

ANNUAL REPORT 2022

INDEPENDENT CHAIR REPORT

During 2022 the level of ABAC Adjudication Panel activity returned to pre-Covid patterns. However high levels of pre-vetting activity continued the upward trend seen over the previous six years.

Over the past few years ABAC has had a strong focus on improving awareness of ABAC standards and compliance by the regulated community. After sharp increases in determinations and breaches in 2020, ABAC implemented a comprehensive series of training videos and an online training course in early 2021. By the end of 2022 this course had been completed by over 650 industry participants. These resources are invaluable in assisting alcohol marketers to understand the Code standards and how to achieve responsibility in alcohol marketing and packaging. Engagement and uptake by industry is key to ensuring that alcohol marketing and packaging is undertaken responsibly.

ABAC built on these resources by developing a set of compliance checklists in 2022. These checklists were developed in light of the findings of pro-active compliance monitoring commissioned by ABAC and completed in 2022. JWS Research was commissioned to check on activation of age restriction controls by ABAC signatories across social media platforms. The process highlighted where education initiatives need to be focused. A number of small companies were not aware of the age restriction options that are available and lacked the technical support to implement those restrictions across their social media accounts. These findings prompted a range of actions, including the development of the checklists that provide links to step by step instructions on how to activate age restriction controls on social media platforms. In addition, ABAC offered practical assistance to enable companies to achieve compliance and provided feedback to social media platforms on simplification of age restriction on

their platforms to encourage take-up. The monitoring was very useful in identifying practical barriers to compliance. The Management Committee is committed to undertaking further monitoring.

The compliance checklists have been promoted to alcohol marketers who have been encouraged to periodically check to ensure that all their social media accounts and any third party influencer posts promoting their brand are age restricted. These resources complement the ABAC Pre-vetting Service which pro-actively checks alcohol marketing for ABAC compliance before it reaches the market.

It was pleasing to see a new record level of pre-vetting activity with 3,397 requests received during 2022. For several years, the level of pre-vetting has been increasing, this is a signal that the industry takes ABAC compliance and responsible marketing seriously by choosing to have communications independently vetted before going to market. The ABAC Pre-vetting Service checks marketing material for compliance with ABAC standards prior to the material reaching the market. Pre-vetting remains the easiest and most efficient way for marketers to ensure their promotions are responsible before hitting the marketplace. The service benefits the community in identifying alcohol marketing that doesn't meet ABAC's standards.

While 2022 saw a significant decline in determinations and breaches, the publicly available determinations by the ABAC Adjudication Panel continue to provide valuable guidance to the alcohol industry on responsible marketing. I am encouraged that all breaches arising from complaints received in 2022 resulted in removal, discontinuation or a commitment to modify the material. We consistently see a significant majority of breaches relating to marketing by non-signatories and 2022 is no exception. ABAC signatories statistically receive far fewer breaches than non-signatories, due to their increased engagement with

ABAC and use of the ABAC pre-vetting service.

2022 saw the commencement of ABAC's periodic whole of Code review. This process provides a valuable opportunity for ABAC to engage with the industry and demonstrate its ability to adapt to evolving community expectations and industry and marketing developments. Throughout the year ABAC has been engaged in consideration of issues raised during public consultation by a wide range of stakeholders, alongside observations from community standards research, Panel determinations, global trends and other considerations. This has been a significant effort by the ABAC Management Committee and everyone who works within ABAC. I thank everyone for their considerable efforts. A new Code will be released in 2023, alongside updated guidance and education resources.

The activities I have outlined are diligently carried out by a very small team. The success of these efforts is in large part due to the continuing dedication and professionalism of our Chief Executive Officer, Jayne Taylor. Her accumulated knowledge and expertise can not be underestimated. ABAC will continue to be effective through her hard work ably assisted by Marilyn Hansford.

Once again, I thank my Management Committee colleagues for their continued display of serious intent to make sure ABAC succeeds, and ABAC signatories for committing to meet the rigorous standards of the ABAC Code.



Mr Harry Jenkins AO
Chair, ABAC Management
Committee

OVERVIEW

The ABAC Scheme is the centrepiece of alcohol marketing regulation in Australia. It is a not for profit organisation established with the aim of the marketing of alcohol beverages occurring responsibly and consistently with standards of good practice via regulation, education and advice. The ABAC Scheme is:

- Administered by a Management Committee which, along with government, includes representatives from industry and advertising;
- The Australian Government is represented on the Management Committee and a Professor of Public Health, nominated by government, is part of all adjudication panels; and
- Funded by industry via membership levies, direct signatory fees and pre-vetting fees.

The ABAC Scheme is not the only set of rules affecting marketing in Australia. Alcohol beverage marketing must also be consistent and comply with other applicable laws and codes, for example:

- the Federal Competition and Consumer Act and State Fair Trading legislation
- State and Territory Liquor Licensing alcohol promotion requirements
- Australia New Zealand Food Standards Code
- the Australian Association of National Advertisers Code of Ethics
- the Commercial Television Industry Code of Practice
- the Commercial Radio Code of Practice
- the Outdoor Media Association Code of Ethics and Alcohol Advertising Policy.

RESPONSIBILITIES OF THE ABAC SCHEME



ADVICE

- The [ABAC Pre-vetting Service](#) assesses whether proposed alcohol marketing communications, including alcohol product names and packaging, meet the ABAC Code standards.



REGULATION

- The [ABAC Responsible Alcohol Marketing Code](#) (The ABAC Code) which sets standards for alcohol marketing in Australia.
- The [Complaints Adjudication system](#) whereby complaints relating to alcohol marketing are assessed and adjudicated by the independent ABAC Adjudication Panel.
- Mandatory pre-vetting of television, cinema, radio and outdoor marketing by ABAC signatories supported by Outdoor Media Association members and the ClearAds Division of Freetv Australia.



EDUCATION & GUIDANCE

- ABAC educates the regulated community on the Code standards via advice and regulation together with an annual free industry webinar and resources on the ABAC website, including a free online compliance training course and video series.
- The [ABAC Guidance Notes](#) provide guidance on all ABAC Code provisions.
- The [ABAC Alcohol Packaging Compliance Guide](#) provides guidance for alcohol manufacturers developing alcohol packaging to ensure it does not have strong or evident appeal to minors.
- The [ABAC Best Practice for Responsible Digital Alcohol Marketing](#) assists alcohol marketers and their agencies in the management of their digital marketing.

ABAC INTERACTIONS WITH ALCOHOL MARKETING COMMUNICATIONS

1

INTERNAL CHECK

Company and advertising agency staff check the marketing communication and its media placement schedule against the ABAC Code standards.

2

EXTERNAL PRE-VETTING CHECK

Independent pre-vetters check the marketing communication against the ABAC Code and either approve or reject.

3

COMPLAINT

Once a campaign is in the marketplace consumers can lodge a complaint about the marketing communication centrally through Ad Standards and at no cost.

4

REFERRAL TO CHIEF ADJUDICATOR

Ad Standards refers all alcohol marketing communication complaints to the Chief Adjudicator of the ABAC Adjudication Panel.

5

REFERRAL TO THE INDEPENDENT ABAC ADJUDICATION PANEL

Complaints raising issues within the ambit of ABAC are referred to the independent ABAC Adjudication Panel for a hearing on whether the marketing communication or its placement meets ABAC Code standards (with the exception of complaints previously considered, consistently dismissed, informally resolved in the case of social media posts more than 6 months old or resolved by an expedited breach determination).

6

COMPLIANCE

If the ABAC Adjudication Panel finds the ABAC Code standards have not been met the marketer is asked:

- in the case of a product name, packaging or marketing collateral - to cease further orders for production of the product name, product packaging or marketing collateral immediately and modify the product name, product packaging or marketing collateral to be consistent with the Panel's determination within 3 months.
- in the case of all other marketing communication content—withdraw, discontinue or modify the material within five (5) business days
- in the case of placement of a marketing communication—withdraw, discontinue or modify the placement within five (5) business days and take all reasonable precautions to ensure that the marketing communication will not again be placed in the location, time or manner that was found to breach the Placement Rules in the Code.

7

DETERMINATION PUBLISHED

Determinations are sent to the complainant, marketer, ABAC Management Committee and Ad Standards and published on the ABAC website.

MANAGEMENT OF THE ABAC SCHEME

The Management Committee sets the strategic direction, manages and reviews the operations and publications of the ABAC Scheme with a view to:

- Encourage industry members, large and small, to participate in the regulatory system;
- Ensure an effective regulatory system;
- Monitor ABAC operations and improve them where necessary;
- Manage the ABAC Pre-vetting Service as an effective mechanism to support and strengthen the aims of ABAC and encourage the use of this service; and
- Co-ordinate the development and completion of a publicly available annual report.

During 2022 the ABAC Management Committee comprised:

- Independent Chair, Mr Harry Jenkins AO
- Chief Executive of the Brewers Association of Australia, Mr John Preston;
- Chief Executive of Spirits & Cocktails Australia Inc, Mr Greg Holland;
- Chief Executive Officer of Australian Grape & Wine Inc, Mr Lee McLean;
- Chief Executive of Advertising Council Australia Limited, Mr Tony Hale;
- The Assistant Secretary with responsibility for alcohol policy at the Commonwealth Department of Health, Ms Belinda Roberts.

The Management Committee is supported in its role by the ABAC Chief Executive Officer, Ms Jayne Taylor.

Each member of the Management Committee represents a group of stakeholders in alcohol beverage marketing regulation. The Management Committee meets at least four times a year and any issues raised by any member or referred by the Panel or Pre-vetters receive full consideration. In practice, the Committee operates on a consensus basis.

ABAC MANAGEMENT COMMITTEE



Harry Jenkins AO



Tony Hale



John Preston



Greg Holland



Lee McLean

Belinda Roberts

The Assistant Secretary with responsibility for alcohol policy at the Commonwealth Department of Health

ABAC SCHEME COVERAGE

Membership and compliance with the Scheme is voluntary. However, the Brewers Association of Australia, Spirits & Cocktails Australia and Australian Grape & Wine have agreed that its members will be bound by the Scheme. This means the great majority of alcohol marketing in Australia is regulated by the Scheme.

The following companies have joined the ABAC Scheme as direct signatories:

- 2013 – Endeavour Drinks Group & Coles Liquor Group
- 2015 – Campari Australia & Lion
- 2017 – Coca Cola Europacific Partners Australia & Asahi Beverages
- 2019 – Independent Brands Australia
- 2020 – Amazon Australia
- 2021 – Australian Distiller's Association members

Around 831 companies involved in the production, distribution and retail of alcohol are signatories to the ABAC Scheme and these companies represent a considerably higher number of alcohol brands in Australia.

ABAC signatories comprise over 87% of alcohol producer media spend in Australia and over 62% of alcohol retailer media spend in Australia.

Many non-signatories currently use the Pre-vetting Service and the Scheme has the support of media associations. In 2022, 17 per cent of pre-vetting applications were from non-signatories.

The alcohol industry (both signatories and non-signatories) and advertising agencies have access to a free online compliance training course and video series and annual training webinar hosted by the ABAC Chief Adjudicator where all aspects and obligations of the Code, Pre-vetting

Service and complaints processes are explained. In addition, the ABAC pre-vetters, alcohol beverage industry associations and ABAC Chief Executive Officer are all available to explain the Code and the Scheme to alcohol beverage marketers and their agencies.

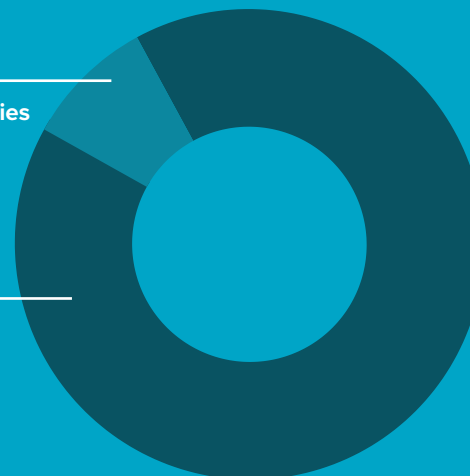
The ABAC Adjudication Panel makes decisions on all marketing communications on which a complaint raising ABAC issues is received and in almost every case, alcohol marketers in Australia co-operate with the ABAC system and comply with Panel determinations. In the rare instances that voluntary compliance is not attained, the complaint is referred to the relevant State or Territory liquor authority for consideration against its promotional guidelines.

ABAC SIGNATORIES MEDIA SPEND

PRODUCERS

13%
ABAC non-signatories

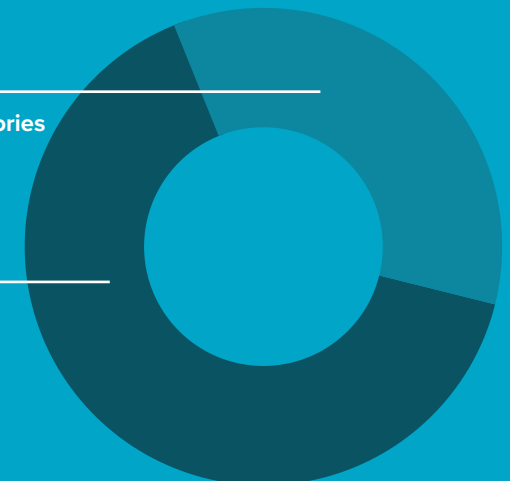
87%
ABAC signatories



RETAILERS

38%
ABAC non-signatories

62%
ABAC signatories





ABAC CODE

The ABAC Code sets key standards for the responsible content and placement of alcohol marketing in Australia.

Subject to regular reviews, the ABAC Code reflects community expectations and changes in the media and advertising industries. It applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol marketing communications in emerging digital and social media.

ABAC has developed a range of Guidance notes to assist advertisers and agencies in interpreting the ABAC Code.

4 KEY STANDARDS FOR ALCOHOL MARKETING IN AUSTRALIA

1 RESPONSIBLE AND MODERATE PORTRAYAL OF ALCOHOL BEVERAGES

- No depictions (not even by implication) or encouragement of excessive or rapid consumption of alcohol, misuse or abuse of alcohol, alcohol consumption inconsistent with [Australian Guidelines](#) or irresponsible or offensive behaviour that is related to the consumption of alcohol.
- No challenge or dare to consume alcohol.
- No encouragement to choose a particular alcohol beverage by emphasising its alcohol strength (unless strength is lower than typical for similar beverages) or the intoxicating effect of alcohol.

3 RESPONSIBLE DEPICTION OF THE EFFECTS OF ALCOHOL

- No suggestion consumption/presence of alcohol creates/contributes to significant change in mood/environment.
- No depiction (not even by implication) that the consumption or presence of alcohol is a cause or contributes to the achievement of personal, business, social, sporting sexual or other success.
- No implication or suggestion that alcohol shown as part of a celebration was a cause of or contributed to the success or achievement.
- No suggestion that alcohol offers any therapeutic benefit or is a necessary aid to relaxation.

4 ALCOHOL AND SAFETY

- No depiction (not even by implication) of alcohol being consumed before or during an activity that, for safety reasons, requires a high degree of alertness or physical co-ordination (i.e. control of a motor vehicle, boat or machinery or swimming).

2 RESPONSIBILITY TOWARD MINORS

- No strong or evident appeal to minors, i.e. the marketing must not be likely to appeal strongly to minors, specifically target minors, have a particular attractiveness for a minor beyond its general attractiveness for an adult, use imagery, designs, motifs, animations or cartoon characters likely to appeal strongly to minors or that create confusion with confectionery or soft drinks or use brand identification on clothing, toys or other merchandise for use primarily by minors.
- People who are or look under 18 may only be shown where they are in an incidental role in a natural situation (ie. family socialising responsibly) and there is no implication they will consume or serve alcohol.
- People who are 18-24 years old and look over 18 may only be shown where the image of the person is not visually prominent within the marketing or is of a real person in a real scenario (not a paid model or actor) only if it is placed in either:
 - › Licensed premises that do not permit entry by minors; or
 - › A digital platform that is:
 - » non-alcohol specific (set up for a purpose other than promotion of alcohol);
 - » requires users to register with birth date and then login to use the platform; and
 - » is able to hide the existence of alcohol pages from users registered as under 18 years of age by selecting appropriate settings (ie. Facebook).
- Not directed at under 18s by:
 - › breach of media specific codes ie within 150m of a school or outside times allocated for alcohol ads on free to air television;
 - › use of available age restriction controls;
 - › only placing where audience is at least 75% adults;
 - › not placing with programs or content primarily aimed at under 18s;
 - › not sending to under 18s by electronic mail (unless due to under 18 providing incorrect date of birth).

RECENT INITIATIVES

ABAC EDUCATION & AWARENESS

ABAC Education & Awareness is key to ensuring industry compliance. In 2022 ABAC:

- developed checklists for ABAC compliance of the content and placement of alcohol marketing;
- promoted its comprehensive series of compliance training videos and free ABAC online training course, which was undertaken by around 220 company and agency staff in 2022;
- delivered tailored in-house training sessions on ABAC compliance for companies and agencies; and
- communicated with the regulated community in relation to ABAC developments and issues both directly and via circulars, upheld determination alerts and quarterly reports released publicly and made available on the ABAC website.

COMPLIANCE MONITORING

In 2022 ABAC commissioned pro-active compliance monitoring for the first time, checking activation of age restriction controls across social media platforms.

The process highlighted where education initiatives need to be focused, and also the practical barriers to compliance, particularly for small alcohol companies.

These findings prompted a range of actions, including:

- practical assistance to enable companies to achieve compliance;
- the development of a set of checklists that provide links to step by step instructions on how to activate age restriction controls on social media platforms, which are useful for self-audit of systems and accounts;
- feedback to social media platforms on simplification of age restriction; and
- a commitment to undertake further monitoring.

2022 SNAPSHOT

2021 2022

PRE-VETTING REQUESTS

3336 3397

Pre-vetting requests rejected

501 590

ALCOHOL COMPLAINTS

288 126

Percentage of all advertising complaints

6% 4.7%

Campaigns complained about

299¹ 118

Complaints resulting in a determination

201 69

DETERMINATIONS

153 63

Determinations upheld

80 28

No Fault Breach

2 3

Upheld marketing pre-vetted

1 0

Compliance with determinations

99%² 100%³

Average business days - determinations⁴

19.6 17.7

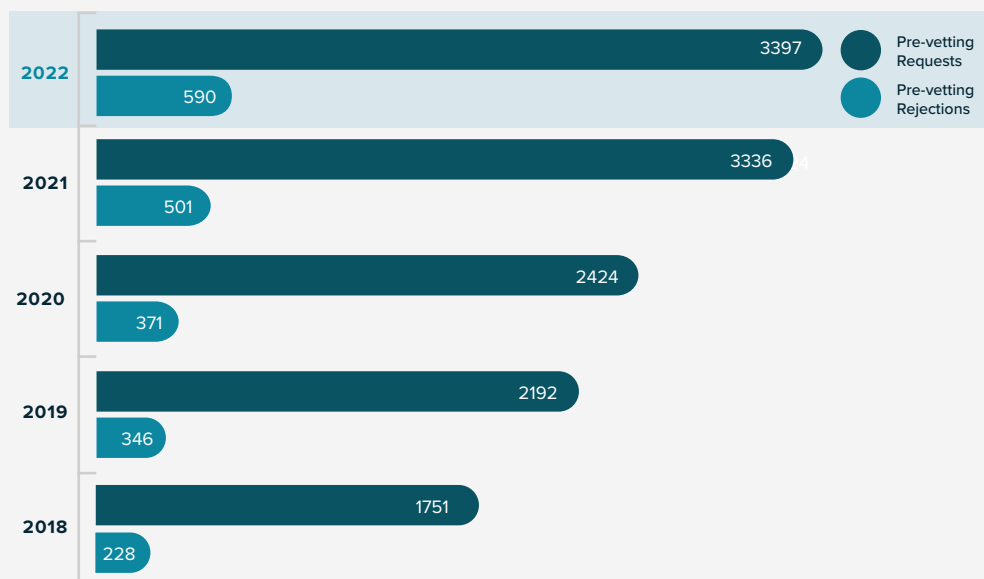
¹ Various complaints referenced multiple campaigns. ² Referred to relevant Liquor Licensing Authority.
³ An example of non-compliance resolved after referral of the complaint to the relevant Liquor Licensing Authority. ⁴ Excludes upheld packaging determinations as they involve a review option.

ABAC PRE-VETTING SERVICE (PRE-VETTING SERVICE)

The Pre-vetting Service provides confidential advice to marketers on whether proposed alcohol marketing communications comply with the Code. This service is offered on a 'user pays' basis.

- Pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting.
- The Pre-vetting Service has the support of:
 - › Media associations that encourage their members to check that an alcohol marketing communication has pre-vetting approval prior to placement of the communication; and
 - › Retailer signatories that encourage suppliers to obtain pre-vetting approval for packaging and point of sale marketing.
- Pre-vetters are independent of the alcohol beverage industry.

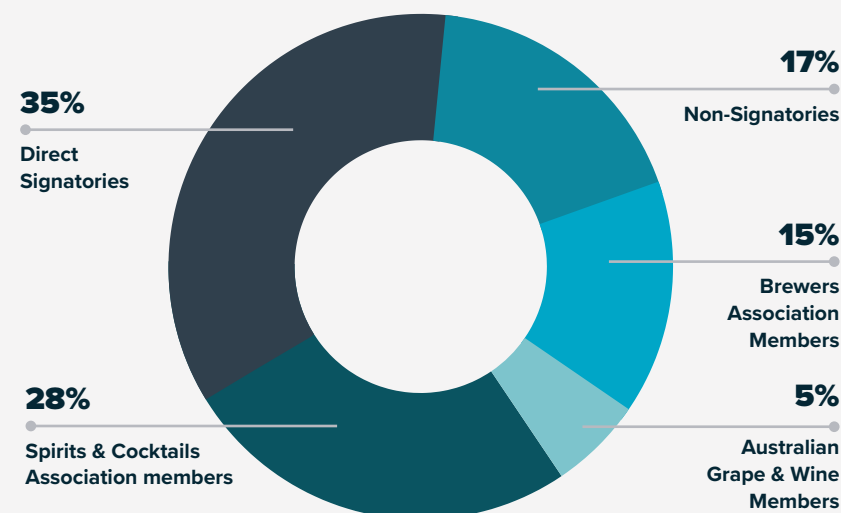
PRE-VETTING REQUESTS & REJECTIONS OVER THE PAST 5 YEARS



The volume of Pre-vetting Requests has almost doubled in the past 5 years.

The Pre-vetting Service is available to both signatories and non-signatories and again there was a good uptake of the service by non-signatories at 17% of all requests. The use of Pre-vetting is encouraged by media associations and also our signatory retailers which has the effect of raising awareness of Pre-vetting among non-signatories.

PRE-VETTING APPLICATIONS BY SECTOR



Pre-vetting is mandatory for signatory advertisements placed in outdoor, television, cinema and radio media but optional for all other media. The alcohol industry continues to find value in pre-vetting by using the service when it is an option rather than mandatory to do so. In 2022, 53% of all pre-vetting requests were optional to pre-vet.

ABAC ADJUDICATION PANEL (THE ABAC PANEL)

The ABAC Panel headed by Chief Adjudicator Professor Michael Lavarch, AO, considers public complaints about alcohol marketing.

- Ad Standards accepts complaints in relation to all types of marketing communications at no cost to the consumer. This streamlined process ensures all relevant Codes are triggered and reduces the risk of duplication and double handling. All alcohol related complaints received by Ad Standards are provided to the ABAC Chief Adjudicator and the Panel considers all complaints that raise ABAC Code issues apart from those already considered, consistently dismissed, informally resolved in the case of social media posts more than 6 months old or resolved by an expedited breach determination.
- Ad Standards considers complaints under the AANA Code of Ethics. The Code covers a wide range of social issues reflecting the issues that concern the community - from discrimination and language through to health and safety. The advertising self-regulation system works to ensure there is a consistent standard for advertising and marketing content across every media channel.
- The ABAC Panel reports its decisions to Ad Standards, the ABAC Management Committee, the marketer and the complainant. Decisions are published on the ABAC website.
- The Panel and its deliberations are conducted independently of the ABAC Management Committee and the broader alcohol and advertising industry.
- The Panel comprises:
 - › The Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise (or if unavailable, the deputy Chief Adjudicator, Debra Richards),
 - › A health sector panelist, Professor Richard Mattick or Professor Louisa Jorm (both were appointed from a shortlist of health sector professionals provided by the relevant Federal Minister responsible for alcohol issues or his or her nominee); and
 - › A panelist with market research, media or advertising expertise, Jeanne Strachan or Debra Richards.
- Each quarter the Chief Adjudicator reports to the ABAC Management Committee on the operation of the Panel and the Chief Adjudicator submits an annual report on the Panel's operations to the ABAC Management Committee for inclusion in its annual report.



COMPLAINTS

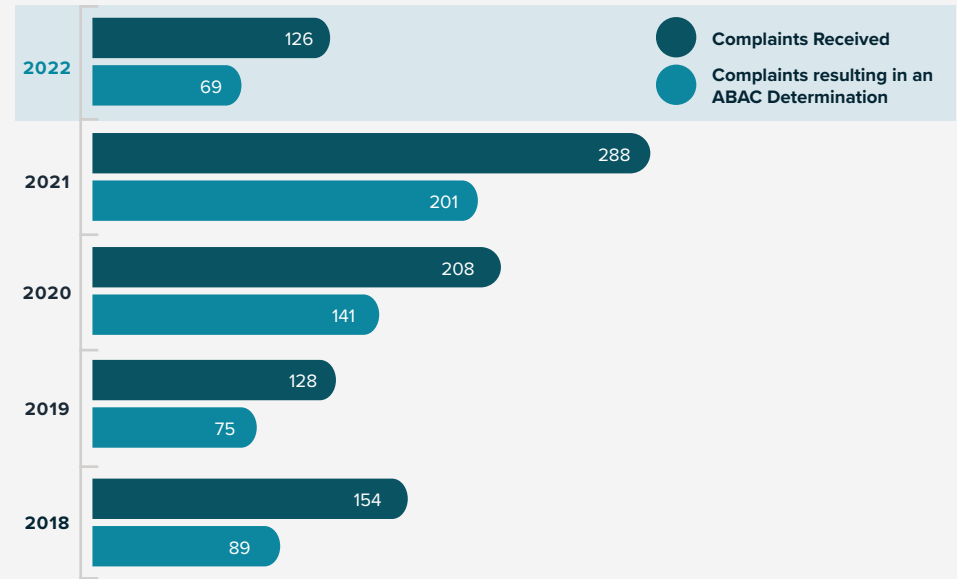
2022 saw a reduction in complaints to pre-pandemic levels.

OF THE 126 COMPLAINTS RECEIVED:

118 Separate advertising campaigns attracted a complaint

69 Complaints resulted in an ABAC Determination

COMPLAINTS RECEIVED AND RESULTING IN AN ABAC DETERMINATION



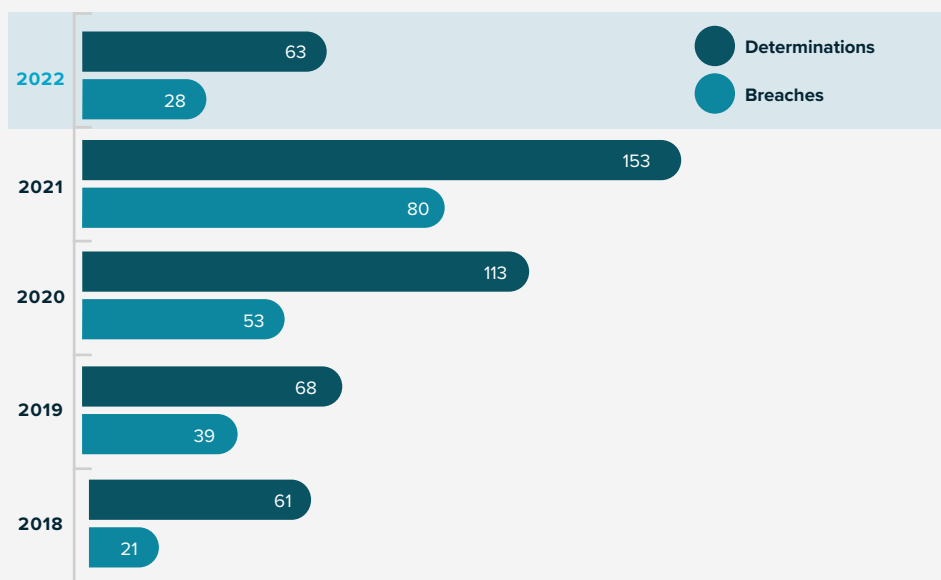
In 2022, 55% of complaints resulted in a determination, 4% of complaints were previously considered by the Panel, 5% of complaints raised issues that have been consistently dismissed by the Panel, 34% were outside the scope of the ABAC Code and 3% could not proceed due to insufficient information being provided.

COMPLAINTS WERE NOT REFERRED TO THE ABAC PANEL FOR THE FOLLOWING REASONS:	
Complaint previously considered:	
2022 Determinations	3
2021 Determinations	2
Consistently dismissed issues:	
Placement with programmes the Panel has previously considered consistent with the Code	6
Outside scope of ABAC:	
Misleading advertising (referred to Fair Trading)	8
Obscene language	7
Failure to disclose as paid advertising	5
Placement outside scope	4
Dislike the ad	3
Objection to alcohol advertising being permitted	3
Racial or sexual discrimination	3
Sexual Imagery	3
Frequency of alcohol advertising on YouTube	2
Unsolicited direct marketing	2
Religious offence	1
Other	2
Insufficient information provided	3

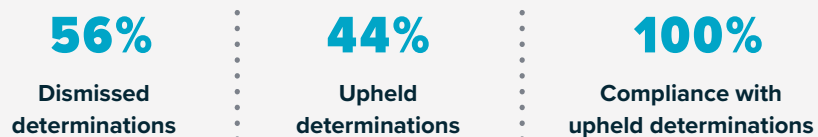
DETERMINATIONS

The annual upward trend of determinations reversed in 2022, with activity returning to pre-pandemic levels. ABAC has increased its education initiatives in response to increased determinations since 2018.

DETERMINATIONS & BREACHES IN 2022



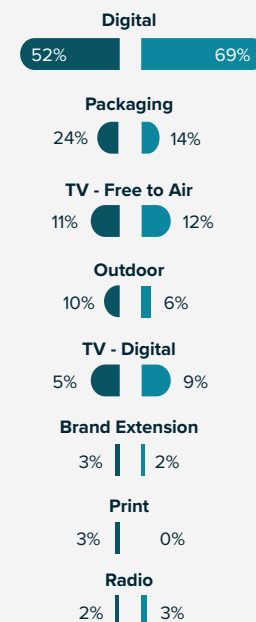
PERCENTAGES OF DISMISSED AND UPHELD DETERMINATIONS IN 2022



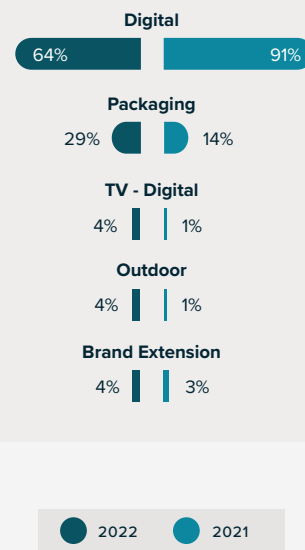
MEDIA ATTRACTING A DETERMINATION

Alcohol marketing via digital media (particularly social media), continued to be the most common medium considered in determinations and the most common medium to result in a breach of ABAC standards by a considerable margin. However that margin has reduced when compared with last year, after a continuing upward trend. Packaging is the next highest medium to result in a determination or breach.

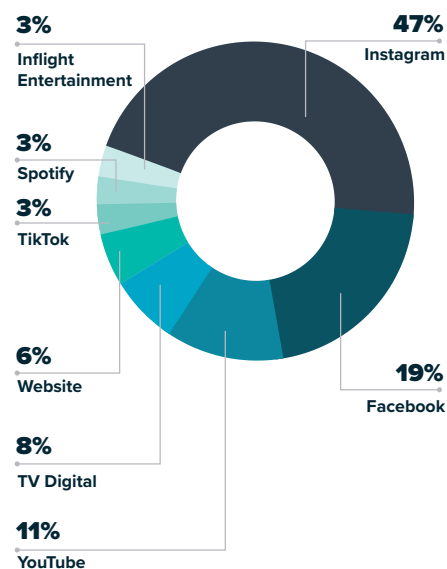
NOTE: Charts represent the percentage of determinations/ breach determinations that include consideration of a particular media type. As a number of determinations relate to more than one media type the percentages total >100%.



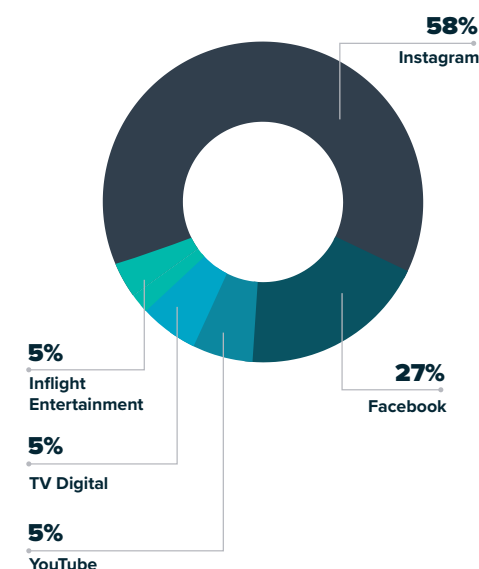
MEDIA ATTRACTING A BREACH



DIGITAL PLATFORMS ATTRACTING A DETERMINATION

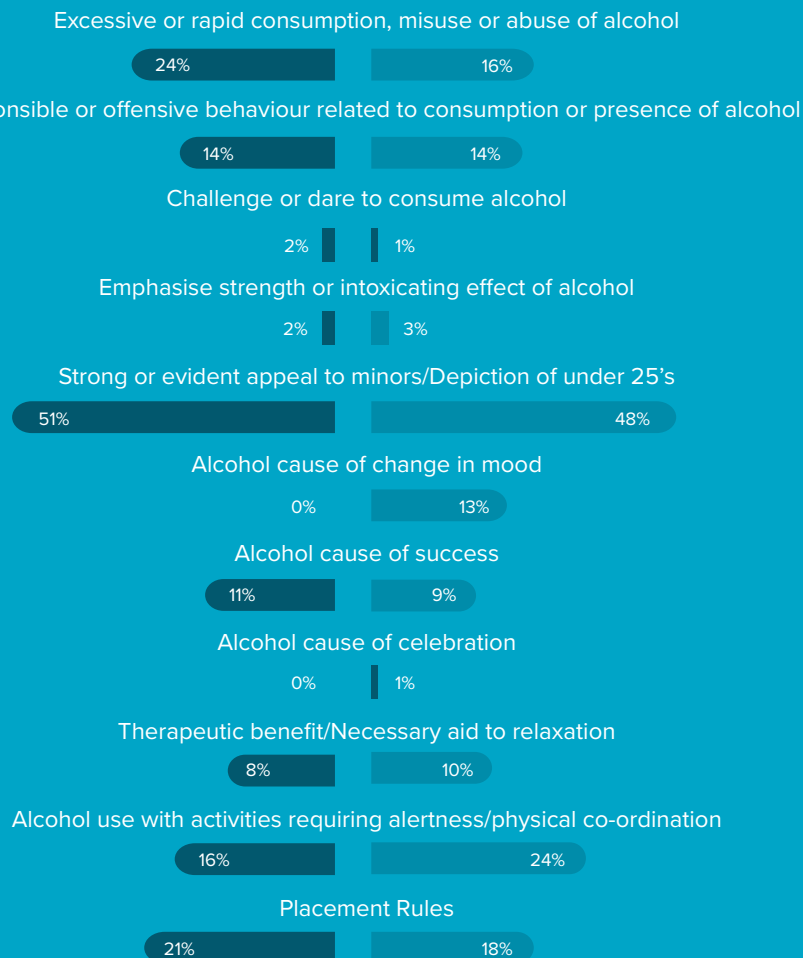


DIGITAL PLATFORMS ATTRACTING A BREACH



ABAC CODE PROVISIONS ATTRACTING DETERMINATIONS

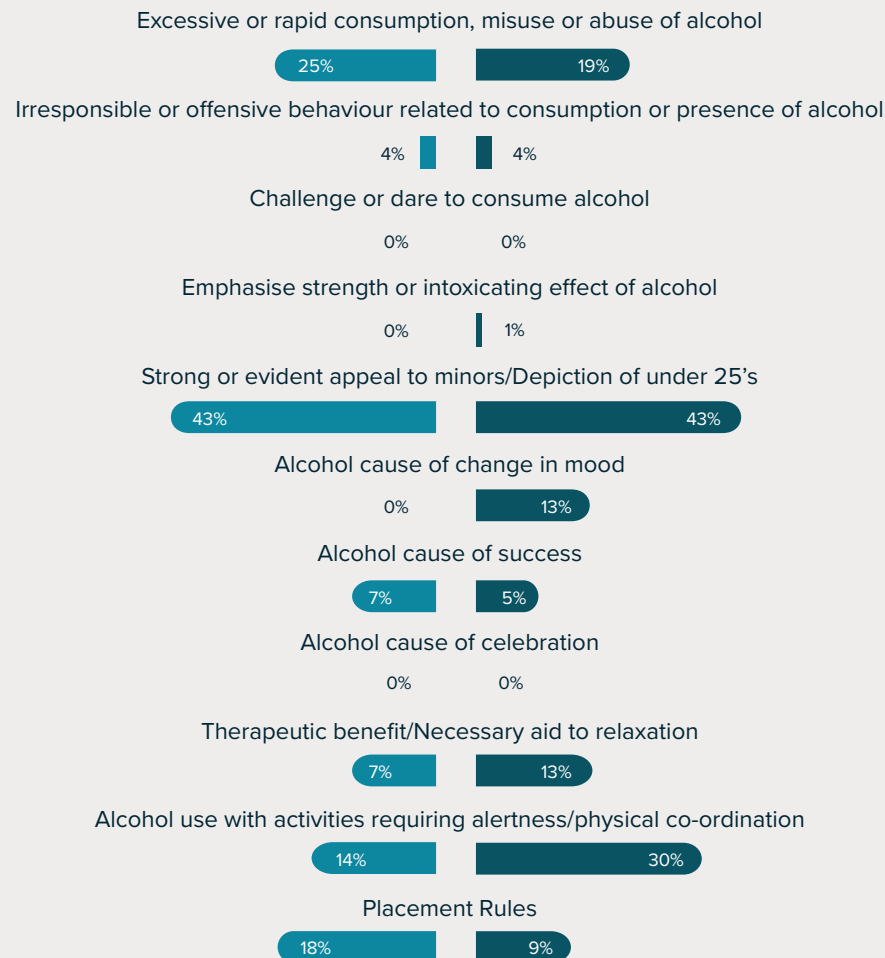
2022 2021



The majority of complaints continue to raise concerns about alcohol marketing having a strong or evident appeal to minors, featuring young people, or being directed toward minors by its placement. Last year saw a spike in complaints concerned with safety and suggesting alcohol as a cause of a significant change in a mood or environment. These concerns have now reverted to lower levels, with excessive or rapid consumption of alcohol being more commonly

ABAC CODE PROVISIONS ATTRACTING BREACH DETERMINATIONS

2022 2021



raised in complaints. NOTE: Charts represent the percentage of determinations/breach determinations that include consideration of a particular ABAC Code provision. As a number of determinations relate to more than one Code provision the percentages total >100%.

2022 REPORT

In total, the ABAC Adjudication Panel made 63 determinations in 2022, returning to complaint and decision levels akin to the pre-pandemic period. While it is too early to assume complaint numbers have permanently declined, it is evident that a range of concerns about alcohol marketing inappropriately messaging alcohol use as a coping strategy for the pandemic has receded. This has seen complaints raising the potential appeal of alcohol marketing to minors return as the single most mentioned of the ABAC standards.

The ABAC Scheme provides two core requirements for marketers in relation to minors. Firstly, the content of an alcohol marketing communication must not have strong or evident appeal to minors. This includes not featuring minors in alcohol marketing or indeed young adults under the age of 25. Secondly, the placement of alcohol marketing must endeavour to limit the exposure of the marketing material to minors.

The implementation of the standards regarding the protection of minors has several dimensions. For instance:

- much of the educational material produced by the Scheme goes to how marketers can best comply with their obligations regarding minors;
- the pre-vetting of marketing communications always reviews the materials against the ABAC standards regarding minors;
- direct government regulation of the responsible service of alcohol has the maintenance of the legal drinking age as a core focus, including the rules around the online ordering and home delivery of alcohol;
- equally, government and industry public community service obligation campaigns often target behaviours by parents and adults to model good alcohol practice to minors;

- and when considering complaints, the ABAC Adjudication Panel's decisions endeavour to set out clearly community expectations on marketers.

At a macro level, government health data indicates that the overall trends regarding the use of alcohol by minors in Australia have improved in recent decades. For instance, on average young Australians are having their first drink later in life and incidences of alcohol use by underage persons have noticeably declined. That said, the obligation of the regulatory system must remain on this key aspect of good marketing practice.

In relation to the complaint and adjudication process, overwhelmingly a complaint about marketing having a strong appeal to minors or the marketing being placed inappropriately will be made by an adult- often, but by no means only, by a parent. It follows that the complaints will tend to be about marketing seen in the clear public domain such as broadcast medium (TV or radio) or public locations like an outdoor billboard. Complaints about marketing delivered over social media will reflect the posts being seen by an adult and not necessarily minors. This begs the question of marketing over digital media which is not so easily supervised by adults.

The ABAC Placement rules require that marketers use available options to exclude minors from receiving alcohol marketing over social media and other digital channels. In 2022 the ABAC Scheme conducted proactive monitoring of the use of age restriction controls by alcohol companies on platforms such as Instagram and Facebook. This is a welcomed initiative as proactive regulatory tools of this type complement reactive regulation that is based upon the receipt of complaints.

Global IT platforms are under international scrutiny for how they operate and moderate content carried over the platforms. The platforms have varied standards when it comes to alcohol marketing but all accept that alcohol marketing should not be directed to minors. The future should see the platforms themselves apply age restriction

controls and employ analytic tools to exclude alcohol marketing and organic material from reaching minors. This is not to excuse the primary obligation of alcohol companies to keep their marketing away from minors, but it does reflect the reality of how the medium operates and the best and most effective way to achieve the public policy goal of protecting minors.

2022 also saw the Scheme undertake a comprehensive review of the Code standards. The fruits of this work will be released in 2023 and a revised Code implemented in the second half of the year. This will require the Adjudication Panel to apply some new provisions and revised standards. I know the Panelists and the other Code decision-makers will welcome the opportunity to adopt the improved provisions to support better outcomes in alcohol marketing regulation.

As always, I thank my fellow Panelists for their work during the year. The adjudication component of ABAC met its benchmarks regarding timelines for decision making and it was pleasing to note there was a 100% compliance rate from the industry in relation to Panel decisions. Many thanks also to the Scheme's Complaint's Officer, Marilyn Hansford, for her sterling assistance and the Scheme's Chief Executive Officer, Jayne Taylor, for her steady hand, clear thinking and ceaseless good humour.

Professor The Hon Michael Lavarch AO
Chief Adjudicator, ABAC Adjudication Panel





MOST COMPLAINED ABOUT ALCOHOL MARKETING IN 2022

Throughout 2022 six complaints were received about marketing for a product named, 'Wet Pussy Shot' following four complaints received about this product in 2021.

Complaints were made about an outdoor ad, digital banner ad, retailer website and packaging in relation to this product, however, most complaints were centred on the product name itself. The concerns ranged from the product's pornographic and sexual references to concerns about misogyny and objectification of women. Insofar as these complaints raised concerns about the sexual references they intersected with ABAC and the standard that

prevents direct implications that alcohol contributes to sexual success. However, concerns about misogyny, objectification of women and sexual references relate to the AANA Code of Ethics standards that are administered by Ad Standards. The AANA Code of Ethics applies to marketing but not product packaging. The Ad Standards Community Panel considered a complaint about a Facebook advertisement for this product in 2021 finding that the advertisement discriminates against or vilifies a person or section of the community on account of gender and is degrading of women in breach of the AANA Code of Ethics. The advertiser disagreed with the decision but removed the advertisement.

Two of the complaints made in 2022 raised issues under ABAC standards but did not trigger an ABAC Panel decision in 2022 as the product name and packaging was considered by the Panel in 2021. In a determination made in December 2021, The Panel found that a reasonable person would probably understand the product name and packaging as suggesting that the product might contribute to the achievement of sexual success. The Panel also found that the packaging is likely to have strong or evident appeal to minors due to the following elements when considered as a whole:

- sexual connotation of the brand name likely to appeal to minors in their mid-teens wishing to feel older;
- bright pink text and clear packaging that displays the cherry coloured liquid are together likely to be eye catching for minors;
- the most influential design elements on the front of the packaging are the 'Wet Pussy' name and cat image; and
- the alc/vol descriptor is in comparatively small print and there is a lack of clear alcohol description on the front of the bottle.

The Company did not respond to the final determination and the complaint was referred to the Victorian Liquor Authority.

BREACHES OF ABAC STANDARDS

During 2022, 28 ABAC determinations were made upholding public complaints about alcohol marketing communications, including:

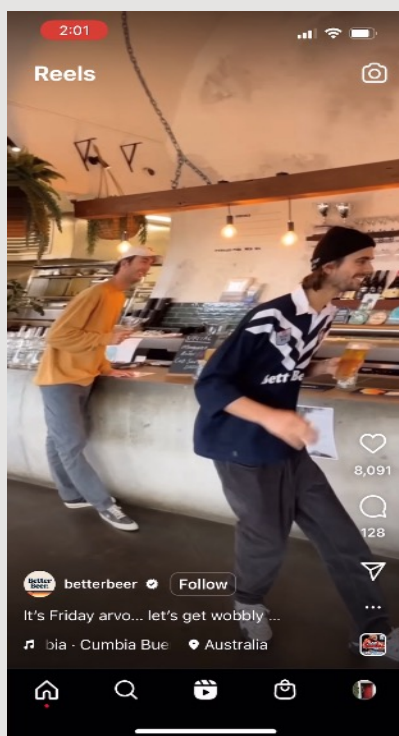
- Two expedited breach determinations, where the alcohol marketer accepted there had been a breach of ABAC standards and promptly removed the marketing material.
- Three determinations associated with the placement of marketing were found to be 'no fault breaches', where the breach was considered to be reasonably unforeseeable or outside the reasonable control of the alcohol marketer or their agency.
- All upheld determinations in 2022 resulted in removal, discontinuance or modification of marketing.



RESPONSIBLE & MODERATE PORTRAYAL OF ALCOHOL BEVERAGES – ABAC CODE PART 3(A)

Excessive or rapid consumption, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines – ABAC Code Part 3 (a)(i)

BETTER BEER



The visual effect of the filter gives rise to an implication of a person being intoxicated through either being unsteady or having their vision impaired and combined with the caption, “It’s Friday arvo...let’s get wobbly...”, would be probably understood as either encouraging excessive consumption or treating the effects of excessive consumption as amusing.

The Company modified the caption of the Instagram post.

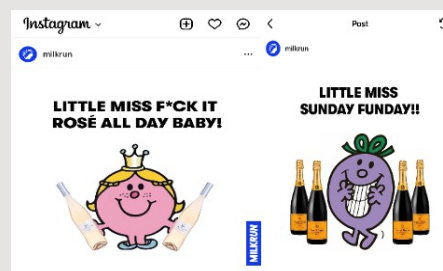
TAMBURLAINE ORGANIC WINES



A post headed ‘Moderation who?’ and the words ‘Who is this “moderation” everyone tells me to drink with?’ superimposed on an image of wine being poured into a glass was found by the Panel to encourage the excessive consumption of alcohol by making fun of drinking in moderation.

The Company removed the post and advised that internal training has been conducted to minimise the risk of this type of breach recurring.

MILKRUN ALCOHOL DELIVERY



The Instagram post reasonably implies excessive consumption through the picture of a character holding two bottles of wine with the caption ‘Rosé All Day Baby’.

The Company removed the post promptly.

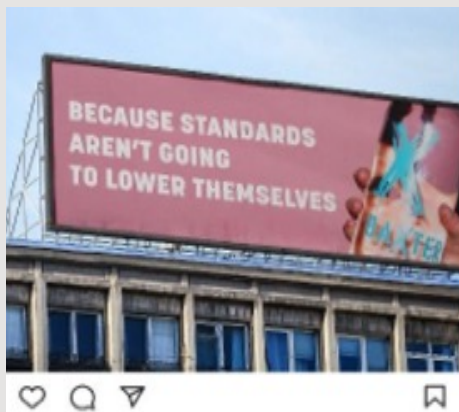
NOTE:

- This determination also found a breach of Part 3(b)(i) – Refer page 22.

RESPONSIBLE & MODERATE PORTRAYAL OF ALCOHOL BEVERAGES – ABAC CODE PART 3(A)

Excessive or rapid consumption, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines – ABAC Code Part 3 (a)(i)

BAXTER VODKA



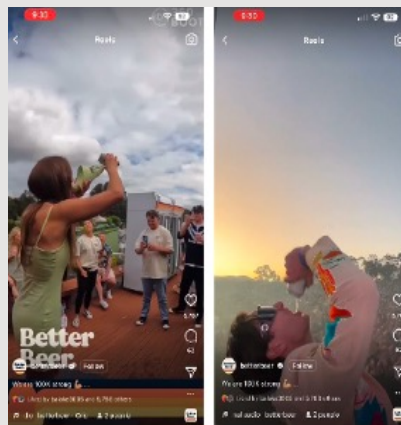
The Panel found that the post shows or encourages the misuse of alcohol in breach of Part (a)(i) as it is in effect suggesting that a reason to use the product is to lower inhibitions and as a result enhance social interactions and likely achieve social/sexual success and this message is directly reinforced by the accompanying text- 'Australia's #1 matchmaker since 2017 😊'.

The Instagram post was removed.

NOTE:

- This determination also found a breach of Part 3(c)(ii) – Refer page 25.

BETTER BEER



The Panel found that scenes depicting a woman drinking from her footwear and a man pouring the product from height directly into his mouth, depict rapid and uncontrolled consumption and are a breach of the Part 3 (a)(i) standard.

The post was removed.

NOTE:

- This determination also found a breach of Part 3(d) – Refer page 27.

NOTE:

- 2 additional expedited determinations related to rapid alcohol consumption (refer page 28).

Irresponsible or offensive behaviour related to the consumption or presence of alcohol – ABAC Code Part 3 (a)(ii)

MSC BOXTAILS



The Panel held the view that the words and emojis in Post 2, breaches Part 3(a)(ii) by suggesting the consumption of alcohol in places that may be illegal or inappropriate.

This post was modified.

NOTE:

- This determination also found a breach of Part 3(d) – Refer page 27.

STRONG OR EVIDENT APPEAL TO MINORS/ DEPICTIONS OF UNDER 25S – ABAC CODE PART 3(B)(I)-(III)

Packaging

JUICE BAR TRIPLE FRUITED GOSE



The overall impact of the packaging creates relatable imagery for minors through the product name, pattern of fruit and fruit juice containers with a straw and confusion with a non-alcoholic beverage through the failure of the front of the packaging to unambiguously establish the product as alcohol.

The Company advised the packaging had sold out and would no longer be used.

HENRIETTA ALE



The unicorn image and the children's drawing/colouring in style gives the label a strong appeal to minors due to the use of imagery familiar to minors (given unicorns are used on many products directed toward minors) and the depiction of an activity (colouring in) that is relatable to minors. In addition, the front of the labelling fails to unambiguously establish the product as an alcohol beverage, although the overall packaging, particularly the bottle type, means it is unlikely to be confused with a soft drink. The Panel found that taken as a whole, a reasonable person would probably understand the label has a strong and evident appeal to minors.

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

THE GOOD LIFE WEST COAST DIPA



The product label fails to unambiguously establish the product as an alcohol beverage, relying on the descriptor 'DIPA' that is not widely recognised beyond dedicated craft beer consumers, and a number of design elements create a relatable imagery for minors, such as the use of cartoon style imagery of a teddy bear head and the solar system, and bright and playful colours are used which are likely to be eye-catching for minors.

The Company advised the packaging was no longer being sold and would not be produced again.

MSC BOXTAILS



Individual serve, 250ml Tetra Pak type packaging, with a straw attached to the side is associated with non-alcoholic beverages commonly consumed by children, as is the presentation in a shrink wrapped six pack, and the images of fruit add to potential appeal to children. The Panel found that the packaging would have a strong or evident appeal to minors.

The Company ceased production of the packaging.

STRONG OR EVIDENT APPEAL TO MINORS/ DEPICTIONS OF UNDER 25S – ABAC CODE PART 3(B)(I)-(III)

Packaging

FLASHBACK VODKA



The Panel found that for each item of packaging, the combination of the bright and contrasting colour scheme, product names associated with desserts or confectionary that are relatable to minors and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

The Company agreed to modify the packaging.

TAWNY GROGMOUTH PALE ALE



The Panel held the view that the overall impression of the packaging amounts to more than incidental appeal to minors and the appeal can be reasonably considered strong or evident due to a combination of the pastel colour scheme, images of animals, insects, flowers (including with a smiling face), love hearts, a koala holding a surfboard and a cartoon person surfing that would be relatable to minors, anthropomorphism of some of the animal depictions and alcohol cues that are not clearly visible due to being lost in the busy design.

The Company advised that the packaging had been discontinued.

BILLSON'S VODKA



The Panel found that four items of packaging would have strong or evident appeal to minors:

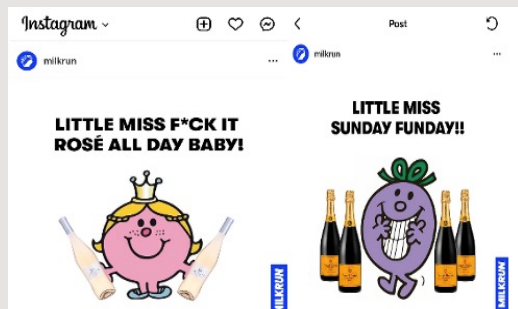
- the name 'Fruit Tangle' is easily confused with 'Fruit Tingle' and the bright colours used on alternating letters of the name, and in wavy blocks are eye-catching and appealing to minors and similar to the confectionery commonly consumed by children;
- the combination of the product name, Fairy Floss, familiar to minors, the fairy floss imagery and eye-catching design creates an illusion for a minor of a smooth transition from a familiar product to an alcohol product;
- 'Toffee Apple' and 'Creamy Soda' include clear alcohol cues and mature designs, but the names are drawn from soft drink and confectionery that are likely consumed more by minors than adults and have a degree of familiarity for minors, with images of toffee apples on that packaging and similarity to a non-alcoholic 'Creamy Soda' variant.

The Company advised that the packaging would be modified.

STRONG OR EVIDENT APPEAL TO MINORS/ DEPICTIONS OF UNDER 25S – ABAC CODE PART 3(B)(I)-(III)

Other marketing

MILKRUN ALCOHOL DELIVERY



The Instagram post has strong appeal to minors by referencing and using images from the 'Little Miss' children's books which remain popular with minors.

The Company removed the post promptly.

NOTE:

- This determination also found a breach of Part 3(a)(i) – Refer page 18.

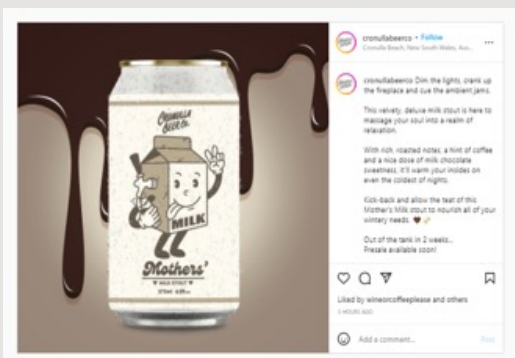
VB T-SHIRT



The Panel held the view that a reasonable person would assess the t-shirt's overall impact as having strong or evident appeal to minors due to anthropomorphised cans of VB, with arms, legs and faces and the depiction of sitting on Santa's knee which is an experience that children would find relatable.

The marketing was removed from sale and destroyed.

MOTHER'S MILK STOUT



The Panel believed that, taken as a whole, a reasonable person would probably understand the Instagram post as having strong or evident appeal to minors due to the milk carton figure, the use of the dripping chocolate with the can image and the words 'milk' and 'mothers' which raises an illusion of smooth transition from a non-alcoholic to alcoholic beverage.

The Company removed the Instagram post.

STRONG OR EVIDENT APPEAL TO MINORS/ DEPICTIONS OF UNDER 25S – ABAC CODE PART 3(B)(I)-(III)

Images of under 18 year olds/under 25 year olds

BASIC BABE



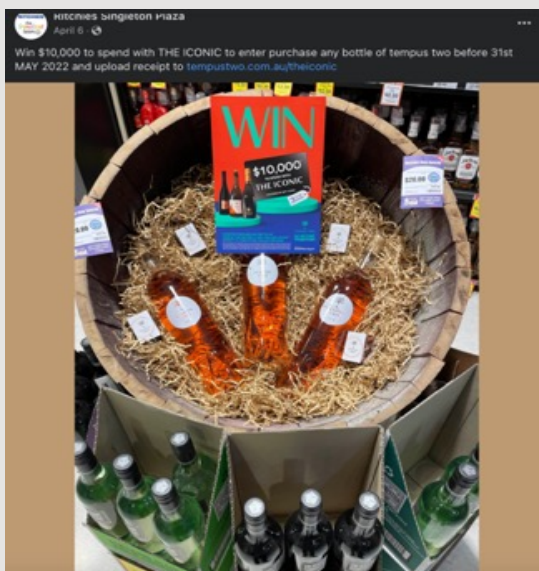
The actual age of the women featured in the Instagram post was not provided, and therefore, the Panel had the difficult task of assessing their apparent age. The Panel believed the women are almost certainly under the age of 25 and quite possibly not 18 and the post was found in breach of the Part 3 (b) standard.

The company removed the post prior to responding to the complaint.

PLACEMENT RULES – ABAC CODE PART 3(B)(IV)

Placement Rule (ii)

RITCHIES IGA+ LIQUOR



Human error resulted in an alcohol promotion being added to the Company's non-age restricted supermarket account rather than its age restricted liquor account.

The Facebook post was removed from the supermarket account on notification of the complaint.

Placement Rules (ii), (iii) & (iv)

ARCHIE ROSE SINGLE MALT WHISKY



The Panel found that placement on the Qantas inflight entertainment children's channel before each episode of the program, Bluey, was a breach of placement rules 2, 3 and 4 as available age restriction controls had not been applied, the 'reasonably expected' audience of the program would exceed 25% minors and Bluey is a program primarily aimed at minors.

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

NOTE:

- Three additional no fault breaches of Placement Rules (refer page 29).

ALCOHOL CAUSING OR CONTRIBUTING TO THE ACHIEVEMENT OF SUCCESS – PART 3(C)(II)

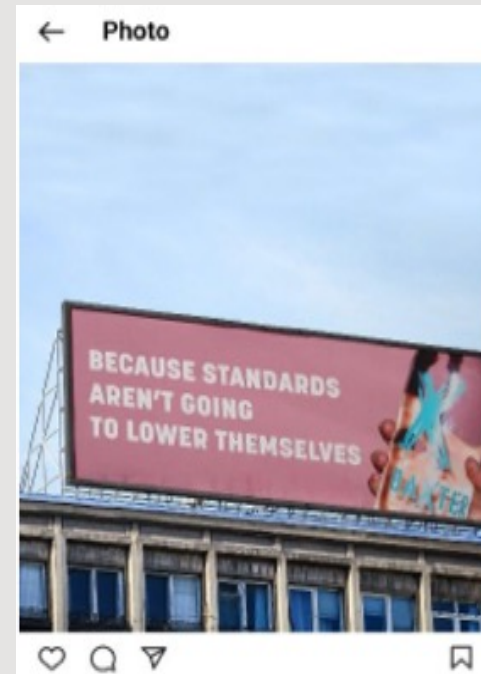
FUNK SEX MACHINE CIDER



Colloquially, the term 'sex machine' is used to refer to someone with considerable sexual prowess and the packaging does not contextualise the name 'sex machine' in a manner that a reasonable person would find readily apparent. The 'stay sexy' phrase on the side panel adds to the inference that the product contributes to sexual success. The Panel believed the name is implying that the product is a contributor to the achievement of sexual success.

The Company advised it would modify the packaging.

BAXTER VODKA



The Panel found that a reasonable person is sufficiently worldly to understand that the post is in effect suggesting that a reason to use the product is to lower inhibitions and as a result enhance social interactions and likely achieve social/sexual success; and this message is directly reinforced by the accompanying text- 'Australia's #1 matchmaker since 2017 😊'.

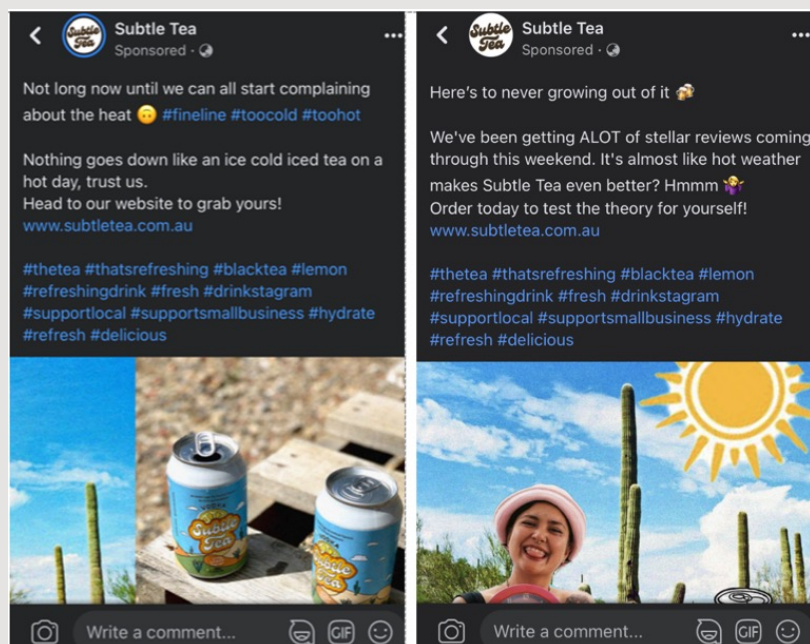
The Instagram post was removed.

NOTE:

- This determination also found a breach of Part 3(a)(i) – Refer page 19.

SUGGESTING CONSUMPTION OR PRESENCE OF ALCOHOL OFFERS A THERAPEUTIC BENEFIT OR IS A NECESSARY AID TO RELAXATION – ABAC CODE PART 3(C)(IV)

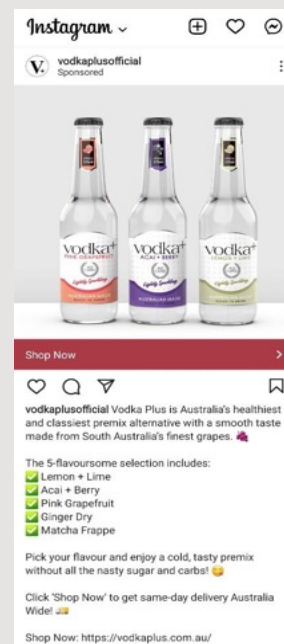
SUBTLE TEA



The Facebook posts sought to establish the product as a good choice on a hot day, which is not of itself a message inconsistent with the Code requirement. However, given that a reasonable person would probably believe the posts were referring to a non-alcoholic iced tea and the use of the hydrate hashtag implies the drink will provide the benefit of hydration, on balance the Panel found the posts suggest consumption of the product offers a therapeutic benefit.

The Facebook posts were removed on notification of the complaint.

VODKA PLUS



The Panel found that the phrase 'Australia's healthiest...premix' goes beyond a point of factual comparison to make a health claim.

The post was removed on notification of the complaint.

ALCOHOL AND SAFETY – ABAC CODE PART 3(D)

Alcohol consumption before or during swimming

40/20 BEER



The post (tag) was removed from the Company's Instagram account.

BETTER BEER (COMPLAINT REGARDING CONTENT)



The Panel believed that a reasonable person would consider that riding on a sack trolley or wheeler being towed by a motorbike is inherently unsafe, with the consumption of alcohol whilst doing so heightening the risk of injury by impacting concentration and reaction times.

The post was removed.

NOTE:

- This determination also found a breach of Part 3(a)(i) – Refer page 19.

MSC BOXTAILS 250ML



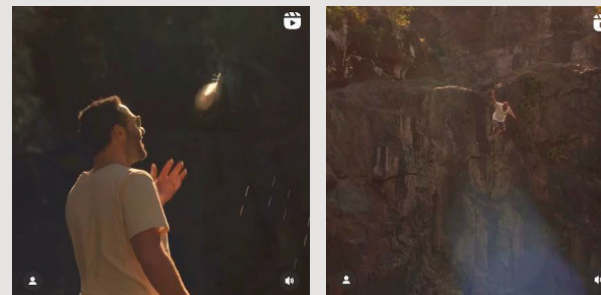
The Instagram post directly implies consumption of alcohol before swimming as a man wearing board shorts and no shirt is shown consuming an alcohol beverage next to the ocean at a time of day that swimming is likely to occur.

The post was removed.

NOTE:

- This determination also found a breach of Part 3(a)(ii) – Refer page 19.

TRAVLA BEER



The Panel held the view that a cliff diving scene is in breach of Part 3(d) of the Code. With an esky of beer shown, and the taking of a beer before the cliff dive, it is a reasonable implication that both men are drinking and that consumption occurred prior to the inherently dangerous activity.

The Company removed the Instagram Video.

EXPEDITED DETERMINATIONS

The Chief Adjudicator has the option of electing to uphold a complaint by expedited resolution where:

- a marketing communication appears to be in breach of a Code Standard, given the issues raised in the complaint;
- the complaint and marketing communication do not raise issues of broader significance to the understanding of Code provisions or the operation of the ABAC Scheme;
- the marketing communication that is the subject of the complaint is not a product name or packaging; and
- the marketer accepts that the ABAC issues raised by the nature of the complaint have not been complied with.

SOUTH ST SELTZER

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

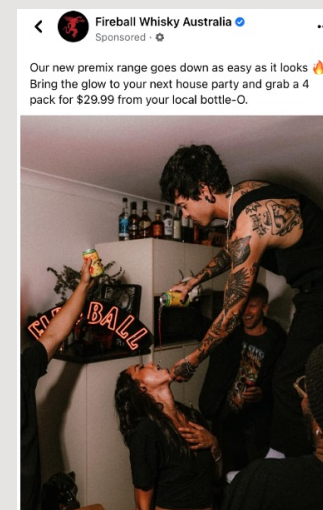
The Company removed the post on notification of the complaint.



FIREBALL WHISKEY

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

The Company accepted the breach and removed the post.



NO FAULT BREACH

A breach of the ABAC Code that is reasonably unforeseeable by or outside the reasonable control of the Marketer or their agency will be classified as a 'no fault breach'.

UDL

A billboard was placed just within 150m of a secondary school which is inconsistent with the Outdoor Media Association Placement Policy and therefore the ABAC Placement Rules. As the Company instructed its advertising to be placed consistent with this obligation and the breach was due to an error in the Outdoor Media Association database recording the location of the school vis-à-vis the distance to the bus shelter shed a no-fault finding was made. The billboard was promptly removed.

THE KRAKEN BLACK SPICED RUM

An alcohol advertisement was shown between episodes of the children's television show "Blaze" between 5 and 6pm on the 10Play app. The Panel held the program was primarily aimed at Minors and the audience would be reasonably expected to comprise less than 75% Adults in breach of ABAC's Placement Rules. A no fault finding was made as the network accepted that it had made an error that resulted in the ad being served with the program. Upon receiving the complaint, the network applied the appropriate exclusion block to prevent the ad from being shown with children's programs.

SUNGAZER FRUITY BEER

An alcohol advertisement was shown before a YouTube video for the Royal Academy of Dance children's ballet practice. The Panel found there had been a breach of the placement rules, as it is likely that the 'reasonably expected' audience of the program would exceed 25% minors and is primarily aimed at minors. A no fault finding was made as the Company applied available age restriction controls, gave instructions as to where its ads should be placed, and if the video had been categorised as children's content, the breach would not have occurred.

ABAC STATISTICS 2004 – 2022

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Marketing Pre-vetted	754	761	936	1267	1110	1369	1050	1059	1229	1394	1571	1589	1416	1453	1751	2192	2424	3336	3397
Rejected	84	86	182	293	232	238	77	82	192	211	212	204	186	198	228	346	371	501	590
Alcohol Complaints	212	105	53	87	162	117	87	119	98	182	94	133	139	130	154	128	208	288	126
Percentage of all complaints ¹	8.1%	3.6%	1.3%	3.3%	4.5%	3.1%	2.5%	3.5%	2.7%	6.6%	1.6%	3%	2.5%	2%	2.3%	2.4%	6%	6%	4.7%
Campaigns complained about	23	29	26	38	44	42	38	74	63	78	42	71	78	67	100	108	170	299 ²	118
Complaints resulting in a determination	8	29	13	25	49	47	41	63	53	69	35	35	47	73	89	75	141	201	69
ABAC Determinations	5	12	10	22	36	39	31	45	36	36	27	29	34	43	61	68	113	153	63
Determinations Upheld	3	2	2	8	7	10	11	15	7	4	8	7	10	7	21	39	53	80	28
Expedited Upheld Determinations	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3	8	2
No Fault Breach Determinations	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1	4	2	3	2	3
Compliance with determination	100%	100%	100%	100%	100%	100%	100%	98%	100%	100%	100%	100%	100%	100%	98%	99% ³	100% ⁴	99% ⁵	100% ³
Upheld Marketing Pre-vetted	2	1	2	2	2	0	2	2	0	2	1	3	2	0	0	1	2	1	0
Average business days – Panel determinations ⁶	35.1	33	78.6	29.3	19.8	22.5	26.5	25	20	26.3	19.7	21.6	19.7	14.6	22	16.7	14	19.6	177

¹ Alcohol related complaints referred by Ad Standards to ABAC as a percentage of all complaints received by Ad Standards about all product/service categories. ² Various complaints referenced multiple campaigns.

³ An example of non-compliance resolved after referral of the complaint to the relevant Liquor Licensing Authority. ⁴ Two examples of non-compliance resolved after referral of the complaints to relevant Liquor Licensing Authorities. ⁵ Referred to relevant Liquor Licensing Authority. ⁶ Excludes upheld packaging determinations as they involve a review option.

