

Australia's Responsible Alcohol Marketing Scheme

2022 Second 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 decrease in consumer complaints about alcohol marketing seen in the first quarter of 2022 has continued resulting in only 21 complaints and 8 determinations during the second quarter. Despite this reduction, complaints continue to raise new issues and the following determinations are highlighted:

- ABAC received its first complaint about a third party post that tagged a brand and therefore appeared on the brand's own Instagram account under tagged posts. While the Panel noted that the post was created by a third party, it found that a brand should be keeping a regular eye on its own social media accounts. Inappropriate user generated comments or tags should be moderated and removed within a reasonable period of time. Read the full decision [here](#).
- The Panel considered an outdoor ad for a non-alcoholic beer and provided helpful guidance on the application of ABAC standards to alcohol alternatives (beer, wine and spirits with an ABV of <0.5%). Read the full decision [here](#).
- The Panel in two determinations has explained how the regulatory system more generally and the ABAC standards specifically deal with vulnerable communities and groups such as persons dealing with alcohol dependency and persons experiencing depression. Read the full decisions [here](#) and [here](#).

ABAC pre-vetting demand continues to remain high, 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. The ABAC Pre-vetting Service Guide (available [here](#)) has recently been updated, with the inclusion of new guidance on the submission of social media marketing material and is an important guide for all users of the service.

ABAC continues to focus its efforts on alcohol industry education and awareness. Following the excellent uptake of the free online training course developed last year (available [here](#)), ABAC has now developed a range of useful compliance checklists that can be accessed via the ABAC website:

[ABAC Alcohol Marketing Content Checklist](#)

[ABAC Alcohol Marketing Placement Checklist 1 – Paid Marketing](#)

[ABAC Alcohol Marketing Placement Checklist 2 – Organic Marketing](#)

ABAC encourages all alcohol marketing staff, ad agency staff, alcohol packaging designers and other media partners to undertake the online training course and now also use these checklists as an important compliance and self-audit tool.

KEY STATISTICS

| | |
|---|------------|
| Complaints | 21 |
| Raising Code issues and referred for determination | 9 |
| Not raising Code issues* | 10 |
| Raising an issue previously considered by the Panel | 2 |
| Determinations | 8 |
| Upheld | 4 |
| Upheld as a No Fault Breach | 1 |
| Dismissed | 3 |
| Pre-vets | 776 |
| Rejected | 127 |

* Complaints that did not raise Code issues fell outside the scope of the scheme as they raised concerns outside ABAC standards such as misleading claims, offensive language or images, objectification of women and sexual references which can fall within the scope of other regulators, including Ad Standards.

RECENT ALCOHOL MARKETING COMPLAINTS

Breach of ABAC Standards

Henrietta Ale (complaint regarding content)

Complaint: Concern that the label uses children's drawings to sell beer.

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

Decision: The Panel held the view the product name was in breach of the standard in Part 3(b)(i) of the ABAC, noting:

- given the use of unicorn imagery on many products and services which are directed towards minors, the use of a unicorn image on alcohol branding does create an inherent possibility of the branding having a strong appeal to minors;
- the unicorn image and the children's drawing/colouring in style more generally gives the label a strong appeal to minors due to:
 - the use of imagery familiar to minors; and
 - the depiction of an activity (colouring in) that is relatable to minors;
- the front of the labelling fails to unambiguously establish the product as an alcohol beverage, although the overall packaging, particularly the bottle type, means it is unlikely to be confused with a soft drink; and
- taken as a whole, a reasonable person would probably understand the label has a strong and evident appeal to minors.

The Company advised they will remove the 11 May Instagram post, not print any more of the offending labels and review and apply the Code's standards when creating product labels.



40/20 Beer (complaint regarding content)

Complaint: Concern that a third party post appearing on the 40/20 Beer account under 'tagged' posts shows drinking alcohol while swimming.

ABAC standard: Alcohol marketing cannot show (visibly, audibly, or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

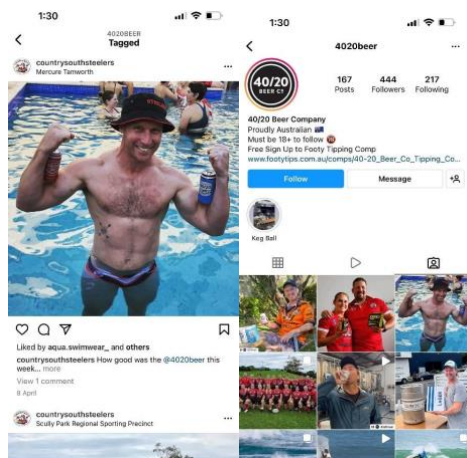
Decision: While the post was user generated, it appeared in the tagged post section of the Company's Instagram account. A Company can control whether a post appears in their account by moderating the material and removing the tag which then removes that post from their account. The Panel found that tagged posts were akin to user generated comments that can be moderated and removed and therefore the Company had reasonable control over the posts.

The Panel found that while the image does not show the man actually drinking the beer, the reasonable implication is that alcohol consumption is occurring, during the use of the pool. As such the post is inconsistent with the Part 3(d) ABAC standard.

The Panel acknowledged that the Company did not itself create the post and upon receiving the complaint it removed the post from its account and contacted the football club to request that it also remove the post. There are no precise rules as to the moderation responsibilities of alcohol companies and social media accounts. For instance, it would not be reasonable to expect tagged posts that

offend the ABAC standards to be removed within say a few hours or even a day or two of the post being made (a 'no-fault breach' might be suitable in such cases). On the other hand, a company should be keeping a regular eye on its own social media accounts and inappropriate user generated comments or tagged posts should not remain for weeks.

The Company removed the tag, and therefore the post, from its Instagram account on receipt of the complaint.



Funk Sex Machine Cider (complaint regarding content)

Complaint: Concern that name, packaging, website and outdoor ad implies contributing to sexual success, change in mood and appeals to minors through content and placement.

ABAC standard: Alcohol marketing cannot:

- have strong or evident appeal to minors;
- be directed at Minors through a breach of the ABAC placement rules;
- suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment; or
- directly imply 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.

Decision: The Panel held the view the product name was in breach of the standard in Part 3(c)(ii) of the ABAC (but not the other standards referenced in the complaint), noting:

- colloquially, the term 'sex machine' is used to refer to someone with considerable sexual prowess;
- the packaging does not contextualise the name 'sex machine' on the front of the label, to the process employed to make the product, in a manner that a reasonable person would find readily apparent;
- the 'stay sexy' phrase on the side panel, while not influential compared to the front of the can, adds to the inference that the product contributes to sexual success; and
- a reasonable person would conclude that the product name is implying that the product is a contributor to the achievement of sexual success.

The Company advised it will modify the packaging.



Expedited Determination

South St Seltzer (complaint regarding content)

Complaint: That an Instagram post depicts people “shot gunning” which is an inappropriate, irresponsible and harmful way to consume alcohol.

ABAC standard: Alcohol marketing cannot show or encourage excessive consumption of alcohol

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

Nature of Breach: An Instagram video post showing two people “shot gunning” with the accompanying text asking, “*What’s your shotgun game like?*”, is an alcohol marketing communication that shows or encourages the excessive or rapid consumption of an Alcohol Beverage.



No Fault Breach

UDL (complaint regarding Placement)

Complaint: That an outdoor advertisement is close to a secondary school.

ABAC standard: Alcohol marketing cannot be placed within 150m line of sight of a school.

Decision: The Company accepted that the Placement Rule had been breached. It explained its agency was instructed to only place its advertising on outdoor sites consistent with the obligations in the Outdoor Media Association Placement Policy but there was an error in the database recording the location of the school vis-à-vis the distance to the bus shelter shed. It seems the database kept by the Outdoor Media Association had not identified the school’s sports fields as part of the school. The Panel upheld the complaint and made a no-fault finding.

Marketing Consistent with ABAC Standards

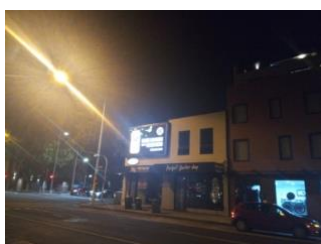
Mind Ya Head Non-Alc XPA (complaint regarding content)

Complaint: Concern the product being alcohol-free is not obvious and the ad could be construed as promoting risky activities such as driving a motor vehicle or other high-concentration activities.

ABAC standard: Alcohol marketing cannot show or imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

Decision: The Panel did not find the ad in breach of the ABAC standard as:

- The ad is for a zero alcohol brand extension of an alcohol beverage and therefore within the scope of the ABAC. However, the billboard fails to unambiguously establish the product as non-alcoholic.
- The issue is then whether a reasonable person would imply from the context of the ad that alcohol consumption will occur prior to bike riding. The Panel believes in the few seconds most passers-by will spend looking at the billboard, a direct implication of alcohol consumption occurring before embarking on a bike ride cannot reasonably be assumed to be formed.



Crafters Union Wines & BWS (complaint regarding content)

Complaint: The ads are insensitive or triggering for consumers dealing with alcohol dependence.

ABAC standard: Alcohol marketing cannot:

- show or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines; or
- show or encourage irresponsible behaviour related to the consumption or presence of alcohol.

Decision: The Panel did not uphold the complaints but considered the issue raised by the complainants of how public policy and regulation intersects with the needs of an alcohol dependent person:

- The ABAC is one component of a shared regulatory regime that applies to the promotion and marketing of alcohol. The ABAC 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.
- 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.
- A fair interpretation of the two ads 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.
- 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.



Carlton Draught (complaint regarding content and placement)

Complaint: The ad is a montage of sentimental imagery with rousing poem voiceover designed to establish and exploit existing emotional relationships with alcohol and was seen during a youtube video on how to cure depression. The advertiser has possibly even specified this cohort as a target for its alcohol advertising. The harm caused by encouraging alcoholism in a depressed cohort of viewers is significant, and increases pressure towards suicide, domestic violence and other social ills.

ABAC standard: Alcohol marketing cannot:

- show or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
- show or encourage irresponsible behaviour related to consumption or presence of alcohol; or
- suggest the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel does not believe the ad breaches the ABAC content standards. In reaching this conclusion the Panel noted:

- Marketing communications such as a TV ad or an ad placed on a social media platform must be assessed on its own content. It is not open to take differing interpretations of an ad because it is seen with say a drama or a sports broadcast or a documentary.
- The theme of the ad is to invoke fond reminiscences of experiences in a pub. The ad aims to be emotionally rousing, but this is not a breach of the ABAC unless the ad would be understood by a reasonable person as portraying alcohol use or the effects of alcohol in a manner inconsistent with a Code standard. While alcohol consumption is a component of many experiences at a pub, the ad shows alcohol use as a secondary element to the primary purpose of promoting the 'pub' as a venue for various entertainments and life experiences. Alcohol use is not shown irresponsibly e.g. no excessive consumption is depicted or implied, nor is alcohol related anti-social behaviours suggested. A reasonable person would not understand the ad as suggesting alcohol use is an appropriate response to dealing with depression.
- The ABAC Placement Rules are aimed to limit the exposure of minors to alcohol marketing. The rules do not go to alcohol marketing and other potentially at-risk groups or individuals. The Company advised that it applies exclusions to campaigns running on YouTube so that advertisements are not shown during videos tagged as being in the 'Mental Health' and 'Depression' categories. The effectiveness of the exclusions depends on the categorisation of YouTube content by the platform. In the case of the video from Mr Corsetti with which the complainant was served with the ad, the Company suggests the content may have been miscategorised. In any event, the placement of the ad with the Corsetti video is not a breach of the Placement Rules.
- The ad identified by the complainant was conveyed by the YouTube social media platform. While not a complete answer, there are steps a holder of a YouTube account can take to limit, if not exclude, alcohol advertising from being served to them while using the platform. A link to instructions to apply the settings is <https://support.google.com/ads/answer/10261289?hl=en>
- In raising this option, the Panel is not suggesting that the primary obligation to market responsibly imposed on alcohol companies should be in any way diminished. Marketers must always operate consistently with their formal regulatory requirements and be conscious of their social license to adopt practices that minimise the risk of harm from alcohol misuse.



The ABAC Complaints Panel is headed by Chief Adjudicator Professor The Hon Michael Lavarch AO. For more information on ABAC or to access the ABAC Adjudication Panel decisions referred to in this report, visit: <http://www.abac.org.au>.