

ABAC Adjudication Panel Determination 110/25

Determination Date	7 August 2025
Brand/Company	Wine/Wine Not the Brand
Media	Facebook and Instagram
ABAC Code provision	Part 3 (d)
Outcome	Upheld

Part 1 - Determination Overview

Complaint:


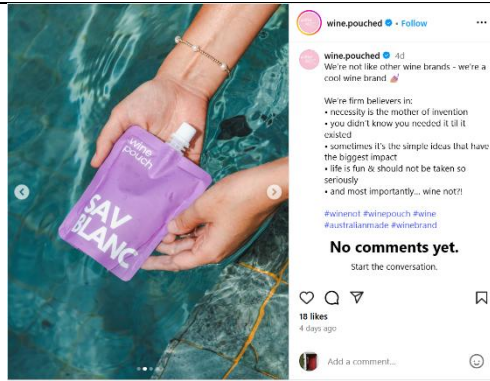
The complainant is concerned that Instagram and Facebook posts show an array of images of individuals holding alcoholic beverages whilst in and around a pool of water. The Royal Life Saving Australia 2024 National Drowning Report found that 323 Australians drowned in waterways. 14% of drowning deaths that occurred in swimming pools had alcohol involved.

Key findings:

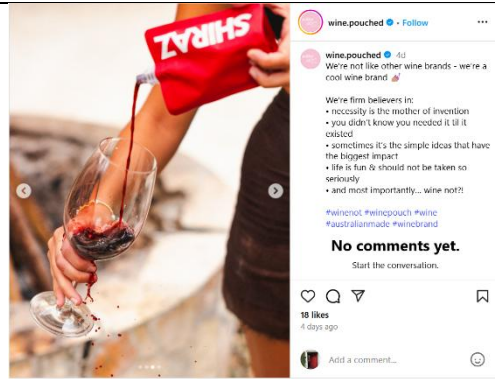
The Panel upheld the complaint finding that while the images are a staged fashion shoot of a model with the product set against a swimming pool, and not a record of action shots of a person drinking and vigorously diving or swimming, most (not all) of the images show or directly imply the consumption of alcohol and the use of a swimming pool which is not permitted by the Part 3 (d) standard.

Marketing Communications:

The complainant is concerned about two posts made to Instagram and Facebook.

Post 1 – Image 1	Post 1 – Image 2
	

Post 1 – Image 3



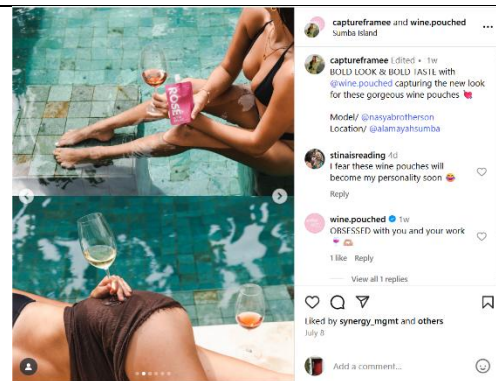
Post 1 – Image 4



Post 2 – Image 1



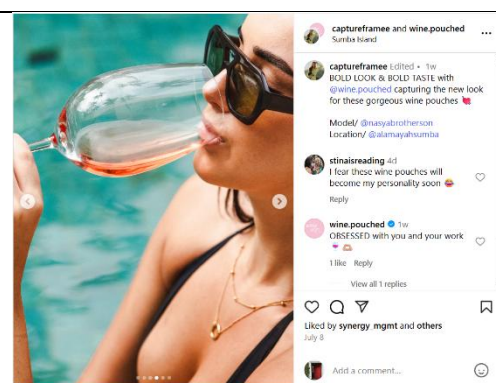
Post 2 – Image 2



Post 2 – Image 3



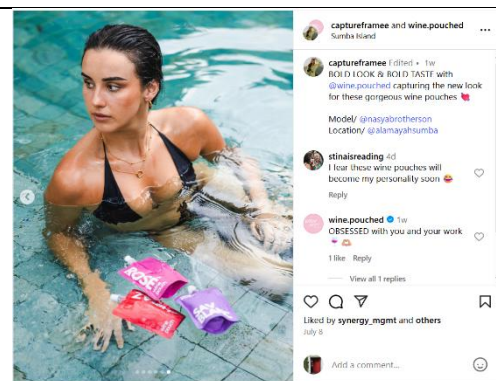
Post 2 – Image 4



Post 2 – Image 5



Post 2 – Image 6



Part 2 - The Panel's View

1. This determination concerns two social media posts marketing wine pouches produced by Wine Not the Brand ('the Company'). The complainant contends that the posts show the consumption of alcohol while in and around a swimming pool.
2. The Company is based in Queensland, and while not a direct signatory to the ABAC Scheme, the Company is committed to responsible alcohol marketing, has provided a response to the complaint and advised it will accept the Panel's determination.
3. Part 3 (d) of the Code provides that alcohol marketing cannot 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.
4. The policy intent of the Part 3 (d) standard is that alcohol marketing should not model alcohol consumption before or in conjunction with activities that are inherently dangerous such as driving a motor vehicle or swimming. This is because alcohol impacts a person's physical and mental capacities, reduces coordination and can contribute to a loss of inhibitions and the making of poor judgements.
5. It is important to note that the Code standard does not prohibit an alcohol brand from being associated with water-based activities. The point of the standard is that alcohol should not be consumed while undertaking the activities and marketing should not suggest that it is acceptable to use alcohol in this way. What this means for water-based activities is that an item of marketing can:
 - show an alcohol product at a beach or adjacent to a swimming pool if it is clear that alcohol is not being consumed; or
 - show alcohol consumption but it is established that the dangerous activity like swimming, surfing, scuba diving etc has finished and will not be recommenced.
6. Assessing whether a marketing communication complies with an ABAC standard is based on how a reasonable person would understand the marketing. A 'reasonable person' considers the typical life experiences, values, and opinions held by the majority of the community as the benchmark. Someone who interprets a marketing element differently is not 'unreasonable', but most people may not share their understanding.
7. So, what factors might influence how a reasonable person would interpret a marketing communication regarding whether a person shown was going to drink alcohol and then swim? Some factors could include:
 - How is the person dressed, for example, are they fully clothed, wearing swimming gear, a floppy hat with sunglasses, or a swimming cap with goggles?
 - The positioning of the person, that is, whether they are in the pool, immediately next to the pool, or some distance away from the edge;

- whether the person is depicted consuming the product (including, if not shown, consumption is directly implied);
 - How is the alcohol product presented, for example, is it in an open can or bottle or closed, or does it appear the product has already been partially consumed?
 - The time of day in the scene shown, for example, it's more likely that swimming is finished if it's late afternoon rather than the morning.
8. The Company acknowledges that the ABAC Standard is significant but argues that a reasonable person would see the posts as aligning with the Code. It is contended:
- The imagery in the posts is clearly editorial, showing no swimming, no movement, and no unsafe activity depicted or implied while drinking.
 - In all images, the model is either sitting, reclining, or standing near the pool. She is never submerged in the water beyond ankle level while holding wine. There is no motion, no diving, no active swimming, and no physical activity requiring alertness or coordination shown or implied.
 - The model is dressed in a skirt, with a full face of makeup, styled hair, sunglasses, and accessories. Her facial expressions are composed, calm, and static. These styling and creative choices suggest she is posed for a lifestyle or fashion shoot, not engaging in an activity or preparing to swim or be active. Her posture is upright or reclined, further reinforcing the controlled, editorial tone of the content.
 - Alcohol is not consumed while in the pool, in motion, or during any coordinated or risky behaviour. The model may hold a wine pouch or glass, but she remains clearly stationary. The presence of a pool does not automatically mean she's swimming drunk or engaging in risky activity, especially as she is shown in shallow water and very deliberately posed.
9. There is no doubt the photos in the posts are a fashion shoot to promote the brand and the product, and as such, are not a live action record of a person swimming. That said, several of the photos directly link alcohol consumption with the use of the swimming pool. Furthermore, the Company's description of the images is not entirely accurate. For instance, it is claimed that the model is not shown immersed in the water beyond ankle depth while holding the wine, whereas Post 2, Image 1 shows the model in the pool with a glass of wine and the water at least at waist level.
10. More importantly, the fact that the photos are staged does not mean that a reasonable person would not interpret them as conveying messages about drinking alcohol and swimming. The Company argues that the posts suggest moderate consumption and do not glamorise dangerous behaviour. While this is a valid point, it does not satisfy the requirements of the ABAC standard.
11. The standard is strict, stating that alcohol consumption should not be depicted before or during activities that require alertness and physical coordination. Using a swimming

pool is such an activity and the standard does not require that diving or doing laps of the pool be depicted for a breach of the standard as suggested by the Company. Further, no level of alcohol consumption can be shown or implied. The standard does not permit moderate consumption while prohibiting the showing of intoxication.

12. Each image has to be assessed on its own merits, and for brevity, the Panel believes the position on each to be as follows:

- Post 1 Image 1 - a breach, showing a person in the pool drinking alcohol.
- Post 1 Image 2 - no breach as alcohol consumption is neither shown nor reasonably implied.
- Post 1 Image 3 - no breach because it shows the wine being poured into the glass without including the product or person near the swimming pool.
- Post 1 Image 4 - no breach as it only shows the products and not consumption.
- Post 2 Image 1- a breach, as it shows a person in the pool consuming alcohol.
- Post 2 Image 2- a breach as it shows two individuals implicitly consuming alcohol in the pool or reasonably assumed to be using the pool after consumption.
- Post 2 Image 3 - on balance a breach, since it shows consumption right next to the pool, and the model is in swimwear and the most likely understanding is that the pool will be used after consumption.
- Post 2 Image 4 - a breach, as it shows consumption either in or immediately adjacent to the pool and reasonably implies the use of the pool.
- Post 2 Image 5 - on balance, it is a breach since it depicts drinking right next to the pool, and the model is in swimwear and might likely use the pool after drinking.
- Post 2 Image 6 - on balance, it is a breach since the woman is in the pool with wet hair, indicating she has been swimming, and the products are placed beside her in the water, directly suggesting consumption with use of the pool.

13. It is accepted that the Company's intention was to showcase its product in an appealing manner and not to breach the ABAC standard. That said, the standard has been breached and the complaint is upheld.

Part 3 - Supporting Information

Panel Process

This complaint was received from Ad Standards (the common entry point for all marketing complaints by members of the Australian community) and was referred by the Chief Adjudicator to the ABAC Adjudication Panel for consideration against the ABAC Responsible Alcohol Marketing Code. The complaint process is explained [here](#).

The Panel operates in accordance with the [ABAC Rules & Procedures](#) and has regard to the principles of procedural fairness.

The Panel comprised Deputy Chief Adjudicator Debra Richards, Health Sector Panellist Professor Louisa Jorm and Panellist Debra Richards.

Applicable ABAC Responsible Marketing Code Standard

Code Part 3 (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.

Company Response

The Company was provided with an opportunity to respond to the complaint and its principal comments were:

- We wish to formally dispute the complaint, as we believe the imagery in question does not breach Part 3(d) or any other part of the ABAC Responsible Alcohol Marketing Code.
- The complaint references Part 3(d) of the Code, which prohibits the depiction or implication of alcohol consumption before or during an activity that requires a high degree of alertness or physical coordination - specifically, swimming.
- We understand the importance of this standard and fully support efforts to prevent unsafe alcohol messaging. However, we believe the imagery in these posts is clearly editorial in nature, with no swimming, no movement, and no unsafe activity depicted or implied whilst drinking as would be contextually apparent to any reasonable viewer.

No swimming or physical activity depicted

- In all images, the model is either sitting, reclining, or standing next to the pool. She is never immersed in the water beyond ankle depth while holding wine. There is no motion, no diving, no active swimming, and no physical action requiring alertness or coordination shown or suggested. Her feet are often only dipped casually in the water, a common and culturally accepted scene of passive poolside leisure specifically used in editorial style shoots such as this one.

Deliberate editorial styling and passive posing

- The model is styled in a skirt, full face of makeup, styled hair, sunglasses, and accessories, with facial expressions that are composed, calm, and static. These styling and creative choices indicate she is posed for a lifestyle or fashion-style shoot, not engaging in an activity or preparing to swim or to be active. Her posture is upright or reclined, further reinforcing the controlled, editorial tone of the content.

No consumption depicted in water or during activity

- At no point is alcohol consumed while in the pool, in motion, or while engaging in any coordinated or risky behaviour. The model may hold a wine pouch or glass, but she is clearly stationary, and the presence of a pool does not automatically equate to intoxicated swimming or high-risk activity, especially as she is shown in shallow depths and very deliberately composed.

Proximity does not imply risk

- Merely being near a pool or holding a drink in a poolside setting does not indicate a breach of the Code. This type of imagery is common across many responsible alcohol and lifestyle brands. The absence of motion, activity, or suggested intoxication and the context of this shoot is important to consider as a whole. The visuals align with safe, low-key, portion controlled enjoyment comparable to sipping wine on a deck or at an outdoor restaurant by the water.

No party setting, impairment or group drinking

- There are no party scenes or crowds in these posts. The content is solo and subdued. There are no signs of impairment, overconsumption, or dangerous water based activities. The model herself is of the age and demographic to slowly enjoy a glass of wine with maturity implied through context and posing. The model remains aware and in control in every frame, further reinforcing a safe and responsible portrayal.

Moderation is implied through packaging

- Our wine pouches are intentionally portion-controlled at 150ml–250ml per unit. This single-serve format encourages moderation and aligns with responsible consumption practices. We believe this supports - not undermines - the intent of the Code by promoting mindful alcohol consumption.

Respect for community safety messaging

- We acknowledge the reference to the Royal Life Saving Australia 2024 Drowning Report. However, this content must be analysed in context and does not show nor imply intoxicated swimming or dangerous behaviour. The data cited applies to alcohol during swimming or aquatic activity, not to stationary, posed, editorial-style photos. We respectfully submit that this imagery does not glamorise unsafe consumption nor would a reasonable viewer interpret it as such.
- We submit that the social media posts do not breach Part 3 (d) when interpreting these images within context as a reasonable viewer. The model is not swimming, not preparing to swim, not in water above the ankles, and not shown consuming alcohol during any activity requiring coordination. The images depict a moment of passive, composed leisure, with no safety concerns evident or implied.

- We take our role as an alcohol marketer and our brand reputation seriously. At no point was it our intention to imply that drinking in or around water is acceptable when swimming or engaging in physical activity. On the contrary, we have gone to great lengths to ensure our content communicates maturity, control, and calm, and that it remains aligned with community expectations and the spirit of responsible consumption.
- We respectfully request that the Panel dismiss this complaint based on the context, visual evidence, and the curation of this content with strong proof of intention to align with Part 3(d) of the Code.

Marketing Best Practice

The Company was asked how it demonstrates a commitment to alcohol marketing best practices. It advised:

- We are not currently an ABAC signatory, but we accept the Panel's decision regarding this complaint and any future rulings.
- Our founder and team are enrolling in the ABAC online training course to ensure a clear understanding of the Code's intent and application moving forward.
- Although this content was not submitted to the ABAC Pre-vetting Service, we are open to doing so for future campaigns and promotions.
- We remain committed to marketing that reflects moderation, safety, and responsible enjoyment of alcohol, and we routinely review our materials with these values in mind.