

## Australia's Responsible Alcohol Marketing Scheme

16 November 2023

### **Hard Solo Packaging - ABAC Panel Decision Released**

The ABAC Adjudication Panel (Panel) has determined that the packaging (can design) of the Ready to Drink alcohol beverage (RTD) 'Hard Solo' has breached the ABAC Responsible Alcohol Marketing Code (Code). The Panel's decision followed the receipt of multiple public complaints raising concerns that the brand name and can design of the product strongly appeals to minors.

“The Panel decided that the packaging breached the standard contained in Part 3(b)(i) of the Code by having strong or evident appeal to minors. This followed careful consideration of the public complaints and the detailed submissions from Carlton & United Breweries (CUB), the producers of Hard Solo. The process involved CUB seeking a re-hearing of the Panel’s earlier provisional determination.” ABAC Panel Chair, Professor Michael Lavarch said

“This decision was the first occasion the Panel has been called upon to assess the packaging of an RTD product with a brand name and core branding elements taken from a well-established and iconic soft drink brand.

“CUB were careful to devise a packaging design that identified Hard Solo as an alcoholic beverage and not a soft drink. However, the Panel believed a reasonable person would probably understand that as a household soft drink brand found in an estimated 1.7 million homes, stocked in supermarkets and convenience stores and marketed freely without the restrictions placed on alcohol products, Solo was an entirely familiar and relatable brand to minors. Using the Solo name and other branding features on Hard Solo would elevate the appeal of Hard Solo and create an illusion for minors of a smooth transition from the non-alcoholic to alcoholic variant of Solo.’

“Hard Solo was a novel case in that previous RTD packaging designs considered by ABAC had been built upon emphasising an alcohol type or a well-known alcohol brand being combined with a soft drink such as cola or ginger ale. Hard Solo packaging in contrast is led by the brand recognition of Solo soft drink. Because of the novel issue, the number of complaints spread over a month and the two-stage process for final decisions on brand names and packaging, the Panel determination was lengthy, and the process has taken several months to finalise. Most ABAC decisions are made within 30 days.”

CUB have accepted the decision and have advised that in accordance with the ABAC Rules they have immediately ceased further orders for production of this packaging. Transition provisions apply to pre-existing stocks.

The ABAC Independent Chair, the Hon Tony Smith added “I am satisfied that the Panel has adopted a rigorous and considered process in making this landmark decision. The independence and integrity of the Panel and its combined expertise in law, public health and media is crucial in ensuring that its decisions are consistent with the ABAC Code standards, that are developed to reflect community expectations.”

More information about the Code and the full determination are available at: <http://www.abac.org.au/>

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## Background:

- The ABAC Scheme is a core component of the regulatory regime applying to alcohol marketing in Australia. It is a not for profit industry initiative with the aim of alcohol marketing occurring consistently with standards of good practice. ABAC regulates alcohol marketing and provides education and advice to alcohol marketers to promote responsibility and high standards. The ABAC Scheme is:
  - Governed by a Management Committee comprised of industry, government and advertising representatives;
  - Funded by industry via membership levies, direct signatory fees and pre-vetting fees.
- Alcohol promotion and marketing is a shared regulatory space between direct government regimes and industry initiatives such as ABAC. The ABAC standards apply over and above:
  - 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; and
  - the Outdoor Media Association Code of Ethics and Alcohol Advertising Policy.
- ABAC does not regulate physical alcohol beverages nor decide whether alcoholised soft drinks should be permitted in the Australian market, those are matters for Government regulators;
- ABAC encourages responsibility in alcohol packaging/marketing before it reaches the market in a variety of ways, including development of strong Code standards, industry training on those standards, proactive compliance monitoring and pre-vetting advice – in 2022 17% of pre-vetting requests were for material that was rejected and never reached the market;
- The ABAC system also includes the safety net of the independent complaints system - public complaints that raise ABAC issues will receive an independent hearing by an expert Panel, regardless of whether pre-vetting advice was obtained, the Panel is the final arbiter;
- The ABAC Adjudication Panel comprises 5 members including two public health experts and two members with experience in media or marketing. The chair of the Panel is former Commonwealth Attorney-General, Professor Michael Lavarch.
- Statistically there is a very high correlation between advice given in pre-vetting and Panel determinations, however on occasions the Panel reaches a different conclusion – this can arise in a novel case such as this or where the marketing material calls for an ‘on-balance’ decision where reasonable minds could disagree on whether the communication does or does not meet community expectations as embodied in the Code standards.
- Pro-active measures combined with reactive expert complaints adjudication ensures a rigorous system that works within the principles of procedural fairness.