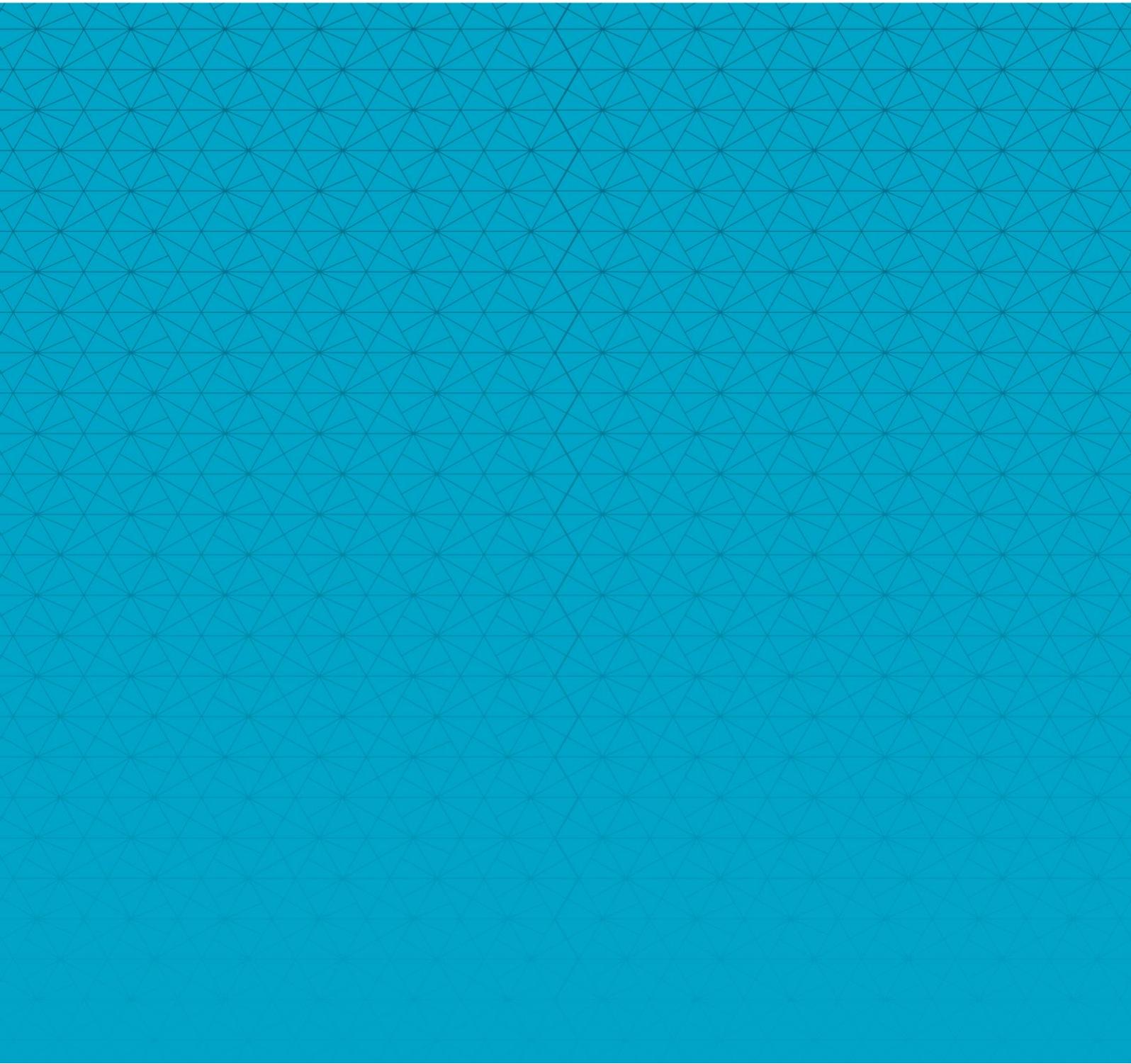


Australia's Responsible Alcohol Marketing Scheme

2022 Fourth 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.

This quarter JWS Research completed social media age restriction compliance monitoring of a selection of ABAC signatory brands providing a range of [insights](#) for ABAC. The insights were helpful in highlighting the impediments to alcohol companies applying age restrictions to their social media accounts and have resulted in feedback being provided to the social media platforms and checklists being developed to assist alcohol companies ensure that age restrictions are in place for [organic](#) and [paid](#) marketing. It is strongly recommended that companies use these checklists to periodically undertake their own internal audit of their social media assets (in particular Instagram, Facebook and YouTube accounts), as an individual staff member could forget to include the age restriction when setting up an account or inadvertently disrupt a setting while managing an existing account. It is also important to brief influencers to age restrict individual posts in which they are promoting an alcohol brand. The checklists include helpful links to instructions. ABAC is committed to further periodic monitoring in this area.

Recent ABAC Panel determinations highlight areas where care is needed when developing marketing:

- Showing or encouraging rapid alcohol consumption either, visually, audibly or by direct implication is a breach of ABAC Code standards, and inconsistent with State/Territory Liquor Authority alcohol promotion guidelines. Two decisions this quarter breach this standard. Read the full decisions [here](#) and [here](#).
- Memes that make fun of choosing to drink in moderation, breach the ABAC standards around the responsible and moderate portrayal of alcohol. Care needs to be taken to avoid humour around excessive or irresponsible alcohol consumption. Read the full decision [here](#).
- It is a breach of ABAC standards to suggest that an alcohol product offers a positive health benefit. The phrase ‘Australia’s healthiest...premix’ was found to go beyond factual comparison to making a health claim in breach of the ABAC Code. Read the full decision [here](#).
- It is important to be aware that showing or directly implying alcohol consumption before or during activities that require a high degree of alertness or physical co-ordination is a breach of the ABAC Code. This quarter the Panel breached ads showing or directly implying alcohol consumption before cliff diving and while sitting on a sack trolley being towed by a motor cycle. Read the full decisions [here](#) and [here](#).
- When developing packaging, it is important to take care that it doesn’t have strong or evident appeal to minors. ABAC’s [Alcohol Packaging Compliance Guide](#) is a useful resource.

KEY STATISTICS

Complaints	47
Raising Code issues and referred for determination	32
Not raising Code issues*	13
Raising an issue previously considered by the Panel	2
Determinations	26
Upheld	8
Upheld as a No Fault Breach	1
Dismissed	17
Pre-vets	885
Rejected	159

* Complaints that did not raise Code issues fell outside the scope of the scheme as they raised concerns outside ABAC standards such as advertising not being clearly distinguishable, placement frequently, during a program on alcohol misuse and on a shopping docket, environmental claims, misleading claims, offensive language, racial discrimination, overtly sexual or offensive to women which can fall within the scope of other regulators, including Ad Standards.

RECENT ALCOHOL MARKETING COMPLAINTS

Breach of ABAC Standards

Better Beer (complaint regarding content)

Complaint: Concern the posts encourage consumption of alcohol in inappropriate locations and ways.

ABAC standard: Alcohol marketing cannot:

- show or encourage excessive or rapid consumption of an alcohol beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
- show the consumption of an alcohol beverage as a cause or contributing to sexual success; or
- show alcohol consumption before or during any activity that for safety reasons, requires a high degree of alertness or physical co-ordination.

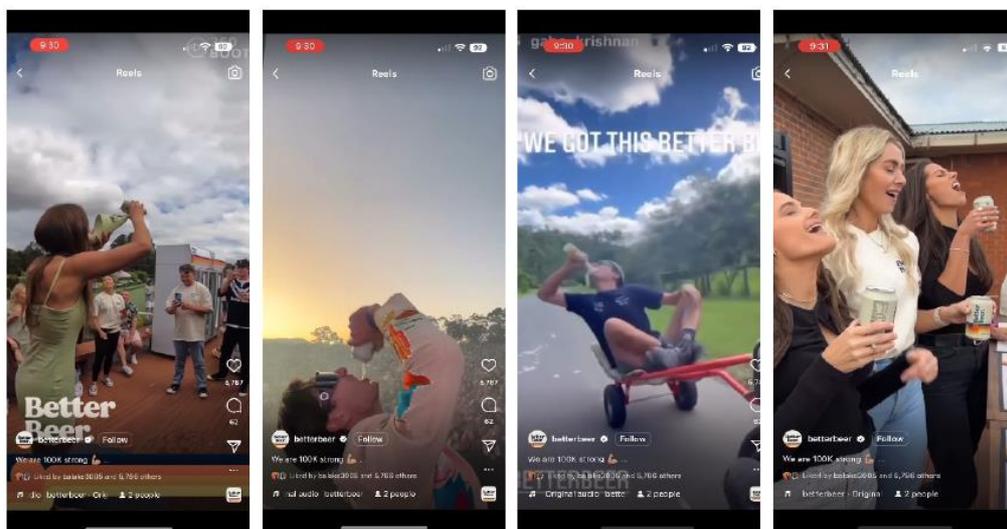
Decision: The Panel held the view that the Part 3 (a)(i) and (d) standard had been breached, noting that:

- rapid and uncontrolled consumption such as drinking alcohol through a sandal or croc style footwear will almost inevitably be inconsistent with the standard;
- a reasonable understanding of a short scene within a compilation video is that the behaviour shown for a second or so is representative of the behaviour;
- scenes depicting a woman drinking from her footwear and a man pouring the product from height directly into his mouth are a breach of the Part 3 (a)(i) standard;
- motorbikes are not designed or intended to tow sack trolleys for the purpose of ferrying passengers. The person being towed is performing a stunt that requires concentration and co-ordination to be done safely; and
- a reasonable person would consider that riding on a sack trolley or wheeler being towed by a motorbike is inherently unsafe, with the consumption of alcohol whilst doing so heightening the risk of injury by impacting concentration and reaction times.

The Panel did not believe that Part 3 (c)(ii) of the Code had been breached, noting:

- the people moaning are shown fully clothed and are in public;
- throughout the entire video, no physical activity is depicted which is sexual in nature;
- the ABAC standards do permit people to be depicted enjoying an alcohol beverage; and
- taken as a whole the scene in the video would most likely be understood as a somewhat exaggerated reaction to tasting the product rather than suggesting the product causes sexual fulfilment.

The Company has declined to remove the post. The complaint has been referred to the Victorian Liquor Authority.



Flashback Vodka (complaint regarding content)

Complaint: Concern that the packaging appeals to minors and has a strong association with confectionery and soft drink.

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

Decision: The Panel considered each item separately and held the view each item of packaging breaches the ABAC standard, noting across the range that:

- the use of bright and contrasting colours will be eye catching to minors;
- the product name 'pink lemonade' is more widely associated with a soft drink that appeals to minors rather than alcohol beverages;
- the product name of 'pine lime' is most closely associated with the well-known Splice Pine Lime ice block and is also a flavour commonly used for non-alcohol beverages such as cordial, flavoured syrup and soft drink;
- the product name of 'peaches & cream' is most associated with a classic dessert enjoyed by all ages, but is also used for a wide range of products, including, yoghurt, make-up and song titles;
- while this does not mean an alcohol beverage cannot use these product names, the inherent potential for the product name to be recognisable and relatable to minors must be carefully considered in designing the marketing communication;
- the expression 'sour grapes' is most commonly associated with the Aesop fable and means disparagement of something out of reach - in relation to food and drink, the name describes a product with a sweet and sour flavour profile and is used as a descriptor in several product ranges including confectionery and some alcohol products - the lollies in the sour grape range eg chews and straps, are not household staples but would likely have a degree of recognition amongst minors - this means there is some potential for an alcohol product employing the sour grape descriptor to be recognisable and relatable to minors based on the familiarity of confectionery also using the descriptor - while this does not mean the descriptor cannot be used in alcohol marketing, it does require care in the design of the marketing communication to avoid creating relatable messaging to minors;
- the overall impression of each item of packaging through the name, colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- for each item of packaging, taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

The Company agreed to change the packaging in response to the determination.



Tawny Grogmouth Pale Ale (complaint regarding content)

Complaint: Concern that the packaging appeals to minors and it is not clear the product is alcoholic.

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

Decision: The Panel held the view the can design breaches the ABAC standard, noting:

- the principal image of a stylised owl will have wide appeal, including minors;
- the use of pastel pink, yellow and blue will be eye-catching to minors, with the images of animals, insects, flowers (including with a smiling face), love hearts, a koala holding a surfboard and a cartoon person surfing being relatable to minors;
- the anthropomorphism of some of the animal depictions brings to mind children's cartoons and characters in stories directed at children;
- the overall impression of the packaging through the colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage;
- the alcohol cues that will direct the product to adults are not immediately apparent due to being lost in the busy design, being in smaller font, or being on the side or back of the can;
- while no one element of itself is decisive, taken as a whole, the combination of the colour scheme and the overall impression of the packaging amounts to more than incidental appeal to minors and the appeal can be reasonably considered strong or evident.

The Company advised that the packaging had been discontinued and would no longer be in market within 3 months.



Archie Rose Single Malt Whisky (complaint regarding placement)

Complaint: Concern about an ad for alcohol shown on the children's channel on Qantas inflight entertainment before each episode of the children's program, Bluey.

ABAC standard: Alcohol marketing cannot be directed at Minors through its placement.

Decision: The Panel found there had been a breach of placement rules 2, 3 and 4 as:

- available age restriction controls had not been applied;
- the 'reasonably expected' audience of the program would exceed 25% minors; and
- Bluey is a program primarily aimed at minors.

The Company advised that the placement occurred due to human error and that steps had been taken to avoid a repeat of the mistake.



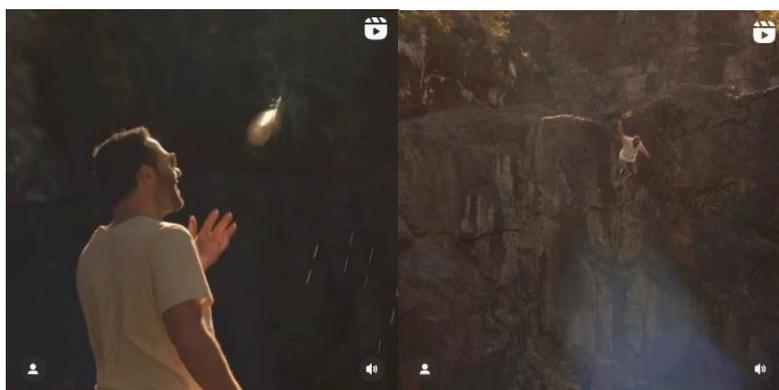
Travla Beer (complaint regarding content)

Complaint: Concern about driving off road and jumping off cliffs and having a grand old time with their beer.

ABAC standard: Alcohol marketing cannot show or directly 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 held the view that a cliff diving scene is in breach of Part 3(d) of the Code. While the Company advised that the character who is given a beer is not the same character who dives, the Panel did not believe this is how a reasonable person would probably understand the scene. With an esky of beer shown, and the taking of a beer before the cliff dive, it is a reasonable implication that both men are drinking and that consumption occurred prior to the inherently dangerous activity.

The Company removed the Instagram Video.



Tamburlaine Organic Wines (complaint regarding content)

Complaint: Concern that Facebook posts show a flippant regard to drinking in moderation and cute promotions appealing to kids.

ABAC standard: Alcohol marketing must not:

- show or encourage excessive or rapid consumption of an alcohol beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines; or
- have Strong or Evident Appeal to Minors.

Decision: The Panel dismissed the complaint concerning two of the posts:

- One post had an image of a puppy and strawberries alongside a mixed drink with the text 'After a long day of herding cats' and the caption 'It's hard work but someone has to do it'. It was found that while the puppy will draw the attention of minors, the overall image and lighting is mature rather than bright and eye-catching, the strapline will resonate more strongly with adults and taken as a whole the appeal to minors is incidental rather than strong or evident.
- Another post promoted discounts for purchases of multiple products, however the Panel found that the posts do not suggest a pattern of consumption and the discount is not offered for consuming the products in a short time frame. The Panel noted that by its nature, alcohol, particularly spirits and wine, has a long shelf life and it is not uncommon to purchase alcohol in multiples.

A third post shows red wine being poured into a wine glass. The post is headed 'Moderation who?' and the words 'Who is this "moderation" everyone tells me to drink with?' are superimposed on the image, along with the Company's name and logo. The Panel believed that this post encourages the excessive consumption of alcohol by making fun of drinking in moderation. It therefore breaches the Part 3 (a)(i) standard.

The Company conceded that Post 3 is not appropriate according to RSA and Licensee regulations and it has been removed. The Company advised that internal training has been conducted to minimise the risk of this type of breach recurring.



Vodka Plus (complaint regarding content)

Complaint: Concern that a Facebook post suggests the product is healthy, and this is inconsistent with the Food Standards Code.

ABAC standard: Alcohol marketing must not suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel noted that the Company is entitled to draw attention in its marketing to the attributes of its products and to make comparisons with other alcohol products. It needs to be mindful however that any claims about the comparative 'health benefits' of its product could breach ABAC standards. The Panel found that the post does breach the Part 3 (c)(iv) standard. While the intention may have been to draw a comparison with other products in terms of the calories contained, it is not permitted to suggest that alcohol products offer a positive health benefit. The phrase 'Australia's healthiest...premix' goes beyond a point of factual comparison to make a health claim.

The post was removed on notification of the complaint.



Expedited Determination

Fireball Whiskey (complaint regarding content)

Complaint: Concern the marketing shows excessive and irresponsible alcohol consumption.

ABAC standard: Alcohol marketing cannot show or encourage excessive or rapid consumption of an alcohol beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.

Expedited Decision: A Facebook post showing a person pouring alcohol into another person's mouth is an alcohol marketing communication that shows or encourages the excessive or rapid consumption of an Alcohol Beverage.

The Company accepted the breach and removed the post.



No Fault Breach

Sungazer Fruity Beer (complaint regarding content and placement)

Complaint: Concern about an ad with appeal for children being shown before a YouTube video for the Royal Academy of Dance children's ballet practice.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors or be directed at Minors through its placement.

Decision: The Panel found:

- there had been a breach of the placement rules, as it is likely that the 'reasonably expected' audience of the program would exceed 25% minors and is primarily aimed at minors;
- the breach of the placement rules was a no fault finding as the Company applied available age restriction controls, gave instructions as to where its ads should be placed, and if the video had been categorised as children's content, the breach would not have occurred.
- any appeal of the ad's content is incidental and not strong or evident.



Marketing Outside ABAC's Jurisdiction

Premier Estate Wines Prosecco (complaint regarding content)

Complaint: Concern that a Facebook post encourages binge drinking.

Decision: The ABAC Scheme and the remit of the Panel do not extend to every alcohol marketing item which can be accessed in Australia over a global digital platform. To fall within the ambit of the Scheme the marketing item must have a discernible and direct link to Australia such as:

- the Facebook account is under the control of an Australian alcohol marketer; or
- the product being marketed is available for sale in Australia from an Australian retailer; or
- the Facebook account is under the control of an international entity however there is a discernible and direct link to Australia so there is an Australian entity to which the ABAC obligations can attach.

The Company advised that the post was intended for its UK followers and that it has never sold its products in Australia. Internet searches by ABAC support that the Company does not have a discernible link to Australia. For instance, it has a UK domain name; a UK phone number is displayed on its website and Facebook page; its product prices are shown in GBP; it ships only to locations in the UK; and the product does not appear to be stocked in Australian alcohol retailers.

Accordingly, although the Facebook account might be accessible to someone in Australia given the global and ubiquitous nature of the internet, the regulatory regime applying to the marketing contained on the account is properly that of the United Kingdom, namely UK's Advertising Standards Authority. It is the UK to which the marketing is directed and where the product is being sold. While the complainant is raising a legitimate point about the marketing message in the post, the Company and its marketing does not fall within the ambit of the ABAC Scheme. Accordingly, the complaint is dismissed on jurisdiction grounds.



Marketing Consistent with ABAC Standards

Bridge Road Brewers & Friends Craft Beer Christmas Countdown Advent Calendar (complaint regarding content)

Complaint: Concern that the packaging has strong or evident appeal to minors through brightly coloured and cartoon style design and artwork and strong associations with a product that is normally associated with children’s Christmas confectionery products, i.e. chocolate advent calendars. In addition that the packaging makes light of irresponsible drinking behaviours including consuming alcohol from a bucket and consumption while undertaking swimming activities.

ABAC standard: Alcohol marketing must not:

- show, directly imply or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
- have strong or evident appeal to minors;
- show or directly 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 held the view that the packaging does not breach ABAC standards, noting:

- Christmas imagery has broad appeal, including, but not exclusively for children and adolescents;
- while chocolate advent calendars would have familiarity with minors, advent calendar inspired packaging is used for many different products, aimed towards a variety of ages;
- a beer carton is of size and type of packaging that irrespective of the imagery, is not likely to resonate strongly with minors;
- much (not all) of the imagery depicts ‘Australiana’ activities recognised by older adults as opposed to minors eg a game of two-up and arm wrestling;
- the animal characters are depicted and dressed as adults as opposed to more childlike anthropomorphised characters employed in children’s books;
- taken as a whole, a reasonable person would assess the packaging’s overall impact as having incidental as opposed to strong or evident appeal to minors;
- the reference to drinking from a bucket is more likely to be a Ned Kelly reference as the ‘bucket’ appears to be a helmet alongside a musket and ‘Australiana’ tropes; and
- the image of a character consuming alcohol while on a floating lounge will not be taken as a serious endorsement of consuming alcohol while undertaking a dangerous activity in the context of the busy and elaborate design of the packaging.



Belvedere Vodka (complaint regarding content)

Complaint: Concern that the image is challenging the viewer to drink the product excessively, through Daniel Craig's choice of dress alluding to a 1950's greaser, open arm body language, placement of the bottle and a half full glass, and its placement at the entrance to the Sydney CBD which has only recently been released from lockout laws.

ABAC standard: Alcohol marketing must not:

- 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;
- challenge or dare people to consume an Alcohol Beverage.

Decision: The Panel did not find the ad in breach of ABAC standards, noting:

- The ad does not show actual consumption of alcohol occurring (although it is clearly implied) and there is no strapline or other written cues about the product, its attributes or its use. This means the takeout from the ad is drawn from sub-text and will invariably be in the eye of the beholder. Certainly, Mr Craig looks very different from his James Bond persona and it is likely many people who have seen Mr Craig in the popular Bond movies will not readily recognise him.
- Also, it should be noted, that as a billboard on a major road, most people will likely see the ad from a passing motor vehicle. This means that impressions will be gained quickly rather than from a more considered study of the photograph.
- The Panel does not believe that the ad can be interpreted as daring or challenging a person to consume alcohol. Nor does the Panel believe that the location of the billboard and the fact Sydney has moved from Covid lockdowns will be a salient factor in how the ad would be understood.
- The ad does not clearly suggest a pattern of consumption and while the sub-text can be taken in different ways, it is considered that most viewers won't take the various suppositions needed to conclude that the ad is showing or encouraging excessive consumption. A typical viewer from a passing motor vehicle will likely absorb the image of a man sitting with a bottle of the product and the product name superimposed and not read much more into it.



Travla Beer (complaint regarding content)

Complaint: Concern that the name is a link to the illegal act of grabbing a beer on the way home from work and drinking while driving (colloquially known as a ‘traveller’).

ABAC standard: Alcohol marketing must not show or directly 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 believe a reasonable person would believe the brand name alone to be promoting irresponsible practices regarding alcohol use, noting:

- it is unlikely that the Travla brand name would be readily associated with drinking a beer while driving by the great majority of the public;
- there are no cues, messaging or imagery on the product packaging which suggests that the product should be consumed while operating a motor vehicle;
- while the term ‘traveller’ was used to describe the practice identified by the complainant, it is unclear how widely this term was recognised in the general public and it seems likely to have faded from colloquial use;
- the more likely understanding will develop from the brand’s marketing messaging of the product alluding to Travis Fimmel and brand attribute of a sense of adventure; and
- this interpretation of the name ‘Travla’ is supported by other text on the label, including ‘Don’t fence me in’, ‘A taste of home, wherever you are’ and ‘...to savour the restless spirit of adventure in everyone’.



Thirsty Camel Bottleshops (complaint regarding content)

Complaint: Concern about the use of the words ‘hydrate responsibly’ at the conclusion of a radio ad, given it is inaccurate as alcohol dehydrates the body.

ABAC standard: Alcohol marketing must not suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: On balance, the Panel did not believe that the advertising breaches Part 3 (c)(iv) standard. It was noted:

- the words “hydrate responsibly” are included with terms, conditions and disclaimers at the conclusion of the advertisement; and while still a part of the marketing, the phrase is separate and distinct from the substance of the advertisement that clearly and actively promotes the products and calls the consumer to action;
- there are no references to hydration or other health benefits in the substance of the ad and the marketing does not explicitly connect the alcohol products mentioned with any particular attributes such as health benefits; and
- it was common ground between the complainant and Company that “hydrate responsibly” would be understood as meaning drink responsibly, it is unlikely that the majority of the community would then go on to draw the further inferences taken by the complainant and more probably a listener will take “hydrate” and “drink” as interchangeable terms in the context of the ad.

While not finding a breach of the standard, the Panel strongly recommended that the Company cease using the phrase “hydrate responsibly” and simply use “drink responsibly”. It is intended to provide a responsibility message, and it would be best to just use direct language rather than rely on terms which may raise concerns as evidenced by the complaint.

Wine Not The Brand Rosé Coloured Glasses (complaint regarding content)

Complaint: Concern that the packaging is a squeezy yoghurt pouch format only seen in supermarkets and not appropriate for alcohol.

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

Decision: The Panel held the view that taken as a whole, a reasonable person would probably understand the packaging does not have strong or evident appeal to minors, noting:

- whilst pouches are used for food and beverages consumed by children, they are also used for other products such as shampoo and body wash, laundry liquid, air purifier and dog food;
- the colours used are muted rather than bright and contrasting;
- the packaging does not depict objects, characters or concepts with strong or evident appeal or familiarity to children; and
- the product clearly establishes that the contents are alcoholic through use of the word 'wine' and the predominate illustration being of a glass of wine and an adult woman.



Brewmanity Social Beast Pale Ale (complaint regarding content)

Complaint: Concern that an Instagram post shows a security guard consuming alcohol on a rooftop.

ABAC standard: Alcohol marketing must not show or directly imply:

- or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
- 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 believe a reasonable person would most probably understand the post is encouraging irresponsible or offensive alcohol use. The image doesn't suggest excessive consumption, no one appears affected by alcohol, the scene is sedate and shows adults quietly socialising. It is not likely that a reasonable person will pay too much attention to the tag on the man's jacket and then imagine a backstory that leads to a conclusion that irresponsible alcohol use is being championed by the post.



Better Beer (complaint regarding content)

Complaint: Concern that a video:

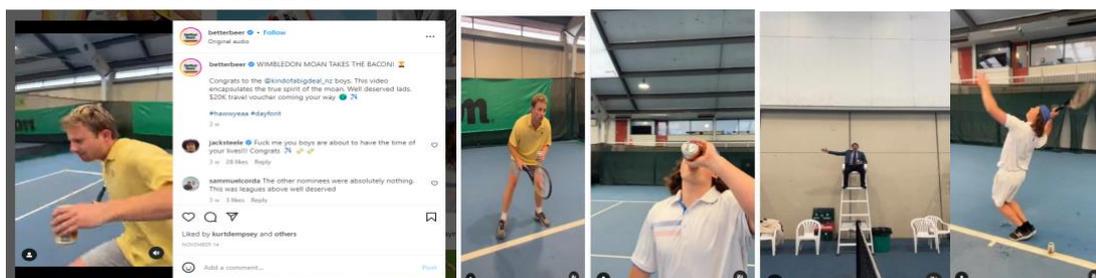
- shows an umpire on a high chair, ball boy and tennis player using alcohol while conducting those roles which require a high degree of alertness and physical coordination; and
- the addition of the text 'Wimbledon Moan Takes the Bacon!??' and the requirement for entrants to moan after consuming a beer suggests alcohol has contributed to a personal achievement and success.

ABAC standard: Alcohol marketing must not show 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;
- 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 believe the ABAC standards had been breached, noting:

- it is not inherently dangerous for a spectator to watch or an umpire to officiate a tennis game and consume alcohol;
- while a large number of sports and physical pursuits are inherently dangerous to drink alcohol and undertake, ranging from contact sports to diving/rock climbing, tennis would be regarded as a lower risk of physical injury, played across age groups, including into senior years;
- it is clear that the 'game' depicted in the video is a parody to emphasise the 'moaning' of the players and others and a reasonable person would not take the video as a genuine call to play tennis while consuming alcohol; while humour will not excuse depictions of irresponsible alcohol impacted behaviour, it is a factor in how a reasonable person interprets marketing;
- 'competitions' are expressly included in Part 2 (a) as an example of a marketing communication falling within the scope of the Code, and by definition, a competition results in a winner and hence 'success'; however it would be a non-sequitur to interpret the Code to mean an alcohol company's competition cannot have a winner because this means showing alcohol leading to success or achievement; and
- a reasonable person would not understand that the post is suggesting that alcohol use leads to personal success or achievement; rather that the post is showing the video which won the moan competition and taken as a whole, the post would not be taken as suggesting alcohol leads to success in life.



Johnnie Walker & Smirnoff Seltzer (complaint regarding placement)

Complaint: Concern about advertisements on 10Play during the day when children can be watching.

ABAC standard: Alcohol marketing cannot be directed at Minors through its placement.

Decision: The Panel found there had been no breach of an ABAC standard, noting:

- time of day restrictions that apply to free to air television do not apply as the FreeTV Code does not apply to digital television advertising;
- the age restriction controls available on the 10Play platform were utilised to exclude account holders who are minors from being served with alcohol ads;
- Ratings data on the audience when the ads were shown exceeds the 75% adult benchmark;
- while a program identified, The Amazing Race, has appeal across age groups, it cannot be fairly said to be primarily aimed at Minors.

South Avenue Seltzer (complaint regarding content)

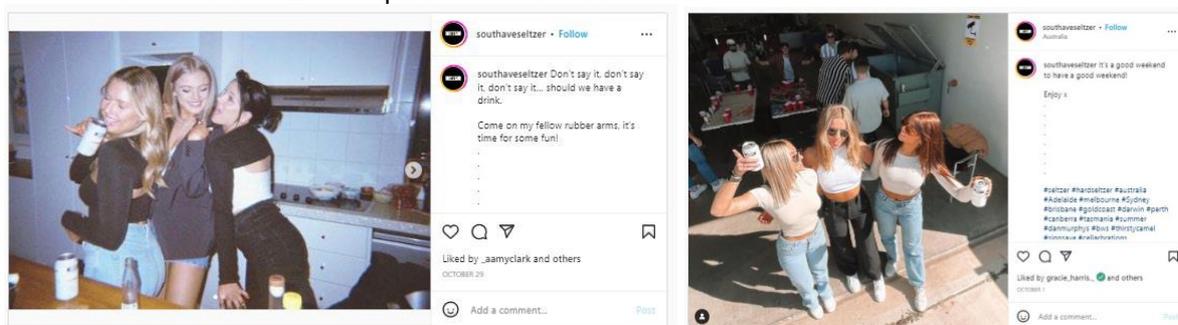
Complaint: Concern about marketing using images of under 18 year olds.

ABAC standard: Alcohol marketing cannot:

- depict a person who appears to be a minor unless they are shown in an incidental role and where there is no implication they are consuming an alcohol beverage; or
- depict a visually prominent person that appears to be an adult but is under 25, unless they are not visually prominent or are not a paid model or actor and shown in marketing placed within an age restricted environment.

Decision: The Panel found there had been no breach of an ABAC standard, noting:

- the women in the posts are all aged over 18, with the youngest woman being 21 years of age;
- while the women in the first post (the women in the second post appear older and are in fact aged in their mid to late 20's) are youthful looking, they are not made out to be minors;
- the women in the first post are aged under 25 and are shown in a visually prominent manner however the Instagram posts were placed on an account that was age restricted and could not be viewed by minors;
- the women are not actors nor paid to participate in the posts; and
- this means the ABAC requirements have been met.



Smirnoff Seltzer (complaint regarding content and placement)

Complaint: Concern about marketing to children during a digital broadcast of a family television show, Australia's Got Talent.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors or be directed at Minors through its placement.

Decision: The Panel found there had been no breach of an ABAC standard, noting:

- placement rule 1 that requires compliance with media industry codes did not apply as the FreeTV Code does not apply to digital television advertising;
- the age restriction controls available on the 7 Plus BVOD platform were utilised to exclude account holders who are minors from being served with alcohol ads;
- Australia's Got Talent ratings data shows that the program exceeds the 75% adult benchmark;
- While the program has wide appeal it cannot be fairly said to be primarily aimed at Minors;
- all characters depicted in the ad are clearly adult and no minors are shown in incidental or other roles;
- the ad does establish the product is alcoholic through depictions of the product packaging and logo which use the well recognised alcohol term of vodka; and
- while the backdrop is a bright and fast-moving party, the tone is adult and is not considered highly relatable to children or adolescents.



Heartbreaker Bar (complaint regarding content)

Complaint: Promoting happy hours with specific pricing encourages binge drinking.

ABAC standard: Alcohol marketing cannot show or encourage excessive or rapid consumption of an alcohol beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.

Decision: The Panel held the view that the two posts do not breach the ABAC standard as while they do promote the happy hour but do not depict any alcohol consumption, recommend any number of drinks to be consumed and do not portray immoderate alcohol consumption or the effects of consuming alcohol.

The Panel noted that:

- it is not prohibited under Victorian law and RSA requirements to conduct ‘happy hours’;
- it is recognised that a ‘happy hour’ and alcohol discounting within a licensed premise can however lead to rapid and excessive consumption and care needs to be taken in how the activities are conducted and promoted;
- In Victoria Liquor Control Victoria and the Victorian Liquor Commission are the primary regulators of happy hours and advertising guidelines give examples of unacceptable promotional activities of happy hours; and
- ABAC requirements can intersect with happy hours, but only in relation to marketing directed to the wider community and not the actual conduct of a happy hour in a licensed premise.



Jimmy Brings (complaint regarding placement)

Complaint: Children will view this advertising that is stencilled onto footpaths.

ABAC standard: Placement Rules provide that alcohol marketing must not be directed toward minors and therefore have available age restriction controls applied (Rule 2)

Decision: The Panel found:

- the content of the messages does not breach ABAC standards;
- ABAC has no jurisdiction regarding the use of public footpaths for advertising, with this being a question for government agencies at the State and local level; and
- while it is conceivable the ABAC Placement Rules do apply to the stencilled messages, in the three examples raised in the complaints, it is not suggested the messages were within 150 metres of a school.



Uber Eats Flyer (complaint regarding placement)

Complaint: Printed voucher handed to an 11 year old minor in a school uniform.

ABAC standard: Placement Rules provide that alcohol marketing must not be directed toward minors and therefore have available age restriction controls applied (Rule 2)

Decision: The Panel found:

- The problem with the flyer was not its content. Rather, it was the distribution of the flyer which was inappropriate. This brought into play the ABAC Placement Rules. The Rules are not drafted to easily capture the circumstances of the case, but the Panel believes the distribution of flyers into the hands of members of the public can be regarded as falling within the intent of Rule 2.
- Adapted to the expectations of the distribution of flyers at a railway station, the rule means that flyers are not to be offered to minors and alcohol companies need to have in place a system that would avoid minors being handed the flyers. This includes requiring partners contracted to distribute flyers to have appropriate measures in place.
- In this case, it appears the two alcohol companies did require Uber Eats to market consistently with ABAC standards and the system Uber Eats employed with its sub-contractor did appear to be robust and if followed would not have alcohol marketing material given to minors. Clearly the system failed in this instance, but whether this was a one-off or something more cannot be determined on the available information.
- Drawing this together, the Panel is unable to find that the two alcohol companies failed to meet their obligation to apply 'available age restriction controls'. While a breach has not been found, the Panel reiterates that the complainant's concern was valid and justified.



Better Beer (complaint regarding content and placement)

Complaint: Encouraging minors to perform drinking beer acts for the chance to win a car.

ABAC standard: The content of alcohol marketing must not have strong or evident appeal to minors.

Placement Rules provide that alcohol marketing must not be directed toward minors and therefore

- have available age restriction controls applied (Rule 2)
- only be placed where the audience is reasonably expected to comprise at least 75% Adults (Rule 3)
- not be placed with programs or content primarily aimed at Minors (Rule 4)

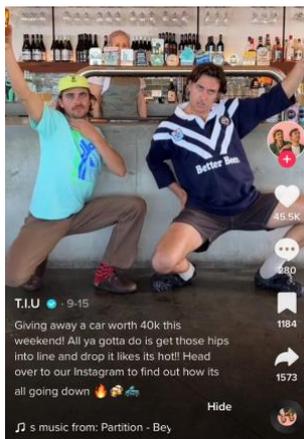
Decision: The Panel believes the video does not breach the Part 3 (b)(i) standard. In reaching this conclusion the Panel had regard to:

- the people shown are all adults aged 25 or more and are depicted as adults;
- the dress and appearance of the adults is not likely to resonate strongly to minors;
- the scenes used include a bar with elderly patrons, a bowling club, bottle shop, the exterior of a house, a paddock and a suburban street, and none of these settings are likely to appeal strongly to minors;
- the dance performance is likely to have appeal across age groups including minors; and

- taken as a whole, the video and a competition with a ute as the prize is more likely to appeal to adults with any appeal to minors being incidental rather than strong or evident.

The Panel also held the view that this placement on Tik Tok was not in breach of the placement rules:

- Rule 2 has not been breached as TikTok to date has not offered an age restriction control to exclude minors from receiving posts or accessing an account.
- Rule 3 has not been breached as based on data provided by the Company, it is unlikely that over 25% of the “reasonably expected audience” of The Inspired Unemployed’s social media accounts and posts would be minors.
- Rule 4 might arguably apply but the content received by each user of TikTok is driven by individual account settings and the analytics of the users likes and content choices and it is not possible to reliably conclude that the video would have been fed with other content primarily aimed at minors.



Kim Crawford Wines (complaint regarding content)

Complaint: Concern that the newspaper ad implies alcohol will cause or contribute to success.

ABAC standard: Alcohol marketing must not show the consumption or presence of alcohol as a cause of or contributing to the achievement success.

Decision: The Panel did not believe the ABAC standard was breached, finding the ad associates the product with the woman and outlines that the woman is a skilled multi-tasker. However, the ad does not show the woman consuming alcohol, nor suggest her success comes from the use of alcohol. The words ‘To the Unstoppable’, are akin to making a toast and suggest alcohol is marking an achievement, not the cause of the achievement.



Kim Crawford Wines (complaint regarding content)

Complaint: Concern that a billboard shows a middle aged woman contentedly drinking alone, when middle aged women are an ‘at risk’ group.

ABAC standard: Alcohol marketing must not suggest that:

- the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
- The consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel made observations about the policy and regulatory framework relating to alcohol marketing, however did not believe the ABAC standards had been breached, noting:

- The mood does not alter but is constant. Neither the words nor images portray a previous environment that was changed by the introduction of alcohol. The woman does not appear affected by alcohol consumption.
- The text positions that peace is being enjoyed due to the wifi pumping, not because alcohol has been consumed. A reasonable person would most likely interpret ‘pumping wifi’ as enabling the woman to enjoy a quiet moment, by providing a distraction for her children.
- Only moderate consumption is portrayed with a single glass with no cues of excessive consumption such as an empty bottle shown.



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>.