismissed.

Alcohol Advertising Pre-vetting Service Approval

- The Spotify audio advertisement referred to in the complaint did not receive Alcohol Advertising Pre-Vetting Service (AAPS) Approval for its content.
- ABAC indicates that AAPS Approval is not compulsory for content on digital applications.

Responsible and moderate portrayal of Alcohol

General Background regarding Crafters Union Wines

- By way of background, Crafters Union is an innovative brand whose core proposition has always been aimed at those who appreciate aesthetic beauty, creative packaging and the expression of individuality. To those interested in

the world of craft, art and something unique. The wines have variously been launched in beautiful wraps, intricately ornate cans and most recently, in a new embossed bottle with tactile and unique designs. The tagline for the brand is “Crafters of the Uncommon”.

- An image of the wines (including the bottles referred to) in question is as follows:



- As per the transcript provided to ABAC, the full script of the advert was as follows:

You're a creative force...

...cool and innovative in everything you do.

Including the wine you choose to drink.

Bring imagination to every moment with Crafters Union...

...wine in a new seductive tactile bottle to get your hands on

From bright Pinot Gris to brilliant Rosé...

...Crafters Union is the wine to celebrate what makes you, uniquely you. Crafters Union. Crafters of the Uncommon.

Available at your local B-W-S.

Placement of the Advertisement

- As ABAC is aware, the advertisement was placed on the Spotify platform, specifically on the Podcast Emsolation with Em Rusciano. For the advertisement to play, a listener presses play to start the podcast content that the advertisement is served against. Once the advertisement comes on, the user has the ability to skip forward to the end of the advertisement in order to get to the podcast content.
- 18+ gating was applied to this advertisement using Spotify age-targeting which comes from the listeners' own logged-in declared demographic data.
- Part 3(a)(ii) of the Code states:
 - (a) Responsible and moderate portrayal of Alcohol Beverages

A Marketing Communication must NOT:

...

 - (ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
- Constellation does not agree that:
 - (a) encouraging a consumer to purchase a particular Alcohol Beverage; nor
 - (b) highlighting the features of the packaging of a particular Alcohol Beverage; nor
 - (c) promoting an Alcohol Beverage as a celebration,

by or of itself is a breach of the Code, subject to certain restrictions as detailed below.

Encouragement of choice

- It is axiomatic that marketing is designed to encourage a consumer to choose the product of the advertiser ahead of the products of its competitors.
- The only “encouragement of choice” which is prohibited by the Code is set out in Part 3(a)(iv) of the Code, which prohibits encouraging the choice of a particular Alcohol Beverage by emphasising its alcohol strength or the intoxicating effect of alcohol, unless emphasis is placed on the relative low alcohol strength of the product.

- The specific words used do not encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage – but emphasise only that consumers have many choices.

Packaging

- By definition, the Code applies to “Alcohol Beverage product names and packaging”.
- In Constellation’s advertisement, the packaging is referred to as a “seductive, tactile” bottle.
- This very literal reference cannot be viewed as “encouraging irresponsible or offensive behaviour”. Nor is it a breach of any other provision of the Code – for example, it does not:
 - suggest that the consumption or presence of the Alcohol Beverage may create or contribute to a significant change in mood or environment; nor
 - show the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

Celebration

- Part 3(c) of the Code makes it clear that there is no problem in marketing an Alcohol Beverage as being suitable for a celebration of something, provided it is not shown:
 - as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success; nor
 - as implying or suggesting that the Alcohol Beverage was a cause of or contributed to the success or achievement.
- The wording used does not (directly or indirectly) encourage irresponsible behaviour from a consumer at all. Constellation’s advertisement contains messages of choice, creativity and celebration. These are not messages that breach the Code.

Triggering Statements

- It is theoretically possible that any advertisement for alcohol at all could be triggering for any particular individual. It is not possible to anticipate how any particular marketing campaign may affect a particular individual. The most that can be expected of Constellation is to ensure that its Marketing Communications comply with the provisions of the Code.

- We note there are various examples of complaints the Panel is asked to reach a determination where an advertisement is claimed to be especially problematic for those suffering or recovering from addiction. Each of these cases has been determined on their own merits, always with the view of whether the advertisement in question is compliant with the Code based on the probable understanding of the reasonable consumer.

Concluding comments

- As can be seen from the facts set out above, Constellation's advertisement does comply with the provisions of the Code.
- For the reasons set out above we submit that there has been no breach by Constellation of Part 3(a)(ii) of the Code and complaint 26/22 should be dismissed.

15. **Endeavour Group** responded to the complaint about advertising for BWS on YouTube by letter emailed on 19 April 2022. The principal points made by the Company were:

- BWS thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. BWS understands that the Panel is considering whether or not the Advertisements breach Part 3(a)(i) of the ABAC Responsible Alcohol Marketing Code (the Code).
- For the reasons outlined below, BWS's position is that the Advertisements do not breach any Part of the Code and it, therefore, requests the Panel to dismiss the Complaint.

Alcohol Advertising Pre-vetting Service Approval

- It is BWS's aim to be Australia's most responsible retailer of alcoholic beverages. This is highlighted by the fact that BWS formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all its advertising in accordance with the Code.
- Furthermore, BWS maintains strict internal and external processes in addition to those required by the Code. As part of its community charter 'Our Community, Our Commitment', BWS has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
 - ID25 (ask for ID from anyone who looks under 25 years of age);
 - Don't Buy It For Them (stopping secondary supply to minors);

- its Intoxication Policy (refusal of service to anyone who may be intoxicated);
 - staff training that exceeds legal requirements, including 'Don't Guess, Just Ask', team talkers, regular refresher and reminder courses; and
 - implementation of the award-winning training program 'Safe'.
- The processes outlined above provide BWS with a compliance framework to ensure that it serves and markets to its customers in accordance with its obligations under the various applicable laws.
 - Accordingly, the Advertisements received Alcohol Advertising Pre-Vetting Service Approval on 1 February 2022 with approval number 1676.

Responsible and moderate portrayal of Alcohol Beverages

- Part 3(a)(i) of the Code prohibits a marketing communication from showing (visibly, audibly or by direct implication) or encouraging the excessive or rapid consumption of an alcoholic beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines. BWS notes that the Complaint suggests that the Advertisements encourage the irresponsible consumption of alcoholic beverages through audible expression of enjoyment and the promotion of access to alcoholic beverages.
- In assessing the Advertisements' compliance with the Code, it must be considered from the perspective of a 'reasonable person to whom the material is likely to be communicated and taking its content as a whole.'¹
- The Advertisements are each approximately 15 seconds long and depict different ranges of BWS products referencing either BWS's 30 minute pick-up or 1 hour delivery services, with an audio overlay of a drink being opened, poured and consumed.
- The Advertisements make no suggestion that the audible consumption of the beverage is excessively or rapidly consumed and the Advertisements do not display or audibly portray any misuse or abuse of alcohol or consumption that is inconsistent with the Australian Alcohol Guidelines.
- Further, the Advertisements do not show or encourage any irresponsible behaviour relating to the consumption of alcohol. The audio and sound effects of each Advertisement depict the sound of one alcoholic beverage being opened and consumed. There is no indication in the Advertisements' sound effects that the person is intoxicated or rapidly consuming the beverage.

¹ Part 5 of the Code.
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- As mentioned above, BWS has strict policies in place to encourage responsible drinking practices and to manage the responsible pick-up and delivery of alcohol. BWS's 30 minute pick-up or 1 hour delivery services depicted in the Advertisements are subject to its obligations under the various Liquor Licensing Acts in the jurisdictions in which it operates and its obligations to comply with responsible service of alcohol obligations, including refusal to deliver or sell products to persons below the age of 18, that appear intoxicated or are abusive. The Advertisements do not encourage irresponsible behaviour relating to the consumption of alcoholic beverages by promoting BWS's 30 minute pick-up or 1 hour delivery services.
- In light of the above, BWS believes that the Advertisements do not breach Part 3(a)(i) of the Code.
- For the reasons outlined above, BWS believes that the Advertisements do not breach any Part of the Code and therefore requests that the Panel dismiss the Complaint.

The Panel's View

Background and policy context

16. This determination arises from two complaints about the marketing of two different alcohol companies over different media platforms. The common point between the complaints is that they have been lodged by individuals who have advised of serious past issues with alcohol dependence. The underlying concern of both complainants is that the marketing communications complained about are at best insensitive and at worst highly triggering for consumers dealing with alcohol dependence. Before dealing with the specifics of the two complaints it is useful to outline how the regulatory regime applying to alcohol marketing treats vulnerable communities and individuals.
17. The starting point is the overarching public policy objectives for alcohol use in the Australian community, contained in the National Alcohol Strategy 2019-2028. The strategy has been adopted by all Australian governments and seeks to minimise harm from alcohol use through a combination of law enforcement, prevention, early intervention and health care strategies. While alcohol is used across the community, the strategy recognises that alcohol-related harms are not experienced uniformly with disproportionate harm experienced within some communities. The strategy specifically identifies the following groups and communities as statistically being at higher levels of risk of harm through alcohol dependence or alcohol related anti-social behaviours:
 - First Nations people
 - People in remote areas

- People with co-occurring mental health conditions
- Pregnant women or those planning a pregnancy
- Teenagers and young adults
- People with impaired cognition and those diagnosed or suspected to have foetal alcohol spectrum disorder
- People whose parents/guardians experience alcohol dependence
- Adults in their 40's, 50's and 60's
- Older people aged over 65
- Lesbian, gay, bisexual, transgender, intersex or queer people
- People from culturally and linguistically diverse backgrounds.

18. It should be stressed that these descriptors of communities in no way means that every person let alone a majority of the members of the communities described experience problems with alcohol. In fact, the vast majority of people in each of the groups mentioned in the Strategy do not have issues with alcohol use and are certainly not alcohol dependent. The strategy expressly recognises the nuance and complexity in identifying such groups as being at greater risk of alcohol related harm. It is critical that groups not be subject to damaging and inaccurate stereotyping regarding alcohol use.

19. The strategy notes that at a whole of population level, alcohol use in Australia has declined in recent decades, young people are on average having their first drink later in life and occurrences of alcohol consumption at levels beyond that recommended by Australian Alcohol Guidelines to minimise the risk of long-term harm has also reduced. These whole of population observations however do not detract from the personal and community harm that arises because of alcohol misuse and the need for public policy to minimise risk. Further, the alcohol industry holds a specific responsibility to always operate with a clear understanding that alcohol is simply not just another product on the market.

20. The strategy identifies four Priority Areas of Focus that collectively aim to minimise the harm occurring from the misuse of alcohol. These priority areas are:

1. Improving community safety and amenity
2. Managing availability, price and promotion of alcohol beverages
3. Supporting individuals to obtain help and systems to respond
4. Promoting healthier communities.

21. Alcohol marketing falls under the second Priority Area of Focus. Here the policy goal is to reduce opportunities for the availability, promotion and pricing of alcohol beverages to contribute to risky alcohol consumption. This goal is to be pursued via three objectives namely:
- strengthen controls on access and availability of alcohol
 - pricing and taxation reforms to reduce risky alcohol consumption
 - minimised promotion of risky drinking behaviours and other inappropriate marketing.
22. Each objective has a number of actions directed towards either the Commonwealth government, the governments of the States and Territories or all levels of government. The third objective covers alcohol marketing and provides the actions to be:
- reduce alcohol advertising exposure to young people
 - prevent promotion of discounted/low price alcohol that is associated with risky drinking including bulk buys, two for one offers, shop-a-dockets
 - effective controls on alcohol promotion to protect at risk groups including youth and dependent drinkers
 - extend the single national advertising code to cover placement and content across all media which provides consistent protection of exposure to minors regardless of programming.
23. Drawing this together, the public policy framework for minimising the risk of harm from alcohol use recognises:
- occurrences of alcohol misuse is decreasing at a whole of population level but this does not mean serious issues do not remain and these require a multifaceted policy response
 - that alcohol dependency is a serious problem confronted by individuals across the community with alcohol use within particular communities or contexts showing higher numbers of alcohol dependent individuals than the population as a whole
 - one element of the policy response goes to how alcohol is marketed with the actions proposed particularly referencing minors and young adults but also noting that controls on alcohol promotion should protect at risk groups including dependent drinkers.

ABAC and alcohol dependency

24. Translating the National Strategy and its Areas of Focus, policy objectives and actions to specific obligations found in the regulatory regime applying to alcohol is not entirely straightforward. This is because the Strategy is framed at a relatively high level and there is no 'one to one' correlation between the policy goals and express regulatory provisions. Further, alcohol marketing regulation in Australia is quite fragmented with responsibility over marketing resting in part with government bodies such as Liquor Licensing Authorities and industry self-regulatory initiatives.
25. The ABAC is one component within this lattice of regulation. The ABAC Scheme commenced in 1998, well in advance of the National Strategy, although the Strategy has itself been preceded by earlier national policy positions on alcohol harm minimisation. The ABAC consists of standards that go to the content of alcohol marketing and since 2017, placement rules that seek to limit the exposure of minors to alcohol marketing irrespective of the content of the marketing.
26. The ABAC contains express provisions that reflect the National Strategy priority given to protecting minors. Part 3 (b) of the Code is entitled 'Responsibility towards Minors' and provides that the content of alcohol marketing must not have strong or evident appeal to minors. Also minors and young adults under the age of 25 are generally not to appear in alcohol advertisements. The ABAC Placement Rules endeavour to limit the exposure of minors to alcohol marketing including the requirement that age restrictions controls be used when marketing is carried over digital media platforms such as Instagram.
27. In contrast the ABAC does not expressly refer to any other 'at risk' group. Rather the Code has provisions about the responsible and moderate portrayal of alcohol beverages (Part 3 (a)), responsible depiction of the effects of alcohol (Part 3 (c)), and alcohol and safety (Part 3 (d)). The Placement Rules are directed only at minors.
28. This means there is no express ABAC standard directed towards marketing and alcohol dependent persons. Rather the more generally framed standards apply, namely alcohol marketing must not:
 - encourage the misuse or abuse of alcohol (Part 3 (a)(i))
 - encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol (Part 3 (a)(ii))
 - suggest that the consumption of alcohol may create or contribute to a significant change in mood or environment (Part 3 (c)(i))

- suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation (Part 3 (c)(iv)).
29. It is possible that an alcohol ad that contained messaging that was considered as triggering by an alcohol dependent person could offend one or more of these ABAC standards. However, the marketing would need to be understood by a 'reasonable person' as conveying a message that was regarded as irresponsible or offensive or suggested alcohol significantly changed the mood or offered a health benefit.
30. The 'reasonable person' benchmark for assessing the consistency of an alcohol marketing communication with an ABAC standard is required by Part 5 of the ABAC. This benchmark seeks to align the understanding of the Code with commonly held values, opinions and life experiences, or in other words prevailing community standards. This means the test is not from the standpoint of a person who holds individual views or particular sensitivities (even if entirely understandable at an individual level) but not shared by a majority of the community.

Do the complained of ads breach the ABAC standards

31. The first complaint concerns a 30 second advertisement for Crafters Union wine that the complainant had served to them while accessing the music streaming platform Spotify. The ad comprises a woman talking about Crafters Union wine, against upbeat music. The ad is supported with static images of the wine. The complainant argues that the ad is incredibly damaging for a recovering alcoholic with the phrase - 'the wine you choose to drink' being particularly distressing.
32. The second complaint goes to an ad accessed via the video streaming platform YouTube. The retailer BWS explains the ad could have been one of six versions all of which follow the same format of displays of various alcohol products accompanied by the sounds of glasses clinking and drinks being consumed. The second complainant contends the sounds of alcohol consumption are triggering to a reformed drinker.
33. In both cases, the respective alcohol companies argued that the ads are consistent with ABAC standards. The points made include:
- the ads do not suggest excessive or rapid alcohol use, or that alcohol changes a mood or environment or misuse or abuse of alcohol;
 - it is possible that any alcohol ad could be triggering for a particular person and it is not possible to anticipate an individual reaction - the most that can be expected is that the standards of good marketing practice are followed; and

- the sound effects used are suggestive of a single alcoholic beverage being consumed.
34. The Panel does not doubt that the concerns expressed are genuine and that it is a considerable challenge for an alcohol dependent person to navigate a society in which alcohol use is often depicted in the popular media, common social situations and in alcohol advertising. That said, the Panel does not believe the ads raised in the complaints can be fairly characterised as breaching ABAC standards. From the standpoint of the 'reasonable person' i.e. a person in the community with commonly held views and opinions, the ads do not depict alcohol in an irresponsible fashion. The ads do seek to make specific alcohol products and retailing services attractive, but they do not suggest or encourage excessive or rapid alcohol use, a misuse of alcohol, offensive behaviours or portray alcohol as offering a health benefit.

Options for an alcohol dependent person to limit exposure to alcohol marketing

35. The advertising identified by the two complainants were conveyed by the media platforms of Spotify and YouTube respectively. While not a complete answer, there are steps a holder of an account on these platforms can take to limit, if not exclude, alcohol advertising from being served to them while using the platforms.
36. For YouTube, an account holder can apply settings on the account to see 'fewer ads' of particular categories including gambling and alcohol. While Google - the owner of YouTube - does not guarantee that the use of the settings will mean no alcohol ads will ever be seen, it does advise that the number should be very limited and possibly only in incidental circumstances e.g. an airline ad showing someone drinking a glass of champagne. A link to instructions to apply the settings is:
- <https://support.google.com/ads/answer/10261289?hl=en>
37. Spotify offers a free and premium service for account holders. There does not appear to be an option for a user of the free service to apply account settings to exclude receiving alcohol ads or any ads in fact. Presumably this is to support the premium service which gives an account holder access to ad free streaming of the music and other programming available on the platform.

Summary and conclusion

38. This determination has considered the very important issue raised by the complainants of how the public policy and regulatory regime that applies to alcohol and alcohol marketing intersects with the needs of an alcohol dependent person. The complainants have raised very genuine issues of the challenges confronted by individuals navigating alcohol dependency in a society in which alcohol is quite ubiquitous and is freely marketed.

39. Public policy set by Australian governments and embodied in the National Alcohol Strategy accepts alcohol is a lawful product, that adults are able to choose to drink or not drink, but those who do drink should do so in an informed way and aware of the risks that arise from the misuse of alcohol. The policy aims to reduce the risk of harm and to achieve this goal, a multifaceted set of actions are proposed involving law enforcement, health responses, taxation and responsible alcohol service and promotion.
40. The strategy notes overall declines in alcohol consumption and some risky behaviours but recognises serious issues remain. Further, risk of harm occurs more often amongst some groups, communities and contexts. Alcohol dependency can be experienced by individuals from all walks of life and arise at any stage of life.
41. The ABAC is one component of a shared regulatory regime that applies to the promotion and marketing of alcohol. The ABAC applies to advertising by alcohol marketers delivered over social media platforms and contains a series of standards going to the responsible portrayal of alcohol use. While the Code has express provisions dealing with minors, alcohol dependency is not separately identified within the ABAC standards. Rather, the Code standards go to matters such as alcohol marketing not encouraging excessive consumption, or suggesting that alcohol is needed to be successful in life or is a necessary aid to relaxation.
42. It is not against the ABAC standards to position alcohol as attractive and enjoyable provided such messaging does not suggest excessive use, or consumption contrary to Australian Alcohol Guidelines or any other of the Code standards. Assessment as to whether a standard has been complied with is from the standpoint of a reasonable person.
43. A fair interpretation of the two advertisements raised by the complainants is that they are consistent with the ABAC standards. This does not mean that the complainant's concerns are not genuine, and it is accepted that the challenges confronted by an alcohol dependent person in a society where alcohol use is often shown, and the product is freely marketed are considerable.
44. While not a complete answer nor a diminution of the requirement of alcohol companies to market responsibly, social media account holders can apply options which can limit alcohol marketing being received.
45. The complaints are dismissed.