

Alcohol Beverages Advertising (and Packaging) Code: Guidance Notes

Overview of The ABAC Scheme

The Alcohol Beverages Advertising Code (ABAC) is an initiative in quasi-regulation administered by industry and supported by government. The key components of the Scheme are the Alcohol Advertising Pre-vetting Service (AAPS) and the ABAC complaints handling process. Costs of the scheme are borne by industry.

All advertisements for alcohol beverages are required to comply with the ABAC as well as the Australian Association of National Advertisers' (AANA) Code of Ethics. In addition, where appropriate alcohol advertisements must comply with the Commercial Television Industry Code of Practice, the Codes for Commercial Radio and the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

In the first instance, any complaints about alcohol advertising are directed to the Advertising Standards Bureau which accepts all complaints about advertising. All complaints in relation to alcohol beverages are then referred to the ABAC Chief Adjudicator. Any that fall under the conditions of the AANA Code will also be referred to the Advertising Standards Board.

Members of the Distilled Spirits Industry Council of Australia and the Brewers Association of Australia & New Zealand Inc must ensure that all advertisements are pre-vetted against the ABAC Code. It is recommended that advertisements should also be assessed against the AANA Code. For wine products, all television, cinema and outdoor advertising should be pre-vetted against the ABAC Code and the AANA Code.

Purpose of the Guidance Notes

The ABAC Management Committee has developed the following Guidance Notes to assist advertisers, agencies and decision makers under the ABAC Scheme including AAPS Pre-vetters in interpreting the essential meaning and intent of the ABAC by providing clarification through definition, explanation, or example. The Guidance Notes are not intended to replace or extend the provisions of the Code itself.

The Guidance Notes represent the opinions of ABAC's advisory services and are based in part on previous decisions made by the independent ABAC Complaints Adjudication Panel. Where particular Clauses of the Code have been the subject of a recent adjudication, they are cited as an addendum to these Notes. The full text of the adjudication can be sourced on the ABAC website – www.abac.org.au – and may be useful in providing further understanding of the issues involved in that clause.

Notwithstanding the content of these Guidance Notes, the AAPS Pre-vetter remains the final arbiter on how the code should be interpreted and applied at the pre-vetting stage.

With respect to the AAPS Service, the initial AAPS Pre-vetter may seek the opinion of a second pre-vetter where the initial AAPS pre-vetter is in the first three months of their term or where a new concept or new medium is being assessed and the pre-

vetter believes that they may be operating without precedent and is unsure of the approach to take. Likewise, an advertiser may request an assessment or a review by more than one AAPS Pre-vetter either when submitting the advertisement or upon the initial decision by the first pre-vetter. In all instances, the initial AAPS Pre-vetter will coordinate the decision-making process.

Advertisers may offer relevant materials and facts in support of their applications for pre-vetting approval. Such materials will be given full consideration by the AAPS Pre-vetters but in all cases the decision of the AAPS Pre-vetters will be considered to be final.

Likewise, in the event of a complaint, materials submitted by the advertiser will be given full consideration, but the decision of the ABAC Complaint Adjudication Panel is final.

Users of these Guidance Notes are strongly encouraged to work within both the spirit and the letter of the Code as it stands. Advertisers are reminded that examples, real or perceived, of attempts to circumvent the provisions of the Code threaten the industry's reputation for responsible regulation and are in direct conflict with the interests of industry and the wider community.

Whilst the AAPS Pre-vetters undertake to provide the best possible advice in relation to all advertisements submitted to them, any complaint regarding an alcohol advertisement will be assessed through this complaints handling process. It should be noted that successful pre-vetting does not serve as a guarantee or an argument that a complaint should be dismissed. The ABAC complaints handling process and the AAPS Pre-vetting Service are conducted separately by independent experts.

Preamble

The Brewers Association of Australia & New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia other than point of sale material produced by alcohol beverage retailers, comply with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated, and taking its content as a whole.

Guidance Note 1: The ABAC is a code which principally deals with the content and not the placement of advertisements within a particular medium, location or timeslot. This can be contrasted with the Commercial Television Industry Code of Practice and the AANA Code for Advertising & Marketing Communications to Children which do contain provisions that restrict when an alcohol beverage advertisement can be broadcast. The preamble does however indirectly raise the placement of advertising by reference to “the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated”. This means

decision makers will take placement into account when assessing the class of persons to whom the ad may be communicated.

For relevant ABAC Adjudications see Appendix A

Guidance Note 2: For the purposes of the ABAC Code, and as it is applied in Australian law, the test of the *reasonable person* is intended as a reflection of the standards and attitudes of contemporary Australian society.

The test of the *reasonable person* exists specifically to ensure the perceived views and standards of the broader community prevail over those of any individual or minority group. Specifically, in relation to the context in which alcohol is presented in advertising, we have adopted the test of *the reasonable person* as it is reflected in widely observed and accepted practice and public opinion, to determine where, when, by whom and how alcohol consumption is portrayed.

Definitions

For the purpose of this Code –

adult means a person who is at least 18 years of age;

alcohol beverage includes any particular brand of alcohol beverage;

adolescent means a person aged 14-17 years inclusive;

Australian Alcohol Guidelines means the electronic document ‘Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)’ published by the National Health & Medical Research Council (“NHMRC”) as at 1st January 2010.

child means a person under 14 years of age; and

low alcohol beverage means an alcohol beverage which contains less than 3.8% alcohol/volume.

Standards to be applied

Part 1 – Standards to be applied to advertisements for alcohol beverages

Advertisements for alcohol beverages must –

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i) must not encourage excessive consumption or abuse of alcohol;
 - ii) must not encourage under-age drinking;
 - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv) must only depict the responsible and moderate consumption of alcohol beverages;

Guidance Note 3: There can be no association with violent, aggressive, dangerous, anti-social or illegal acts or behaviour, nor can there be any suggestion of illegal, irresponsible or immoderate consumption of alcohol.

The 2010 Australian Guidelines to Reduce Health Risks from Drinking Alcohol advise that to reduce the lifetime risk of harm from alcohol-related disease or injury, healthy men and women should drink no more than 2 standard drinks on any day and to reduce the risk of alcohol related injury arising from a single occasion of drinking healthy men and women should drink no more than 4 standard drinks on a single occasion. Notwithstanding this, where alcohol consumption is depicted in advertising, it should always be done in an appropriate and responsible manner, depicting consumption in moderation.

For relevant ABAC Adjudications see Appendix B

- b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;

Guidance Note 4: The Code defines an adult as someone of 18 years or over, that is anyone of legal drinking age and it is accepted that advertisements should always be directed at adults. However the apparent age of the talent in an advertisement will often be a subjective test. To avoid ambiguity, the pre-vetter will always take a conservative view of the apparent age of the talent. Therefore agencies should do likewise, irrespective of the actual age of the talent.

In addition to the above, advertisements should not feature activities, imagery, music, characters, celebrities or any other elements that have evident appeal to, or are targeted at, people under 18.

ABAC Adjudications see Appendix C

- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;

Guidance Note 5: Advertisements for alcohol beverages must not portray the presence of alcohol as having any causal relationship with mood change, or success of any kind. However, this Clause is not intended to prevent the depiction of alcohol as being incidental to any of these circumstances or attributes.

For example, there is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success. The same rationale should apply to any form of personal, business, social, sporting, or other success, there being no intention to restrict the depiction of alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion that it has caused or contributed to their circumstance. Subject to these limitations, it is also possible to depict the presence of alcohol in a romantic situation.

It should be noted that the presence of alcohol includes any elements of the product or brand (such as packaging or brand marks) intended to represent the product.

For relevant ABAC Adjudications see Appendix D

- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;

Guidance Note 6: There is no intention to exclude every association between alcohol and sport; however any such association must not involve depictions of consumption of alcohol taking place before or during the engagement in sport. Depictions of consumption of alcohol is more than just actual drinking and includes language and images which invoke consumption. In addition, the clause precludes consumption prior to or during engagement in

- the operation of machinery/equipment which could be dangerous
- any other potentially dangerous activity.

This clause contains an exemption in relation to low alcohol beverages, however, the exemption is not intended to allow the depiction of alcohol consumption in conjunction with inherently dangerous activities, irrespective of the strength of the alcohol product being consumed.

For relevant ABAC Adjudications see Appendix E

- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and

For relevant ABAC Adjudications see Appendix F

- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Guidance Note 7: There is no intention to prevent or limit the use of fantasy or fiction in the advertising of alcohol beverages, provided the spirit and letter of the *Code* is adhered to in all respects. The fact that the circumstance or outcome being portrayed is clearly of a fantastic or fictional nature provides no relief or relaxation of the advertiser's obligations to depict the presence or consumption of alcohol beverages in a manner that is consistent with the *Code*.

Part 2 – Standards to be applied to the naming and packaging of alcohol beverages

1. The standards set out in Part 1 (with the exception of section 1(f)) are extended to the naming or packaging of alcohol beverages.
2. These standards (Part 2 (1)(a)-(g)) apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.

For relevant ABAC Adjudications see Appendix G

Appendix A

ABAC Adjudications:

22/12/08 (*Kahlua*)
01/11/07 (*Tooheys Extra Dry*)
16/04/07 (*Absolut cut Vodka*)

Appendix B

ABAC Adjudications:

24/12/10 (<i>Agwa de Bolivia</i>)	Clause A (i)(iii) C(i)(iii)	Upheld
26/04/10 (<i>Tooheys New</i>)	Clause A (i)(iii) and G	Dismissed
21/10/09 (<i>Wine Doctor</i>)	Clause A (i)(iii) C(iii) and G	Upheld
21/10/09 (<i>Pre-mix Kings</i>)	Clause A (i) and (iii)	Upheld
23/12/08 (<i>Natural Beer x 3</i>)	Clause A (ii)(iii) B and D	Dismissed
14/10/08 (<i>Carlton mid</i>)	Clause A (i) and (iii)	Dismissed
15/09/08 (<i>Jim Beam 'stalker'</i>)	Clause A (i)(ii)(iii) and B	Upheld
25/03/08 (<i>Black Douglas</i>)	Clause A (iii)	Upheld
08/02/08 (<i>Corona</i>)	Clause A (i) and (iii)	Upheld
27/11/07 (<i>James Boag Draught</i>)	Clause A (i)(iii) and (iv)	Upheld
31/07/07 (<i>Toohey's New</i>)	Clause A (i) and (iii)	Dismissed
16/05/07 (<i>Johnnie Walker</i>)	Clause A (ii)	Dismissed
19/05/05 (<i>Jim Beam</i>)	Clause A (iii) and E	Upheld

Appendix C

ABAC Adjudications:

17/12/10 (<i>Three Kings</i>)	Clause A (ii) and B	Upheld
14/10/10 (<i>BWS</i>)	Clause A (ii) and B	Dismissed
02/12/09 (<i>Go Vodka</i>)	Clause A (ii) and B	Upheld
03/03/09 (<i>Dominos</i>)	Clause A (ii) and B	Dismissed
29/02/08 (<i>Cellarbrations</i>)	Clause A (ii) (iii) B and C(iii)	Dismissed
14/11/07 (<i>Little Creatures</i>)	Clause A (ii) and B	Upheld
01/11/07 (<i>Pure Blonde</i>)	Clause A (ii) and B	Dismissed
16/05/07 (<i>Toohey's New</i>)	Clause A (ii) and Clause B	Dismissed
25/04/06 (<i>Bundaberg Rum</i>)	Clause B	Upheld

Appendix D

ABAC Adjudications:

07/01/11 (<i>Liquor Barons</i>)	Clause A (i)(iii) and C (ii)(iii)	Upheld
28/10/10 (<i>VB</i>)	Clause A and C (i)(iii)	Upheld
21/12/09 (<i>Coopers</i>)	Clause A and C (iii)	Upheld
05/02/09 (<i>Moorilla Wines</i>)	Clause C (i)	Upheld
22/12/08 (<i>Johnnie Walker</i>)	Clause C (i)	Dismissed
02/12/08 (<i>Bacardi</i>)	Clause A (ii) B and C(i)	Dismissed

30/10/08 (<i>Budweiser</i>)	Clause A (i)(iii)(iv) and C (i)	Upheld
23/05/08 (<i>Cockatoo Ridge</i>)	Clause A (ii) B and C(i)	Upheld
25/10/07 (<i>Tooheys New</i>)	Clause C (i) & (ii)	Dismissed
31/07/07 (<i>James Boag</i>)	Clause C (i)	Upheld
10/04/07 (<i>Victoria Bitter</i>)	Clauses A (i) (iii) (iv) & C (iii)	Dismissed
26/02/07 (<i>James Boag</i>)	Clauses A (i), (iii), C (i) and D	Dismissed
03/11/06 (<i>James Boag</i>)	Clauses A (iii) and C (ii)	Dismissed
20/06/06 (<i>Toohey's New</i>)	Clause C (ii)	Upheld
07/02/06 (<i>Hahn Light</i>)	Clauses A (iii) and C (i)	Dismissed
13/01/06 (<i>Cascade</i>)	Clause C (i) and (ii)	Dismissed
14/01/05 (<i>St. Agnes Brandy</i>)	Clause C (i)	Upheld
09/12/04 (<i>James Boag</i>)	Clause C (i)	Upheld
09/12/04A (<i>James Boag</i>)	Clause C (i)	Upheld

Appendix E

ABAC Adjudications:		
23/12/10 (<i>XXXX Gold</i>)	Clause A and D	Upheld
28/10/10 (<i>Tooheys New</i>)	Clause A and D	Dismissed
04/08/09 (<i>Bundaberg Rum</i>)	Clause D	Upheld
15/06/09 (<i>Sip'n'save</i>)	Clause D	Dismissed
10/06/09 (<i>Sip'n'save</i>)	Clause D	Upheld
22/12/08 (<i>XXXX Gold</i>)	Clause A and D (i)	Dismissed
15/09/08 (<i>XXXX Gold</i>)	Clause A (iii) and D (i)	Dismissed
21/12/07 (<i>Corona</i>)	Clause D (i)	Dismissed
12/07/07 (<i>Pure Blonde</i>)	Clause A and D (i)	Upheld
09/07/07 (<i>McKenna Bourbon</i>)	Clause D (i)	Upheld
26/02/07 (<i>James Boag</i>)	Clause A (i)(iii) C (iii) and D	Dismissed
17/11/05 (<i>Toohey's New</i>)	Clause D	Upheld
17/12/04 (<i>Guinness</i>)	Clause D (i)	Dismissed
31/08/04 (<i>Carlton Draught</i>)	Clause A (iii) and D	Dismissed

Appendix F

ABAC Adjudications:		
19/05/05 (<i>Jim Beam</i>)	Clause A (iii) and E	Upheld

Appendix G

ABAC Adjudications:		
18/01/10 (<i>Skinny Blonde</i>)	Part 1 C (Upheld) and Part 2.1 A	Dismissed