



## **ABAC Adjudication Panel Determination No 25/23**

**Product:** VB Big Green Button  
**Companies:** Carlton & United Breweries, Endeavour Group – Jimmy Brings  
**Media:** Marketing Collateral, Digital - YouTube  
**Date of decision:** 20 March 2023  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### **Introduction**

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 6 February 2023 and concerns both VB’s Big Green Button (“the Button”) and advertising for the Button via YouTube. The Button is a collaboration between Carlton & United Breweries (“CUB”) and Endeavour Group subsidiary, the retailer Jimmy Brings.
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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 6 February 2023.
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 complaint was 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. Jimmy Brings obtained Pre-vetting approval for the YouTube marketing (Approval Number 4906).

## The Marketing Communication

10. The complaint relates to the VB Big Green Button, and YouTube marketing for the Button.

The YouTube video can be viewed at the following link, and a brief summary is provided below.

<https://youtu.be/VHFZ9KJQf94>

How to set up your Big Green Button	
<p>The video is accompanied by the VB Theme Music.</p> <p>It commences with the words “The Victoria Bitter Big Green Button Instruction Manual”.</p>	
<p>We then see an illustrated character place a Button on a fridge and the words “Put your Big Green Button onto any metal surface” and “Like your fridge” are shown.</p>	
<p>An illustrated person is then shown pressing the Button, and a button sound effect is heard. The music pauses, and we hear a male voice say the words “A hard earned thirst needs a big cold...”</p> <p>The words “Press once. Hear audio goodness” are shown at the bottom of the screen.</p>	

The illustrated hand presses the Button again, the music recommences, and the same male voice sings “da da da...” in time with the ad music.

The words “Press again. Enjoy more audio goodness” are shown at the bottom of the screen.

The illustrated hand then presses the Button twice in quick succession and we hear button sound effects.

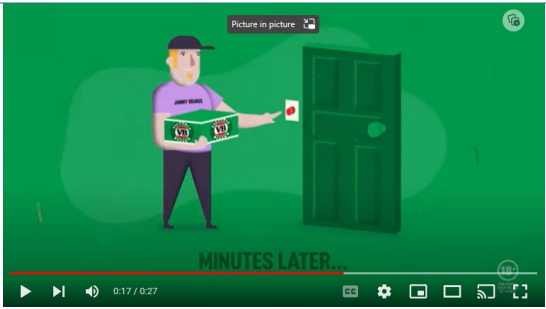
The words “Press twice for cold beer delivered in minutes” are shown at the bottom of the screen.

We then see another illustrated character, wearing a t-shirt with the words “Jimmy Brings” and carrying a case of VB, arrive at a door, and ring the doorbell.

The words “Minutes later...” are shown at the bottom of the screen.

Following, we see an illustrated hand holding an open bottle of VB. The words “Enjoy your cold VB” are shown at the bottom of the screen.

The ad concludes by showing the words “Push the Big Green Button”. The Button is shown in place of the letter “O”, and an illustrated hand reaches out to press the Button twice. The words “Jimmy Brings” are shown at the bottom of the screen. We hear a doorbell.



## The Complaint

11. The complainant objects to the marketing as follows:
- *Advertising a promotional fridge magnet that plays VB theme song if pressed once, orders a slab if pressed twice.*
  - *This glorifies regular consumption of alcohol and the accessibility of having it delivered in minutes.*
  - *As someone who is in recovery and being treated for alcohol use disorder, I find this really concerning. Accessibility and convenience of obtaining alcohol on demand is a large risk factor in developing bad habits and in relapse, and I myself have self-excluded from services such as these for this reason.*
  - *The idea that you can press a button whenever the impulse to consume alcohol takes you and have it delivered "in minutes", as the ad claims, is promoting very problematic behaviours and attitudes towards the consumption of a dangerous and addictive substance.*

## The ABAC Code

12. 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; and
- (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.

13. Part 6 of the ABAC Code provides that:

**Marketing Collateral means** material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

**Marketing Communications** means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

**Marketer** means a producer, distributor or retailer of Alcohol Beverages.

## The Company Responses

14. **CUB** responded to the complaint by letter emailed on 16 February 2023. The principal comments made by CUB were:

### ABAC Pre-vetting Service

- VB / Carlton & United Breweries did not pre-vet this material. We have manufactured and supplied the Big Green Button as well as a suite of digital advertising assets for our retail partner to use for this promotional campaign. Jimmy Brings / Endeavour Group is the Promoter; we are unaware if they had sought pre-vetting for the YouTube advertisements.


### Scope of the Code





- The 'VB' branding on the Big Green Button is Marketing Collateral or a 'brand extension to a non-alcohol beverage product' within the scope of Part 2 (a) of the ABAC and CUB intends that its branding on the Big Green Button occurs consistently with the requirements of the ABAC.

### Functionality of the Button

- The button is a promotional item aimed at VB enthusiasts. It takes the form of a magnet that, when pressed, will repeat a VB catch phrase or play the VB theme song, and when pressed twice, will add a case of VB to the user's Jimmy Brings shopping cart.
- The user must then log on to their Jimmy Brings account via the Jimmy Brings website or app and confirm the purchase as per the usual manner of making an alcohol delivery transaction.
- This is an important step in the process that gives consumers an opportunity to reconsider their purchase before it is complete and also ensures orders are not placed accidentally. Jimmy Brings drivers will also check ID for age verification before the delivery is complete.
- This process is clearly detailed in the set-up instructions and on both the VB and the Jimmy Brings FAQ pages for the item.

[HISTORY](#) [STORE](#) [VB SOLAR EXCHANGE](#) [GROOMING](#) [BIG GREEN BUTTON](#)



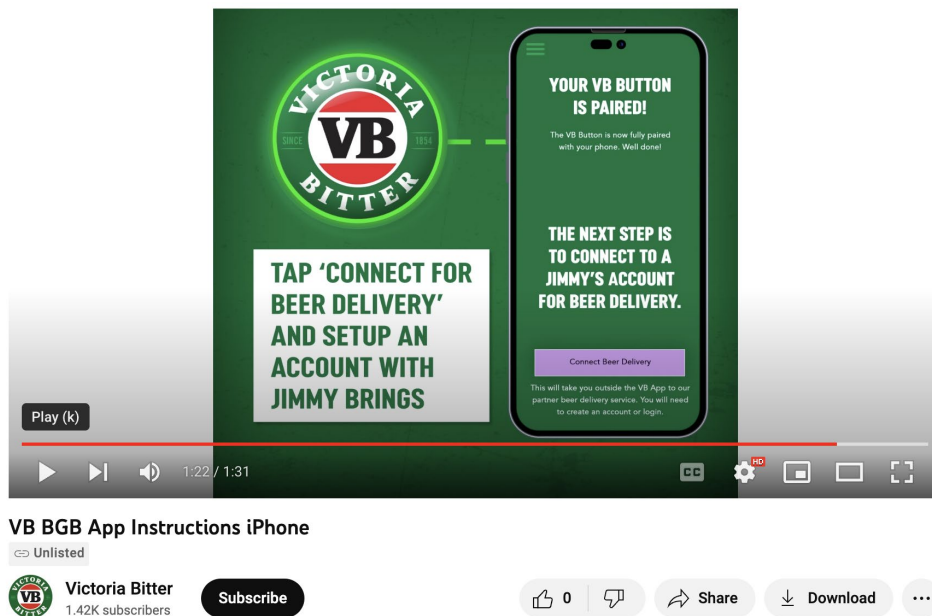
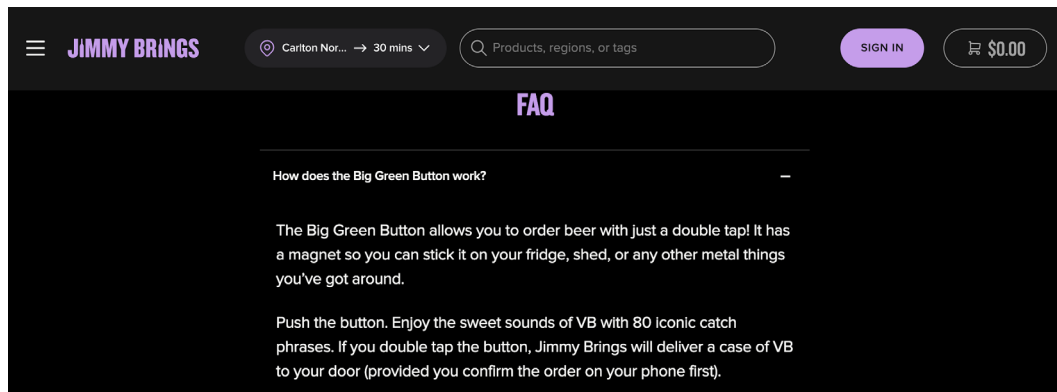
### Frequently Asked Questions

[GENERAL](#) [SET UP](#) [ORDERING](#) [TECH TROUBLESHOOTING](#) [CONTACT US](#)

#### How does the Big Green Button work?

The Big Green Button allows you to order beer with just a double tap! It has a magnet so you can stick it on your fridge, shed, or any other metal things you've got around.

Push the button. Enjoy the sweet sounds of VB with 80 iconic catch phrases. If you double tap the button, Jimmy Brings will deliver a case of VB to your door (provided you confirm the order on your phone first).



## Responsible and moderate portrayal of Alcohol Beverages

- The Button does not breach Part 3 (a)(i) of the Code by showing (visibly, audibly or by direct implication) or encouraging the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
- The button is a promotional item intended to engage VB consumers with a novel method for initiating a transaction which must then be completed through routine use of the Jimmy Brings app.
- As the Panel has [previously concluded](#), off-premise promotions are not *per se* breaches of Part 3(a)(i); specifically, “there is a significant distinction between the promotion of the purchase of a product and its subsequent consumption.” Nothing in the advertisements promoting the Big Green Button suggests that the resulting purchase of packaged alcohol must be consumed immediately or in a way that is inconsistent with the consumption guidelines outlined by the NHMRC.
- In order to complete the transaction, the potential Big Green Button user must confirm their purchase via their Jimmy Brings account. The button

does not add any impulsivity or convenience to the purchase beyond what is already offered by on-demand delivery services like Jimmy Brings.

- Additionally, the 'within minutes' claim is used extensively in Jimmy Brings advertising:

Ad · <https://www.jimmybrings.com.au/> ▼

### Jimmy Brings Alcohol Delivery - Hot Deals On Your Fave Drinks

**Jimmy Brings** All Summer Long. AU's Fastest Alcohol Delivery Service. Order Cold Drinks Now. Get **Jimmy** with Drinks Delivered In Minutes, Cold And Ready for Sippin' in the Sun! New Locations. Beer, Wine & Spirits. Exclusive Deals. Awesome Service. Fast Delivery.

- After pressing the button, the functional experience of ordering alcohol via the Big Green Button is no different to a user logging on to their Jimmy Brings account and ordering a case of VB. The button cannot be used to order alcohol without engaging with the Jimmy Brings app.
- Further, both VB and Jimmy Brings are signatories to the Retail Drinks Association Online Alcohol Sale and Delivery Code of Conduct, ensuring that Jimmy Brings drivers are subject to responsible supply principles, including a prohibition on the sale and supply of alcohol to persons who are under 18 or who are intoxicated at the time of supply.
- Carlton & United Breweries is committed to ensuring our promotional and marketing material does not appeal to minors. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to the placement and content of our advertising.

15. **Jimmy Brings** responded to the complaint by letter emailed on 15 February 2023. The principal comments made by Jimmy Brings were:

- Jimmy Brings thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. Jimmy Brings understands that the Panel is considering whether or not the Advertisement breaches Part 3 (a)(i) and/or Part 3 (a)(ii) of the ABAC Responsible Alcohol Marketing Code (the Code).
- At the outset, Jimmy Brings would like to note that:
  - Jimmy Brings, as part of Endeavour Group, is committed to maintaining our position as an industry leader in the responsible service of alcohol. This is highlighted by the fact that Endeavour Group formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all advertising within its reasonable control in accordance with the Code. As a signatory to ABAC, Endeavour Group commits to the objectives of the Code to ensure that alcohol advertising does



not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.

- Furthermore, Jimmy Brings maintains strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Endeavour Group has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage the responsible consumption of alcohol. These include:
  - ID25; we ask for ID if a shopper looks under the age of 25;
  - Our Refusal of Service Policy (Secondary Supply, Intoxication and School Uniform); and
  - Staff training that exceeds legal requirements, including our 'Leading in Responsibility' training module, team talkers, regular refresher and reminder courses.
- The processes outlined above provide Jimmy Brings with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.

### **Alcohol Advertising Pre-vetting Service Approval**

- The YouTube video (which appears on the Jimmy Brings landing page, <https://jimmybrings.com.au/bgb>) received Alcohol Advertising Pre-Vetting Service Approval (Pre-Vetting Approval) on 27 January 2023, pursuant to approval number 4906;
- Jimmy Brings did not seek Pre-Vetting Approval for the BGB on the basis that it is an initiative owned by Carlton & United Breweries (CUB).

### **Relationship with CUB and control over marketing materials**

- There was an informal agreement between the parties that each would be responsible for producing their own assets to house on their respective channels.
- Jimmy Brings was aware of the development of the Advertisements and approved them prior to use.
- Jimmy Brings was in a position to request the removal / discontinuance of the Advertisements, however in relation to the BGB, the decision would ultimately rest with CUB as the owner of the device.

## **Functions of the Button**

- The BGB allows customers to bypass the order 'selection' stage when shopping on the Jimmy Brings website, and is designed to simply place a case of VB in the users' cart on the checkout page, where the customer can either edit their cart, or proceed to place their order. This requires the customer to have a Jimmy Brings account already set up. Jimmy Brings notes that in order to have an account with Jimmy Brings, a customer must first verify that they are over 18 years of age.
- Assuming a customer has already obtained a BGB (e.g., as a gift with purchase or by separately purchasing the BGB online via the Jimmy Brings app or website), the following steps would need to be completed before a customer can place their order:
  - Customer double-taps button (single-taps simply result in the button outputting a range of catchphrases and sounds).
  - The button triggers a push notification on the customers' mobile device (which they have already paired with the Big Green Button via bluetooth, setup instructions housed on the VB Button App).
  - Customer clicks push notification.
  - Push notification triggers the Jimmy Brings website to open on the customers' phone on the 'Your Order' page.
  - A case of VB will appear in the customer's cart.
  - Customers must then confirm their order after reviewing their name, address & payment details.
  - Jimmy Brings order is fulfilled in the ordinary course.

## **Responsible and moderate portrayal of Alcohol Beverages**

- Jimmy Brings respectfully submits that the Advertisements do not breach Part 3(a)(i) or Part 3(a)(ii) of the Code for the following reasons:
  - The focus of the Advertisements is the convenience of ordering and delivery via the BGB. The Advertisements do not focus on, nor make any suggestions or implications about, the rate of purchase or consumption of alcohol.
  - The Complaint is centred on the appropriateness of the concept of "delivery in minutes" as opposed to the content of the Advertisements.
  - The distinction between alcohol purchase and consumption has been considered by the Panel in previous decisions

(Determination No. 9 & 14/16 and Determination No. 125/18), in which the Panel observed that:

- Determination No. 9 & 14/16: "...There is a clear distinction between the purchase of an alcohol product and the pattern of its subsequent consumption. Alcohol by its nature is a product with a relatively long shelf life in that it can be stored for months or in the case of wine and spirits, for years, prior to its use. It does not follow that simply because alcohol products are home delivered that a person will then engage in binge drinking, any more than a person purchasing a product in store at a bottle shop will engage in subsequent excessive or rapid consumption of the product purchased."
- Determination No. 125/18: "There is no ABAC requirement which prohibits home delivery of alcohol products by retailers. The ABAC does not deal with issues such as where alcohol might be purchased... Accordingly, the question of home delivery facilitating an impulse purchase of alcohol as opposed to a consumer having to travel to a store to purchase alcohol is not an ABAC issue."
- Jimmy Brings reiterates that it takes its RSA obligations incredibly seriously and that such obligations form an integral part of its operations. Endeavour Group's RSA initiatives outlined earlier, including ID25 and the Refusal of Service Policy, apply to its delivery services, including deliveries via Jimmy Brings. All of Jimmy Brings' delivery drivers are RSA qualified and upon each delivery, including those fulfilled via the BGB, will always:
  - ask for a customer's identification to verify that they are over 18 years old;
  - check the identification of all individuals in a group of customers, if they believe that some in the group may be underage;
  - refuse to supply alcohol to an intoxicated customer;
  - refuse to leave a delivery unattended;
  - verbally confirm the name of the customer matches the name provided in the order.
- In addition, Jimmy Brings notes that the following measures and controls were implemented to further minimise any risk of harm (including any potential perception that the BGB/Advertisements could encourage impulse purchasing):
  - customers must have an account with Jimmy Brings in order to make a purchase via the BGB;

- customers must verify their order through their mobile phone before the delivery is sent out;
  - Jimmy Brings drivers apply 'ID25' processes for all orders, reducing the risk of intoxicated or underage service;
  - customers are only permitted to make 2 orders per day, per account. A third order placed under the same account on the same day will automatically be cancelled;
  - a customer is unable to link more than one BGB to the same Jimmy Brings account; and
  - Jimmy Brings' automated RSA system applies 'red flags' to online customer purchases which could be high risk, either by volume or ordering frequency, and allows for targeted review and consideration for intervention.
- In view of the above and considering the Advertisements as a whole, it is our view that a reasonable person would understand that the Advertisements were conveying a message about delivery and convenience. We do not believe that a reasonable person would understand the Advertisements as:
    - encouraging the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines; or
    - showing or encouraging the impulsive purchase of alcohol; and/or the rapid or excessive consumption of alcohol.
  - Notwithstanding this, Jimmy Brings does not seek to diminish the concerns of the complainant and would like to reiterate that we take our responsibility as an industry leader in the responsible service and marketing of alcohol incredibly seriously. To that end, the importance of ensuring all necessary marketing communications (involving Jimmy Brings brand name or logo) are reviewed from a Code compliance perspective (and pre-vetted where appropriate), has been reinforced with the marketing team, even in circumstances where that material is controlled / owned by a third party.

## **The Panel's View**

### **Introduction**

16. In early February 2023, CUB, the producers of VB beer, and the alcohol retailer Jimmy Brings, launched a novelty item called the VB Big Green Button. The Button is in effect a high-tech fridge magnet that links to the Jimmy Brings app and enables a consumer to initiate the purchase and home delivery of a carton of VB.

17. The complainant came across a YouTube video promoting the Button and has raised a complaint about the video but more fundamentally the Button itself. The complainant explains that for a person who is in recovery for alcohol use disorder, the Button and its associated marketing is highly irresponsible. It is contended that the Button glorifies regular alcohol consumption and that accessibility and convenience of obtaining alcohol is a large risk factor in developing alcohol dependency or causing a relapse.
18. The complaint does raise some important issues about the regulation of alcohol and its marketing and how this regulatory regime treats people with particular vulnerabilities such as individuals dealing with issues of alcohol dependency. Accordingly this determination is structured as follows:
- Alcohol Regulation
  - ABAC and alcohol dependency
  - Is the Green Button and Youtube video consistent with ABAC standards
  - Options for an alcohol dependent person to limit alcohol marketing exposure and home delivery
  - Summary and conclusion.

### **Alcohol Regulation**

19. The starting point for the regulation of alcohol is the overarching public policy objectives for alcohol use 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.
20. 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.
21. 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 at being at greater risk of alcohol related harm. It is critical that groups not be subject to damaging and inaccurate stereotyping regarding alcohol use.
22. 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.
23. 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.
24. 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.

25. 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.
26. 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**

27. 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.
28. The responsible service of alcohol is regulated directly by State and Territory government bodies. This includes home delivery services such as Jimmy Brings. In NSW for instance, there are requirements governing the same day delivery of alcohol that include:

- A delivery is to be made to a specific adult who is to provide ID and age verification
  - Alcohol is not to be left with a person who is intoxicated
  - Deliveries are not to be made between midnight and 9 am
  - Customers can self exclude from alcohol deliveries and orders from an excluded customer are to be rejected.
29. The ABAC Scheme is not directed at the responsible service of alcohol as such but to the marketing of alcohol beverages. The Code consists of standards that go to the content of alcohol marketing and placement rules that seek to limit the exposure of minors to alcohol marketing irrespective of the content of the marketing.
30. 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.
31. 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.
32. 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 excessive or rapid consumption of alcohol or consumption inconsistent with Australian Alcohol Guidelines (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)).



33. 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.
34. 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.

#### **Are the Green Button and YouTube video consistent with ABAC standards**

35. Both the Green Button and the YouTube video are marketing communications for ABAC purposes. The Button is captured by the concept of 'marketing collateral' which is defined by the Code to mean material used by a marketer to promote a brand and support the sales and marketing of alcohol beverages including gifts with purchases, competition prizes and branded merchandise.
36. The Button is branded with the VB logo and is an interactive marketing technique. The consumer can push the Button once to hear VB marketing taglines or its theme music, or twice in quick succession for it to wirelessly interact with the customer's Jimmy Brings account to add a case of VB to their cart (the app needs to have been previously downloaded to the consumers device and linked to the Button). To make the purchase and initiate delivery the consumer follows the usual process for making an online purchase with Jimmy Brings while logged into their Jimmy Brings account.
37. The complainant's contention is that the Button, and the YouTube video promoting its use:
- Glorifies the regular consumption of alcohol and the accessibility of having it delivered in minutes;
  - Promotes very problematic behaviours and attitudes towards the consumption of a dangerous and addictive substance; and
  - Is irresponsible as accessibility and convenience of obtaining alcohol on demand is a large risk factor for people acquiring and then dealing with alcohol dependence.
38. Essentially the argument is that the Button (assuming it is placed prominently within a household such as on the fridge) will be a constant reminder of alcohol and its functionality makes the immediate delivery of

alcohol very easy. This brings into play the ABAC standard in Part 3 (a)(i) that requires a marketing communication must not 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.

39. Both CUB and Jimmy Brings have responded to the complaint, asserting (separately or collectively) the following:
- As previously noted by the ABAC Adjudication Panel, there is a significant distinction between the promotion of the purchase of a product and its subsequent consumption;
  - Nothing in the advertisements promoting the Big Green Button suggests that the resulting purchase of packaged alcohol must be consumed immediately or in a way that is inconsistent with the consumption guidelines outlined by the NHMRC;
  - In order to complete the transaction, the potential Big Green Button user must confirm their purchase via their Jimmy Brings account. The button does not add any impulsivity or convenience to the purchase beyond what is already offered by on-demand delivery services like Jimmy Brings;
  - After pressing the button, the functional experience of ordering alcohol via the Big Green Button is no different to a user logging on to their Jimmy Brings account and ordering a case of VB. The button cannot be used to order alcohol without engaging with the Jimmy Brings app;
  - Jimmy Brings' drivers are subject to responsible supply principles, including a prohibition on the sale and supply of alcohol to persons who are under 18 or who are intoxicated at the time of supply;
  - Jimmy Brings' customers are only permitted to make two orders per day, per account. A third order placed under the same account on the same day will automatically be cancelled;
  - Jimmy Brings' automated RSA system applies 'red flags' to online customer purchases which could be high risk, either by volume or ordering frequency, and allows for targeted review and consideration for intervention; and
  - the advertisements are conveying a message about delivery and convenience.
40. The Panel acknowledges the point being made by the complainant however but does not believe that either the Button or the YouTube video breach the Part 3 (a)(i) standard. In forming this view, the Panel noted:
- The Button is a visual reminder of the product and in this respect it is similar to other marketing collateral items such as a (non interactive) fridge magnet, or stubbie cooler or branded bar mat;

- Where it differs from other marketing collateral is its interactive nature that enables the consumer to cause it to play VB promotional phrases or theme music, or initiate the online purchase of a case of VB;
  - However there is no immediate order sent from the Button directly to Jimmy Brings, rather the Button requires the consumer to access their Jimmy Brings app on a smart device and order the product in the usual way ie
    - confirm the order including the delivery address etc;
    - confirm the name of the person accepting the order; and
    - make payment.
  - In essence the effect of the Button is to pre-populate the order of a case of VB in the 'cart' within the Jimmy Brings app. It moves a click otherwise needed in the app to add the product with a double push of the Button. Otherwise, the online ordering steps required with the app remain the same;
  - The Button is a novelty but it seems unlikely it would induce a reasonable person to purchase more alcohol than would otherwise be the case. It may induce a person to choose the purchase of VB over an alternate beer and select Jimmy Brings as the online retailer for home delivery over another online retailer.
  - The YouTube video does not show the excessive or rapid consumption, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
41. Further and importantly, the ABAC standard prohibits the encouragement of the excessive consumption of alcohol and not the encouragement of the purchase of alcohol. As the Panel has often noted, there is an important distinction between the purchase of alcohol and the subsequent pattern of its consumption. For instance, in ordering the home delivery of a case of beer:
- The beer has a long shelf life and can be stored for many months prior to consumption;
  - The beer might be consumed by multiple persons not a single person;
  - It might be purchased for an event such as a party; and
  - It does not follow that the purchase of a carton of beer means the product will be consumed in a binge fashion by a single person.
42. The Panel does not doubt that the complainant has expressed a genuine and real concern 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 Button and video can be fairly characterised as breaching the ABAC standard. From the standpoint of the 'reasonable person' i.e. a person in the community with commonly held views and opinions, the marketing items do not depict alcohol consumption in an irresponsible fashion.

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

43. The video identified by the complainant was conveyed by the media platform YouTube. While not a complete answer, there are steps a holder of an account on this platform can take to limit, if not exclude, alcohol advertising from being served to them while using the platform.
44. A YouTube 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>
45. As noted by the complainant, it is possible for a consumer to have their name added to an exclusion list for the home delivery of alcohol by Jimmy Brings and other online retailers. Such a measure can assist in navigating an impulsive decision to seek the delivery of alcohol.

### **Summary and conclusion**

46. This determination has considered the very important issue raised by the complainant 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 complainant has raised a very genuine issue of the challenges confronted by individuals navigating alcohol dependency in a society in which alcohol is quite ubiquitous and is freely marketed.
47. 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.
48. 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.

49. 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 marketing collateral items such as the Green Button. 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.
50. 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.
51. A fair interpretation of the Green Button item and the YouTube video 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.
52. 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. Further it is possible to self exclude from the home delivery of alcohol by online alcohol retailers.
53. The complaint is dismissed.