

Australia's Responsible Alcohol Marketing Scheme

2024 First Quarter Report



OVERVIEW

The ABAC Responsible Alcohol Marketing Code (the Code) sets standards for responsible alcohol and alcohol alternative marketing in Australia and regularly measures its determinations externally to ensure it is in line with community expectations. The Code regulates both the content and placement of marketing across all advertising mediums.

Recent ABAC Panel determinations continue to offer guidance to industry and highlight areas where care is needed when developing marketing. Panel breaches last quarter highlight that:

- Showing or directly implying excessive alcohol consumption or anti-social behaviour is not acceptable, even in humour. Recent decisions provide useful guidance [here](#) and [here](#).
- Alcohol marketing and packaging must not have strong or evident appeal to minors, through choice of imagery, or associations with confectionery. Refer to decisions [here](#) and [here](#).
- Caution should be used if describing alcohol consumption as ‘guilt free’ as it might suggest alcohol offers a health benefit. Refer to the decision [here](#).
- Alcohol use while swimming is an obvious safety issue that continues to draw Panel breaches.

As complaint numbers remain steady after a post Covid dip, it is important for marketers to take proactive steps to educate teams and agencies on responsible marketing of alcohol. ABAC offers a range of options:

- Guidance materials including a recently updated packaging guide – located [here](#).
- A free online training course (only takes an hour to complete and a certificate is issued on completion) – access [here](#).
- In-house interactive training workshops tailored for your team – refer [here](#) for more information.
- Pre-vetting advice significantly reduces the risk of a Panel breach and is available to both signatories and non-signatories – refer [here](#).

ABAC aims to keep pre-vetting costs affordable for industry, however, it has been 7 years since the last signatory fee increase and 3 years since the last non-signatory fee increase during a high inflationary period. Accordingly, from 1 July 2024 fees will increase to \$150 per half hour for signatories and \$240 per half hour for non-signatories, increases significantly lower than inflation.

Pre-vetting Tips:

If uploading material using a Link, please ensure you enable immediate access for the Pre-vetter by clicking “enable access for anyone with the Link” or by sharing the link with your Pre-vetter as soon as your application is allocated. Not enabling access delays your application.

If your application is for a 3D animated or interactive outdoor creative, it is important you flag this. The 3D element is relevant in how a reasonable person would understand the marketing material.

KEY STATISTICS

| | |
|--|------------|
| Complaints | 52 |
| Raising Code issues and referred for determination | 27 |
| Not raising Code issues* | 21 |
| Raising an issue previously considered by the Panel | 0 |
| Raising an issue consistently dismissed by the Panel | 4 |
| Determinations | 27 |
| Dismissed | 13 |
| Upheld | 9 |
| Upheld - Expedited | 5 |
| Pre-vetting | 687 |
| Rejected | 99 |

* Complaints that did not raise Code issues fell outside the scope of the scheme as they raised concerns outside ABAC standards such as a general objection to alcohol advertising, frequency of alcohol advertising, packaging without mandatory information, failure to disclose as an ad or include 18+ disclosure, offensive language, sexism/racist themes, overseas marketing and misleading marketing which can fall within the scope of other regulators, including Ad Standards, FSANZ, Consumer Affairs and others with referrals made where appropriate.

RECENT ALCOHOL MARKETING COMPLAINTS

Breach of ABAC Standards

Tradie Beer (complaint regarding content)

Complaint: A video features Tickford Racing teammates and was recognisably inspired by The Hangover movie, which is argued to be irresponsible.

ABAC standard: A marketing communication must NOT show (visibly, audibly or by direct implication), encourage, or treat as amusing,:

- consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol (Part 3(a)(i)); or
- rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol (Part 3(a)(ii)).

Decision: The Instagram video parodies The Hangover movie with Tickford team members as the Wolf Pack. It portrays the morning aftereffects of a wild night out. The Pack members are shown with shaved heads as well as face and other tattoos all acquired without recollection. Evidence of the misadventure includes a large number of empty alcohol cans around the men as they awaken.

The Panel believed the video posted to the Tradie Beer Instagram account breaches the standards. It is clearly implying excessive consumption and anti-social behaviours and treats this as amusing.

Tradie Beer removed the video from its social media pages.



Robo Diner (complaint regarding content)

Complaint: The Company is advertising \$1 Margaritas every day of the week when you spend \$20 or more on food, with a limit of five margaritas per person and this promotes excessive drinking.

ABAC standards: A marketing communication must NOT show (visibly, audibly or by direct implication), encourage, or treat as amusing consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol (Part 3(a)(i)).

Decision: The Panel believed a reasonable person would probably understand the marketing conveying that it is acceptable to consume up to 5 margaritas which breaches the Australian Alcohol Guideline of no more than 4 standard drinks in a single drinking occasion. Other posts which either contain a 3 drink cap, or a single free beer are not in breach as they would not be understood as necessarily suggesting more than 4 standard drinks on a single occasion is acceptable.

The business has since closed.



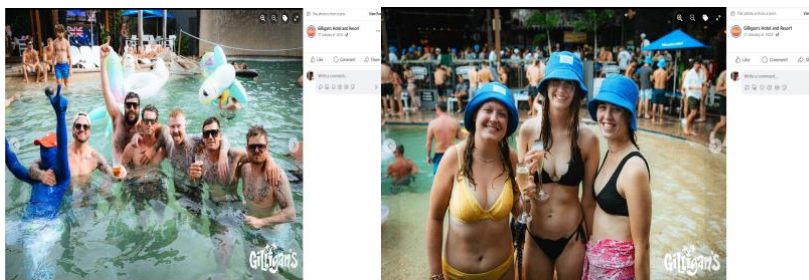
Gilligan's Cairns (complaint regarding content)

Complaint: Instagram posts show alcohol consumption and swimming.

ABAC standard: That an alcohol marketing communication must not show 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 (Part 3(d)).

Decision: The Panel found that the posts show alcohol consumption before or while swimming.

The company did not respond to the complaint or determination and as per the ABAC Rules and Procedures the complaint was referred to the Queensland Liquor Authority.



DoorDash (complaint regarding content)

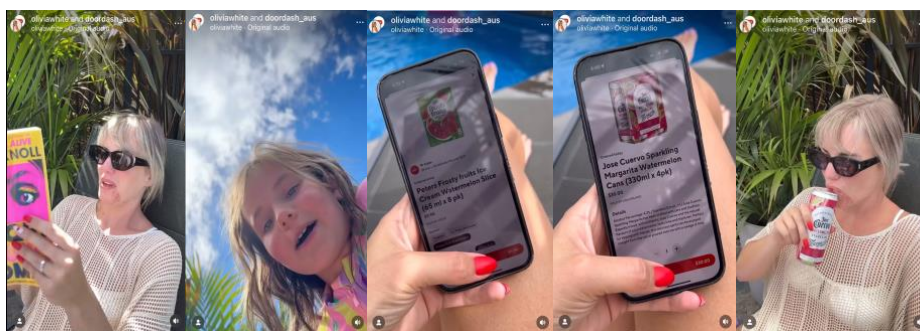
Complaints: That a video promoting alcohol included a child and showed unsafe behaviour.

ABAC standard: That an alcohol marketing communication must not:

- 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 (Part 3(b)(i)); or
- show 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 (Part 3(d)).

Decision: The Panel made a 'spirit and intent' decision that the Company, while not technically an alcohol retailer, as an alcohol industry participant they should observe ABAC standards. 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. The Panel found there was no breach of Part 3(d) as there were clear cues the woman consuming alcohol would not be using the pool.

DoorDash disputed the Panel's View in this matter, both in relation to a determination being issued when it isn't a signatory or 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 considered had not been breached. While DoorDash did 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 complaints.



T-Sauce (complaint regarding content)

Complaint: That the packaging of three products, T-Sauce, Pickle Beer and Spicy Pickle Beer has strong and evident appeal to minors, as evidenced by the stylised cartoon imagery used to depict fruit and vegetables and bright colours used in the cartoon imagery.

ABAC standards: A marketing communication must NOT have strong or evident appeal to minors (Part 3(b)(i)).

Decision: The Panel dismissed the complaint in relation to Pickle Beer and Spicy Pickle Beer, but found that on balance the packaging of the T-Sauce product breaches the standard, noting:

- the front of the packaging does not unambiguously establish the product as alcohol and its overall appearance might be confused with a product such as a tomato sauce or tomato juice;
- the anthropomorphic tomato depictions closely resemble those found in children’s books;
- tomato and tomato sauce (as compared to pickles) is a vegetable and product more likely to be familiar and relatable to minors; and
- taken as a whole a reasonable person would probably understand the packaging has more than incidental appeal and has strong or evident appeal to minors.

The Company advised that T-Sauce was a limited release that would not be re-released in Australia.



Milky Lane (complaint regarding content)

Complaint: That three Milky Lane social media posts promoting Frosty Fruit Cocktails, Milky Bar Milo Espresso Martinis and Strawberries & Cream Shots have strong or evident appeal to minors.

ABAC standard: A marketing communication must NOT have Strong or Evident Appeal to Minors (Part 3(b)(i)).

Decision: The Panel believed all three social media posts breach the Code, noting:

- the images of the cocktails are bright and eye-catching;
- Milo remains a popular and well known drink for minors and the confectionery items would be familiar to minors given their common presence in supermarkets and other retail stores;
- the combination of the product name and imagery (Frosty Fruits, Milky Bar, Milo and Strawberries & Cream) creates an illusion of a smooth transition from a non-alcohol product to an alcohol beverage;
- the text does not unambiguously establish the cocktails are alcoholic in nature;
- taken as a whole a reasonable person would probably understand the marketing would have evident appeal to minors.

The Company agreed to remove the posts.



Island Mist Guilt Free Seltzer (complaint regarding content)

Complaint: That packaging and digital marketing creates the perception that there are minimal health risks associated with alcohol consumption, both short term and long term.

ABAC standard: A marketing communication must NOT suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation (Part 3(c)(iv)).

Decision: On balance the Panel believed that the packaging breaches the Code, noting:

- the policy intention of the standard is that marketing communications are not to be understood as making claims as to the positive health benefits of alcohol use;
- the packaging information hierarchy highlights the descriptor 'guilt free' over all other branding elements and this descriptor would be probably understood as meaning that the product can be consumed without any negative consequences;
- the subordinate packaging references to the product being gluten, sugar and preservative free would not likely alter the overall understanding that the product has no negative consequences; and
- this goes beyond a comparison of the product's attributes to an 'ordinary' alcohol beverage and would probably be understood as claiming it is relatively beneficial in health terms compared to alternate products.

Consistent with the above reasons, the Panel believes that the use of the term 'Guilt Free' in the Company's social media handles and account names also breaches the Code.

The Panel further found that website copy using the words '...healthier alcoholic option'; and 'an easy drinking, low calorie, sugar free experience with all the flavour and none of the bad stuff!' breaches the Code as a reasonable person would conclude that consumption of the Company's alcoholic beverages offer therapeutic benefits, are relatively beneficial for a person's health or wellbeing and do not have the adverse side effects of alcohol consumption.

The advertiser advised it will remove the term "Guilt Free" from its marketing communications and discontinue the packaging.



The Wine Group (complaint regarding placement)

Complaint: The complainant asked to be removed from a contact list but continued to receive calls.

ABAC standard: That a marketing communication must not be delivered directly to any person that has sought removal from the marketer's mailing list (Part 4(e)).

Decision: The company did not respond to the complaint, and the Panel found that on the balance of probabilities the Code standard had been breached.

The company responded to the determination advising that 'The Wine Concierge Club has added additional internal sweeps to our contact lists to ensure that requests sent through from consumers to no longer be contacted from us are actioned. Along with this, an additional staff member has been added to our administration team to ensure that these requests can be given extra care.'

Grog (complaint regarding content)

Complaint: That the Company's website and product packaging strongly appeal to children.

ABAC standard: A marketing communication must NOT have Strong or Evident Appeal to Minors (Part 3(b)(i)).

Decision: The Panel believed the website breaches the standard due to:

- an overall design which would be considered playful, fun and engaging to minors rather than mature with a clearly adult focus;
- the cute and amorphous drawings of fruit, which in some instances are walking and/or waving, in a cartoon style that are reminiscent of characters from children's media;
- the use of cartoonish font and swirling block colours, which could be appealing to minors; and
- taken as a whole, a reasonable person would probably understand the website as having evident appeal to minors beyond the general appeal it has to an adult.

On balance, the Panel found that the packaging does not breach the Part 3 (b)(i) standard, noting:

- while the bubble style font might convey a childlike or playful tone, it does spell out the word 'Grog' which is colloquially used and recognised as a name for alcoholic drinks;
- the can design establishes the product as being a shochu and vodka RTD and it is unlikely the product packaging would be confused with a soft drink;
- the use of Japanese lettering would not likely have any strong appeal to minors;
- taken as a whole, the packaging would probably be understood as having incidental rather than strong appeal to minors.

The Company undertook to modify its website.



Expedited Determinations –Breach accepted and marketing removed promptly

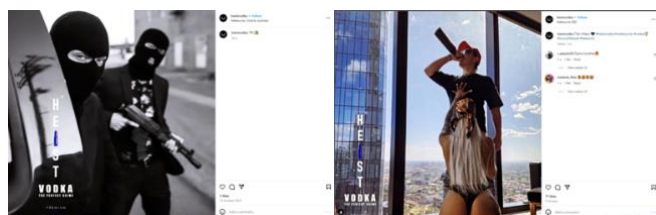
Heist Vodka (complaint regarding content)

Complaint: An Instagram post shows criminal and sexual activity.

ABAC standards: A marketing communication must NOT:

- show (visibly, audibly or by direct implication), encourage, or treat as amusing irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol (Part 3(a)(ii)).
- show (visibly, audibly or by direct implication) the consumption or presence of alcohol as a cause of or contributing to the achievement of sexual or other success (Part 3(c)(ii)).

Decision: The first post directly implies criminal activity (irresponsible behaviour) related to the product. The second post directly implies alcohol consumption contributing to sexual success.



Tradie Beer (complaint regarding content)

Complaint: An Instagram post shows alcohol consumption while submerged in water.

ABAC standard: An Alcohol Marketing Communication must not show 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 (Part 3(d)).

Decision: The Instagram post shows a person apparently underwater holding a can of the product and then partially submerged while consuming the product, inconsistent with the Part 3(d) standard.

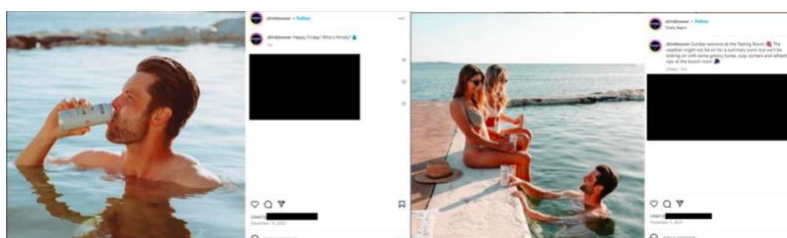


Bower Hard Kombucha (complaint regarding content)

Complaint: Two Instagram posts show alcohol consumption while submerged in water.

ABAC standard: An Alcohol Marketing Communication must not show 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 (Part 3(d)).

Decision: The post shows a person in a pool while consuming the product, in breach of the Code.



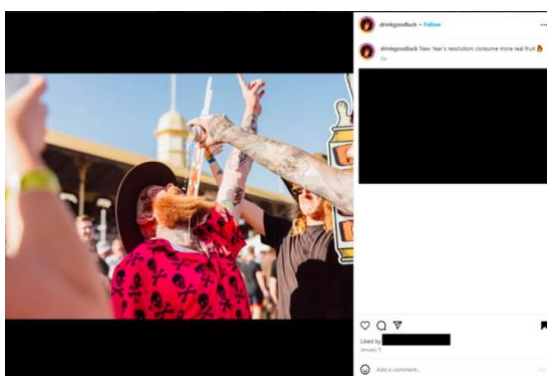
Good Luck Seltzer (complaint regarding content)

Complaint: An Instagram post shows or treats as amusing excessive and rapid alcohol consumption.

ABAC standards: A marketing communication must NOT show (visibly, audibly or by direct implication), encourage, or treat as amusing:

- consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol (Part 3(a)(i)); or
- rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol (Part 3(a)(ii)).

Decision: An image of a man receiving an uncontrolled long pour into his mouth by a third party posted to social media with the caption ‘New Year’s resolution consume more real fruit’, breaches Part 3 (a)(i) and (ii) of the Code by showing the rapid and irresponsible consumption of alcohol and directly implying and treating as amusing the excessive consumption of alcohol.



Blackflag Brewing (complaint regarding content)

Complaint: That an Instagram post shows alcohol consumption in a passenger vehicle

ABAC standard: A marketing communication must NOT show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol (Part 3(a)(ii)).

Decision: The consumption of alcohol by passengers while travelling in a vehicle is illegal in some but not all Australian jurisdictions. The video is clearly set in Queensland and the Traffic Act of that State makes it unlawful for alcohol to be consumed by the passengers of a vehicle. Alcohol marketing showing or encouraging unlawful activity involving alcohol use is irresponsible.



Marketing Outside ABAC's Jurisdiction

Solo Soft Drink (complaint regarding placement)

Complaint: Solo soft drink could be confused with the Hard Solo RTD product. Because of this, the Solo soft drink Instagram account should be age restricted so it's not accessible to under 18 year olds.

ABAC standard: An alcohol marketing communication must not be directed at Minors through a breach of any of the Placement Rules (Part 3(b)(iv)).

Decision: Solo soft drink does not contain alcohol and on the face of it, any marketing material produced to promote Solo soft drink would not be usually expected to be an alcohol marketing communication. The Code however adopts an expansive view of what type of activity/material can be regarded as marketing alcohol beverages and this includes 'marketing collateral'.

Marketing collateral' is defined to mean 'material to promote a brand and support the sales and marketing of alcohol or an alcohol alternative, including but not limited, to point of sale marketing, gifts with purchase, competition prizes and branded merchandise'.

The Panel does not believe the Solo soft drink Instagram account can be fairly regarded to be an alcohol marketing communication. In reaching this view the Panel noted:

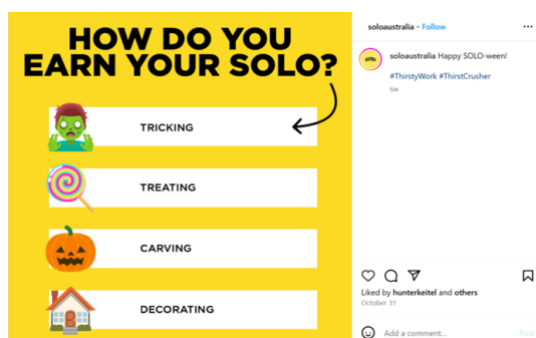
- Solo soft drink has a 50 year history and the extensive marketing campaigns to promote the soft drink over many decades including its social media accounts cannot be reasonably construed as material to support the sales and marketing of an alcohol product;
- as found in the Hard Solo determination, the packaging of the Hard Solo RTD and the Solo soft drink are sufficiently distinctive that a reasonable person would not confuse the two; and
- while the introduction of Hard Solo did attract a short burst of intense media and public attention, it would be a long bow to believe that the profile of the product is such that a reasonable person including a minor seeing the Solo Instagram account would be confused to think the site related to an alcohol product.

For completeness the revised ABAC Code extended the ABAC Scheme to capture alcohol alternative marketing communications. This term is defined to mean a marketing communication for an alcohol alternative - ie a beverage that is at or less than 0.5% alcohol by volume that:

- has an appearance and style commonly associated with alcohol; and
- uses a brand or descriptors commonly associated with alcohol, such as, beer, wine, spirit or other; and
- is not a beverage commonly understood as non-alcoholic, such as fruit juice, soft drink, flavoured milk or other which fall outside the Code remit.

The Code captures the marketing of zero alcohol beers and wines etc. Solo soft drink does not contain alcohol, but it is not styled as an alcohol alternative and is commonly understood to be a soft drink.

Accordingly, the Panel finds that the Solo Instagram account is not within the remit of the ABAC Scheme, and the age restriction controls required under the ABAC have no application to the Solo social media accounts.



Marketing Consistent with ABAC Standards

James Squire (complaint regarding content)

Complaint: The final two shots of the advertisement show a bottle of James Squire balancing on the back of a moving motor scooter and then being dropped from a rooftop into a person's hand as they stand on a balcony several floors below. This shows dangerous and irresponsible behaviour, with the complainant suggesting people on the street below could be injured if the bottle was not caught.

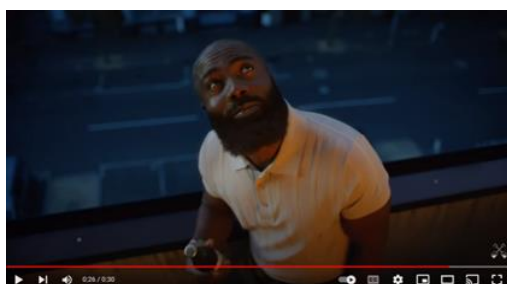
ABAC standards: An alcohol marketing communication must not:

- show, encourage, or treat as amusing, rapid alcohol consumption, misuse or abuse of alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of alcohol (Part 3(a)(ii)); and
- show 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 (Part 3(d)).

Decision: The Panel did not believe a reasonable person would take the ad as actually encouraging irresponsible or dangerous behaviour. In reaching this conclusion the Panel noted:

- the ad is self-evidently not showing a real life scenario;
- there is no alcohol consumption by either the driver of the motor scooter or Dave prior to the scene of the bottle being dropped to Dave on the balcony and neither is affected by alcohol;
- the underlying message of the ad would not be taken as endorsing dangerous behaviour; and
- more likely the message of the ad would be taken to be that the product is the choice of cool successful people and it's worth a wait or a journey to obtain the product.

Accordingly, while the Panel understands the point the complainant made, it does not believe a reasonable person would probably understand the ad as breaching the ABAC standard.



Suntory -196 (complaint regarding placement)

Complaint: The placement of a television advertisement for Suntory -196 Double Lemon on Channel 10 free-to-air TV at 8:47pm on a Sunday, during Gladiators when minors would be watching.

ABAC standards: An alcohol marketing communication:

- must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice)
- may only be placed where the audience is reasonably expected to comprise at least 80% Adults (when age restriction controls are not available); and
- must not be placed with programs or content primarily aimed at Minors.

Decision: The Panel found that there had not been a breach of the ABAC Placement Standards by showing alcohol ads with Gladiators given:

- the CTICP has been complied with;
- the audience for Gladiators fell comfortably over the 80% adult requirement; and
- Gladiators cannot be said to be primarily aimed at minors.

Carlton Dry (complaint regarding content and placement)

Complaint: An advertisement for Carlton Dry - “Drylandia” - has strong or evident appeal to minors, and was shown at the cinema before screenings of “Anyone But You” and “Aquaman and the Lost Kingdom”, movies which had a large number of minors in the audience.

ABAC standards: The ABAC Code provides that:

- an alcohol marketing communication must NOT have strong or evident appeal to minors (Part 3(b)(i));
- may only be placed where the audience is reasonably expected to comprise at least 80% Adults (when age restriction controls are not available) (Part 4(c)); and
- must not be placed with programs or content primarily aimed at Minors (Part 4(d)).

Decision: The Panel did not believe the ad has strong or evident appeal to minors, noting:

- the ad adopts a magic realism style which is distinctive and hence makes the ad stand out to its audience, however;
- the ad establishes the product being marketed is a beer;
- all characters depicted are clearly mature in appearance, dress and demeanour;
- the activities shown are not relatable or familiar to minors; and
- taken as a whole, any appeal to minors is incidental and not strong or evident.

The Panel did not consider that placement of the advertisement prior to ‘Anyone But You’ and ‘Aquaman and the Lost Kingdom’ breached the Placement Standards, noting:

- the overall expected audience of both movies appears to be overwhelmingly adult;
- the M and MA15+ classifications indicate the movies are not considered by the government classification office to be suitable for under 15 year olds;
- the themes in the movies are directed towards adults rather than minors;
- while there will be some appeal in both movies to teenagers in the 16 and 17 age cohort in particular, it cannot be fairly concluded that the movies are primarily directed towards minors.



Tradie Beer (complaint regarding content)

Complaint: That Tradie products for children and babies is promoting the Tradie Beer brand.

ABAC standard: A marketing communication must NOT have Strong or Evident Appeal to Minors (Part 3(b)(i)).

Decision: A majority of the Panel did not believe that the Code should be understood as capturing the entirety of the clothing and non-alcohol product range of ‘Tradie’ as an alcohol marketing communication. Noting that the clothing and watches do not allude to or reference alcohol products in a discernible way. The Panel recognised that there is a temporal element to the decision. As it stands, Tradie is not primarily recognised in the community as an alcohol business. This could change in the future if the Tradie alcohol products expand in range and wider community understanding emerges of the Tradie brand being known for its alcohol products.

The Glenlivet Scotch Whisky (complaint regarding content)

Complaint: That the ad markets alcohol to women explicitly, ambiguously suggests that women don't care who or what they sleep with under the influence and there is ambiguity and open immorality in the slogan 'obey the rules - miss out on the fun'. The ad is not about responsible drinking.

ABAC standard: An alcohol marketing communication must NOT show, encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol (Part 3(a)(ii)).

Decision: The Panel noted it is impermissible for alcohol marketing to encourage alcohol consumption during pregnancy or breastfeeding but marketing can be directed at women generally.

The Panel believed that combined and read as a whole, the ad would be understood by most people as suggesting that any assumption that whisky is only consumed by men is incorrect. Further the sexualised interpretation suggested by the complainant is not supported by the image of Ms Paquin who is pictured sitting quietly with the product. Her appearance, pose and demeanour does not imply sexual connotations. Other cues to how the ad would most likely be understood are:

- the 'don't follow the rules' tagline, which within the context of the ad is more likely to be understood as referencing the usual choice of drink by women than an encouragement of anti-social behaviour or excessive alcohol use; and
- Ms Paquin does not appear affected by alcohol.

The Panel believed that taken as a whole, a reasonable person would not consider the ad is promoting alcohol related offensive behaviour or the misuse or abuse of alcohol.



Squealing Pig Wine (complaint regarding placement)

Complaint: The placement of the advertisement on SBS On Demand during Pagan Peak, when minors may be watching.

ABAC standards: Part 4 of the ABAC Code provides that:

- Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication;
- if age restriction controls are not available, an Alcohol Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults; and
- an Alcohol Marketing Communication must not be placed with programs or content primarily aimed at Minors.

Decision: The Panel found that there had not been a breach of the ABAC Placement Standards as:

- the age restriction controls available on SBS On Demand were utilised to exclude account holders who are minors from being served with alcohol ads;
- the audience for Pagan Peak fell comfortably over the 80% adult requirement of the Placement Standards; and
- Pagan Peak cannot be said to be primarily aimed at minors.

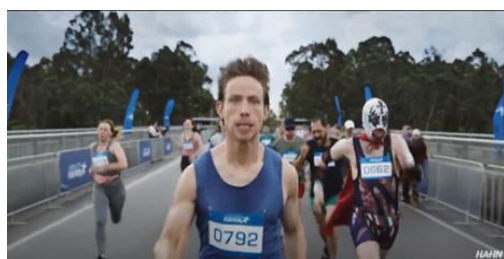
Hahn Beer (complaint regarding content)

Complaint: That alcohol marketing should not associate alcohol with winning or success and this makes the ad inconsistent with the ABAC Code.

ABAC standard: An alcohol marketing communication must NOT show the consumption or presence of Alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success (Part 3(c)(ii)).

Decision: The Panel believed the ad is consistent with the Code, noting:

- the scenario of the ad is that while the run was supposedly ‘fun’ and not competitive, for the main character the reality is that he is competitive and takes the run to be a race at the end;
- the most likely understanding is that the man is inherently competitive and not that alcohol played a part in the man’s attitude to the run nor his performance in the run;
- it might be taken that the ad is suggesting the product is a suitable choice for competitive people and/or people who run and exercise;
- however the product is shown after the finishing of the run and marks the achievement of completing the run and not as causing or contributing to that achievement;
- a reasonable person would not probably conclude that alcohol has caused the success of the person or the event.



Tooheys New (complaint regarding content)

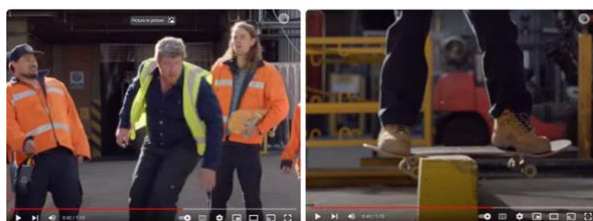
Complaint: That the marketing “is all about skateboarding which is very appealing to minors”.

ABAC standard: A marketing communication must NOT have Strong or Evident Appeal to Minors (Part 3(b)(i)).

Decision: Marketers need to be aware of the appeal of skateboarding to minors. The inclusion of the activity in marketing raises a potential strong appeal to minors and the marketing as a whole needs to provide context and balance to ensure that the marketing item is consistent with the Code standard.

The Panel did not believe that the marketing has strong or evident appeal to minors, noting:

- while skateboarding can be relatable to minors, this does not mean it is impermissible to show or reference the activity with each marketing communication 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 is a middle aged male 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.



Gee Up Vodka (complaint regarding content)

Complaint: That the 'Gee Up' brand name as used in all the Company's marketing implies irresponsible claims about the effects of the product.

ABAC standards: A marketing communication must NOT:

- suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment (Part 3(c)(i));
- show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success (Part 3(c)(ii));
- if an Alcohol Beverage is shown (visibly, audibly or by direct implication) as part of a celebration, imply or suggest that the Alcohol Beverage was a cause of or contributed to success or achievement (Part 3(c)(iii)); or
- suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation (Part 3(c)(iv)).

Decision: The Panel found the packaging did not breach the Part 3 (c) standards, noting:

- the expression 'gee up' can have a range of meanings depending on the context of its use;
- the product packaging does not contain any text or imagery to direct a particular meaning of the brand name 'Gee Up';
- the product label as used on the packaging does not invoke a creation of a mood or environment by the product or a shift from one state to another;
- a reasonable person is unlikely to take from the brand name alone that the product's presence or consumption will lead to achieving success;
- there is no celebration depicted or implied by the product packaging or name; and
- the product packaging does not reasonably imply that the consumption of the product offers a positive health benefit (Part 3 (c)(iv)).



Cellarbrations (complaint regarding content)

Complaint: That the marketing uses Christmas imagery, specifically Santa, which would capture the attention of minors and also encourages children to engage with alcohol by leaving it out for Santa.

ABAC standards: A marketing communication must NOT have Strong or Evident Appeal to Minors (Part 3(b)(i)).

Decision: Marketers need to be aware of the appeal of Christmas to minors. The inclusion of Christmas in a marketing communication raises an inherent appeal to minors and the marketing as a whole needs to carefully provide context to ensure it is consistent with the Code standard.

In this case, the Panel did not believe the marketing breached the standard, noting:

- the advertisement is set in a domestic environment at Christmas and there are cues that a younger child or children are part of the household although only adult characters are shown;

- Christmas has broad appeal to both adults and children alike and this together with the domestic setting would be familiar to minors;
- Santa is a standard trope used to signify the Christmas period. In a particular context marketing with a Santa character can have strong appeal to minors, but it does not automatically follow that a reference to Santa will always have strong appeal;
- context will be decisive in how a marketing communication will be understood, in this case Santa is alluded to but not depicted and there is no interaction between a child and Santa;
- the theme of the ad is a shared warm experience between parents and the ad would not be understood as being directed towards minors; and
- taken as a whole, the overall tone of the marketing is adult and not considered strongly appealing to minors with any appeal being incidental at its highest.



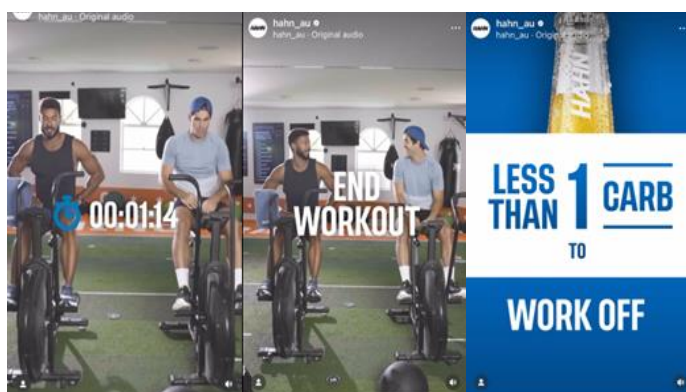
Hahn Ultra Low Carb (complaint regarding content)

Complaint: That the marketing is misleading as it is trying to show that one second of exercise reverses the effects of drinking on weight and is not showing the other five minutes required to burn off the calories from the ethanol.

ABAC standard: An Alcohol Marketing Communication must not suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity (Part 3(c)(iv)).

Decision: The Panel believed the marketing did not breach the standard, noting:

- the video seeks to emphasise the low carb content of the product;
- it does this by the device of the time required of exercise to use the energy equivalent of the claimed carb content of the product;
- the ABAC does not go to the factual accuracy of alcohol marketing with the regulation of this aspect of marketing resting with government regulators;
- while the post might be taken as the product will have a limited impact on weight gain, it does not suggest the product will positively assist health.



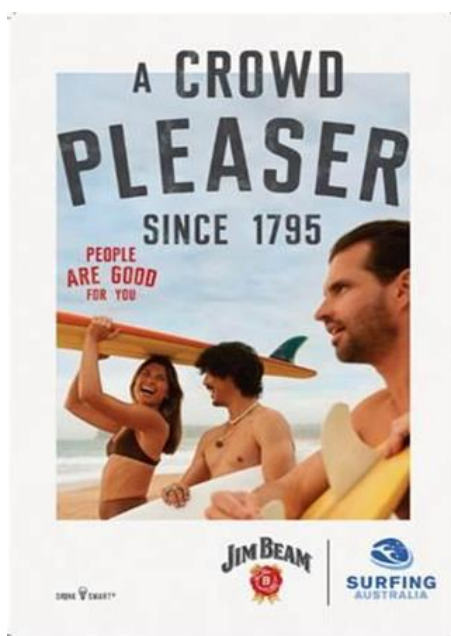
Jim Beam (complaint regarding content)

Complaint: That an outdoor billboard is promoting drinking while surfing, which is a dangerous combination.

ABAC standard: An Alcohol Marketing Communication must not show 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 (Part 3(d)).

Decision: While the marketing is linking the product with Surfing Australia, the Panel did not believe the standard had been breached as:

- no product is depicted, only the Jim Beam logo beneath the image;
- alcohol consumption is not shown, nor can it be or directly implied i.e. there is no product in the scene;
- the people depicted do not appear affected by alcohol; and
- a reasonable person would likely understand the product is being associated with the sport of surfing but not that the ad is showing that actual consumption will take place before or during the pursuit of surfing.



The ABAC Complaints Panel is headed by Chief Adjudicator Professor The Hon Michael Lavarch AO. For more information on ABAC or to access the ABAC Adjudication Panel decisions referred to in this report, visit: <http://www.abac.org.au>.