



ABAC Adjudication Panel Determination Nos 32, 33, 37, 39, 41, 42, 45, 47, 48 & 49/23

Product: Gee Up Vodka
Company: 80Proof Australia Pty Ltd
Media: Instagram/Facebook/TikTok/Website
Date of decision: 23 April 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel ('the Panel') arises from 10 complaints received in relation to website and social media marketing for Gee Up Vodka products ('the products') by 80Proof Australia Pty Ltd ('the Company'):

Complaint No.	Date Received	Media
32/23	20 February 2023	Instagram/Facebook/TikTok
33/23	24 February 2023	Website/Instagram
37/23	28 February 2023	Digital - Instagram
39/23	1 March 2023	Digital - Facebook
41/23	3 March 2023	Digital - Instagram
42/23	6 March 2023	Digital - Instagram
45/23	8 March 2023	Digital - Instagram
47/23	14 March 2023	Digital - Instagram
48/23	14 March 2023	Digital - Instagram
49/23	14 March 2023	Digital - Instagram

2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences

and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:

(a) Commonwealth and State laws:

- Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
- legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
- State liquor licensing laws – which regulate the retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
- ABAC Responsible Alcohol Marketing Code ('ABAC Code') – which is an alcohol-specific code of good marketing practice;
- certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
- Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.

3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meet the standards contained in the ABAC.
4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.

5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received over a period of time spanning from 20 February 2023 until 14 March 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. Due to the large number of complaints each going to the Company's marketing, it was convenient to combine the complaints into a single determination. This has meant some of the earlier complaints have exceeded the 30 day timeframe but the Panel believes this is justified in the circumstances.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing.

The Marketing Communications and Complaints

10. The following is a summary of the marketing communications, complainant's concerns, and the relevant ABAC Standards raised. Additional detail is provided elsewhere in this determination as follows:
 - Marketing Communications – Attachment 1
 - ABAC Code – Paragraph 11

Complaint Number and Media	Marketing Description	Complainant's Concerns	Relevant ABAC Standards
32/23	<ul style="list-style-type: none">InstagramTikTokFacebook	<p>32/23 - Post 1 ('Handing Out Drinks on a Hot Day')</p> <ul style="list-style-type: none">Post 1 ('Handing Out Drinks on a Hot Day') was made to Troy Candy's Instagram and TikTok pages.It shows Troy Candy visiting various locations (including workplaces) on a hot day to provide alcoholic drinks so that the workers can 'freshen up'. The workplaces include a warehouse, mechanics, road works and a construction site. In a warehouse scene a person consumes a bottle of product using a drinking snorkel.	<ul style="list-style-type: none">Part 3 (a)(i)Part 3 (a)(ii)Part 3 (c)(iv)Part 3 (d)
32/23	<ul style="list-style-type: none">Instagram	<p>32/23 - Post 2 ('Tradie')</p> <ul style="list-style-type: none">32/23 - Post 2 ('Tradie') was made to the Troy Candy Instagram page.The video shows a vehicle stopping at a construction site and interrupting a person, while they are apparently working, to offer them a bottle of product.	<ul style="list-style-type: none">Part 3 (d)

Complaint Number and Media		Marketing Description	Complainant's Concerns	Relevant ABAC Standards
		The worker drinks from the bottle and then makes their way back towards their interrupted task.		
32/23	<ul style="list-style-type: none"> Instagram 	<p>32/23 - Post 3 ('Corporate Office')</p> <ul style="list-style-type: none"> 32/23 Post 3 ('Corporate Office') was made to the Troy Candy and Gee Up Vodka Instagram pages. It shows people in what would appear to be a corporate environment, followed by footage of various cars and people in what would appear to be a beverage production environment. Included in the post are scenes where: <ul style="list-style-type: none"> alcohol is consumed in a workplace, being the corporate environment; a person in the corporate office environment smiles while saying the words 'This is the worst part about dealing in alcohol isn't it? You just have to drink all day', before taking a drink from the bottle they are holding; and a person in the beverage production environment says 'when you see a rainbow colour in front of you when you're doing drinks...let's party!'. 	<ul style="list-style-type: none"> Refer above. 	<ul style="list-style-type: none"> Part 3 (a)(i).
32/23	<ul style="list-style-type: none"> Instagram 	<p>32/23 - Post 4 ('Bottling Plant')</p> <ul style="list-style-type: none"> 32/23 - Post 4 ('Bottling Plant') was made to the Gee Up Vodka Instagram page. The video was over ten minutes long and 	<ul style="list-style-type: none"> Refer above. 	<ul style="list-style-type: none"> Part 3 (a)(i)

Complaint Number and Media	Marketing Description	Complainant's Concerns	Relevant ABAC Standards
		<p>featured a number of people in an operating bottling plant at the Products' initial bottling run. It primarily featured Troy Candy as he moved around the bottling plant providing commentary.</p> <ul style="list-style-type: none"> At approximately the 7:20 mark of the video the attendees prepare to take their first taste of the bottled product. This includes discussion as to whether the product should be consumed using a drinking snorkel. Ultimately it is concluded that the drinking snorkel was left in the car, and the product is consumed without using one. 	
32/23	<ul style="list-style-type: none"> Instagram 	<p>32/23 - Post 5 ('Snorkel')</p> <ul style="list-style-type: none"> Post 5 ('Snorkel') appeared in the 'Tagged' section of the Gee Up Vodka Instagram page and can be viewed at the following link: https://www.instagram.com/p/CowpF9FJlmL/ The post is a 20 second video showing a person rapidly consuming an entire bottle of Gee Up product using a drinking snorkel. 	<ul style="list-style-type: none"> Refer above.
33/23	<ul style="list-style-type: none"> Website Instagram 	<ul style="list-style-type: none"> Complaint 33/23 relates to the Gee Up Vodka website, as well as the Gee Up Vodka and Troy Candy Instagram pages: www.letsgeep.com.au https://www.instagram.com/letsgeep/ www.instagram.com/troycandy 	<ul style="list-style-type: none"> <i>Has a very strong appeal to minors with the bright colours.</i> <i>Has very strong appeal with the flavours such as "Cotton Candy".</i> <i>Is making health claims yet no nutrition information or ingredients on the website.</i> <i>Has wording on the website such as "You Can Call Me Daddy"</i>

Complaint Number and Media		Marketing Description	Complainant's Concerns	Relevant ABAC Standards
			<ul style="list-style-type: none"> Win a Golden Ticket has appeal to minors The branding on the website of cartoon fruit has a strong appeal to minors Product could be confused with a sports drink with the strong emphasis on the wording of Electrolytes on their packaging. The packaging in a whole with the bright colours could be confused with a brightly coloured sports drink. Can't see any nutrition labels or ingredients on the packaging despite making health claims. Influencer of the product Troy Candy heavily promotes the product on his Instagram despite it not being age-gated. The advertisements on Troy Candy Instagram could be seen by a lot of minors. 	
37/23	<ul style="list-style-type: none"> Unknown 	<ul style="list-style-type: none"> Marketing not available 	<ul style="list-style-type: none"> They are promoting that by consuming their alcohol you don't wake up with a hangover. I do not know of any company that can scientifically make a claim to this, this should be referred to ACCC. Can't see any nutrition chart or ingredient list that would provide any evidence to this claim. 	<ul style="list-style-type: none"> Part 3 (c)(iv)
37/23	<ul style="list-style-type: none"> Instagram 	<ul style="list-style-type: none"> Gee Up Vodka and Troy Candy Instagram pages. 	<ul style="list-style-type: none"> Instagram as a whole has a strong appeal to minors. The Instagram page is not age-gated. 	<ul style="list-style-type: none"> Part 3(b)(iv)
37/23	<ul style="list-style-type: none"> Instagram 	<p>37/23 - Post 1</p> <ul style="list-style-type: none"> Post 1 was made to the rockafellas.aus Instagram page, and tagged the Gee Up Vodka 	<ul style="list-style-type: none"> They are promoting rapid consumption of their Alcoholic product 'Gee Up' on a boat. They have a DJ rapidly drinking a full bottle of Gee Up Vodka through a device known as a snorkel. 	<ul style="list-style-type: none"> Part 3(a)(i)

Complaint Number and Media		Marketing Description	Complainant's Concerns	Relevant ABAC Standards
		<p>Instagram page. The video can be viewed at the following link:</p> <p>https://www.instagram.com/p/CpKZgXwDHRR/</p> <ul style="list-style-type: none"> The video included footage of a person consuming an entire bottle of product using a drinking snorkel. 		
37/23	<ul style="list-style-type: none"> Instagram 	<p>37/23 - Post 2</p> <ul style="list-style-type: none"> Post 2 was made to the Gee Up Vodka Instagram page. This post shows nine adults wearing black Gee Up Vodka t-shirts, standing with or sitting in front of a banner reading 'Gee Up Vodka Sold Out', in the drive through of a bottleshop. One of the adults is holding a small child, who is also wearing a matching black Gee Up Vodka t-shirt. 	<ul style="list-style-type: none"> <i>They are using minors to promote alcohol. They have a baby with their Gee Up logo on the shirt.</i> 	<ul style="list-style-type: none"> Part 3(b)(ii)
37/23	<ul style="list-style-type: none"> Instagram 	<p>37/23 - Post 3</p> <ul style="list-style-type: none"> Post 3 is a fast-moving compilation of shots, including one of women posing with bottles of Gee Up Vodka while wearing swimwear. 	<ul style="list-style-type: none"> <i>They are promoting alcohol while swimming, a dangerous activity under the influence.</i> 	<ul style="list-style-type: none"> Part 3(d)
37/23	<ul style="list-style-type: none"> Instagram 	<p>37/23 – Post 4</p> <ul style="list-style-type: none"> Post 4 was made to the Gee Up Vodka Instagram page and can be viewed at the following link: <p>https://www.instagram.com/p/CpCS6rMr09T/</p> The Post shows two women wearing swimwear, holding bottles of Gee Up Vodka. 	<ul style="list-style-type: none"> <i>As above for Post 3</i> 	<ul style="list-style-type: none"> Part 3(d)
39/23	<ul style="list-style-type: none"> Facebook Marketplace 	<ul style="list-style-type: none"> Alleged marketing of alcohol on Facebook Marketplace 	<ul style="list-style-type: none"> <i>Troy Williams is promoting the sale of the GEE UP vodka</i> 	<ul style="list-style-type: none"> Part 3(b)(iv)

Complaint Number and Media	Marketing Description	Complainant's Concerns	Relevant ABAC Standards
		<p>(screenshots were not provided by the complainant).</p> <p><i>through platforms such as Facebook Marketplace.</i></p> <ul style="list-style-type: none"> <i>I highly doubt the people listing the Gee Up products on Facebook marketplace have a liquor license, RSA etc to legally sell Liquor.</i> <i>These platforms are also not Age-Gated and have relevant liquor messaging.</i> 	
41/23	<ul style="list-style-type: none"> Instagram 	<ul style="list-style-type: none"> Marketing material was not able to be located. <i>Instagram story stating that their product goes down like soft drink and stating that their alcoholic product tastes like confectionery product Hubba Bubba</i> <i>Has a strong appeal to minors advertising that their product smells like confectionery product Hubba Bubba and tastes like soft drink.</i> <i>Has also been promoted on Gee Up self proclaimed founder Troy Williams Instagram at www.instagram.com/troycandy that has a large following of kids Under 18.</i> 	<ul style="list-style-type: none"> Part 3(b)(i) Part 3(b)(iv)
42/23	<ul style="list-style-type: none"> Instagram 	<p>42/23 – Post 5</p> <ul style="list-style-type: none"> Post 5 was posted as a video Story to the Troy Candy Instagram page. It shows a person leaning out of the window of a moving car to pass a bottle of alcohol with a drinking snorkel attached to a person riding a motorbike. That person then consumes the product using a drinking snorkel while riding the motorbike on its rear wheel. 	<ul style="list-style-type: none"> Part 3(d)
45/23	<ul style="list-style-type: none"> Instagram 	<ul style="list-style-type: none"> Complaint 45/23 relates to a Story video post to the Troy Candy Instagram page. <i>Founder of Gee Up Vodka sharing an image of a person holding an open bottle of GEE</i> 	<ul style="list-style-type: none"> Part 3(b)(iv)

Complaint Number and Media		Marketing Description	Complainant's Concerns	Relevant ABAC Standards
		<ul style="list-style-type: none"> The camera initially focuses on an opened bottle of Cotton Candy Gee Up Vodka being held in front of a steering wheel, before panning to the right to show the passing countryside. The following text is superimposed at the top of the picture: 'Farrk, these are so good for a sugar free drink [two hands emoji]' The following text is shown beneath the picture: 'This simulator is crazy actually looks like he's driving' 	<p><i>UP Vodka while appearing to drive.</i></p> <ul style="list-style-type: none"> <i>This is illegal and goes against multiple Liquor License Laws surrounding advertising.</i> <i>The majority of his audience is underage, and he is showcasing driving with an open bottle of Vodka in your hand.</i> 	<ul style="list-style-type: none"> Part 3 (d)
47/23	<ul style="list-style-type: none"> Instagram 	<ul style="list-style-type: none"> Refer to 32/23 – Post 4 above. 	<ul style="list-style-type: none"> <i>The use of models under the age of 25 to promote alcohol</i> 	<ul style="list-style-type: none"> Part 3(b)(iii)
48/23	<ul style="list-style-type: none"> Instagram 	<ul style="list-style-type: none"> Shows three women wearing Gee Up t-shirts, holding bottles of Gee Up Vodka. 	<ul style="list-style-type: none"> <i>The use of models under the age of 25 to advertise alcohol</i> 	<ul style="list-style-type: none"> Part 3(b)(iii)
49/23	<ul style="list-style-type: none"> Instagram 	<ul style="list-style-type: none"> Shows five men, wearing Gee Up t-shirts, and holding opened bottles of Gee Up Vodka, sitting high-up near the water, with their feet on chairs. 	<ul style="list-style-type: none"> <i>Drinking while sitting on the back of a moving boat, is a dangerous act</i> 	<ul style="list-style-type: none"> Part 3(d)

The ABAC Code

11. Part 2 of the ABAC Code provides that:

- (a) The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:
- brand advertising (including trade advertising)
 - competitions

- digital communications (including in mobile and social media and user generated content)
- Alcohol Beverage product names and packaging
- Advertorials
- alcohol brand extensions to non-alcohol beverage products
- point of sale materials
- retailer advertising
- Marketing Collateral.

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;
- (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;
- (b)(i) have Strong or Evident Appeal to Minors;
- (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
- (b)(iii) depict an Adult who is under 25 years of age and appears to be an Adult unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment;
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules;
- (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

- (d) 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 co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

13. Part 6 of the ABAC Code provides that:

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

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.

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications. If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up-to-date audience composition data, if such data is available).
- (iii) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- (iv) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;

- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company's Responses

14. The following summarises the Company's responses to the complaints. The full text is provided in Attachment 2 to this determination.

80Proof 'Gee Up' launch and general comments

General comments

- As a corporate group that produces alcoholic beverages, 80Proof promote its efforts to fulfill its responsibility to:
 - promote responsible drinking; and
 - eradicate the harmful consumption of alcohol.
- 80Proof is aware of the requirements under ABAC and the Code and recognises their importance in setting standards for responsible alcohol marketing in Australia.
- 80Proof has implemented social media processes which include monitoring its tags on social media daily, to ensure any material they are tagged in, that is not in compliance with the Code, is promptly removed.
- 80Proof has implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code moving forward.
- The Gee Up Instagram Account is age restricted to users aged 18 years and above. Therefore, it excludes minors from viewing their marketing communications.
- 80Proof does not condone or support:
 - excessive or rapid consumption of alcohol or misuse or abuse of alcohol inconsistent with the Code or any Australian alcohol guidelines.

- irresponsible or offensive behaviour under any circumstance, including whilst consuming the Products.
- alcohol advertising that has a strong or evident appeal to minors, nor does it encourage minors to consume the Products.
- the consumption of alcohol whilst undertaking unsafe behaviour.
- the consumption of Products before or during any activity for safety reasons requires a high degree of alertness or physical co-ordination (including driving).

'Gee Up' launch marketing campaign

- The advertisements subject of the Complaints are part of the 80Proof 'Gee Up' launch marketing campaign.
- The Campaign includes a collaboration between 80Proof and influencer Troy Williams.
- Troy Candy is not a director or employee of 80Proof.
- The Products were first supplied for retail sale in Australia on 16 February 2023.

Complaint numbers 32-23 and 33-23

Gee Up Website

- By way of a general comment, it is noted that careful consideration has been made by 80Proof in developing the content on <https://letsgeeeup.com.au/> (Gee Up Website), whilst having regard to the important requirements of ABAC and the Code. For example, the Gee Up Website:
 - includes a prominent age restriction warning which states: 'WARNING. Under the Liquor Control Reform Act 1998 it is an offence to supply alcohol to a person under the age of 18 years (Penalty exceeds \$19,000) or for a person under the age of 18 years to purchase or receive liquor (Penalty exceeds \$800)';
 - includes a link to the Terms & Conditions which refer to the fact that the Gee Up Website is not available to minors;

- is aged gated, which requires users to confirm they are over the age of 18 to enter and therefore is not accessible to minors.
- includes a 'Responsible Consumption & Supply of Alcohol' Policy.
- 80Proof do not suggest that the Products have any sort of therapeutic or health benefit and without admission of any liability, the words 'a cleaner way to party' and 'as it was on tomorrow' have been removed from the Gee Up Website.
- 80Proof respectfully notes that the complaints regarding the Gee Up Website do not refer to specific pages/sections and therefore, general comments have been made above.

Handing Out Drinks Post

- The first social media post is a video that depicts Troy Candy handing out the Products to consumers in various locations (Handing Out Drinks Post).
- The Handing Out Drinks Post was shared on Troy Candy's Instagram and TikTok accounts on 20 February 2023.
- This video was not approved or directed by 80Proof.
- The Handing Out Drinks Post has been removed (without admission of liability) and 80Proof have implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code (see below for further information).

Tradie Post

- The second advertisement is a video that depicts Troy Candy handing out the Products to a tradesperson (Tradie Post).
- The Tradie Post was shared on Troy Candy's Instagram account on 17 February 2023.
- This video is a parody. The 'tradie' depicted is Troy Candy acting and he was not working on, or at, the construction site depicted. 80Proof did not instruct nor approve Troy Candy to publish the Tradie Post.
- The Tradie Post has been removed (without admission of liability) and 80Proof has implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code (see below for further information).

Corporate Office Post

- The Corporate Office Post was shared on Troy Candy's Instagram account and the Gee Up Account on 29 January 2023.
- A person featured in the Corporate Office Post states, after seeing the colour of the Products, that they want to party. They do not say they want to excessively drink alcohol at any such party and 80Proof submits the word 'party' by itself does not automatically imply binge drinking or irresponsible consumption of alcohol in breach of the Code.
- 80Proof did not approve the Corporate Office Post and 80Proof have implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code.
- The Corporate Office Post has been removed (without admission of liability).

Bottling Plant Post

- This post depicts Troy Candy and others at the first session of the Product's manufacturing (Bottling Plant Post).
- The Bottling Plant Post was shot and broadcast live by Troy Candy using the Instagram live video feature on the Gee Up Account on 15 February 2023 and was titled 'first run'. It was approximately 10 minutes in length.
- The Bottling Plant Post does not depict excessive or rapid consumption of alcohol. Troy Candy and others test the first run of the product by taking a sip of the Products in a responsible manner. It is noted there is distant background discussion regarding the use of a drink snorkel. 80Proof did not instruct nor approve Troy Candy to bring a drink snorkel to the bottling plant nor to use a drink snorkel to test the first run of the Products.
- 80Proof rejects the claims that the Bottling Plant Post breaches part 3(a)(i) of the Code. The people featured are wearing high vis vests, which is assumed to be a part of the safety requirements of the third party plant. Troy Candy and the others test 1 bottle of the Product by taking a sip. None of the people featured in this scene were operating machinery or working at the manufacturing plant before, during or after the Products were consumed.
- The Bottling Plant Post has been removed from the Gee Up Account (without admission of liability).

Snorkel Post

- The fifth advertisement is a video that depicts a third party @rockafellas.aus (Rockafellas) using a drink snorkel to consume the Product at what appears to be a music festival/rave (Snorkel Post).
- Rockafellas posted the video to their own Instagram account on 17 February 2023 and tagged both Troy Candy and the Gee Up account in the post, which are both public accounts.
- Rockafellas is a third party who is not associated with, contracted with or under the reasonable control of 80Proof. The Snorkel Post appeared in the tagged section of the Gee Up Account due to Instagram's settings and the third party tagging both Troy Candy and the Gee Up Account.
- As a result of the above, 80Proof submits that the Snorkel Post was not within its reasonable control and the depiction of the 80Proof Product in the Snorkel Post was an unauthorised product placement.
- 80Proof has subsequently removed the tag (without admission of liability) and the Snorkel Post no longer appears in the tagged section of the Gee Up Account.

Placement

- 80Proof respectfully notes that the complaints regarding placement rules and the 80Proof and Troy Candy's social media accounts/marketing communications are not clear or specific.
- Generally, 80Proof notes that the Gee Up Account is age restricted to users aged 18 years and above. Therefore, it excludes minors from viewing their marketing communications. 80Proof has also directed Troy Candy to ensure their social media accounts employ age restrictions. In any event, the Troy Candy Instagram accounts audience analytics depict that 95.5% of followers are aged 18 years and above.
- It is noted that Troy Candy has signed an influencer agreement with 80Proof which outlines numerous obligations on the influencer, including with respect to the provisions set out in the table below:

Complaint numbers 37-23, 39-23, 41-23 and 42-23

Post 1

- Rockafellas posted the video to their own Instagram account and tagged both Troy Candy and the Let's Gee Up Instagram account (Gee Up Account) in the post, which are both public accounts.

- Rockafellas is a third party who was engaged by 80Proof to provide their DJing services at the Gee Up launch event.
- Rockafellas are not a contracted influencer for, or representative of, or under the reasonable control of, 80Proof.
- 80Proof did not direct Rockafellas to post Post 1 on Instagram, nor did they direct Rockafellas to consume the Product using a drink snorkel.
- As a result of the above, 80Proof submits that Post 1 was not within its reasonable control and the depiction of the Product in Post 1 was an unauthorised product placement post.
- Without admission of liability, 80Proof has subsequently untagged the Gee Up Account from appearing as a tagged party in Post 1.

Post 2

- The second post is an image of Troy Candy and the Gee Up team taken at a launch event.
- Troy Candy is depicted in the image holding his son accompanied by the wider Gee Up team and contractors; nearly everyone in the image is wearing a t-shirt with the brand name 'Gee Up' on it (Post 2).
- The child is not the main nor prominent feature of the image, being 1 of 9 people depicted, and is positioned in a natural way, where a reasonable audience would assume the person holding the child is their father or a relative.
- Despite the child wearing a t-shirt with the 'Gee Up' branding, it is obvious due to the child's age, positioning with its parent and the fact it is not featured holding nor close to the Product, that there is no implication whatsoever that the child will consume or serve alcohol.
- In any event, without conceding a breach of the Code, Post 2 has been removed from the Gee Up Account.

Post 3

- The third post is a video compilation of images that shows the Products creation process from inception to the current version including product events and content shoots, with each image shown for approximately ½ second (Post 3).
- Without conceding a breach of the Code, Post 3 has been removed from the Gee Up account.

Post 4

- The fourth post is a still image 'selfie' of 2 female models wearing swimwear and posing with the Product.
- 80Proof submits that Post 4 does not breach part 3(d) of the Code on the following basis:
 - Post 4 is a 'selfie' style post that features 2 females (who are aged 26 and 31 years) in front of a wooden crate style background. It is difficult to infer exactly where they are located but Post 4 does not include them featured in or surrounding any form or body of water;
 - whilst both females are wearing swimwear, this does not of itself directly indicate or imply they are swimming or are going to go swimming. It is common in the modelling and marketing industry to include models in swimwear as clothing for shoots, content and events. This is further supported by the models featured with a full face of makeup, hair styled (that is not wet), accessories such as bracelets and necklaces (that are not normally worn whilst swimming) and their swimwear and bodies do not have a wet appearance; and
 - based on the above, taken as a whole, a reasonable person (who will not study the post in fine detail but rather will absorb an overall impression) would not infer based on this image that the models are partaking, or are about to partake, in swimming.

Post 5

- The fifth post is an Instagram story video of Troy Candy on a motorbike consuming the Product (Post 5).
- This video was not approved or directed by 80Proof.
- Post 5 has been removed (without conceding a breach of the Code).

ABAC question re therapeutic benefits marketing

- 80Proof do not claim, or condone any claims, that the Products may assist in avoiding a hangover.
- The Products packaging depicts the words 'with electrolytes'. This statement is a mere fact regarding the Product's formula and ingredients. This statement is supported by third party lab testing and reports.

- 80Proof does not suggest, state or imply that there is any therapeutic, health or wellbeing benefit that will result from consuming the Products.

ABAC question re taste and smell of Products

- 80Proof do not market or claim the products smell like Hubba Bubba or taste like any soft drink, nor support or encourage any such claims.
- 80Proof is not aware of the marketing communication referred to in complaint 41-23.
- Whilst the 'cotton candy' flavour of the product references the confectionary 'cotton candy' and includes an image of cotton candy, this is only included as an indicator of the flavour of the Product to adult consumers.
- The wording and depictions of cotton candy on the Product bottle are not stylised in a format targeted to, or strongly attractive to, children. The Product bottle includes a basic image of cotton candy, which has not been created into a character nor used in a humorous or cartoon-like way. The images and words of cotton candy are also not positioned on the Product as the primary feature, but rather used in a small size near the base of the Product bottle as flavour indicators.
- The name of the flavour of the Product is its common name being 'cotton candy' and it has not been sensationalised to be attractive to minors by including descriptive words before its common name (in the way that confectionery sometimes is named).
- Further, the Products are not likely to create confusion with soft drinks. 80Proof is an alcohol brand and does not manufacture or sell soft drinks. The Products are part of a new brand that sit amongst 80Proof's other alcohol products and they are not visible in supermarkets or other environments where minors would frequent.
- The shape of the Products bottles are not similar to a soft drink, which is predominantly sold in cans. The branding and the Products therefore, should not be recognisable to minors, nor suggest a smooth transition from non-alcoholic to alcoholic beverages.

ABAC question re Facebook Marketplace

- 80Proof do not market and/or sell alcohol on the Facebook Marketplace platform. Furthermore, there is also no Product specific Gee Up Facebook account.
- It is 80Proof's understanding that the references in complaint 39-23 to Facebook marketplace is in reference to posts by a third party that were

reshared on Troy Candy's Instagram story for 24 hours. Without a copy of the post 80Proof cannot comment on its compliance with the Code.

- Furthermore, 80proof notes they did not direct or instruct Troy Candy to repost these third parties posts and, in any case, the posts have been removed.

Complaint number 45/23

- The Driving Video appears to have been taken by the Third Party and posted to their own personal Instagram account.
- Troy Candy, in their capacity as an influencer of the Products, reshared the Driving Video to their Instagram story, where the stories can be viewed for 24 hours only (i.e. after 24 hours it can no longer be viewed). Based on the prominent caption that was added to the image, it is deduced that the Third Party was using a driving simulator and not actually in control of a motor vehicle.
- It is noted that the Driving Video appears to be of a realistic driving simulator and even if it was viewed as driving a 'real car', 80Proof did not direct the Third Party to consume the Products whilst operating the vehicle.
- 80Proof did not instruct nor approve Troy Candy to reshare the Driving Video. 80Proof do not condone or support in any way consuming alcohol products whilst engaging in any activity that requires a high degree of alertness or physical co-ordination per the Code, nor any illegal activity.
- The Driving Video is no longer reshared or published on Troy Candy's Instagram account (without admission of liability). 80Proof has also instructed Troy Candy to implement age gate controls on their account via the Instagram app.

Complaint numbers 47-23, 48-23 and 49-23

Complaint number 47-23

- 80Proof submits that this advertisement does not breach part 3(b)(iii) of the Code. The 2 models featured in the advertisement subject of this complaint on the Gee Up Account are aged 26 and 31 respectively and clearly depicted as adults in the post.

Complaint number 48-23

- The three adults featured in this post subject of this complaint are paid models who are clearly depicted as adults in the post however, it is acknowledged that the third model was slightly under 25 years at the time

the image was taken. The image in the post is also taken outside of a licensed bottle shop.

- In recognition of the third model being slightly under 25 years, 80Proof has removed this advertisement and adopted a robust process going forward to ensure paid models are always over 25 years.

Complaint 49-23

- The advertisement subject of this complaint is an image posted to Troy Candy's Instagram account on 3 March 2023. The Gee Up Account was tagged in this post.
- 80Proof did not direct, instruct or approve Troy Candy to post this image.
- It is unclear if the boat was moving at the time the image in the advertisement was taken. It is noted that this image comprises 5 males sitting on a boat holding a drink and with a skyline setting in the background.
- Without conceding a breach of the Code, 80Proof removed the Gee Up Account from being tagged in the post and requested that Troy Candy remove this post.

The Panel's View

Introduction

15. This determination arises from 10 of 13 complaints concerning the marketing of Gee Up Vodka products. The 10 complaints considered in this determination relate to digital and social media marketing directly by the Company or the social media influencer Troy Candy. The remaining three complaints relate to the packaging of Gee Up Vodka products and are dealt with in a separate determination.
16. The complaints about the digital and social media marketing often refer to several individual social media posts and taken as a whole the Panel has been called upon to make a large number of specific decisions regarding the consistency of the marketing communications against multiple ABAC standards. In fact, the determination is the largest (and at 86 pages, the longest) the Panel has been required to make in the 25 year history of the ABAC Scheme.
17. At an overview level the complainants contend that the Company's marketing has been highly irresponsible by showing and/or encouraging the excessive use of alcohol, alcohol use in inappropriate or unsafe circumstances, making inappropriate health claims about the product and often portraying the product

in a manner that strongly appeals to minors. In response the Company mostly disputes the complaints or does not concede a breach, but nonetheless has removed the marketing communications.

18. To make the decision making process manageable and this determination comprehensible, the description of the marketing communications is contained in Attachment 1 and the full response to the various complaints from the Company is at Attachment 2. The Panel's View is structured as follows:

- general considerations
- the relevant ABAC standards
- the decision on each complaint
- conclusion.

General considerations

19. The marketing in question consists of marketing communications found on the Company's website and social media posts over the platforms of Instagram and Facebook and on one occasion TikTok. The marketing has been created either by the Company or the social media personality, Troy Candy. In several instances, posts by third parties have been 'tagged' to the Company's Instagram account. On several occasions the complaints go to individual posts that the Panel have not been able to locate and hence a decision could not be made.
20. The ABAC applies to all marketing communications in Australia generated by or within the reasonable control of a marketer. 'Marketer' means a producer, distributor or retailer of alcohol beverages. It is clear that the Company's own website and social media pages are within the Code's ambit. But what is the status of the posts by Troy Candy and the tagged third party posts?
21. The Company has advised Troy Candy (real name Troy Williams) is a social media influencer with an agreement with the Company and this gives the Company the ability to approve and remove posts from Mr Candy. As such this gives the Company reasonable control and brings the posts from Troy Candy within the scope of an ABAC marketing communication.
22. The tagged posts, while not created by the Company, appeared on the Company's Instagram account. Once on the Company's account, the Company assumes responsibility for the post and can have the post removed from its account. There is a moderation responsibility for alcohol marketers in relation to their own accounts and this means the third party post tagged on the Company's social media accounts becomes a marketing communication for ABAC purposes.

Relevant ABAC Standards

23. There are four key content standards within the ABAC, supported by specific Code provisions that collectively aim at alcohol marketing communications consistent with good practice. The complainants' concerns potentially raise Code provisions under each standard, as described below.

Standard 1 - Responsible and moderate portrayal of alcohol beverages

24. Alcohol marketing should model the moderate and responsible use of alcohol and accordingly an alcohol marketing communication must not show or encourage:
- excessive or rapid consumption of alcohol, misuse or abuse of an alcohol beverage – Part 3 (a)(i)
 - alcohol related irresponsible or offensive behaviour (eg violence, vandalism, or general alcohol influenced anti-social activity) – Part 3 (a)(ii).

Standard 2 - Responsibility toward Minors

25. Responsibility toward minors involves consideration of both the content and placement of alcohol advertising. In summary:
- the content of alcohol marketing must not:
 - strongly appeal to minors - Part 3 (b)(i)
 - depict a person who is or appears to be a minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol - Part 3 (b)(ii)
 - depict an Adult who is under 25 years of age and appears to be an adult unless certain conditions are met - Part 3 (b)(iii)
 - be directed at minors through a breach of any of the Placement Rules (refer to further information below).

Responsibility toward Minors – Strong or Evident Appeal to Minors

26. Alcohol marketing might have strong appeal to minors if it:
- is likely to appeal strongly to minors;
 - is specifically targeted at minors;

- has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
- uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionary or soft drinks;
- uses brand identification, including logos, on clothing, toys or other merchandise for use primarily by minors.

27. Whether a marketing communication is in breach is assessed looking at the material as a whole. This requires a weighing up of factors such as the visual techniques, themes, age of persons appearing in the marketing item and overall look and feel. Some of the factors that may indicate a marketing communication could have strong appeal to minors are:

- depictions of activities or products typically undertaken or used by minors;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong appeal to minors);
- use of a music genre and artists featuring in youth culture;
- bright/playful/contrasting colours;
- illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- style of humour relevant to the life stage of a minor (as opposed to humour more appealing to adults);
- authentic use of language and expressions used more by minors than adults;
- novelty or collectible attributes;
- relatable animated characters (as opposed to animations nostalgic to an older audience or more sophisticated animations which have no relevance to minors).

Responsibility toward Minors – Placement Rules

28. The ABAC Placement Rules have the aim that alcohol marketing is directed to adults and to the extent reasonably possible does not appear in media for minors and in media where minors make up a significant proportion of the audience. There are five Placement Rules, two of which are relevant to the complaints considered in this determination:
- a marketer must utilise available age restriction controls to exclude minors from viewing its marketing communications (Placement Rule 2); and
 - a marketing communication may only be placed where the audience is reasonably expected to comprise at least 75% adults (based on reliable, up-to-date audience composition data (Placement Rule 3);

Standard 3 - Responsible depiction of the effects of alcohol

29. In some instances, the concerns expressed by the complainants raise the Code provision requiring that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit (Part 3 (c)(iv)).
30. In general, a marketing communication must not suggest that consuming the product is beneficial for a person's health or wellbeing. It may, however, factually communicate the ingredients used and make claims about nutritional content such as calories, sugar or carbohydrate levels and compare this information with other alcohol products.

Standard 4 - Alcohol and safety

31. Part 3 (d) of the Code requires that an alcohol marketing communication must not 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 co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

Assessing if a standard has been breached

32. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.
33. Sometimes it is possible to interpret a marketing communication in several ways. A consequence of the reasonable person test is that the most likely interpretation is to be preferred over a possible but less likely interpretation. This doesn't mean that a person taking a different interpretation of the

marketing item is 'unreasonable' but possibly their understanding of the marketing would not be shared by most people in the community.

Assessment of complaints and marketing communications against the ABAC provisions

34. The balance of the determination provides a summary of the Panel's findings on the marketing communications in light of the various complaints. Given the sheer number of marketing communications and the large number of complaints, only a limited discussion is provided on each decision. Attachment 1 gives a description of the relevant marketing communication to which the complaint number relates.

Complaint 32/33

35. The complainant did not provide links to or recordings/screenshots of specific social media posts, and it may be that they saw Instagram Story posts which disappear after 24 hours. On receipt of the complaint, ABAC identified five different social media posts with content that appeared to align with the posts that the complainant has concerns about. These are considered by the Panel in turn below.
36. While the complaint referenced claims about the products having health benefits, a post containing this statement was not able to be located.

Post 1 ('Handing Out Drinks on a Hot Day')

37. The Panel believes that:
- the Part 3 (a)(i) standard has been breached by showing a person consuming a bottle of product using a drinking snorkel which is the rapid consumption of alcohol;
 - the Part 3 (c)(iv) standard has been breached by portraying that alcohol can be used to 'freshen up' when working on a hot day, which attributes health or therapeutic benefits to the product; and
 - the Part 3 (d) standard has been breached by showing alcohol consumption at workplaces involving activities that require alertness to be performed safely - road work sites, and workshops/production lines with machinery.

Post 2 ('Tradie')

38. Building construction sites are an inherently unsafe environment and the Panel finds that the Part 3 (d) standard has been breached by showing the consumption of an alcohol beverage before or during an activity that, for safety reasons, required a high degree of alertness or physical co-ordination.

39. It is not material that the 'tradie' was in fact Mr Candy role playing the part. The scene depicted was a construction site and even if the viewer recognised Mr Candy and took the scene as a parody, the humour assumed it was okay to drink during inherently dangerous work.

Post 3 ('Corporate Office')

40. The post shows various scenes in an office and moving a box of the product by car. In large measure the post is unexceptional but at one point Mr Candy says - 'This is the worst part about dealing in alcohol, isn't it? You just have to drink all day'.
41. A reasonable person would likely take the statement as a light-hearted comment about working for an alcohol producer and not a serious call to action to drink excessively. It can be expected that an entity developing a new alcohol product will witness some tasting and testing of the product. Given the context, and the fact that only modest consumption is depicted, the Panel does not believe the video post is in breach of ABAC standards.

Post 4 ('Bottling Plant')

42. Post 4 ('Bottling Plant') is a video of approximately 10 minutes in duration that was posted to the Gee Up Vodka Instagram page. It depicts Troy Candy and others at the products' initial bottling run.
43. At approximately the 7:20 mark of the video the attendees prepare to take their first taste of the bottled product. This includes discussion as to whether the product should be consumed using a drinking snorkel. Ultimately it is concluded that the drinking snorkel was left in the car, and the product is consumed without using one.
44. The video shows Mr Candy and party consuming alcohol (modestly). Clearly it is unsafe for workers of the plant to be consuming alcohol, but Mr Candy and those accompanying him are not involved in facility operations and it is established that they are there to witness and not participate in the process.
45. The Panel believes that the video:
- breaches the Part 3 (a)(i) standard by encouraging the rapid consumption of alcohol. Whilst the participants are not actually shown rapidly consuming the product, there is discussion of doing so and a reasonable person would conclude that had a drinking snorkel been easily available it would have been used;
 - does not breach other Code standards as the consumption is contextualised as testing the first run of the product and does not involve individuals actually working on the machinery in the plant.

Post 5 ('Snorkel')

46. Post 5 ('Snorkel') appears in the 'Tagged' section of the Gee Up Vodka Instagram page. It is approximately 20 seconds long and shows a person using a drinking snorkel to consume an entire bottle of product in this time.
47. As previously noted, the Panel considers that posts tagging the Company and hence located on the Company's social media account are within the Company's reasonable control. The Panel notes that the post was made on 17 February, the complaint was made on 19 February and the post was 'untagged' by the Company after being advised of the complaint on 27 February 2023.
48. The Panel concludes that the post breaches the Part 3 (a)(i) standard by showing rapid consumption. While there is no precise timeframe by which a tagged post should be identified and removed, it remained on the Company's account for 10 days and this is too long a period for the Company not to have removed the post if it applied reasonably expected moderation review of its social media accounts.

Complaint 33/23

49. Complaint 33/23 raises a number of concerns in relation to product marketing on both the Gee Up Vodka webpage and Troy Candy's Instagram page, as well as concerns about the product packaging. As noted earlier, the Panel has dealt with the product packaging issue in a separate determination and hence this decision deals with the non-packaging issues on a medium-by-medium basis.

Website

50. The complainant has expressed two concerns about the Gee Up Vodka website. Firstly, that it makes health claims about the products without providing nutrition information or ingredients, and secondly that it appeals very strongly to minors.

Website - Health claims, nutrition information and ingredients

51. The complainant's concern that the website makes health claims about the products raises Part 3 (c)(iv) of the Code which requires that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation.
52. It should be noted that the ABAC does not regulate physical beverages nor does the Code go to the type of information about nutrition that should be contained on product labelling or in general marketing. To the extent these areas are regulated, the responsibility rests directly with government agencies

such as Food Standards. Equally the ACCC and State Fair Trading is responsible for marketing not to be misleading or deceptive.

53. Alcohol marketers are entitled to choose their brand posture and highlight that alcohol beverages are produced in a particular fashion and contain various elements. What cannot be done is to suggest that either the manner in which the product is made or its constituent parts, results in the consumption of the product giving a consumer positive health or relaxation benefits.
54. The complainant did not provide specific information about the purported health claims made on the website, however, review by the Panel noted use of the following text:
- ‘...and added electrolytes – a cleaner way to party.’
 - ‘Troy and a handful of his best mates set out to create a drink that was as easy on the taste buds as it was on tomorrow...’
55. The Panel believes that the Part 3 (c)(iv) standard has been breached by:
- linking the added electrolytes to ‘a cleaner way to party’, which implies that the product has health benefits relative to other alcohol products and
 - implying that the consumption of the product would result in fewer hangover side effects.
56. The Panel notes the Company’s advice that this wording has now been removed from the website.

Website - Appeal to Minors

57. The complainant is concerned that the Gee Up Vodka web page has strong appeal to minors, and has specifically mentioned the following features to support their argument:
- bright colours;
 - showing flavours such as ‘Cotton Candy’ and cartoon fruit;
 - using wording such as ‘You can call me daddy’; and
 - using a golden ticket promotion.
58. In large measure the concerns go to the product packaging and will not be considered here. Rather, the Panel has looked at the ‘golden ticket’ promotion and whether this has strong or evident appeal to minors. The golden ticket provides a ‘chance for you and a friend to experience a once in a lifetime

opportunity at our exclusive Gee Up Gold Coast Party with Troy, Adrian and the whole Gee Up team on 2nd April'.

59. The Panel has previously considered the use of a similar 'Golden Can' in Determination 239/21, where the Panel acknowledged that golden tickets have a link to the children's book and movies of Roald Dahl's Charlie and the Chocolate Factory story. It is considered, however, that the golden ticket trope has moved well beyond its origins as a children's story and now is recognised as meaning something that gives the holder the chance of a significant opportunity.
60. The Panel does not believe the website has strong appeal to minors.

Instagram

61. The complainant is concerned that neither the Troy Candy nor Gee Up Vodka Instagram pages are age-gated, and that the marketing on the Troy Candy page in particular may be seen by 'a lot of minors'.
62. These concerns raise the Code requirement that alcohol marketing must not be directed at minors through a breach of any of the Placement Rules (Part 3 (b)(iv)).
63. In response to the complaint, the Company advised that:
- The Gee Up Vodka Instagram page has now been age-gated;
 - It has instructed Troy Candy to implement age gate controls on his account via the Instagram app; and
 - It rejects the complainant's allegation that the majority of Troy Candy's Instagram audience (where the Company has marketed the products) is underage. Troy Candy's target market is adults. This is evident through the adult nature of their posts and the analysis of their account analytics which demonstrates that 95.5% of followers are 18 years and above.
64. On receipt of the complaint, ABAC reviewed both the Gee Up Vodka and Troy Candy Instagram pages and noted that neither were, at that time, age gated. Accordingly, while the accounts may now be age restricted, they were not at the time of the complaint and a breach of ABAC Placement Rule 2 has occurred.

Complaint 37/23

65. Complaint 37/23 relates to four different social media posts, each of which will be considered in turn below.

37/23 - Post 1

66. The Company was tagged in a video post that was made to the rockafellas.aus Instagram account. It shows a person rapidly drinking a full bottle of Gee Up Vodka through a device known as a snorkel.
67. The Panel notes that the post was made on 27 February, the complaint was made on 28 February and the post was 'untagged' by the Company after being advised of the complaint on 13 March 2023. The Panel concludes that the post breaches the Part 3 (a)(i) standard by showing rapid consumption and was not detected and removed revealing a failure to employ proper moderation practices.

37/23 - Post 2

68. This post shows nine adults wearing black Gee Up Vodka t-shirts, standing with or sitting in front of a banner reading 'Gee Up Vodka Sold Out', in the drive through of a bottle shop. One of the adults (presumably a father) is holding a small child, who is also wearing a matching black Gee Up Vodka t-shirt.
69. The Part 3 (b)(ii) standard provides that a minor should not appear in alcohol marketing unless shown in an incidental role in a natural situation and where there is no implication that the minor would consume or serve alcohol.
70. While a father with their child is a natural situation and the child would not be taken to be consuming or serving alcohol, the photograph was clearly staged for the purposes of the post. This staging of the photograph and the child wearing a Gee Up Vodka t-shirt positions the minor into a more than incidental role and the standard has been breached.

37/23 - Posts 3 & 4

71. The complainant has expressed a concern that Gee Up Vodka are 'promoting alcohol while swimming a dangerous activity under the influence'. The complainant did not provide links to or screenshots of the marketing giving rise to this concern. Review of the Let's Gee Up Instagram account by the Panel found two posts showing women wearing swimwear while posing with bottles of Gee Up Vodka, which have been taken to be the posts referred to by the complainant.
72. The Panel does not believe that either of the images breach the Part 3 (d) standard as, apart from wearing swimwear, there are no other cues that swimming has or will occur. Rather the scenes appear to be a party and do not give a reasonable implication of swimming.

Complaint 39/23

73. Complaint 39/23 relates to the sale of liquor on Facebook Marketplace, in particular the complainant is concerned about the platform not being age-gated, the purveyors not being licensed to sell liquor and relevant liquor messaging not being included.
74. The complainant did not provide links to or screenshots of the marketing on Facebook Marketplace, and on receipt of the complaint, ABAC was not able to locate any marketing for Gee Up Vodka on Facebook Marketplace.
75. The Panel is unable to make a determination due to not being able to view the marketing materials, but makes the following general comments:
- the complainant's concerns that people were selling alcohol on Facebook Marketplace without holding a liquor licence and without relevant liquor messaging being included are a matter for State Liquor Licensing Authorities and are not within the ABAC remit; and
 - Facebook users who have provided a date of birth making them under 18 years of age are not able to access Facebook Marketplace.

Complaint 41/23

76. This complaint relates to an Instagram Story, that the complainant believes has strong appeal to minors due to claims that their product smells like confectionery product Hubba Bubba and tastes like soft drink.
77. The complainant did not provide a link to or screenshots of the marketing, and it is noted that as a Story it would automatically disappear 24 hours after being posted. ABAC requested the advertiser to identify the marketing and where it appears, and in response was advised by the Company that:
- It did not market or claim the products smell like Hubba Bubba or taste like any soft drink, nor support or encourage any such claims;
 - It is not aware of the marketing communication referred to in complaint 41/23.
78. The Panel is unable to make a determination in relation to complaint 41/23 due to not being able to view the marketing materials.

Complaint 42/23

79. The Panel believes that the post breaches Parts 3 (d) of the Code as:
- leaning out of the window of a moving car is irresponsible behaviour; and

- riding a motorbike, especially on just one wheel, is inherently unsafe, with the consumption of alcohol whilst doing so heightening the risk of injury by impacting concentration and reaction times.
80. Whilst not a concern raised in relation to this post, the Panel also notes that the portrayal of a person rapidly consuming the alcohol product using a drinking snorkel breaches Part 3 (a)(i) of the Code.

Complaint 45/23

81. The complainant is concerned that the marketing depicts an illegal act, being the consumption of alcohol while driving. They are further concerned that the majority of the Tom Candy Instagram page's audience would be under 18 years old.
82. The Panel has earlier in this determination concluded that the Placement Rules have been breached due to available age restriction controls not being utilised, and the consistency of the marketing with the Part 3 (d) Code provisions will be considered below.

Safety

83. The Panel believes that the Part 3 (d) standard has been breached, after taking the following into consideration:
- holding an open bottle of alcohol implies that consumption has occurred, or is about to occur;
 - the picture looks very much like a real car. Apart from the words beneath the picture, there are no other clear indications that the picture is of a driving simulator;
 - the passing countryside (seen after the camera pans to the right) looks realistic;
 - in any event, a reasonable person would probably conclude that the consumption of the product during the use of a motor vehicle is being encouraged or at least is acceptable.

Complaints 47 & 48/23

84. Complaints 47 and 48/23 both relate to the ages of people shown in Instagram posts and raise the concern that models used to promote alcohol are under 25 years old.
85. In response to complaint 47/23, the Company advised that the two models featured are aged over 25 years.

86. In response to complaint 48/23, the Company advised that the third model was slightly under 25 years at the time the image was taken.
87. The Panel concludes that Part 3 (b)(iii) of the Code has been breached due to showing an image of a paid model or actor who is under 25 years of age.

Complaint 49/23

88. Complaint 49/23 is in relation to a Story post made to the Gee Up Vodka Instagram account, apparently showing five men sitting on the railing of a large boat, with their feet on the seat of chairs in front of them. They are holding opened bottles of the product.
89. It is not inherently dangerous for a passenger of a boat to consume alcohol. In this case, the men are consuming alcohol sitting on the railing and this elevates the risk of mishap. On balance the Panel believes the post does breach the Part 3 (d) standard.

Conclusion

90. This has been a lengthy determination due to the number of complaints, media and ABAC issues raised. In summary, the Panel has concluded that the following marketing material breaches various Code requirements, as specified below:
- In relation to Complaint 32/23:
 - Post 1 breaches Part 3 (a)(i), (c)(iv) and (d);
 - Post 2 breaches Part 3 (d); and
 - Posts 4 and 5 breach Part 3 (a)(i).
 - In relation to Complaint 33/23:
 - The website breaches Part 3 (c)(iv); and
 - The Instagram pages breach Part 3 (b)(iv) – Placement Rule 2.
 - In relation to Complaint 37/23:
 - Post 1 breaches Part 3 (a)(i); and
 - Post 2 breaches Part 3 (b)(ii).
 - In relation to Complaint 42/23:
 - The post breaches Parts 3 (a)(i) and (d).

- In relation to Complaint 45/23:
 - The post breaches Part 3 (d).
- In relation to Complaint 48/23:
 - The post breaches Part 3 (b)(iii).
- In relation to Complaint 49/23:
 - The post breaches Part 3 (d).

91. More generally, the Panel encourages the Company to reflect upon the style of marketing that it has employed. There are infinite ways in which marketing can be directed at different demographic groups to convey a casual brand position which are consistent with modelling responsible alcohol use. The ABAC pre-vetting service together with the resource materials on the ABAC website can assist the Company.

The Marketing Communications

The complaints relate to the following marketing communications:

Complaint 32/23

Complaint 32/23 relates to five different social media posts:

32/23 - Post 1 ('Handing Out Drinks on a Hot Day')

Post 1 ('Handing Out Drinks on a Hot Day') was made to Troy Candy's Instagram and TikTok pages. The following is a brief description of the posted video:

The music accompanying the video throughout is 'This is Australia' by Steve McNaughton.

The following text is shown with the video:

'Out here doing god's work [Australian flag emoji, white heart emoji]'

The video commences with footage of Troy Candy (TC) addressing the camera. He is standing in front of three cars, branded with the Gee Up logo, at what is presumably his Eye Candy Motorsports (ECM) business. TC is holding a bottle of the product.

Troy Candy (TC): *'...it's fucking hot, its 35, blokes slaving away outside today, so we're going to make their day, freshen them up...'*



The scene changes to footage of TC extracting product from a fridge and handing a box to another person.

TC: *'Load 'em up. First things first. The boys have been putting the stickers on...[unintelligible] so go freshen the boys.'*

Still at his ECM business, TC gestures for others to join him.

TC: *'Hey boys! Come try some.'*

TC hands a bottle of product to Person 1 (P1) who takes a drink.

P1: *'Fuck, grape. Sick.'*

The Marketing Communications

TC addresses Person 2 (P2) who has emerged from a different room.

TC: *'Hey bro. Honest feedback.'*

TC hands a bottle of product to P2.

P2 then quickly consumes the bottle of product using a drinking snorkel, and nods to indicate that he has enjoyed consumption of the product.

P2: *'Fuck'*

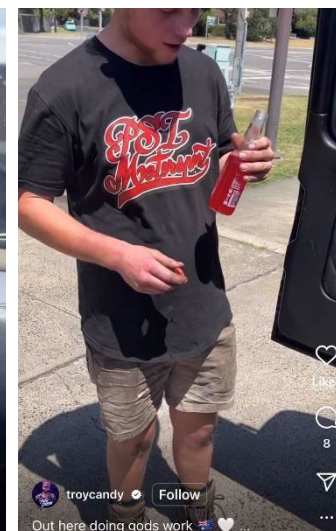
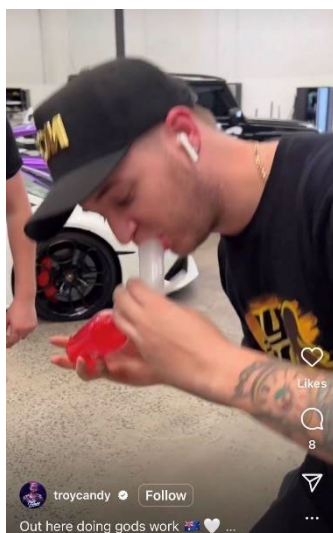
The video then changes the scene to some ice being broken and product being placed into an esky. A vehicle is shown driving towards a mechanics (Service Centre).

TC: *'Jimmy! You thirsty?'*

Jimmy: *'Yeah.'*

A bottle of product is handed to Jimmy.

TC: *'Honest feedback.'*



The Marketing Communications



TC then travels in a vehicle to a suburban street, where he sees two men (Person 3 and Person 4) beside a small truck, seemingly dressed for manual work (shorts and high-vis t-shirt).

TC: *'What's going on? What's going on boys?'*

TC is shown getting out of the passenger side of the vehicle, and P3 and P4 are then shown consuming the product.

A person off camera (P5) says: *'What do you reckon?'*

P4: *'Yep'*

Footage taken from the interior of a vehicle is shown as it approaches some roadworks.

TC: *'Go, go, go, go'*

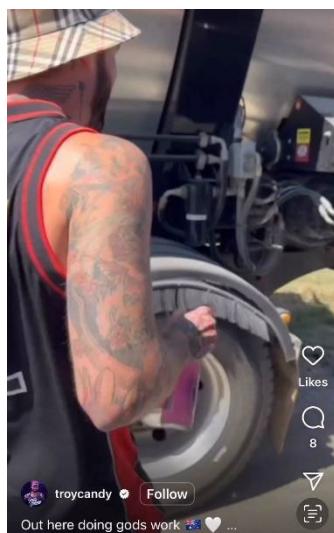
The vehicle stops, TC is shown getting out of the passenger side of the vehicle, as a person in high-vis approaches (P6).

TC: *'We're just seeing if you boys are thirsty.'*

P5:...*'[unintelligible] drinking problems here.'*



The Marketing Communications



TC is seen walking alongside some road plant and handing out bottles of product.

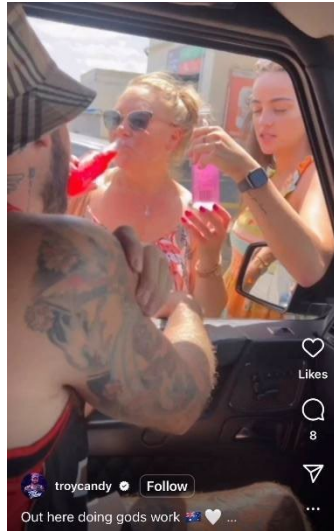
The scene changes to a residential area and a number of people are seen emerging from behind a house. The tailgate of the vehicle is open, and a person is handing out products.

TC: *'Got some fresh drinks for the boys, fuckin' oath.'*

The boys from behind the house are then shown gathered, clinking bottles, exchanging cheers and consuming the product.



The Marketing Communications



The vehicle is then shown driving through what appears to be a shopping centre car park. TC, a passenger in the vehicle, opens the vehicle window and attracts the attention of a group of four or five women.

TC: *Hi ya, hey, we're releasing a new drink soon. Do you want to try it? We've got some here.*

TC hands product to the women.

P6: *'What drink are you releasing?'*

TC: *'So it's a premix.'*

P5: *It's got really low sugars, electrolytes in it.*

TC: *'So this is grape.'*

P7: *'and then this one?'*

TC: *'This is raspberry.'*

P7: *'Ooh that's nice.'*

P8: *'That's really good.'*

TC: *'Gee Up on Instagram.'*

P9: *'Well happy birthday to me guys.'*

TC & P5: *'Happy birthday!'*

P9: *'Thanks guys.'*

A chorus of thanks, goodbyes and parting comments are made.

32/23 - Post 2 ('Tradie')

32/23 - Post 2 ('Tradie') was made to the Troy Candy Instagram page. A brief description of the video is provided below:

The Marketing Communications

The song 'Cocaine' by Eric Clapton can be heard playing throughout the video.

The post is accompanied by the words:

'Visited a few hard working tradies getting it down in the heat today, full video coming soon.'

The video commences with footage taken from the interior of a vehicle which is approaching a construction site.



The vehicle passenger (P1) opens a bottle of product and calls out to a person at the construction site, who is dressed as a tradesperson (Tradie).

P1: 'Hey mate – you thirsty?'

Tradie: 'Huh?'

P1: 'Thirsty?'

Tradie: 'Yeah, what's that?'

Tradie drops a brick onto a pallet and walks towards the vehicle.



P1: 'Got this new drink, try it.'

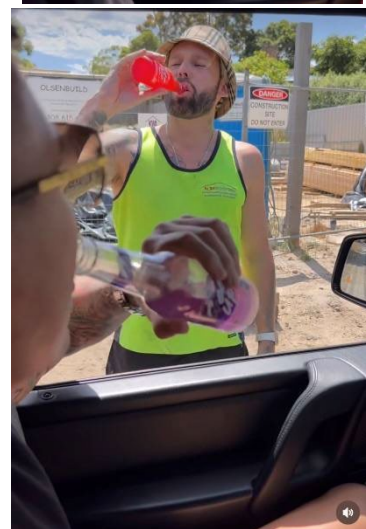
Tradie: 'What is it?'

P1: 'It's called Gee Up.'

Tradie: 'Gee Up huh.'

P1: 'Cheers'

The two clink bottles and drink the product.



The Marketing Communications

Tradie: *'I normally only drink beer.'*

Tradie: *'Mate'*

P1: *'What do you reckon?'*

Tradie: *'I don't know who you guys are but that's the best drink I have ever tasted. I'm not going to drink anything else.'*

Tradie takes another drink.

P1: *'Neither should you.'*

Tradie: *'Thanks boys [unintelligible]...to work.'*

P1: *'Have a good one mate. Cheers mate.'*

Tradie turns and starts walking back towards his starting position.



32/23 - Post 3 ('Corporate Office')

32/23 Post 3 ('Corporate Office') was made to the Troy Candy and Gee Up Vodka Instagram pages. The video commences with footage of people wearing Gee Up t-shirts in a corporate office environment. Two people are shown drinking the product. A person is then shown carrying a box in a carpark, and various shots of three different cars follow, and people are shown driving in a car. The scene then changes to what looks like a beverage production plant.

The following dialogue and visuals from the video are relevant to the complaint:

The Marketing Communications

In the corporate office
working environment:

Troy Candy (TC): *'This is
the worst part about
dealing in alcohol isn't it?
You just have to drink all
day.'*

TC then takes a drink of
the product.



At the beverage
production plant, a person
dressed in a white coat
and wearing a hair net
says:

*'when you see a rainbow
colour in front of you when
you're doing drinks...let's
party!'*

The people to whom he is
speaking then laugh
jovially.



32/23 - Post 4 ('Bottling Plant')

32/23 - Post 4 ('Bottling Plant') was made to the Gee Up Vodka Instagram page. The video was over ten minutes long and featured a number of people in an operating bottling plant. It primarily featured Troy Candy as he moved around the bottling plant providing commentary.

The following dialogue and visuals from the video are relevant to the complaint:

The Marketing Communications



At the 7:20 mark of the video, preparations are being made to drink the first bottles from the run.

Person off camera: 'Did we bring the snorkel in the boot? Bring it in?'

Troy Candy (TC): 'Actually, I brought the snorkel, but where is it? Nah, it's in the car'.

Person off camera: We've got to snorkel the first one. 100 percent.

At the 9:18 mark of the video, the product is sampled, whilst still in the operating bottling facility (without using a snorkel).

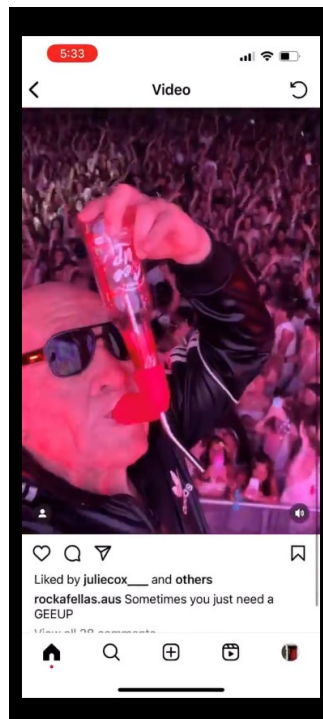
The Marketing Communications

32/23 - Post 5 ('Snorkel')

Post 5 ('Snorkel') appeared in the 'Tagged' section of the Gee Up Vodka Instagram page and can be viewed at the following link:

<https://www.instagram.com/p/CowpF9FJmL/>

The post is a 20 second video showing a person rapidly consuming an entire bottle of Gee Up product using a drinking snorkel.



Complaint 33/23

Complaint 33/23 relates to the Gee Up Vodka website, as well as the Gee Up Vodka and Troy Candy Instagram pages:

www.letsgeeup.com.au

<https://www.instagram.com/letsgeeup/>

www.instagram.com/troycandy

The following screenshots are from the website:

The Marketing Communications

OUR FLAVOURS



GEE UP GRAPE 275ML CASE (X24)
\$99.99 AUD



GEE UP SUGAR FREE COTTON CANDY 275ML CASE (X24)
\$99.99 AUD



GEE UP RASPBERRY 275ML CASE (X24)
\$99.99 AUD

92.



GEE UP
GEE UP 3 X CASE + FREE T-SHIRT & GOLDEN TICKET

~~\$338.98 AUD~~ **\$299.99 AUD**
TAX INCLUDED.

SIZE
S M L XL XXL

QUANTITY
- 1 +

SOLD OUT

BUY WITH shop pay

[More payment options](#)

[Share](#)

VIEW FULL DETAILS →

The Marketing Communications

HOME

SHOP ALL

RETAIL

CONTACT

GEE UP

🔍

👤

🛒

WE ARE LIVE!

LETS

Gee Up

SHOP NOW

GEE UP

GEE UP GRAPE 275ML CASE (X24)

\$99.99 AUD

TAX INCLUDED.

QUANTITY

-

1

+

SOLD OUT

BUY WITH shop Pay

More payment options

WHEELS UP, IT'S TIME TO PARTY! I'M SWEETER THAN STIFLER'S MUM AND PACKED WITH A DELICIOUS GRAPE PUNCH!

WITH F*CK ALL SUGAR AND NO STRANGE AFTERTASTE, I'M GUARANTEED TO BE YOUR NEW FAVORITE. RIP MY LID OFF, LET'S GO!

PLEASE NOTE: DELIVERY DETAILS

ALL ORDERS WILL BE PACKED AND PROCESSED WITHIN 5-7 WORKING DAYS. SHIPPING FROM THEN IS DETERMINED VIA AIR POST. PLEASE ALLOW UP TO 5-7 DAYS. THIS MAY BE LONGER IN MORE RURAL OR REMOTE AREAS. IF YOUR ORDER IS NOT DELIVERED IN 21 WORKING DAYS PLEASE CONTACT info@letsgeeu.com.au

♡ GRAPE

46

CALORIES PER 100ML

4.3

SUGAR (G) PER 100ML


0

GRAMS OF FAT

+

ADDED ELECTROLYTES

The Marketing Communications



WITH ELECTROLYTES

GRAPE

PLEASE NOTE: DELIVERY DETAILS

ALL ORDERS WILL BE PACKED AND PROCESSED WITHIN 1-7 WORKING DAYS, SHIPPING FROM THEN IS DETERMINED VIA OUR POST. PLEASE ALLOW UP TO 1-7 DAYS. THIS MAY BE LONGER IN MORE RURAL OR REMOTE AREAS. IF YOUR ORDER IS NOT DELIVERED IN 21 WORKING DAYS PLEASE CONTACT info@letsgeeor.com.au

♡ GRAPE

46

CALORIES PER 100ML

4.3


SUGAR (G) PER 100ML

0

GRAMS OF FAT

+

ADDED ELECTROLYTES




Gee Up GOLDEN TICKET

WIN A GOLDEN TICKET!

SIMPLY PURCHASE OUR "GOLDEN TICKET PACK" FOR YOUR CHANCE TO WIN THE ULTIMATE GEE UP VIP EXPERIENCE!

SHOP NOW



VODKA

Gee Up

Sugar Free

COTTON CANDY UP

WITH ELECTROLYTES

GEE UP

GEE UP SUGAR FREE COTTON CANDY 275ML CASE (X24)

\$99.99 AUD

TAX INCLUDED.

QUANTITY

-

1

+

SOLD OUT

BUY WITH [shopPay](#)

[More payment options](#)

MY NAME'S COTTON CANDY BUT YOU CAN CALL ME LATER. DON'T BE SHY, GIVE ME A TRY - WITH 0 SUGAR AND AN EPIC COTTON CANDY TASTE, I'LL BE MORE THAN JUST A ONE NIGHT STAND! YEAH I'M SUGAR FREE, BUT YOU WOULDN'T HAVE FCUKING GUESSED IT.

PLEASE NOTE: DELIVERY DETAILS

ALL ORDERS WILL BE PACKED AND PROCESSED WITHIN 1-7 WORKING DAYS, SHIPPING FROM THEN IS DETERMINED VIA OUR POST. PLEASE ALLOW UP TO 1-7 DAYS. THIS MAY BE LONGER IN MORE RURAL OR REMOTE AREAS. IF YOUR ORDER IS NOT DELIVERED IN 21 WORKING DAYS PLEASE CONTACT info@letsgeeor.com.au

♡ COTTON CANDY (SUGAR FREE)

28

CALORIES PER 100ML

0


GRAMS SUGAR (G) PER 100ML

0

GRAMS OF FAT

+

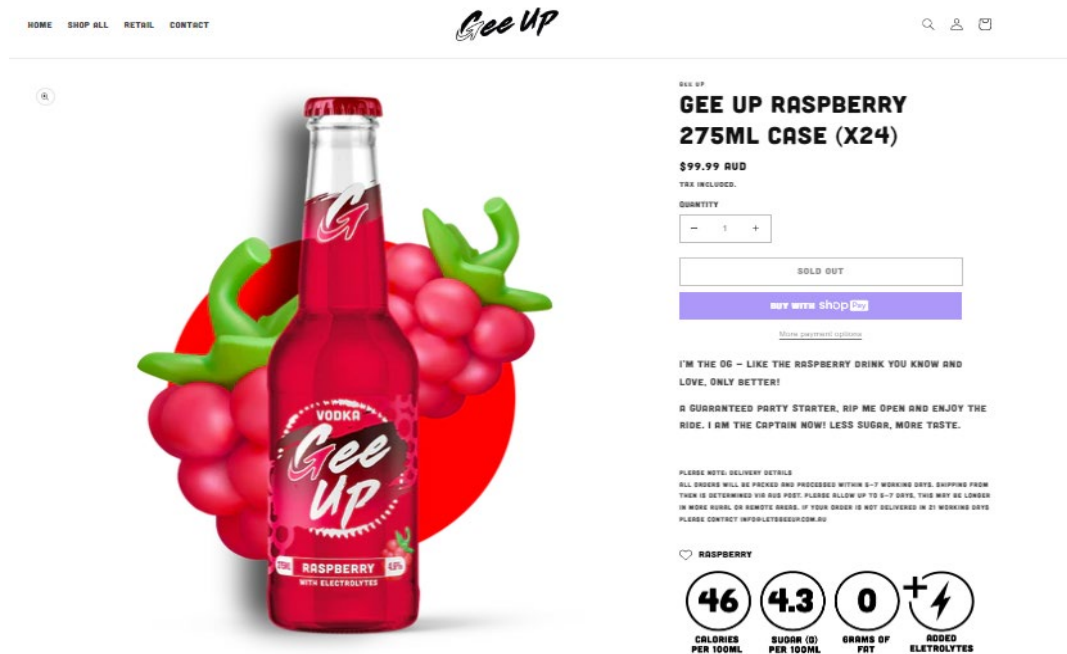
WITH ADDED ELEKTROLYTES



WITH ELECTROLYTES

CANDY

The Marketing Communications



HOME SHOP ALL RETAIL CONTACT

Gee UP

GEE UP

GEE UP RASPBERRY
275ML CASE (X24)

\$99.99 AUD

TAX INCLUDED.

QUANTITY

— 1 +

SOLD OUT

BUY WITH shop

[More payment options](#)

I'M THE OG - LIKE THE RASPBERRY DRINK YOU KNOW AND LOVE, ONLY BETTER!

A GUARANTEED PARTY STARTER. RIP ME OPEN AND ENJOY THE RIDE. I AM THE CAPTAIN NOW! LESS SUGAR, MORE TASTE.

PLEASE NOTE: DELIVERY DETAILS

ALL ORDERS WILL BE PACKED AND PROCESSED WITHIN 5-7 WORKING DAYS, SHIPPING FROM THEM IS DETERMINED VIA AEST POST. PLEASE ALLOW UP TO 5-7 DAYS, THIS MAY BE LONGER IN MORE RURAL OR REMOTE AREAS. IF YOUR ORDER IS NOT DELIVERED IN 21 WORKING DAYS PLEASE CONTACT info@letsgeeeup.com.au

♥ RASPBERRY

46	4.3	0	+
CALORIES PER 100ML	SUGAR (G) PER 100ML	GRAMS OF FAT	SOOD ELEKTROLYTES

Complaint 37/23

Complaint 37/23 relates to four different Instagram posts.

37/23 - Post 1

Post 1 was made to the rockafellas.aus Instagram page, and tagged the Gee Up Vodka Instagram page. It is a video of Troy Candy's private yacht party for his Gee Up product launch and can be viewed at the following link:

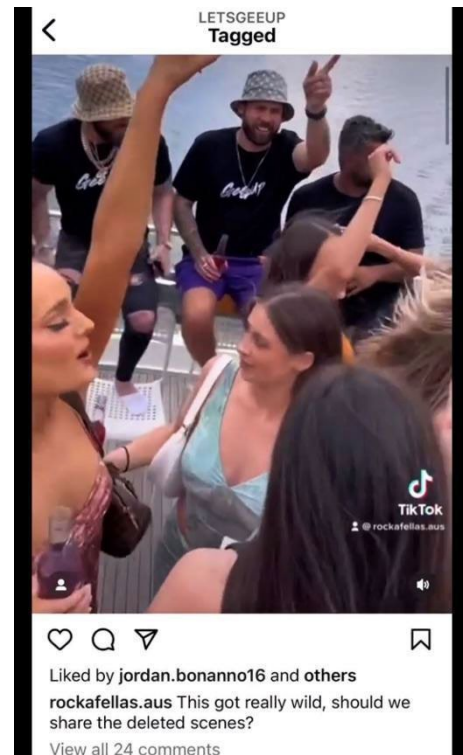
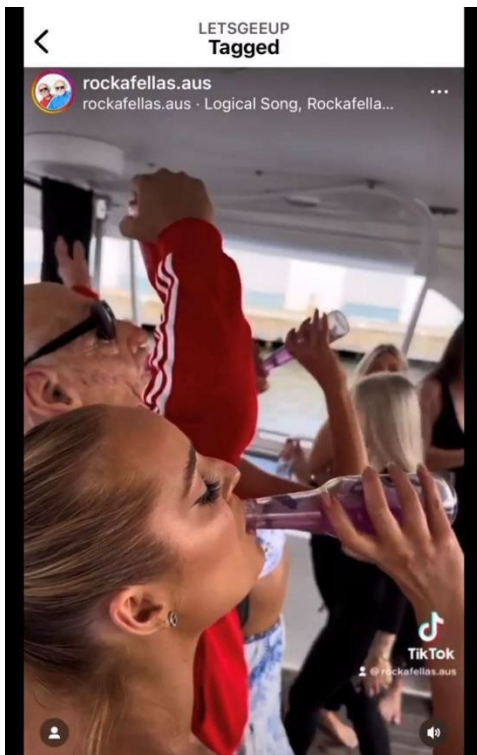
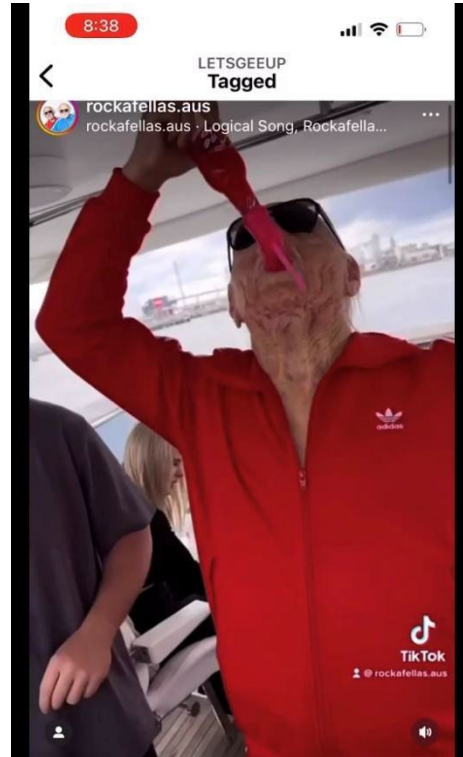
<https://www.instagram.com/p/CpKZgXwDHRR/>

The video showed various scenes of people on a boat, dancing and drinking Gee Up Vodka, and included footage of a person consuming an entire bottle of product using a drinking snorkel. The post was accompanied by the following text:

This got really wild, should we share the deleted scenes?

The Marketing Communications

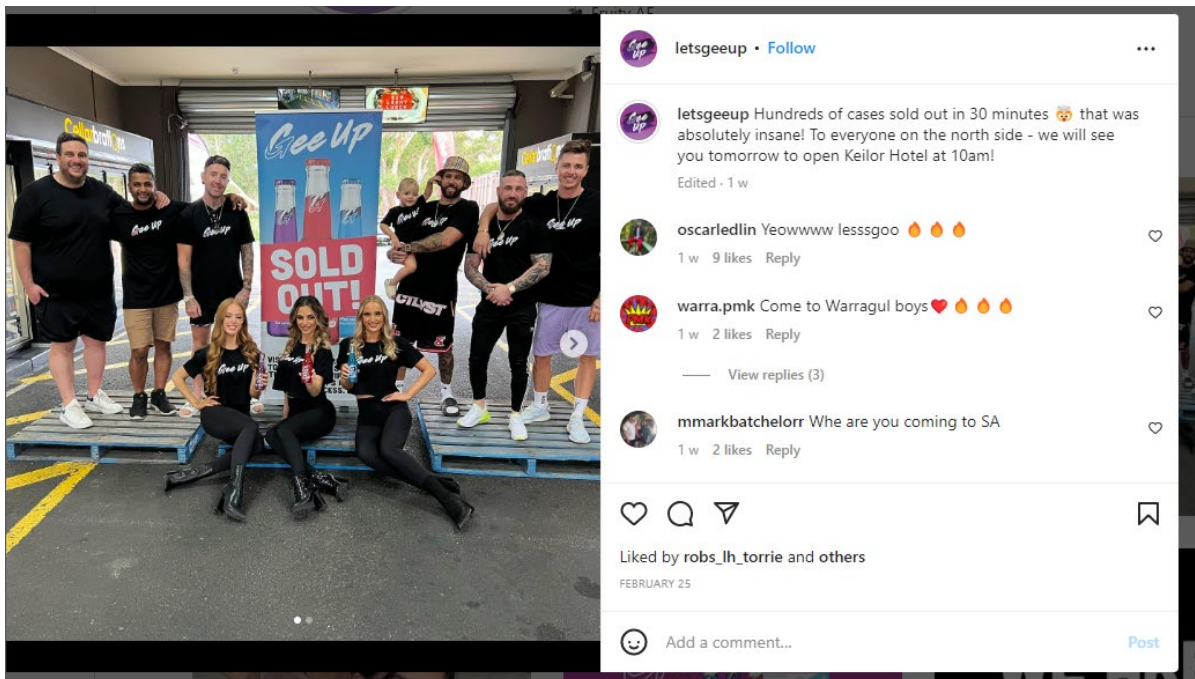
The following screenshots are taken from the video:



The Marketing Communications

37/23 - Post 2

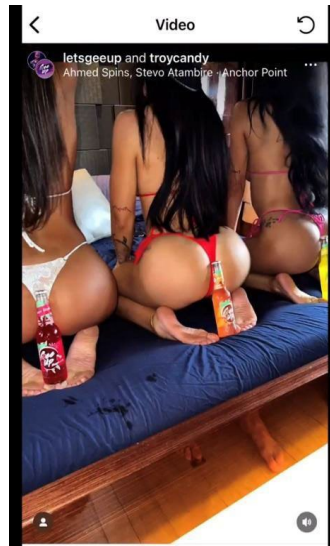
The following screenshot is of Post 2, which was made to the Gee Up Vodka Instagram page:



Complaint 37/23 - Post 3

Post 3 is a fast-moving compilation of shots, including one of women posing with bottles of Gee Up Vodka while wearing swimwear.

The Marketing Communications

**Complaint 37/23 - Post 4 and Complaint 47/23**

Post 4 was made to the Gee Up Vodka Instagram page and can be viewed at the following link:

<https://www.instagram.com/p/CpCS6rMr09T/>



The Marketing Communications

Complaint 39/23

Complaint 39/22 relates to the sale of Gee Up Vodka on Facebook Marketplace.

Complaint 41/23

The marketing referred to in this complaint is not available.

The Marketing Communications

Complaint 42/23

Complaint 42/23 - Post 5

Post 5 was posted as a video Story to the Troy Candy Instagram page. It shows a person leaning out of the window of a moving car to pass a bottle of alcohol with a drinking snorkel attached to a person riding a motorbike. That person then consumes the product using a drinking snorkel while riding the motorbike on its rear wheel.

The following screenshots were taken of the video:



The Marketing Communications

Complaint 45/23

Complaint 45/23 relates to a Story video post to the Troy Candy Instagram page.



The Marketing Communications

Complaint 48/23

Complaint 48/23 relates to the following post made to the Let's Gee Up Instagram page:



The Marketing Communications

Complaint 49/23

Complaint 49/23 relates to the following Story post made to the Let's Gee Up Instagram page:



The Company's Responses

Company Response to Complaint Numbers 29, 32, 33 & 45/23

The Company's legal advisors responded on behalf of their client by letter emailed on 14 March 2023. The principal comments made were:

80Proof 'Gee Up' launch and general comments

General comments

- 80Proof is an Australian based producer of alcohol products. It produces the 'Gee Up' product.
- As a corporate group that produces alcoholic beverages, 80Proof promote its efforts to fulfill its responsibility to:
 - promote responsible drinking; and
 - eradicate the harmful consumption of alcohol.
- 80Proof is aware of the requirements under ABAC and the Code and recognises their importance in setting standards for responsible alcohol marketing in Australia.

'Gee Up' launch marketing campaign

- The advertisements subject of the Complaints are part of the 80Proof 'Gee Up' launch marketing campaign.
- The Campaign includes a collaboration between 80Proof and influencer Troy Williams. Troy Williams is a social media personality that is known publicly by the name Troy Candy (Troy Candy). Troy Candy is the founder of motorsport company 'Eye Candy Motorsports' that create custom car transformations and has approximately 225,000 followers on Instagram.
- Troy Candy is not a director or employee of 80Proof.
- The Campaign's intention is to create consumer awareness of the availability of their new range of 'ready to drink' vodka beverages that are sold under the brand 'Let's Gee Up' and come in 3 flavours: raspberry, grape and cotton candy (Products).
- The Campaign utilises 80Proof's social media marketing strategies to reach their target market of those aged 18 - 40 years (and specifically not targeted to under 18 years).

The Company's Responses

- 80Proof has also completed the 'ABAC Alcohol Marketing Placement Checklists' – see below for copies of these completed checklists.

Complaint numbers 32-23 and 33-23

Overview

- There are numerous advertisements subject to this complaint which we have set out responses to in the sections below. None of the advertisements subject of these complaints received Alcohol Advertising Pre-vetting Service Approval for its content and/or placement.

Gee Up Website

- By way of a general comment, it is noted that careful consideration has been made by 80Proof in developing the content on <https://letsgeeeup.com.au/> (Gee Up Website), whilst having regard to the important requirements of ABAC and the Code. For example, the Gee Up Website:
 - includes a prominent age restriction warning which states: 'WARNING. Under the Liquor Control Reform Act 1998 it is an offence to supply alcohol to a person under the age of 18 years (Penalty exceeds \$19,000) For a person under the age of 18 years to purchase or receive liquor (Penalty exceeds \$800)';
 - includes a link to the Terms & Conditions which refer to the fact that the Gee Up Website is not available to minors;
 - is aged gated, which requires users to confirm they are over the age of 18 to enter and therefore is not accessible to minors. Please see a screenshot of this age gate in Schedule 3.
 - includes a 'Responsible Consumption & Supply of Alcohol' Policy, that can be found at this link here and further extracted below:

Responsible Consumption & Supply of Alcohol

80Proof Australia Pty Ltd ('80Proof') is a socially responsible corporate group that manufactures and markets alcohol beverages. In pursuit of responsible consumption and supply of alcohol, this policy has been developed and implemented at 80Proof. In this regard, 80Proof is also focussed on raising public awareness about responsible drinking and defining and enforcing stringent voluntary standards on alcohol advertising and

The Company's Responses

promotion activities. We educate and train our staff on responsible consumption and supply of alcohol. Moderate and responsible drinking can be part of a balanced and sociable lifestyle and 80Proof does not approve excessive or binge drinking. In our business activities, 80Proof will comply with laws and regulations, and voluntary standards set by the industry and 80Proof, including the AANA Code of Ethics and the relevant guidelines of the Victorian Gambling and Casino Control Commission. The 80Proof staff will be mindful of their responsibilities toward society and act responsibly, by acquiring correct knowledge and deepening understanding in relation to responsible drinking. As a corporate group that produces alcoholic beverages, 80Proof promotes its efforts to fulfill its responsibility to promote responsible drinking and eradicate the harmful consumption of alcohol. 80Proof is aware of the importance of standards for responsible alcohol marketing in Australia.'

- 80Proof do not suggest that the Products have any sort of therapeutic or health benefit and without admission of any liability, the words 'a cleaner way to party' and 'as it was on tomorrow' have been removed from the Gee Up Website.
- 80Proof respectfully notes that the complaints regarding the Gee Up Website do not refer to specific pages/sections and therefore, general comments have been made above.

Handing Out Drinks Post

- The first social media post is a video that depicts Troy Candy handing out the Products to consumers in various locations (Handing Out Drinks Post).
- The Handing Out Drinks Post was shared on Troy Candy's Instagram and TikTok accounts on 20 February 2023.
- This video was not approved or directed by 80Proof. 80Proof does not condone rapid or excessive consumption of the Products and did not instruct the person featured in the video to use a drink snorkel on the Product.
- 80Proof also does not condone or encourage irresponsible behaviour related to the consumption of the Products, nor condone suggesting that the Products have any sort of therapeutic benefit.

The Company's Responses

- The Handing Out Drinks Post has been removed (without admission of liability) and 80Proof have implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code (see below for further information).

Tradie Post

- The second advertisement is a video that depicts Troy Candy handing out the Products to a tradesperson (Tradie Post).
- The Tradie Post was shared on Troy Candy's Instagram account on 17 February 2023.
- This video is a parody. The 'tradie' depicted is Troy Candy acting and he was not working on, or at, the construction site depicted. 80Proof did not instruct nor approve Troy Candy to publish the Tradie Post.
- 80Proof does not condone or encourage irresponsible behaviour when consuming the Products.
- The Tradie Post has been removed (without admission of liability) and 80Proof has implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code (see below for further information).

Corporate Office Post

- The third advertisement is a video that depicts Troy Candy in an office with others discussing the Products creation. It also includes a montage of numerous vehicles and behind the scenes footage of the Products production plant and processes (Corporate Office Post).
- The Corporate Office Post was shared on Troy Candy's Instagram account and the Gee Up Account on 29 January 2023.
- A person featured in the Corporate Office Post states, after seeing the colour of the Products, that they want to party. They do not say they want to excessively drink alcohol at any such party and 80Proof submits the word 'party' by itself does not automatically imply binge drinking or irresponsible consumption of alcohol in breach of the Code.
- 80Proof did not approve the Corporate Office Post and 80Proof have implemented a robust approval process for their influencer social media

The Company's Responses

marketing to ensure it complies with the Code (see clause 3.10 below for further information).

- The Corporate Office Post has been removed (without admission of liability).

Bottling Plant Post

- The fourth advertisement is a video that depicts Troy Candy and others at the first session of the Product's manufacturing (Bottling Plant Post).
- The Bottling Plant Post was shot and broadcast live by Troy Candy using the Instagram live video feature on the Gee Up Account on 15 February 2023 and was titled 'first run'. It was approximately 10 minutes in length.
- The Bottling Plant Post does not depict excessive or rapid consumption of alcohol. Troy Candy and others test the first run of the product by taking a sip of the Products in a responsible manner. It is noted there is distant background discussion regarding the use of a drink snorkel. 80Proof did not instruct nor approve Troy Candy to bring a drink snorkel to the bottling plant nor to use a drink snorkel to test the first run of the Products.
- 80Proof do not condone or support in any way consuming alcohol products rapidly or excessively, nor misuse or abuse of alcohol or consumption inconsistent with any Australian alcohol guidelines.
- 80Proof rejects the claims that the Bottling Plant Post breaches part 3(a)(i) of the Code. The people featured are wearing high vis vests, which is assumed to be a part of the safety requirements of the third party plant. Troy Candy and the others test 1 bottle of the Product by taking a sip. None of the people featured in this scene were operating machinery or working at the manufacturing plant before, during or after the Products were consumed.
- 80Proof also does not condone or support in any way irresponsible or offensive behaviour in relation to the consumption or presence of the Products.
- The Bottling Plant Post has been removed from the Gee Up Account (without admission of liability). 80Proof take their responsibilities as an alcohol producer seriously and to ensure compliance with the Code, have implemented processes for their social media marketing to ensure all posts require 80Proof approval before being broadcast (see below for further information).

The Company's Responses

Snorkel Post

- The fifth advertisement is a video that depicts a third party @rockafellas.aus (Rockafellas) using a drink snorkel to consume the Product at what appears to be a music festival/rave (Snorkel Post).
- Rockafellas posted the video to their own Instagram account on 17 February 2023 and tagged both Troy Candy and the Gee Up account in the post, which are both public accounts.
- Rockafellas is a third party who is not associated with, contracted with or under the reasonable control of 80Proof. The Snorkel Post appeared in the tagged section of the Gee Up Account due to Instagram's settings and the third party tagging both Troy Candy and the Gee Up Account.
- As a result of the above, 80Proof submits that the Snorkel Post was not within its reasonable control and the depiction of the 80Proof Product in the Snorkel Post was an unauthorised product placement.
- 80Proof has subsequently removed the tag (without admission of liability) and the Snorkel Post no longer appears in the tagged section of the Gee Up Account. Furthermore, 80Proof has implemented social media processes which include monitoring its tags on social media daily, to ensure any material they are tagged in, that is not in compliance with the Code, is promptly removed.
- Furthermore, 80Proof does not condone or support excessive or rapid consumption of alcohol or misuse or abuse of alcohol inconsistent with any Australian alcohol guidelines.

Placement

- 80Proof respectfully notes that the complaints regarding placement rules and the 80Proof and Troy Candy's social media accounts/marketing communications are not clear or specific.
- Generally, 80Proof notes that the Gee Up Account is age restricted to users aged 18 years and above. Therefore, it excludes minors from viewing their marketing communications. Details of the age restriction is evidenced below. 80Proof has also directed Troy Candy to ensure their social media accounts employ age restrictions. In any event, the Troy Candy Instagram accounts audience analytics depict that 95.5% of followers are aged 18 years and above - please see details below.

The Company's Responses

Influencers and social media approval process

- 80Proof has implemented a more robust social media process that includes a vigorous approval process of all influencer marketing posts to ensure compliance with the Code. 80Proof is focussed on being vigilant regarding the nature of its packaging and marketing and would never intentionally breach the Code.
- An influencer guideline document has been rolled out at 80Proof and provided to social personnel and all 80Proof staff, including influencers as part of their influencer agreement. A copy of these Influencer Guidelines are set out below.
- It is noted that Troy Candy has signed an influencer agreement with 80Proof which outlines numerous obligations on the influencer, including with respect to the provisions set out in the table below:

Topic	Provision in the influencer agreement (as extracted from the signed influencer agreement)
Social media approval process	<p>The Talent must provide each proposed Social Media Deliverable (including image, video and caption) for approval by the Company at least 48 hours before the Deadline.</p> <p>The Company must approve the proposed Social Media Deliverable or notify the Talent that it is not approved and outline the requested changes. The Talent must update the proposed Social Media Deliverable accordingly and provide to the Company for approval within 24 hours after receipt of the Company's requested changes.</p> <p>The Talent must not post or publish a Social Media Deliverable unless it has been approved by the Company.</p>

The Company's Responses

Influencer obligations (clause 2)	<p>The Talent must:</p> <ul style="list-style-type: none"> (a) provide the Services with the due care, skill, professionalism and diligence expected of a service provider of that kind, and in a conscientious manner; (b) ensure all Materials it provides or creates for the Campaign contains only its original work; (c) be available when requested by the Company and its Personnel (acting reasonably); (d) comply with all directions and decisions made by the Company and its Personnel, the Influencer Guidelines and any applicable social media platform terms and conditions, Laws and industry standards, including the AANA Code of Ethics and the ABAC Responsible Alcohol Marketing Code, and the relevant guidelines; (e) immediately remove any Social Media Deliverable on request by the Company, and not remove or archive any Social Media Deliverable without the Company's prior consent; (f) not consume, or be under the influence of, alcohol or drugs, except prescribed medication, while providing the Services; (g) not engage in any conduct, act or omission or make any public statement that it knows, or ought to know, is reasonably likely to harm, disparage, damage or diminish the reputation of the Company or the Campaign, bring the Company or its Related Bodies Corporate into disrepute, or infringe the rights of any third party; and (h) obtain and maintain, at its cost, all appropriate licences required to provide the Services and comply with its obligations in relation to the Services, in accordance with this Agreement.
Influencer warranties (clause 8)	<p>The Talent warrants on a continuing basis that it will provide the Services in accordance with all applicable Laws and industry standards, including the AANA Code of Ethics and the ABAC Responsible Alcohol Marketing Code, and the relevant guidelines.</p>

Complaint number 45-23

Image description

- The image the subject of this complaint is an Instagram story posted by third party @tom howe (Third Party) on Instagram. This image was subsequently re-shared on Troy Candy's Instagram story (Steering Wheel Image).
- Below is a screen shot of the reshared Steering Wheel Image.

The Company's Responses



- The image depicts the Product being held by a hand and it's clearly noted that it is in front of a steering wheel simulator. The caption superimposed on the image reads 'Farrk these are so good for a sugar free drink' accompanied by the praise hands emoji.
- When the Steering Wheel Image was reshared to Troy Candy's Instagram story a prominent caption was added to it stating 'This simulator is crazy actually looks like he's driving'.
- The Steering Wheel Image did not receive Alcohol Advertising Pre-vetting Service Approval for its content and/or placement.

Response to issue raised in complaint

- A Marketing Communication must not show consumption of an alcohol beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination (section 3(d) of the Code)
- The Steering Wheel Image appears to have been taken by the Third Party and posted to their own personal Instagram account.
- The Third Party was not instructed by 80Proof to take this image.

The Company's Responses

- It is noted that this image appears to be a driving simulator and even if it was viewed as driving a 'real car', 80Proof did not direct the Third Party to consume the Products. 80Proof also does not suggest or condone, directly or indirectly, through their marketing that the Products should be consumed whilst operating a motor vehicle nor in any other scenario that requires a high degree of alertness or physical co-ordination.
- Troy Candy, in their capacity as an influencer of the Products, reshared the Steering Wheel Image to their Instagram story, where the images can be viewed for 24 hours only (i.e. after 24 hours it can no longer be viewed). Based on the prominent caption that was added to the image, the Third Party was using a driving simulator and not actually in control of a motor vehicle.
- 80Proof did not instruct nor approve Troy Candy to reshare the Steering Wheel Image. 80Proof do not condone or support in any way consuming alcohol products whilst engaging in any activity that requires a high degree of alertness or physical co-ordination per the Code, nor any illegal activity.
- The Steering Wheel Image is no longer reshared or published on Troy Candy's Instagram account (without admission of liability). 80Proof has also instructed Troy Candy to implement age gate controls on their account via the Instagram app.
- Additionally, 80Proof has implemented a regime for their influencer marketing, which includes robust approval processes of marketing material moving forward to ensure compliance with the Code.
- 80Proof also rejects the complainant's allegation that the majority of Troy Candy's Instagram audience (where 80Proof have marketed the Products) is underage. Troy Candy's target market is adults aged 18 and over. This is evident through the adult nature of their posts and the analysis of their account analytics which demonstrates that 95.5% of their following is 18 years and above.

The Company's Responses

ABAC checklists



ABAC Alcohol Marketing Placement Checklist 1 Paid Marketing*

		Checked
1.	Have all relevant media specific codes been complied with?	
	Outdoor Media Association Policies – no alcohol ads within 150m of a school	NA
	FreeTV Industry Code – time of day restrictions on placement – Clear Ads approval needed	NA
	Subscription Media Code – consider suitability of subscription tv or radio programme	NA
2.	Have you activated available age restriction controls to exclude minors from viewing your alcohol ads? When placing digital ads, the platform used to place the ad (Facebook, Instagram, Google or another Demand Side Platform) will generally have age/targeting and exclusion options – these must be used to select age groups 18 and above and exclude age groups under 18 For example: Snapchat	Yes
3.	Do you always instruct brand ambassadors/ influencers to age restrict any Facebook or Instagram posts that reference your product? Do your briefing documents include this requirement and the ABAC Alcohol Marketing Content Checklist ? Instructions for influencers on how to age restrict an individual post on Facebook can be accessed here and on Instagram can be accessed here	Yes
4.	Have you taken available steps to ensure your ad will only be placed where its audience is reasonably expected to comprise at least 75% adults? You must specify this requirement to all media partners when placing ads The following resources are available: <ul style="list-style-type: none"> • Linear television –Ozta audience data for the programme • Digital live & on-demand television –Ozta VPM audience data for the programme • Radio – Audience data for the programme/time slot • Brand ambassadors/Influencers - demographic breakdown of followers of their social media accounts 	Yes
5.	Have you taken available steps to ensure your ad will not be placed with programs or content primarily aimed at minors? You must specify this requirement to all media partners when placing ads Assess specific programmes or content you choose to have your ad placed with When placing digital ads programmatically, the platform or tools used to place the ad will generally have targeting options that will assist, including the ability to select age groups 18 and above and exclude age groups under 18 from receiving your ad	NA

Further resources:
[ABAC Guidance Notes](#)
[ABAC Pre-vetting Service](#)
[ABAC Online Training Course](#)

*Paid Marketing involves payment for any media space or placement of promotional material. For example television, outdoor, radio, print, cinema or digital advertisements, sponsored or promoted social media posts or paid Influencers

The Company's Responses



ABAC Alcohol Marketing Placement Checklist 2 Organic Marketing*

		Checked
1.	Have you activated available age restriction controls to exclude minors from viewing alcohol marketing on your alcohol brand assets?	
	Facebook accounts must be age restricted – instructions available here	Yes
	Instagram accounts must be age restricted – instructions available here	Yes
	Youtube Channels <u>and</u> videos must be age restricted – instructions available here	Yes
	Some Twitter accounts can be age screened – check your eligibility here	NA
	Website age gates – contact your website developer	Yes
	Other - Always check whether a social media or other platform you intend to use has age restrictions available as technology is constantly changing	Yes
2.	Do you have a system for regular moderation of user generated content on your assets/accounts (including posts in which your brand is tagged) to ensure they meet ABAC content rules . Instructions on how to moderate and remove tags from posts on Facebook can be accessed here and on Instagram can be accessed here	yes
3.	Do you always instruct influencers (that you engage or send free samples/ reward) to age restrict any Facebook or Instagram posts that reference your product? Do your briefing documents include this requirement and the ABAC Alcohol Marketing Content Checklist ? Instructions for influencers on how to age restrict an individual post on Facebook can be accessed here and on Instagram can be accessed here	Yes
4.	Have you taken available steps to ensure your marketing will only be placed where its audience is reasonably expected to be at least 75% adults? Platforms or influencers may have access to demographic breakdowns of users/followers	Yes
5.	Have you taken available steps to ensure your marketing will not appear with programs or content primarily aimed at minors? Assess the nature of content posted by platforms or influencers that you engage with	Yes
6.	Have you verified that all contacts in your direct marketing database are adults?	Yes

Further resources:

[ABAC Guidance Notes](#)

[ABAC Pre-vetting Service](#)

[ABAC Online Training Course](#)

*Organic marketing refers to marketing that does not use paid advertising tools, for example brand owned websites or social media accounts, third party/influencer posts, blogs or content sharing

The Company's Responses

Age restrictions

Gee Up Website:



The screenshot shows the Gee Up website's age restriction page. At the top, the "Gee UP" logo is displayed in a large, stylized, black, hand-drawn font. Below the logo, the text "ARE YOU OVER THE AGE OF 18?" is centered. Underneath this question are two rectangular buttons: "YES" on the left and "NO" on the right. At the bottom of the page, a line of text reads: "BY ENTERING THIS SITE YOU ARE AGREEING TO THE TERMS OF USE AND PRIVACY POLICY." The page has a white background with a thin black border at the top and bottom.

The Company’s Responses

Gee Up Account:

Minimum Age

Done

Require people to be a certain age to see your account, including your profile, posts and stories.

Default

Remove

Set a minimum age for people everywhere.

Minimum age

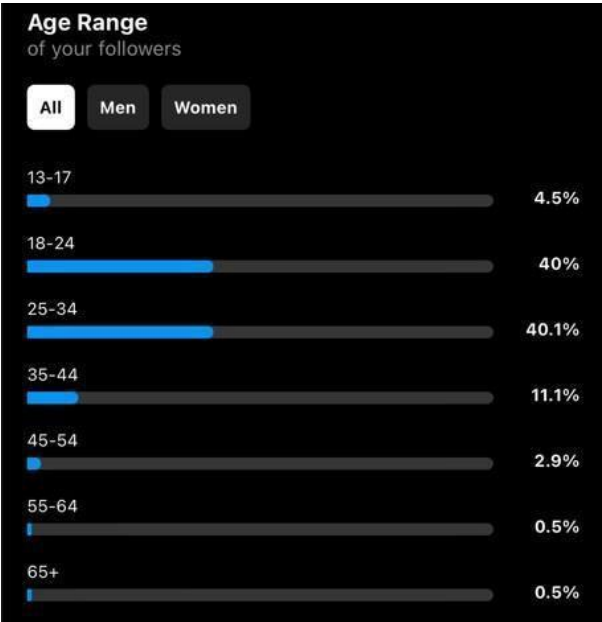
18

By country

Add

Set a different minimum age in specific countries. For example, you could set the default to 21 but allow people in Canada to be 18.

Audience age range



Influencer Guidelines

The Company's Responses

80PROOF

Influencer Guidelines

This document outlines your (**Your** or **You**) responsibilities, or those of third parties acting at your direction, when creating, providing and posting any type of content (such as photos, videos and posts) (**Content**). You must comply with these rules and requirements at all times, so please read this document carefully. You must follow all specified guidelines in this document and comply with all applicable laws, regulations, codes and standards prior to organic posting of Content as outlined in your engagement.

Item 1 General

- (a) You must comply with all applicable laws, rules, regulations, standards, guidelines and codes (including the AANA Code of Ethics and the ABAC Responsible Alcohol Marketing Code).
- (b) Among other things, complying with applicable laws, rules, regulations, standards, guidelines and codes means that You must clearly and conspicuously disclose in Your Content that You received a benefit from 80Proof in exchange for Your Content (ie it must be clear that your Content constitutes advertising).
 - (i) Examples of acceptable disclosures include #ad, #advert, #advertising, #brandedcontent, #paidpartnership and #paidpromotion. Note that less clear labels (such as #sp, #spon, #gifted, #affiliate, #collab, saying 'thanks to...' or merely mentioning or tagging @80Proof) may not be sufficient to clearly distinguish the post as advertising.
 - (ii) Disclosures should appear prominently within the post.
 - (iii) In addition to written disclosure accompanying the Content, disclosures must be in video Content as well, either verbally or super-imposed on the screen, for a period long enough for the viewer to see/understand.
- (c) You agree to comply with any and all social media policies as posted on the individual social media platforms (eg Facebook, Instagram, Twitter, Snapchat and YouTube) that You use.

Item 2 Honesty and accuracy

- (a) Only include honest expressions of Your actual personal opinions, findings, beliefs and/or experiences about the product.
- (b) Your Content should represent only Your own opinions. Do not represent that Your opinions are those of 80Proof.
- (c) Be sure You have substantiation for any statements or claims that You make.

Item 3 Competitors

- (a) Do not make statements about any of 80Proof's competitors (**80Proof Competitors**), or any 80Proof Competitor products or services within the Content.
- (b) See Section 6(b) below for additional information.

Item 4 Respectfulness

- (a) Do not use profanity, or the use of alternate characters and/or abbreviations that represent profanity or other offensive language, which is prohibited.
- (b) Do not post anything that a reasonable person would understand to embarrass 80Proof or damage its reputation or business interests.
- (c) Do not post comments that are illegal or, to a reasonable person's interpretation, are harassing, disparaging, defamatory, insulting, inflammatory, obscene, an invasion of privacy, discriminatory or offensive, or would otherwise not be deemed acceptable.

Item 5 Third party Content

Do not use names, photographs, logos, trade marks, images, copyrights or other materials owned by someone else or of someone else (like a picture of a celebrity) without that person's or company's written permission. If Your Content contains any third-party materials that are not provided by, or on behalf of, the person that engaged You, by a person authorised to provide such Content (eg logos, images of someone other than You), it is Your responsibility to ensure You have all the necessary rights to use those materials. You shouldn't include a picture of a celebrity in Your Content, unless You have their written permission.

Item 6 Talking and writing about 80Proof

- (a) All references You make to 80Proof should be related to Your engagement, and Your agreed scope of work, with 80Proof. Do not talk about 80Proof's operations, performance or 80Proof Competitors.
- (b) In addition, when posting Your Content, do not:
 - (i) Post or write about anything related to narcotics or other illicit drug use.

The Company's Responses

- (ii) Post about anything that portrays an unsafe environment or state, in connection with an 80Proof product or service.
- (iii) Reference or discuss 80Proof Competitors.
- (iv) Offer or promote any products of 80Proof to a minor.
- (v) Reference or discuss how using an 80Proof product or service is superior to the goods or services of a third party, such as an 80Proof Competitor.
- (c) Your Content should accurately represent 80Proof.

Item 7 Images

Remember to comply with the following (if Your Content includes a motor vehicle):

- (a) Ensure everyone in the motor vehicle is wearing a seatbelt.
- (b) Do not consume or show open alcoholic beverages in a motor vehicle.
- (c) Obey the rules of the road. Signal, don't run yellow lights, don't drift over the white line. Avoid unsafe practices and drive at safe speeds.
- (d) Comply with all safety standards and regulatory requirements in the city where You are capturing Content.
- (e) Ensure conversations are not seen as a potential distraction whilst driving.
- (f) Do not touch or operate Your mobile device, self-record or take a selfie while driving.

Also:

- (a) Do not show anyone under 18 consuming or being offered alcohol.
- (b) Do not show people touching in a sexual way.
- (c) Do not show people consuming or being offered drugs.

Item 8 Takedown requests

80Proof reserves the right to request that You take down any Content and You will promptly comply with those requests.

Item 9 Privacy

Don't post the following about another person without that person's written consent:

- (a) a person's personal information or any other information that may reasonably identify that person (eg a photo that can reasonably identify that person may be personal information).
- (b) information about a person identified or tagged in the post.
- (c) sensitive information about a person's religious or political beliefs, racial origin or health.

The Company's Responses

Company Response to Complaints 37, 39, 40, 41, 42, 47, 48, 49 & 50/23

The Company's legal advisors responded on behalf of their client by letter emailed on 21 March 2023. The principal comments made were:

- 80Proof Australia Pty Ltd (80Proof) makes these submissions in response to complaint numbers 37- 23, 39-23, 40-23, 41-23, 42-23, 47-23, 48-23, 49-23 and 50-23 (Complaints) under the Alcohol Beverages Advertising Code (ABAC) Responsible Alcohol Marketing Code (Code) regarding advertisements as part of the 80Proof 'Gee Up' launch marketing campaign (Campaign).

80Proof 'Gee Up' launch and general comments

General comments

- 80Proof is an Australian based producer of alcohol products. It produces the 'Gee Up' product.
- As a corporate group that produces alcoholic beverages, 80Proof promote its efforts to fulfill its responsibility to:
 - promote responsible drinking; and
 - eradicate the harmful consumption of alcohol.
- 80Proof is aware of the requirements under ABAC and the Code and recognises their importance in setting standards for responsible alcohol marketing in Australia.

'Gee Up' launch marketing campaign

- The advertisements subject of the Complaints are part of the 80Proof 'Gee Up' launch marketing campaign.
- The Campaign includes a collaboration between 80Proof and influencer Troy Williams. Troy Williams is a social media personality that is known publicly by the name Troy Candy (Troy Candy). Troy Candy is the founder of motorsport company 'Eye Candy Motorsports' that creates custom car transformations and has approximately 225,000 followers on Instagram.
- Troy Candy is not a director or employee of 80Proof.

The Company's Responses

- The Campaign's intention is to create consumer awareness of the availability of their new range of 'ready to drink' vodka beverages that are sold under the brand 'Let's Gee Up' and come in 3 flavours: raspberry, grape and cotton candy (Products).
- The Campaign utilises 80Proof's social media marketing strategies to reach their target market of those aged 18 - 40 years (and specifically not targeted to under 18 years).
- The Products were first supplied for retail sale in Australia on 16 February 2023.
- None of the advertisements subject of the Complaints received alcohol advertising pre-vetting service approval for their content and/or placement.

Complaint numbers 37-23, 39-23, 40-23, 41-23 and 42-23

Overview

- There are numerous advertisements subject to these complaints which we have set out responses to in the sections below.

Post 1

- The first post is a video that was posted by third party @rockafellas.aus (Rockafellas) containing footage of Rockafellas DJing and celebrating at one of the Products launch events (Post 1).
- Rockafellas posted the video to their own Instagram account on 27 February 2023 and tagged both Troy Candy and the Let's Gee Up Instagram account (Gee Up Account) in the post, which are both public accounts.
- Rockafellas is a third party who was engaged by 80Proof to provide their DJing services at the Gee Up launch event. Rockafellas are not a contracted influencer for, or representative of, or under the reasonable control of, 80Proof. 80Proof did not direct Rockafellas to post Post 1 on Instagram, nor did they direct Rockafellas to consume the Product using a drink snorkel.
- As a result of the above, 80Proof submits that Post 1 was not within its reasonable control and the depiction of the Product in Post 1 was an unauthorised product placement post.

The Company's Responses

- Without admission of liability, 80Proof has subsequently untagged the Gee Up Account from appearing as a tagged party in Post 1. Furthermore, 80Proof has implemented social media processes which include monitoring its tags on social media daily, to ensure any material they are tagged in, that is not in compliance with the Code, is promptly removed.
- Furthermore, 80Proof does not condone or support excessive or rapid consumption of alcohol or misuse or abuse of alcohol inconsistent with the Code or any Australian alcohol guidelines.

Post 2

- The second post is an image of Troy Candy and the Gee Up team taken at a launch event for the Product at Beretta's Langwarrin Hotel in Victoria (**Hotel**). Troy Candy is depicted in the image holding his son accompanied by the wider Gee Up team and contractors; nearly everyone in the image is wearing a t-shirt with the brand name 'Gee Up' on it (Post 2). The image was taken to commemorate the Products' successful first launch.
- As previously mentioned, the Campaign is a collaboration with influencer Troy Candy who was involved in the Products creation process. Therefore, his son and family attended the launch event. This was not inappropriate considering the event was held at the Hotel, which is a family friendly establishment that has a bistro and a kids club, in addition to being a licensed venue with an onsite bottle shop. The Hotel's marketing displays the Hotel as a venue frequented by children who are out socialising with their families in a responsible manner, see further details here and it is also noted on the Hotel's website that it has a '4 level Worx Zone play area that's soft, safe and fun, so your kids can enjoy themselves while you do too'.
- Furthermore, the child is not the main nor prominent feature of the image, being 1 of 9 people depicted, and is positioned in a natural way, where a reasonable audience would assume the person holding the child is their father or a relative. No one in the image is drinking the Product and only 3 people are actually holding the Product, none of which are Troy Candy or the child. Despite the child wearing a t-shirt with the 'Gee Up' branding, it is obvious due to the child's age, positioning with its parent and the fact it is not featured holding nor close to the Product, that there is no implication whatsoever that the child will consume or serve alcohol.
- 80Proof does not condone or support alcohol advertising that has a strong or evident appeal to minors, nor does it encourage minors to consume the

The Company's Responses

Products. This is evident through its age gating on the Gee Up Account and the Gee Up website.

- In any event, without admission of any liability, Post 2 has been removed from the Gee Up Account.

Post 3

- The third post is a video compilation of images that shows the Products creation process from inception to the current version including product events and content shoots, with each image shown for approximately ½ second (Post 3).
- Post 3 was posted to the Gee Up Account on 8 January 2023.
- 80Proof does not condone consumption, nor rapid consumption of the Products before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination.
- Without admission of liability, Post 3 has been removed from the Gee Up account.

Post 4

- The fourth post is a still image 'selfie' of 2 female models wearing swimwear and posing with the Product. The caption reads 'all orders from the first drop have now been dispatched! We would love to hear your feedback! Make sure you tag us' and is accompanied by a white love heart emoji (Post 4).
- Post 4 was posted to the Gee Up account on 24 February 2023.
- 80Proof submits that Post 4 does not breach part 3(d) of the Code on the following basis:
 - Post 4 is a 'selfie' style post that features 2 females (who are aged 26 and 31 years) in front of a wooden crate style background. It is difficult to infer exactly where they are located but Post 4 does not include them featured in or surrounding any form or body of water;
 - whilst both females are wearing swimwear, this does not of itself directly indicate or imply they are swimming or are going to go swimming. It is common in the modelling and marketing

The Company's Responses

industry to include models in swimwear as clothing for shoots, content and events. This is further supported by the models featured with a full face of makeup, hair styled (that is not wet), accessories such as bracelets and necklaces (that are not normally worn whilst swimming) and their swimwear and bodies do not have a wet appearance; and

- based on the above, taken as a whole, a reasonable person (who will not study the post in fine detail but rather will absorb an overall impression) would not infer based on this image that the models are partaking, or are about to partake, in swimming.

Post 5

- The fifth post is an Instagram story video of Troy Candy on a motorbike consuming the Product (Post 5).
- Post 5 was posted to Troy Candy's Instagram story on or around 5 March 2023. Instagram stories are only visible for 24 hours.
- This video was not approved or directed by 80Proof. 80Proof does not condone rapid or excessive consumption of the Products nor the consumption of alcohol whilst undertaking unsafe behaviour. 80Proof did not instruct Troy Candy to film, create or make this post, nor to use a drink snorkel on the Product in Post 5.
- 80Proof also does not condone or encourage irresponsible or offensive behaviour under any circumstance, including whilst consuming the Products.
- Post 5 has been removed (without admission of liability) and 80Proof has implemented a robust approval process for their influencer social media marketing to ensure it complies with the Code moving forward (refer below for further information).

ABAC question re therapeutic benefits marketing

- 80Proof do not claim, or condone any claims, that the Products may assist in avoiding a hangover.
- The Products packaging depicts the words 'with electrolytes'. This statement is a mere fact regarding the Product's formula and ingredients. This statement is supported by third party lab testing and reports.

The Company's Responses

- 80Proof does not suggest, state or imply that there is any therapeutic, health or wellbeing benefit that will result from consuming the Products.

ABAC question re taste and smell of Products

- 80Proof do not market or claim the products smell like Hubba Bubba or taste like any soft drink, nor support or encourage any such claims.
- 80Proof is not aware of the marketing communication referred to in complaint 41-23. As previously outlined to ABAC, whilst the 'cotton candy' flavour of the product references the confectionary 'cotton candy' and includes an image of cotton candy, this is only included as an indicator of the flavour of the Product to adult consumers.
- The wording and depictions of cotton candy on the Product bottle are not stylised in a format targeted to, or strongly attractive to, children. The Product bottle includes a basic image of cotton candy, which has not been created into a character nor used in a humorous or cartoon-like way. The images and words of cotton candy are also not positioned on the Product as the primary feature, but rather used in a small size near the base of the Product bottle as flavour indicators.
- The name of the flavour of the Product is its common name being 'cotton candy' and it has not been sensationalised to be attractive to minors by including descriptive words before its common name (in the way that confectionery sometimes is named).
- Further, the Products are not likely to create confusion with soft drinks. 80Proof is an alcohol brand and does not manufacture or sell soft drinks. The Products are part of a new brand that sit amongst 80Proof's other alcohol products and they are not visible in supermarkets or other environments where minors would frequent.
- The shape of the Products bottles are not similar to a soft drink, which is predominantly sold in cans. The branding and the Products therefore, should not be recognisable to minors, nor suggest a smooth transition from non-alcoholic to alcoholic beverages.

ABAC question re Facebook Marketplace

- 80Proof do not market and/or sell alcohol on the Facebook Marketplace platform. Furthermore, there is also no Product specific Gee Up Facebook account.

The Company's Responses

- It is 80Proof's understanding that the references in complaint 39-23 to Facebook marketplace is in reference to posts by a third party that were reshared on Troy Candy's Instagram story for 24 hours. Without a copy of the post 80Proof cannot comment on its compliance with the Code.
- Furthermore, 80proof notes they did not direct or instruct Troy Candy to repost these third parties posts and, in any case, the posts have been removed.
- The Gee Up Account is age restricted to those aged 18 years and over. 80Proof's Gee Up website <https://letsgeeeup.com.au/> where products can be purchased, is also age restricted to those 18 years and over.

The Company's Responses

Complaint numbers 47-23, 48-23 and 49-23

Overview

- There are numerous advertisements the subject of these complaints which we have set out responses to in the sections below.

Complaint number 47-23

- 80Proof submits that this advertisement does not breach part 3(b)(iii) of the Code. The 2 models featured in the advertisement subject of this complaint on the Gee Up Account are aged 26 and 31 respectively and clearly depicted as adults in the post.
- The Gee Up Instagram Account is age restricted to users aged 18 years and above. Therefore, it excludes minors from viewing their marketing communications.

Complaint 48-23

- 80Proof submits that this advertisement does not breach part 3(b)(iii) of the Code in relation to 2 of the 3 models (who are both aged over 25 years). The 3 adults featured in this post subject of this complaint are paid models who are clearly depicted as adults in the post however, it is acknowledged that the third model was slightly under 25 years at the time the image was taken). The image in the post is also taken outside of a licensed bottle shop.
- The Gee Up Instagram Account is age restricted to users aged 18 years and above. Therefore, it excludes minors from viewing their marketing communications.
- In recognition of the third model being slightly under 25 years, 80Proof has removed this advertisement and adopted a robust process going forward to ensure paid models are always over 25 years.

Complaint 49-23

- The advertisement subject of this complaint is an image posted to Troy Candy's Instagram account on 3 March 2023. The Gee Up Account was tagged in this post.
- 80Proof did not direct, instruct or approve Troy Candy to post this image.

The Company's Responses

- It is unclear if the boat was moving at the time the image in the advertisement was taken. It is noted that this image comprises 5 males (presumably celebrating friendship) sitting on a boat holding a drink and with a skyline setting in the background.
- 80Proof do not under any circumstance condone the consumption of Products before or during any activity for safety reasons requires a high degree of alertness or physical co-ordination.
- Without admission of liability, 80Proof removed the Gee Up Account from being tagged in the post and requested that Troy Candy remove this post.

Influencers and social media approval process

- As previously submitted to ABAC, 80Proof has implemented a more robust social media process that includes a vigorous approval process of all influencer marketing posts to ensure compliance with the Code. 80Proof is focussed on being vigilant regarding the nature of its packaging and marketing and would never intentionally breach the Code.
- An influencer guideline document has been rolled out at 80Proof and provided to social personnel and all 80Proof staff, including influencers as part of their influencer agreement. A copy of these Influencer Guidelines are set out in Schedule 1.
- It is noted that Troy Candy has signed an influencer agreement with 80Proof which outlines numerous obligations on the influencer, including with respect to the provisions set out in the table below:

Topic	Provision in the influencer agreement (as extracted from the signed influencer agreement)
Social media approval process	<p>The Talent must provide each proposed Social Media Deliverable (including image, video and caption) for approval by the Company at least 48 hours before the Deadline.</p> <p>The Company must approve the proposed Social Media Deliverable or notify the Talent that it is not approved and outline the requested changes. The Talent must update the proposed Social Media Deliverable accordingly and provide to the Company for approval within 24 hours after receipt of the Company's requested changes.</p> <p>The Talent must not post or publish a Social Media Deliverable unless it has been approved by the Company.</p>
Influencer obligations (clause 2)	<p>The Talent must:</p> <p>(a) provide the Services with the due care, skill, professionalism and diligence expected of a service provider of that kind, and in a</p>

The Company's Responses

Topic	Provision in the influencer agreement (as extracted from the signed influencer agreement)
	<p>conscientious manner;</p> <p>(b) ensure all Materials it provides or creates for the Campaign contains only its original work;</p> <p>(c) be available when requested by the Company and its Personnel (acting reasonably);</p> <p>(d) comply with all directions and decisions made by the Company and its Personnel, the Influencer Guidelines and any applicable social media platform terms and conditions, Laws and industry standards, including the AANA Code of Ethics and the ABAC Responsible Alcohol Marketing Code, and the relevant guidelines;</p> <p>(e) immediately remove any Social Media Deliverable on request by the Company, and not remove or archive any Social Media Deliverable without the Company's prior consent;</p> <p>(f) not consume, or be under the influence of, alcohol or drugs, except prescribed medication, while providing the Services;</p> <p>(g) not engage in any conduct, act or omission or make any public statement that it knows, or ought to know, is reasonably likely to harm, disparage, damage or diminish the reputation of the Company or the Campaign, bring the Company or its Related Bodies Corporate into disrepute, or infringe the rights of any third party; and</p> <p>(h) obtain and maintain, at its cost, all appropriate licences required to provide the Services and comply with its obligations in relation to the Services, in accordance with this Agreement.</p>
Influencer warranties (clause 8)	The Talent warrants on a continuing basis that it will provide the Services in accordance with all applicable Laws and industry standards, including the AANA Code of Ethics and the ABAC Responsible Alcohol Marketing Code, and the relevant guidelines.

Schedule 1

- Schedule 1 is shown on the following pages.

The Company's Responses

80PROOF

Influencer Guidelines

This document outlines your (**Your** or **You**) responsibilities, or those of third parties acting at your direction, when creating, providing and posting any type of content (such as photos, videos and posts) (**Content**). You must comply with these rules and requirements at all times, so please read this document carefully. You must follow all specified guidelines in this document and comply with all applicable laws, regulations, codes and standards prior to organic posting of Content as outlined in your engagement.

Item 1 General

- (a) You must comply with all applicable laws, rules, regulations, standards, guidelines and codes (including the AANA Code of Ethics and the ABAC Responsible Alcohol Marketing Code).
- (b) Among other things, complying with applicable laws, rules, regulations, standards, guidelines and codes means that You must clearly and conspicuously disclose in Your Content that You received a benefit from 80Proof in exchange for Your Content (ie it must be clear that your Content constitutes advertising).
 - (i) Examples of acceptable disclosures include #ad, #advert, #advertising, #brandedcontent, #paidpartnership and #paidpromotion. Note that less clear labels (such as #sp, #spon, #gifted, #affiliate, #collab, saying 'thanks to...' or merely mentioning or tagging @80Proof) may not be sufficient to clearly distinguish the post as advertising.
 - (ii) Disclosures should appear prominently within the post.
 - (iii) In addition to written disclosure accompanying the Content, disclosures must be in video Content as well, either verbally or super-imposed on the screen, for a period long enough for the viewer to see/understand.
- (c) You agree to comply with any and all social media policies as posted on the individual social media platforms (eg Facebook, Instagram, Twitter, Snapchat and YouTube) that You use.

Item 2 Honesty and accuracy

- (a) Only include honest expressions of Your actual personal opinions, findings, beliefs and/or experiences about the product.
- (b) Your Content should represent only Your own opinions. Do not represent that Your opinions are those of 80Proof.
- (c) Be sure You have substantiation for any statements or claims that You make.

Item 3 Competitors

- (a) Do not make statements about any of 80Proof's competitors (**80Proof Competitors**), or any 80Proof Competitor products or services within the Content.
- (b) See Section 6(b) below for additional information.

Item 4 Respectfulness

- (a) Do not use profanity, or the use of alternate characters and/or abbreviations that represent profanity or other offensive language, which is prohibited.
- (b) Do not post anything that a reasonable person would understand to embarrass 80Proof or damage its reputation or business interests.
- (c) Do not post comments that are illegal or, to a reasonable person's interpretation, are harassing, disparaging, defamatory, insulting, inflammatory, obscene, an invasion of privacy, discriminatory or offensive, or would otherwise not be deemed acceptable.

Item 5 Third party Content

Do not use names, photographs, logos, trade marks, images, copyrights or other materials owned by someone else or of someone else (like a picture of a celebrity) without that person's or company's written permission. If Your Content contains any third-party materials that are not provided by, or on behalf of, the person that engaged You, by a person authorised to provide such Content (eg logos, images of someone other than You), it is Your responsibility to ensure You have all the necessary rights to use those materials. You shouldn't include a picture of a celebrity in Your Content, unless You have their written permission.

Item 6 Talking and writing about 80Proof

- (a) All references You make to 80Proof should be related to Your engagement, and Your agreed scope of work, with 80Proof. Do not talk about 80Proof's operations, performance or 80Proof Competitors.
- (b) In addition, when posting Your Content, do not:
 - (i) Post or write about anything related to narcotics or other illicit drug use.

The Company's Responses

- (ii) Post about anything that portrays an unsafe environment or state, in connection with an 80Proof product or service.
- (iii) Reference or discuss 80Proof Competitors.
- (iv) Offer or promote any products of 80Proof to a minor.
- (v) Reference or discuss how using an 80Proof product or service is superior to the goods or services of a third party, such as an 80Proof Competitor.
- (c) Your Content should accurately represent 80Proof.

Item 7 Images

Remember to comply with the following (if Your Content includes a motor vehicle):

- (a) Ensure everyone in the motor vehicle is wearing a seatbelt.
 - (b) Do not consume or show open alcoholic beverages in a motor vehicle.
 - (c) Obey the rules of the road. Signal, don't run yellow lights, don't drift over the white line. Avoid unsafe practices and drive at safe speeds.
 - (d) Comply with all safety standards and regulatory requirements in the city where You are capturing Content.
 - (e) Ensure conversations are not seen as a potential distraction whilst driving.
 - (f) Do not touch or operate Your mobile device, self-record or take a selfie while driving.
- Also:
- (a) Do not show anyone under 18 consuming or being offered alcohol.
 - (b) Do not show people touching in a sexual way.
 - (c) Do not show people consuming or being offered drugs.

Item 8 Takedown requests

80Proof reserves the right to request that You take down any Content and You will promptly comply with those requests.

Item 9 Privacy

Don't post the following about another person without that person's written consent:

- (a) a person's personal information or any other information that may reasonably identify that person (eg a photo that can reasonably identify that person may be personal information).
- (b) information about a person identified or tagged in the post.
- (c) sensitive information about a person's religious or political beliefs, racial origin or health.