



## ABAC Adjudication Panel Determination No 207/23

**Product:** Tooheys New  
**Company:** Lion - Beer Spirits & Wine Pty Ltd  
**Media:** YouTube  
**Date of decision:** 23 January 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 22 December 2023 in relation to a YouTube video for Tooheys New (“the product”) by Lion - Beer Spirits & Wine Pty Ltd (“the Company”).
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
    - State liquor licensing laws – which regulate the retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol-specific code of good marketing practice;
  - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meet the standards contained in the ABAC.
  4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
  5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
  6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 22 December 2023.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of

materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.






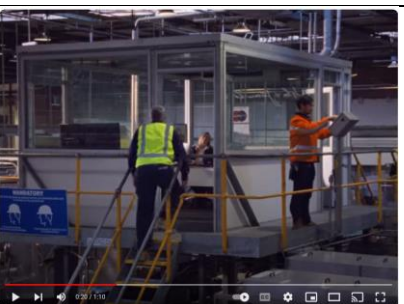
## Pre-vetting Clearance






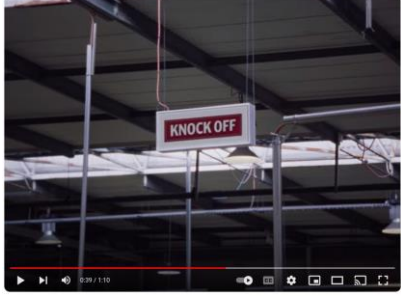



9. The quasi-regulatory system for alcohol beverage marketing features an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing.







## The Marketing

10. The complaint relates to a YouTube video:

[TOOHEYS & PASS~PORT | FOR THE WORKERS \(youtube.com\)](https://www.youtube.com/watch?v=...)

<p>The “I feel like a Tooheys” song is playing throughout the video.</p> <p>It commences with footage of the operating Tooheys New brewery.</p>		
<p>The main protagonist (Person 1 – in yellow hi-vis) is seen observing other workers.</p>		
<p>He then sees a colleague in orange hi-vis skateboarding between some tanks and shakes his head before alighting the stairs to the production office.</p>		

<p>He is shown some graphs and does not look pleased.</p>		
<p>He turns his head, and we again see footage of the skateboarding worker, who Person 1 continues to watch from various viewpoints.</p>		
		
<p>Knock off time arrives, and we see employees leaving the brewery.</p>		
<p>Person 1 skateboards between them, before sliding his board along a yellow concrete curb.</p>		

<p>His colleagues look impressed, cheer, and crowd around to congratulate him.</p>		
<p>He is given a new jacket and looks pleased.</p>		
<p>We then see the work colleagues in a bar setting, drinking beer, with Person 1 the centre of attention as he seemingly recounts his skateboarding exploits.</p>		

## Complaint

11. The complainant objects to the marketing as follows:

- *Campaign and ad is all about skateboarding which is very appealing to minors.*
- *The ad also makes out that those skateboarding are having fun and he is missing out.*
- *The ad then insinuates that someone who skateboards should be rewarded with a beer which is a disgraceful thing to show when especially given how many kids skateboard when the man finally decides to use the skateboard.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a marketing communication must NOT:
- (b)(i) have strong or evident appeal to minors, in particular;
    - (A) specifically target minors;
    - (B) have a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
    - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors;
    - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors;  
or
    - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by minors.

## The Company Response

13. The Company responded to the complaint by letter emailed on 5 January 2024. The principal comments made by the Company were:
- We refer to your letter dated 22 December 2023 (Letter) in relation to a complaint received by ABAC about a Tooheys x Pass~Port video posted on Youtube, which can be found at this link:  
<https://www.youtube.com/watch?v=wLRbf91zVRA>
  - Thank you for raising this complaint and providing the opportunity for us to respond to the concerns of the complainant.
  - Lion – Beer, Spirits & Wine Pty Ltd (Lion) reiterates its commitment to the ABAC Scheme and that it takes its obligations to responsibly promote its products seriously. For the reasons set out below, and with respect to the complainant, we submit that there has been no breach of Part 3(b)(i) of the ABAC Code by Lion and the Complaint should be dismissed by the ABAC Panel.

### **Alcohol Advertising Pre-Vetting Service**

- The Advertisement was not submitted for review through the Alcohol Advertising Pre-Vetting Service (AAPS). As the Advertisement is social media content, we note that it is not mandatory to obtain AAPS approval as a signatory.

### **Reasonable Control of Advertisement by Lion**

- The Advertisement was created by Passport, a premium skate wear brand, as part of its collaboration with the Tooheys brand. All content created by Pass~Port as part of the collaboration is subject to Lion's approval, and therefore within its reasonable control.

### **Responsibility toward Minors**

- For the following reasons, we do not consider that the Advertisement breaches Part 3(b)(i) of the ABAC Code:
  - the Advertisement was created in support of a collaboration between the premium skate wear brand Pass~Port and Tooheys:
    - this collaboration involved the creation of custom jackets for workers at the Tooheys brewery in Lidcombe and promotional purposes, which are featured in the Advertisement; and
    - a premium skate wear brand, products sold by Pass~Port are directed at an adult audience – this is reflected by their design (i.e. colours and motifs) and price point, and the demographics of their social media following (which is predominantly over 18 years old);
  - the Advertisement itself is a tongue-in-cheek 'insight' into what happens behind the scenes at the Tooheys brewery and the dynamic between co-workers:
    - the worker who isn't initially participating in the skating is 'rewarded' with one of the custom jackets, and not a beer as the complainant suggests. Further, there is a clear delineation between the skateboarding content and social event / beer consumption at the end of the video;
    - as a production facility, the location of the Advertisement is not an environment that is accessible to minors;
    - workplace-related humour is clearly directed at an adult audience;

- aside from the hi-vis elements of the Pass~Port x Tooheys jackets, the Advertisement does not use bright, playful or contrasting colours or otherwise make use of imagery, designs, motifs, language or involve activities would have particular attractiveness to a minors; and
- all talent used in the Advertisement is over the age of 25 years old;
- skateboarding is a sport and recreational activity enjoyed by people of all ages; and
- for all of these reasons, we respectfully submit that the Advertisement does not specifically target minors or have particular attractiveness beyond the general attractiveness that it has for an adult.
- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance.

### **The Panel's View**

14. This determination relates to YouTube marketing for Tooheys New. The video is set within an operating brewery where a worker is being surreptitiously observed skateboarding by their supervisor. At the end of the shift, the supervisor is also shown skateboarding and his team congratulates him and he is presented with a jacket. After this, the workers are seen in a pub drinking the product as the Tooheys theme song plays.
15. The complainant is concerned that the marketing "*is all about skateboarding which is very appealing to minors*". This concern raises Part 3 (b)(i) of the Code which requires that an alcohol marketing communication must not have strong or evident appeal to minors.
16. 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.
17. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:



- the use of bright, playful, and contrasting colours;
- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors;
- language and methods of expression used more by minors than adults;
- 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 current appeal to minors);
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
- use of a music genre and artists featuring in youth culture.

18. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.

19. The Company contends the ad is consistent with the ABAC standard, arguing that:

- as a production facility, the location of the ad is not an environment that is accessible to minors;
- workplace-related humour is clearly directed at an adult audience;
- aside from the hi-vis elements of the Pass-Port x Tooheys jackets, the advertisement does not use bright, playful or contrasting colours or otherwise make use of imagery, designs, motifs, language or involve activities would have particular attractiveness to a minors;
- all talent used in the ad is over the age of 25 years old;
- skateboarding is a sport and recreational activity enjoyed by people of all ages; and

- the ad does not specifically target minors or have particular attractiveness beyond the general attractiveness that it has for an adult.
20. The Panel has made a number of decisions considering whether the depiction of skateboarding in alcohol marketing contributes to it having strong or evident appeal to minors. Clearly each case has been decided on its own merits, but some general guidance can be drawn from these past decisions, namely:
- while skateboarding is an activity enjoyed by a range of age groups, the largest cohort appears to be under 18 year olds e.g. a survey for the City of Melbourne showed 60% of skaters are minors and statistics on reported injuries from skateboarding indicate the majority of skaters are minors (Determinations 154/23, 76/10, 51/18 and 185/20);
  - the depiction of skateboarding, combined with other elements, may contribute to the marketing overall having strong or evident appeal to minors. Additional elements contributing to a breach of the Code may include:
    - a cartoon character image that has some resemblance to characters that might be found in stories or animations directed towards minors (Determination 154/23);
    - the use of a young male skateboarding as the central character in the post, who is likely to strongly resonate with males under the age of 18 (Determination 51/18); and
    - the apparent youth of the models and the dress of the characters which is suggestive of a youth/young adult culture (Determination 76/10).
21. The Panel has also considered marketing referencing skateboarding where the conclusion was that the appeal to minors standard was not breached. In these determinations the age of the people involved was clearly over 25 years and the setting and theme of the marketing was adult focussed. As mentioned, each item of marketing has to be assessed on its own merits.
22. Marketers need to be aware of the appeal of skateboarding to minors. The inclusion of the activity in a marketing communication raises a potential strong appeal to minors and the marketing as a whole will need to carefully provide context and balance to ensure that the marketing item is consistent with the Code standard.
23. In this case, the Panel does not believe that the marketing video breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- while skateboarding can be relatable to minors, this does not mean it is impermissible to show or reference the activity with each marketing communication needing to be assessed as a whole;
- the ad is positioned in a factory with adult workers and aside from skateboarding, there are no other elements in the video likely to strongly resonate with minors;
- the hero of the story (the supervisor) is a middle aged male and is unlikely to have strong or evident appeal to minors;
- the other people shown skateboarding or holding skateboards are clearly depicted as being of working age and therefore minors are less likely to relate to them; and
- the overall tone of the marketing is adult and not considered highly relatable to children or adolescents.

24. The complaint is dismissed.