



ABAC Adjudication Panel Determination No 25 & 26/24

Product: Alcohol Delivery
Company: DoorDash/Coles Group/Proximo Spirits
Media: Instagram
Date of decision: 13 March 2024
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 two complaints received on 5 February 2024 in relation to an Instagram post promoting alcohol delivery services (“the product”), by DoorDash (“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 complaints raise concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 5 February 2024.
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 Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the content of the marketing.

The Marketing

10. The complaint relates to a video Instagram post made to the @oliviawhite and @doordash_au pages.

The post is accompanied by the following comment, and a description of the video is provided below:



oliviawhite Cheers to the DoubleDash @doordash_au keeping me sane this summer while playing canteen lady all day every day 😊

Who feels me?

1w

The video commences with a woman taking a seat on an outdoor chair and holding a book up.

The woman (W) says:

"[Sigh]. I think this is the first time I've sat down all week. Finally, I can get started on my book".

A child wearing a swimming rashie appears and the woman expresses surprise.



The following exchange occurs:

Child (C): "Hi mum

W: Ah, yeah?

C: I want an icy pole

W: But I just started my book

C: Pleeeeease

W: I don't want to go down the street

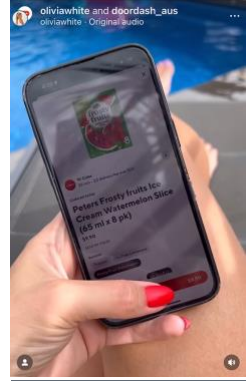
C: Pretty please

W: I just sat down

C: You can just DoorDash it"



We see the woman ordering watermelon Frosty Fruits and a four pack of RTD Jose Cuervo Sparkling Margaritas in watermelon flavour on her phone.



Next, we see someone pick a Coles branded paper bag up off the ground.



<p>We then see the woman, again sitting down, holding a box of Frosty Fruits as she says:</p> <p><i>"Watermelon icy poles for you".</i></p> <p>She then picks up a four pack of Jose Cuervo Sparkling Margaritas and says:</p> <p><i>"Watermelon Margies for mum."</i></p>		
<p>The woman opens a can, takes a drink and says:</p> <p><i>"Cheers to DoorDash".</i></p>		

Complaint

11. The complainants are concerned about:
- *Alcohol advertising featuring a child.*
 - *It's unsafe.*
 - *Ad partnership not disclosed in any way.*

The ABAC Code

12. Part 3 of the Code provides that a marketing communication must not:

<p>(b)(i)</p>	<p>have Strong or Evident Appeal to Minors, in particular;</p> <p>(A) specifically target Minors;</p> <p>(B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;</p>
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	<p>(C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;</p> <p>(D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or</p> <p>(E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.</p>
(b)(ii)	depict a person who is or appears to be a Minor unless they are shown in an incidental role and there is no implication they will consume or serve Alcohol.
(d)	An Alcohol Marketing Communication must NOT show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

13. Part 8 of the Code provides that:

Alcohol Marketing Communication means a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

The Company's Responses

1. **DoorDash's** legal advisors responded to the complaint on its behalf by letter emailed on 23 February 2024. The principal comments made were:

Initial observations and applicability of the Code to DoorDash

- At the outset DoorDash wishes to stress to ABAC that it takes compliance with its legal and regulatory obligations very seriously. DoorDash is committed to ensuring compliance in respect of all of its activities in Australia and across the multiple jurisdictions in which it operates including all relevant National, State and Territory laws applying to the sale and marketing of alcohol.
- In relation to the Complaint, in our view there is a threshold question as to whether the Code applies to DoorDash.

- As you are aware, the ABAC Scheme is an 'opt-in' scheme. The corollary of this is that a person who is not a signatory to the ABAC Scheme has not agreed to adopt the Code or to be within ABAC's authority to determine any alleged or suspected breach of the Code.
- In this regard, we note DoorDash is not:
 - the holder of an Australian liquor licence;
 - a member of the Brewers Association of Australia, Spirits & Cocktails Australia or Australian Grape & Wine (each of which is a signatory to the ABAC Scheme); or
 - otherwise a Direct Code Signatory to the ABAC Scheme.
- Accordingly, we respectfully submit that the ABAC Scheme, and therefore the Code, does not apply to DoorDash.
- It follows that, respectfully, in our view, ABAC is not empowered either under the Code or its relevant Rules and Procedures to determine if the Advertisement may have breached the Code (which in any event, and as discussed below, is denied by DoorDash).
- Given the above, DoorDash is of the view that the ABAC Adjudication Panel (the Panel) should not proceed to make any determination in respect of the Complaint.
- In the event that the Panel proceeds to an adjudication notwithstanding this objection, the balance of this letter details DoorDash's response to the questions raised by ABAC and the substantive elements of the Complaint.

DoorDash's response to the Letter

- Notwithstanding the matters raised above and reiterating that DoorDash takes all matters of its compliance obligations extremely seriously, should the Panel take the view it is empowered to proceed to consider the Complaint and make a determination, DoorDash's response to each of the questions raised in your Letter is set out below.
- In respect of the questions raised in the Letter, DoorDash responds as follows:
- DoorDash is not and should not be regarded as an alcohol beverage retailer for the purpose of the ABAC Scheme. DoorDash is a third-party delivery fulfillment platform. In addition to various other consumer products, customers of alcoholic beverage retailers over the age of majority may

order alcoholic beverages from retailers which are then delivered by DoorDash to the customer.

- Alcohol products for sale by alcoholic beverage retailers are available for purchase via DoorDash's delivery fulfillment platform. DoorDash considers that the marketing of the availability of alcohol products from its platform is done in a responsible manner consistent with the standards of good practice, as per the Code, and in accordance with applicable laws and regulations.
- The terms of DoorDash's agreements with merchants (including alcoholic beverage retailers) are commercially sensitive and confidential to DoorDash and the respective merchant. Accordingly, DoorDash is not at liberty to divulge the details of the terms of any such agreement save that it is DoorDash's usual practice for its agreements with any merchant (including alcoholic beverage retailers) to include obligations and warranties from merchants in respect of compliance with applicable law and regulatory obligations.
- DoorDash and Ms White are parties to a Talent Agreement under which Ms White promotes the delivery services provided by DoorDash via her Instagram page @oliviawhite. As with its merchant agreements, it is DoorDash's usual practice for its agreements with talent agreements to include obligations and warranties in respect of advertising disclosure requirements and compliance with applicable laws and regulations.
- Ms White created the Advertisement under the terms of the Talent Agreement with DoorDash. Creative control in respect of the Advertisement was largely left to Ms White. DoorDash did not provide a script or direct Ms White to create the Advertisement in a certain way. DoorDash requires posts to be submitted for approval prior to any such posts being published. The Advertisement was submitted to and approved by DoorDash's marketing team. DoorDash may request that a post be deleted, which in this case was done immediately upon receipt of the Letter on 6 February 2024 and, DoorDash understands, the Advertisement was subsequently deleted.
- DoorDash expects social media influencers with which it engages to comply with all laws, regulations and applicable codes of conduct in respect of advertisements produced by those influencers, including with respect to the advertisement of alcohol products.

Responsibility toward minors

- DoorDash does not consider the Advertisement breaches Part 3(b)(ii) of the Code for the following reasons:

- the minor depicted in the Advertisement appears in an incidental role to the key character (Ms White) who is clearly the purchaser and recipient of the goods purchased and then delivered by DoorDash;
- the Advertisement does not imply or suggest in any way the alcohol being purchased is intended for the minor or that the minor will consume, or be at risk of consuming, the alcohol;
- the language used in the Advertisement makes clear that the minor will consume an icy pole. This is evident when the minor states "I want an icy pole" and Ms White, on receiving the delivery from DoorDash, stating "watermelon icy poles for you, watermelon margi's for mum"; and
- no frame in the video depicts the minor and alcohol together.

Alcohol and safety

- DoorDash does not consider the Advertisement breaches Part 3(d) of the Code, and in particular does not accept a reasonable inference can be drawn to conclude that the Advertisement implies that Ms White will drink alcohol before swimming, for the following reasons:
 - it is clear from the Advertisement that Ms White is wearing clothing over swimwear, and by implication is not intending to swim at that time nor is there any suggestion that she intends to swim at a later point;
 - Ms White states, and indicates by her actions, in the Advertisement that it is her intention to remain seated and read a book;
 - Ms White is clearly depicted in the Advertisement reading the book and uses the language "finally I can get started on that book", "but I just started my book" and "but I just sat down". In each instance and collectively, this language indicates that the primary activity Ms White intends to engage in is to read a book and subsequently to relax;
 - Ms White makes no statements or physical movement to suggest or imply that she intends to go swimming imminently, or in the immediate future, nor does the footage in part or in its entirety imply this to be the case; and
 - in the circumstances, it is respectfully submitted that no reasonable inference could be drawn that the Advertisement

implies Ms White intends to or will consume alcohol before or during the activity of swimming.

Conclusion

- Should the Panel require any further information in respect of its consideration of this matter please let us know.
- DoorDash would welcome engagement with the Panel and the opportunity to be heard further in respect of the matters raised above should the Panel propose to make a determination notwithstanding DoorDash is not a signatory to the ABAC scheme or an alcohol beverage retailer for the purposes of the scheme.

14. **Coles Group** responded to the complaint by letter emailed on 13 February 2024. The principal comments made by Coles were:

- We refer to both your letter and email dated 7 February 2024 in relation to two complaints received about Instagram marketing for DoorDash (the 'Complaints'), which feature an alcohol delivery from Coles.
- Coles takes its alcohol marketing and promotions responsibilities very seriously and appreciates the opportunity to provide comment on the Complaints for ABAC consideration.
- As outlined in my email dated 7 February 2024, Coles does not have a relationship with the social media influencer that created the DoorDash post (the 'Post') and did not instigate, create or approve the content of the Post.
- Coles currently uses DoorDash as one of its on-demand delivery providers.
- Coles has a master services agreement ('Agreement') in place with DoorDash which contains obligations in relation to complying with laws, and, specifically in respect of the sale and supply of alcohol laws. Under the Agreement, DoorDash, and its drivers must comply with all applicable laws, regulations, ordinances, or mandatory rules that apply to the sale or delivery of alcoholic beverages and include any applicable terms, restrictions and conditions. In addition to this specific obligation, the Agreement contains a general obligation for DoorDash to comply with all applicable laws which would extend to the laws regarding the ABAC standards in marketing.
- The Agreement also contains marketing approval requirements to cover situations where DoorDash wishes to use Coles' brand or products in marketing or promotional activities (which includes marketing or promotional activities through social media channels).

- Under the Agreement, DoorDash must not undertake any marketing or promotional activities or programs that involve the use of Coles' name or products without Coles' prior written consent. We note that Coles' approval was not sought in respect of the Post.
 - Given the Complaints, Coles intends to shortly meet with DoorDash to further discuss and reinforce Coles' marketing approval requirements as outlined in the Agreement.
 - Thank you again for the opportunity to respond to the Complaints. We trust that this information assures ABAC that Coles did not instigate, create or approve the Post and that we remain strongly committed to ensuring that alcohol products are marketed responsibly in accordance with ABAC Marketing standards.
15. **Proximo Spirits** advised by email on 6 February that it was not involved with production of the marketing and was not aware of the Instagram post prior to being advised of the complaints that day by ABAC.

The Panel's View

Introduction and background

16. This determination arises from a video posted on Instagram by social influencer and self described 'creative, entrepreneur, mother and speaker' Oliva White. In the video, Ms White creates a scenario where she has just sat down near the family swimming pool and is about to start reading a book, when she is interrupted by her daughter (maybe 10 years old) who asks for an icy pole. This results in Ms White using the DoorDash app on her phone and ordering for home delivery a box of icy poles and a pack of four cans of alcoholic sparkling margaritas.
17. The complainant believes the video is objectionable on three points, namely:
- an alcohol ad should not feature a child;
 - it depicts a unsafe scenario; and
 - the relationship between Ms White and DoorDash is not disclosed.
18. The complaint raises firstly procedural aspects regarding the applicability of the ABAC Scheme to the video marketing and secondly whether the content of the video breaches the ABAC standards. The ABAC Scheme applies to the marketing communications of alcohol industry participants i.e. producers, distributors and retailers or marketing under the reasonable control of an alcohol industry participant. The threshold issue is whether any alcohol industry entity can fairly be said to be responsible for the video. On the face of it, the

video involves Ms White, DoorDash and more obliquely the alcohol retailer Coles and the alcohol brand Jose Cuervo produced by Proximo Spirits.

19. DoorDash is an online food ordering and delivery platform that launched in San Francisco in 2013 and has grown to have the largest market share in food home delivery in the USA. In 2019 it commenced its first operations outside of North America in Melbourne and has since expanded throughout Australia.
20. Coles is a major Australian retailer of alcohol products under several business names such as LiquorLand. Proximo Spirits is a global alcohol producer and the world's largest producer of tequila. Brand names in the Proximo range include Cuervo tequila, Kraken rum and Pendleton whisky.
14. Each of the companies were contacted about the video and in short, all three contend that the video will not fall within the scope of the ABAC Scheme but for different reasons. Both Coles and Proximo Spirits advised that they were neither involved with nor aware of the marketing prior to ABAC notifying them of the complaint. Hence, both companies contend that they did not generate the video or have any control over it.
15. In contrast, DoorDash explained it was aware of the video which was created by Ms White under a Talent Agreement but argues that DoorDash does not fall within the remit of the ABAC Scheme as it is not a signatory to the ABAC Scheme and hence has not 'opted into' the ABAC obligations. Further it contends it is not an alcohol retailer captured by the Scheme.
16. It can be readily accepted that neither Coles or Proximo were involved in the video. Their brand names are only discernible upon a very close- frame by frame- viewing of the video. It is evident neither company had any knowledge of the video and had no relationship with Ms White. Accordingly the video cannot be regarded as a marketing communication of the two companies.

Is DoorDash within the ambit of the ABAC Scheme?

17. The position regarding DoorDash is more nuanced. The Company is not an ABAC signatory and it has made no prior commitment to abide by ABAC standards in its marketing referencing alcohol products. That said, it has been the long standing practice of the Panel to make a determination on public complaints concerning alcohol marketing even if the marketing is from a non-signatory to the ABAC Scheme.
18. And almost without exception, alcohol industry participants will facilitate the complaints process and accept Panel decisions whether they are signatories to the ABAC standards or not. This is not because of a formal legal obligation, but because of the acceptance of a social licence and corporate responsibility that comes from involvement in the sale and supply of alcohol. Alcohol is not just another product. It needs to be used responsibly and moderately and good

marketing practice is an important part of the overall policy settings to minimise the harm from alcohol misuse.

19. The second contention of DoorDash is that it is not an alcohol retailer within the meaning of the ABAC Code. The Company argues that:
 - It does not hold a liquor licence
 - It is a third-party delivery fulfillment platform
 - In addition to various other consumer products, customers of alcoholic beverage retailers over the age of majority may order alcoholic beverages from retailers which are then delivered by DoorDash to the customer.
 - Alcohol products for sale by alcoholic beverage retailers are available for purchase via DoorDash's delivery fulfillment platform but not from DoorDash itself as a retailer.
20. The 'delivery fulfillment platform' is the centre of the contention that DoorDash is a technology company operating an online marketplace. Its IT platform connects merchants (including alcohol retailers) with customers and delivery people known as 'Dashers'. Within this model, DoorDash is not an alcohol retailer nor is it a supermarket or a restaurant. Rather it enables these retailers to supply products to the public through the assignment of delivery orders to the retailer via a Dasher.
21. This model was considered by the Fair Work Commission [2023] FWC 1683 in a case brought by a 'Dasher' and was described as follows:
 - *A customer, using an electronic device, places an order for food or other goods that are advertised by merchants;*
 - *Upon being notified of the order, a merchant can either accept or reject the order;*
 - *If the order is accepted by the merchant, the Doordash Platform uses an algorithm to determine which Dasher is best placed to complete the delivery of the order and notifies Dasher of the opportunity to complete the delivery, which the Dasher can accept or reject. If that Dasher does not accept the delivery opportunity within a set period, the Doordash Platform assigns the delivery opportunity to the next best placed Dasher;*
 - *If the delivery opportunity is accepted, the Dasher will collect the order from the merchant and deliver it in accordance with the customer's instructions.*
22. Consistent with its finding in Determination 109/22 concerning DoorDash's competitor UberEats, the Panel accepts that DoorDash is not an alcohol

retailer within the meaning of the ABAC Code. Rather the Company is a technology provider connecting alcohol retailers with customers. That said, DoorDash is now a participant in the alcohol industry broadly understood. For instance:

- it is subject to State/Territory laws regarding the home delivery of alcohol;
- its customer agreement has a section on alcohol which requires that alcohol can only be ordered by an adult and that identification and verification of age is required;
- the terms of its agreement with its Dashers as independent contractors stipulates that alcohol can only be delivered to customers who are adults and who have been verified and identified as the adult customer placing the order;
- as advised by Coles, the master service agreement between DoorDash and Coles contains obligations in relation to sale and supply of alcohol and from the Coles perspective (as a major Australian retailer of alcohol products) it expects DoorDash's obligations to include operating consistent with ABAC standards; and
- DoorDash takes all its legal responsibilities seriously including those related to the supply of alcohol.

23. Drawing this together, the Panel finds that DoorDash is not an alcohol retailer and hence its marketing communications are not captured by the ABAC obligations in the manner that the marketing communications of an alcohol retailer are evidently within the ambit of the ABAC Scheme. However the Company is now a participant in the alcohol industry and its technology service is facilitating the supply of alcohol to the public.
24. The Panel believes that as a matter of corporate responsibility, DoorDash should meet standards of good practice in its marketing that references alcohol. Its involvement facilitating the retailing of alcohol will be ongoing, and its marketing will likely refer to alcohol products and home delivery specifically on occasion.
25. Accordingly, and consistent with the spirit and intent of the ABAC Scheme, the Panel will make a substantive finding on the merits of the complaint against the applicable Code standards.
26. It is recognised that it will be for DoorDash to accept or not the Panel's views on its alcohol related marketing. In this regard, DoorDash has fully cooperated with this process, provided thoughtful and comprehensive responses to the questions asked of them and stated its commitment to good practice in alcohol

marketing. This reflects well on the Company's sense of social responsibility irrespective of the status of its formal legal obligations.

Is the video consistent with the ABAC Standards?

27. The complainant raises three concerns about the video from Ms White. The final concern is that the relationship between Ms White and DoorDash was not properly disclosed. This is a general requirement regarding influencer marketing and is not specific to the ABAC Code which goes solely to the portrayal of alcohol as a product. As such, the concern does not fall within the ABAC standards.
28. The other two concerns do raise ABAC standards. Firstly, it is noted that while the Company did not create the video itself, it was created under the umbrella of an agreement with Ms White which gives the Company rights over social media posts created by Ms White that reference or promote DoorDash. This includes approval of posts and the ability to request that posts be removed. Clearly the video is within the reasonable control of the Company and hence is a Company marketing communication for ABAC purposes.
29. The first concern is that it is inappropriate for a child to appear in an alcohol ad. Part 3 (b)(ii) of the Code provides that a minor must not be depicted in alcohol marketing unless they are shown in an incidental role and there is no indication that they consume or serve alcohol.
30. The Company submits the Code standard has not been breached. It is argued that Ms White is the key character in the video and her daughter is an incidental character. Further it is contended that it is clear that the daughter is seeking an icy pole and not alcohol and there is no implication that the child will consume or serve alcohol. It is pointed out that the daughter and the delivered alcohol product are not shown together.
31. In assessing the consistency of a marketing communication with an ABAC standard, the Panel is to adopt the probable understanding of the marketing item by a reasonable person. This means that the life experiences, values and attitudes found in most members of the community is the benchmark.
32. Clearly Ms White's daughter appears in the video and is a minor. And there is no inference to be drawn that the child will consume or serve alcohol. It is a more balanced assessment however if the daughter is depicted in an 'incidental role'. The child is not simply seen in the background. She creates the 'problem' i.e. wanting icy poles and suggests the solution, namely using DoorDash. This means the child character is important in the narrative of the video.
33. The scenario then moves to Ms White ordering the products and the products arriving in a Coles bag. The final scene has Ms White describing the products

i.e. the icy poles which are handed to her daughter (out of shot) and the alcohol product for her.

34. On balance, the Panel believes the video does breach the Part 3 (b) (ii) standard. While accepting that the ad would not be taken as having the child consuming or serving alcohol, the child is more than an incidental background character in the ad. Rather the daughter plays the part of introducing DoorDash as the solution and she is present (even if not visible), when the delivered products including the alcohol are received and handed out. This amounts to the minor playing more than an incidental role in the ad.
35. The complainant's second concern is that the video showed unsafe behaviour. While the basis of this concern is not entirely clear, the Panel takes this to be about alcohol consumption occurring next to the swimming pool. Part 3 (d) of the Code provides that an alcohol marketing communication must not show or directly imply the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical coordination such as swimming.
36. While the video is set adjacent to the family swimming pool, the Panel believes that it is established that Ms White will not be consuming alcohol and then going into the pool to swim. The whole narrative of the video is based on Ms White looking forward to reading her book when she is interrupted by her daughter. This means that the scene is near the pool, but there are clear pointers that the pool is not going to be used by Ms White.

Conclusion

37. Food and drink home delivery services such as DoorDash now play an important role in Australian life. The so-called gig economy provides work for many tens of thousands of people, catering for home delivery is a critical part of the business model of many retailers and most Australian households will use the convenience of the services to purchase items and this can include alcohol.
38. The ABAC Scheme is at its heart a self-regulatory initiative of the alcohol industry. Self-regulatory schemes inherently have features that can be strengths or weaknesses depending on the circumstances. A key feature is that self-regulation essentially relies on the voluntary engagement and support of industry to follow the standards of good practice and accept rulings, including adverse rulings, about a company's compliance with these standards.
39. If industry participants choose not to adopt the standards and/or accept decisions of the applicable decision making body such as the ABAC Panel, then self-regulation will be weakened. On the other hand, if industry players submit themselves to the standards and decisions about their compliance even when not legally obliged to do so, then this is a great strength of self-regulation.

40. The Panel has found that DoorDash is not an ABAC signatory nor is it an 'alcohol retailer' in the sense companies like BWS or Liquorland are retailers. It is not formally bound by the ABAC standards of good marketing practice. It can choose as a result not to engage with public complaints or accept Panel decisions.
41. That said, it is clear in a wider sense that DoorDash is a participant in the alcohol industry and that it facilitates the sale and supply of alcohol products to households. It is directly subject to State Liquor laws that regulate alcohol home delivery. It's marketing will invariably on occasion reference alcohol products and that such products are available to be supplied via the DoorDash IT platform.
42. The Panel believes that as a result DoorDash should elect to accept the ABAC standards in relation to its marketing that references alcohol and alcohol products. Accordingly the Panel has made a policy decision to make a substantive ruling on the complaint regarding Ms White's video and has treated the video as being under the effective control of the Company.
43. It is noted that while DoorDash submitted it was outside the scope of the ABAC Scheme, it nonetheless fully cooperated in the complaints process and made thoughtful arguments about the consistency of the video with the applicable Code standards. It also took the pre-emptive step of having the video removed upon being notified of the complaint. These actions speak well of DoorDash's acceptance of its social license to participate in the alcohol industry.
44. The Panel has reviewed the video against the applicable ABAC standards. It has found that the video does breach Part 3 (b) (ii) of the Code. Accordingly the complaint is upheld in part.

Addendum

DoorDash has advised in response to the Determination that it disputes the Panel's View in this matter, both in relation to:

- the Determination being issued in relation to a marketing communication from DoorDash in circumstances where DoorDash is not a signatory or an alcohol retailer pursuant to the ABAC Scheme; and
- the views expressed in relation to the consistency of the marketing communication with Part 3(b)(ii), which DoorDash considers has not been breached.

Notwithstanding DoorDash does not admit the marketing communication breached the Code, the marketing communication was promptly withdrawn from the relevant social media platform upon DoorDash being provided with notice of the Complaint.