

Australia's Responsible Alcohol Marketing Scheme

2021 Fourth Quarter Report



OVERVIEW

The ABAC Responsible Alcohol Marketing Code (the Code) sets standards for responsible alcohol 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 alcohol marketing across all advertising mediums.

2021 has seen record levels of activity across both the ABAC pre-vetting service (38% increase) and the ABAC complaints adjudication system (35% increase). Digital marketing continues to be an increasing source of both pre-vetting and complaints activity, reflecting its widespread use by both consumers and marketers in Australia. The vast majority of breaches last year were promptly remedied with only one breach referred to the relevant Liquor Licensing authority for investigation due to non-compliance.

ABAC has responded to these trends with increased training initiatives. ABAC's annual industry webinar and its in-house training workshops have been supplemented this year with a free online training course and video series launched in March. The training has now been completed by around 450 alcohol marketing, agency and media staff. It takes just over an hour to complete and is a must for everyone involved in marketing alcohol in Australia - access via this [link](#).

Importantly, this year ABAC commissioned JWS Research to undertake quantitative community standards research in relation to ABAC and alcohol marketing in Australia. The findings released in October supported strong consistency of both ABAC Code Standards and ABAC Panel decisions with community expectations. ABAC will be building on this important research by undertaking a review of the ABAC Code standards in 2022, which will incorporate public consultation.

A reminder that compliance with the ABAC Placement Rule that requires available age restriction controls to be applied to restrict alcohol marketing on social media to adults will be monitored in 2022. As previously highlighted the ABAC website includes links to a range of resources and 'how to' guides that can help companies check that age restrictions are in place and if not, explain how they can be easily activated:

Brand accounts: [Facebook](#) [Instagram](#) [Youtube](#) [Twitter](#)

Individual Influencer and Brand Partner posts: [Facebook](#) [Instagram](#)

KEY STATISTICS

Complaints	55
Raising Code issues and referred for determination	26
Not raising Code issues*	27
Raising an issue previously considered by the Panel	1
Complaint withdrawn	1
Determinations	41
Upheld	17
Upheld as a No Fault Breach	0
Dismissed	24
Pre-vets	999
Rejected	126

* Complaints that did not raise Code issues either fell outside the scope of the scheme as they were not promoting an alcohol product; or raised concerns outside ABAC standards such as a dislike of advertising, frequency of ads, offensive language or imagery or offence to cultural groups which can fall within the scope of other regulators, including Ad Standards.

RECENT ALCOHOL MARKETING COMPLAINTS

Breach of ABAC Standards

Better Beer Instagram Post (complaint regarding content)

Complaint: Concern that the video post shows a man riding a bicycle on a road while drinking beer and also suggests that drinking the beer leads to a sexual therapeutic benefit.

ABAC standard: Alcohol marketing cannot show or directly imply:

- the consumption or presence of an alcohol beverage as a cause of or contributing to the achievement of sexual or other success; or
- the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel held the view that the video is inconsistent with the Part 3 (d) standard. The bike riding scene shows (by direct implication) the consumption of alcohol while riding a bike on a public road, which, for safety reasons, requires a high degree of alertness or physical coordination.

However, the Panel did not believe the video breached the Part 3 (c)(ii) standard, noting:

- all people are shown fully clothed, the majority are in public, and no physical activity is depicted which is sexual in nature;
- the ABAC standards do permit people to be depicted enjoying an alcohol beverage; and
- taken as a whole, the video would most likely be understood as a somewhat exaggerated reaction to tasting the product rather than suggesting the product causes sexual fulfilment.

The post has been removed.



W Seltzer Instagram Post (complaint regarding content)

Complaint: Concern that the Instagram post encourages unhealthy drinking habits.

ABAC standard: Alcohol marketing cannot encourage excessive consumption.

Decision: The Panel believed the post would most probably be taken as humorous rather than seriously advocating unhealthy alcohol use. That said, the humour relies on an assumed shared understanding by the reader that excessive alcohol consumption can be 'sweated out' and consumption resumed. This message, whether offered seriously or made as a joke, does not model responsible alcohol use consistent with the Part 3 (a) standard.

The post was removed on notification of the complaint.



Various Vodka Packaging & Retailer Facebook Posts (complaint regarding content)

Complaint: Concern that the packaging and posts would appeal to minors.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel held the view that the Mystical Mango Magic Vodka packaging complied with the ABAC standard, but the Fairy Floss and Bubblegum Vodkas would have strong or evident appeal to minors, noting:

- the packaging establishes the product as being alcohol due to the clear reference to 'vodka' on the front of the label and would not be confused with a soft drink or confectionery;
- fairy floss and bubblegum are confectionery items likely marketed toward and consumed more extensively by minors than adults and the references to these confectionery items are the most dominant messaging on the front of the label;
- while the font and design elements of the label do not have any particular appeal for minors, the use of descriptors 'magical fairy floss' alongside 'unicorn vodka' and 'bursting bubblegum' on an alcohol product would enhance the appeal to minors as the terms 'unicorns', 'magic' and exaggerated descriptors like 'bursting' are highly relatable to minors;
- the use of references to these confectionery items on a vodka product is likely to contribute to an illusion of a smooth transition to an alcohol product for a minor;
- while the name is used, in part, to invoke a sense of nostalgia in potential adult consumers, this nostalgia stems from memories of childhood use of fairy floss and supports the attraction of the name to minors;
- the pastel blue or dark pink colour of the packaging is attractive; and
- while no one factor of itself is decisive, taken as a whole, a reasonable person would probably understand the packaging has a strong and evident appeal to minors.

In addition, the Facebook posts would likely have strong or evident appeal to minors.

The Company have taken steps toward modifying the packaging and the posts have been removed.



Wet Pussy Packaging (complaint regarding content)

Complaint: Concern that the packaging suggests young people need to drink to be sexy or to get sex and appeals to a youth market.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel held the view that a reasonable person would probably understand the packaging would have strong or evident appeal to minors, noting:

- the sexual connotation of the brand name is likely to appeal to minors in their mid-teens wishing to feel older;
- the packaging employs bright pink text and clear packaging that displays the cherry-coloured liquid that are together likely to be eye-catching for minors;
- while the product labelling does contain cues that it is an alcohol beverage the most influential design features on the front of the packaging is the Wet Pussy brand name and the cat image, with the alc/vol descriptor in comparatively small print;
- the lack of a clear alcohol description on the front of the bottle together with the prevailing colour scheme and cat imagery creates an illusion that the product may be an easy transition from non-alcoholic to an alcoholic beverage;

The Panel also found that the product name, branding and packaging carries a strong implication of the achievement of success, noting:

- the standard is broadly framed and captures both the presence and consumption of alcohol ie it is not required for a marketing communication to depict the consumption of alcohol to breach the standard;
- the Company's stated intention not to raise sexual connotations is not the test, but rather how the product name and packaging would be probably understood by a reasonable person;
- 'wet pussy' in common Australian colloquial use refers to a sexually aroused woman and a reasonable person is sufficiently worldly to readily recognise the reference;
- even assuming a person is aware of the bar cocktail of the same name, this does not mean the sexual connotation of the product name is diminished; and
- taken together a reasonable person would probably understand the product and packaging was suggesting that that the product might contribute to the achievement of sexual success.

The Company has not responded to the final determination and the complaint has therefore been referred to the Victorian Liquor Licensing Authority.



Methanol Moonshine Website and Children’s T-shirts (complaint regarding content)

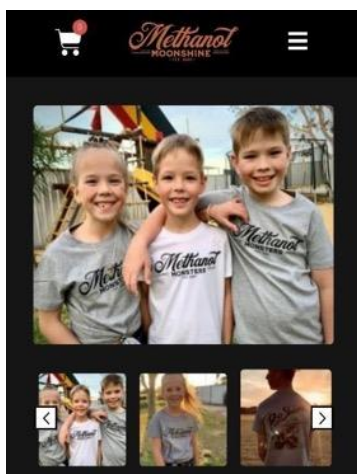
Complaint: Concern about children’s t-shirts with company branding being sold via the brand website.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors or include images of minors, unless in an incidental role.

Decision: The Panel believed the marketing collateral (children’s t-shirt) to be in breach of the Part 3 (b) standard, noting:

- the t-shirts are self-evidently for use by minors;
- the t-shirt employs the alcohol branding style of cursive writing and would be recognised by persons familiar with the Company’s alcohol branding;
- replacing the word ‘Moonshine’ with ‘Monsters’ does not sufficiently differentiate the children’s design from the core alcohol product branding;
- the image on the rear of the children’s t-shirt clearly relates to sprint car racing and readily brings to mind the Company’s association and its co-branding with the sport; and
- taken as a whole the children’s t-shirts would be understood as an item of marketing collateral promoting the Company’s alcohol brand.

The marketing collateral has been discontinued and the website entry selling the children’s t-shirts has been removed from the brand website.



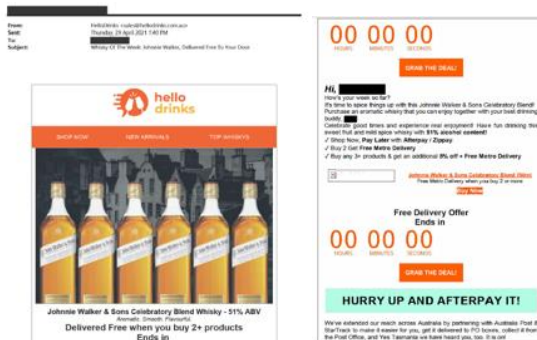
Hello Drinks EDM (complaint regarding content)

Complaint: The email emphasises the high alcohol strength of a whisky.

ABAC standard: Alcohol marketing cannot encourage the choice of an alcohol beverage by emphasising its alcohol strength or intoxicating effect.

Decision: The Panel believed the standard had been breached. The sentence - ‘Have fun drinking this sweet fruit and mild spice whisky with **51% alcohol content!**’ - would be likely understood as going beyond the provision of factual information about the product. The bold lettering and the exclamation mark would be understood as promoting the high alcohol content of the product as a selling point. Equally, the message could be easily interpreted as the high alcohol content contributing to a ‘fun’ drinking experience.

The Company advised they changed their marketing systems to avoid a recurrence.



Good Pair Days EDM (complaint regarding content)

Complaint: A meme in the marketing suggests consuming wine could contribute to a significant change in mood.

ABAC standard: Alcohol marketing cannot suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.

Decision: The Panel found the posts were in breach of the standard in Part 3 (c)(i), noting:

- the intended humour of the joke referred to in the complaint arises from the entirety of the meme, including the accompanying text, the marginal change in the rabbit's facial expression, combined with the words "Me handling sugar-high kids vs me with wine handling sugar-high kids", delivers a message that drinking alcohol makes it easier to remain calm when handling a stressful situation, in this case, energetic, rowdy and excited children;
- the underlying humour of the joke is not achieved if, overall, a significant change in mood is not portrayed; and
- a reasonable person has a sense of humour and would not take the meme as the Company seriously advocating for alcohol to be used irresponsibly, but the humour does rely on a shared common understanding that alcohol can be used to change mood and cope with stress and it is this implicit messaging about alcohol that is inconsistent with the ABAC standard.

The Company agreed not to again use the meme in marketing.

Me handling sugar-high kids
vs.
Me with wine handling sugar-high kids



Good Pair Days

Red Eye Bar Instagram Post (complaint regarding content)

Complaint: Concern that a variety of posts showed irresponsible/excessive consumption of alcohol.

ABAC standard: Alcohol marketing cannot depict or encourage excessive consumption.

Decision: Nightplan posts were found to be outside ABAC's scope as they were by an app developer not generated by or within the reasonable control of an alcohol producer, distributor or retailer.

The Panel believed the Red Eye bar post implied or encouraged excess alcohol consumption, noting:

- drinking directly from a 750ml bottle of wine (as opposed to a half, demi or piccolo sized bottle, ready to drink spirit product or a stubbie of beer) can raise an inference of excessive consumption;
- the reference in the text to getting weird, where people are more likely to have reduced inhibitions and to act 'weird' after drinking excessively; and
- the wording positions getting 'weird' after the reference to consumption of alcohol and tacos.

The post was removed on notification of the complaint.



Gin Society Instagram Post (complaint regarding content)

Complaint: The marketing suggests this product is required to survive the lockdown/ as a coping mechanism.

ABAC standard: Alcohol marketing cannot:

- suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment; or
- suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel found the posts were in breach of the standard in Part 3 (c)(i) and (c)(iv), noting:

- the posts were made during the covid lockdowns impacting on NSW, ACT and Victoria during late June to mid October 2021 and while it is permitted to reference the lockdowns in alcohol marketing, this must be done consistently with the standards of responsible marketing contained in the ABAC;
- the wording of the post and hashtags used suggest that lockdown is difficult, but a person's frame of mind may improve after drinking alcohol; and
- a reasonable person could well take the meaning to be that alcohol consumption is a coping mechanism for the lockdown and will improve a person's mood.

The post was modified on receipt of the complaint.



Fairy Cake Oat Cream IPA (complaint regarding content)

Complaint: Concern that the packaging appeals to children through its curly and cutesy font, soft pastel colour scheme with sprinkles and appearance of fairy bread, a sprinkle doughnut or cake.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel held that taken as a whole, a reasonable person would probably understand the packaging as having a strong and evident appeal to minors, noting:

- there is the potential for the product to be confused with a non-alcoholic beverage as the labelling fails to unambiguously establish the product as being a beer on the front of the can;
- the name Fairy Cake is far more associated with a non-alcohol than an alcohol product;
- the pattern of sprinkles and mixed colours would resonate and be familiar to minors;
- the overall impact of the packaging creates relatable imagery for minors inclusive of the product name and cake decoration pattern.

The packaging has been discontinued.



Abermain Hotel (complaint regarding content)

Complaint: Concern that takeaway cocktail labels breach various ABAC standards.

ABAC standard: Alcohol marketing cannot encourage excessive consumption or have strong or evident appeal to minors.

Decision: The Panel noted that applicable legislative and Food Standards Code requirements did not require alcohol content to be included on the packaging and the packaging itself did not breach ABAC standards, However, the Panel found that the social media posts promoting the take-away cocktails did breach the ABAC standards, noting;

- the phrase ‘you can make 4 to 6 cocktails with this 1 litre bottle of cocktail mix ‘ followed by ‘... Cos let's face it, we've got nowhere to be!’ raises an implication that since a consumer can't leave home, then more heavy consumption than normal is ok.
- the shape, colour and style of the bottle is not immediately recognisable as one that would ordinarily contain alcoholic beverage;
- failure of accompanying text to unambiguously identify the cocktails as being alcoholic; and
- posing of the products with Bundaberg Ginger Beer and Kirks Lemonade along with the use of the words “fruit tingle” (a well known confectionery item) creates a relatable image for minors.

The Company removed the posts.



Wine Not The Brand Facebook Posts (complaint regarding content)

Complaint: The phrase “because lockdown calls for a beverage in hand at all times” implies that excessive alcohol consumption is a necessary coping mechanism during difficult times.

ABAC standard: Alcohol marketing cannot:

- show or encourage the excessive or rapid consumption of alcohol;
- suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment; or
- suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel found the posts were in breach of the standard in Part 3 (a)(i) (c)(i) and (c)(iv) as:

- inclusion of the phrase, ‘because lockdown calls for a beverage in hand at all times’ raises a direct implication of excessive alcohol consumption; and
- a reasonable person could well take the meaning to be that alcohol consumption is a coping mechanism for the lockdown and will improve a person’s mood.

The ad was discontinued on receipt of the complaint.



Basic Babe Instagram Posts (complaint regarding content)

Complaint: Concern that four Instagram posts show images of underage people and alcohol consumption before swimming.

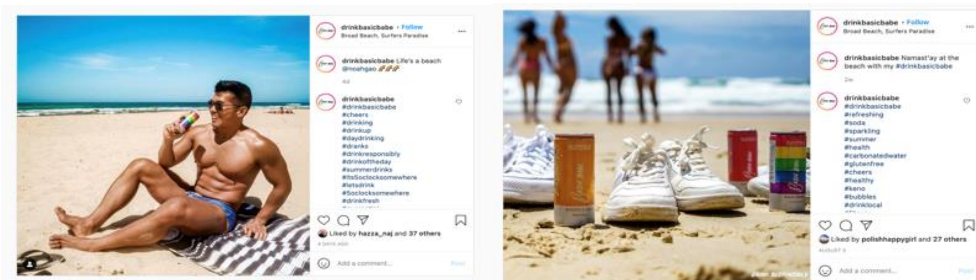
ABAC standard: Alcohol marketing cannot:

- depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
- depict an adult who is under 25 years of age unless:
 - they are not visually prominent; or
 - they are not a paid model or actor and are shown in a Marketing Communication that has been placed within an Age Restricted Environment; or
- show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that the posts all included models aged 25 or over who appear to be adult, however two of the posts were in breach the Part 3 (d) standard on the basis it is reasonable to imply from the images the consumption of alcohol before or during swimming, as:

- the first post shows a man in swimwear on a towel sitting on the beach and drinking the product at a time of day when swimming at the beach is highly likely; and
- the most likely interpretation of the second post is that the foreground image of the product and the shoes is connected to the background image of the women ie the shoes and the product belong to the women, the women appear to be about to enter the water; and there is a reasonable implication that consumption of the product has occurred.

The posts were removed.



Milky Lane (complaint regarding content and placement)

Complaint: Concern that takeaway cocktail labels do not detail alcohol content, leading to inadvertent excess consumption and confusion for minors, social media platforms are not age restricted and product names on the online cocktail menu could appeal to minors.

ABAC standard: Alcohol marketing cannot:

- encourage excessive consumption;
- have strong or evident appeal to minors; or
- be directed at Minors, through any breach of the placement rules

Decision: The Panel noted that applicable legislative and Food Standards Code requirements did not require alcohol content to be included on the packaging, the packaging itself did not breach ABAC standards, and age restriction controls are not intended to apply in relation to licensed restaurants,. However, the Panel found that the social media posts promoting the take-away cocktails did breach the Part 3 (b) standard. The Panel noted:

- the images of the cocktails are bright and eye-catching;
- some names given to the cocktails adopt confectionery descriptions popular with minors such as Bubblegum Sour, Sour Warhead, Fruit Tingle; and
- the text does not unambiguously establish the cocktails are alcoholic in nature;.

The posts were removed on notification of the determination.



Lockdown essentials Pack Website and Facebook Posts (complaint regarding content)

Complaint: The marketing implies alcohol consumption is a necessary coping mechanism during difficult times, aiding relaxation and numbing negative emotions associated with the lockdown.

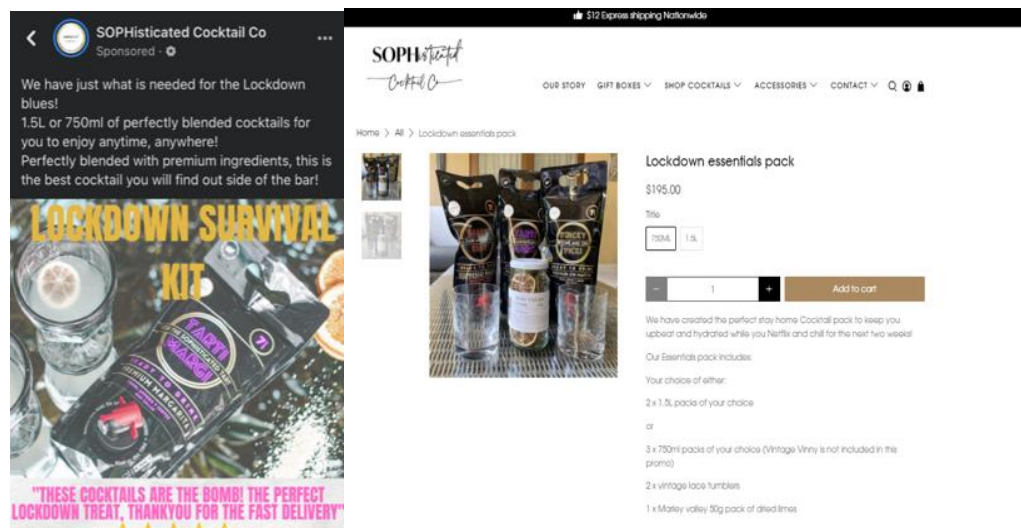
ABAC standard: Alcohol marketing cannot:

- suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment; or
- suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

Decision: The Panel found the posts were in breach of the standard in Part 3 (c)(i) and (c)(iv) as a combination of the following phrases within marketing for an alcohol product would suggest to a reasonable person that the product may enhance a person's mood or be used as a coping mechanism during lockdown:

- 'we have just what is needed for the lockdown blues' and 'Lockdown survival kit' in the Facebook post; and
- 'We have created the perfect stay home Cocktail pack to keep you upbeat and hydrated while you Netflix and chill for the next two weeks!' on the Company website.

The posts/entires were modified on receipt of the complaint.



Your Mates Brewing (complaint regarding content)

Complaint: Concern that the packaging is designed around cartoon images that appeal to minors and that two Instagram posts show images of alcohol consumption while driving a boat and swimming.

ABAC standard: Alcohol marketing cannot:

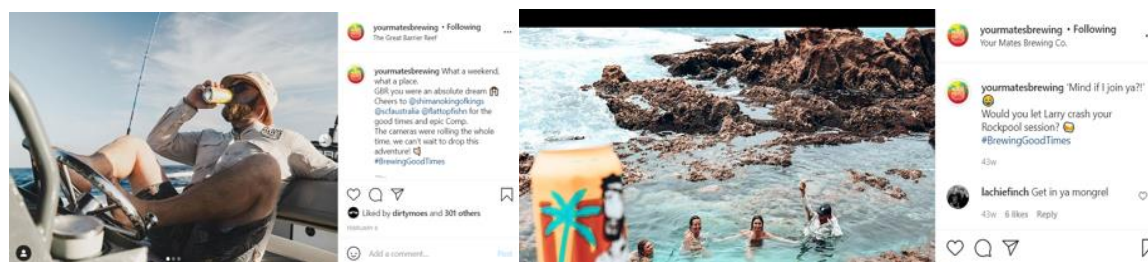
- have strong or evident appeal to minors; or
- show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that the packaging did not breach the standard, noting:

- the packaging sufficiently identifies the Products as being alcoholic beverages and the style and design of the labelling would not cause confusion with a soft drink;
- the artwork depicts clearly adult characters in scenes that would not strongly resonate with minors;
- the colour scheme used is not bright but muted and mature; and
- taken as a whole, the appeal of the packaging design to minors would be incidental and not strong or evident.

However, the Panel found that Instagram posts with an image of a man consuming alcohol while in control of a boat and a group of people swimming while one is holding up a can of beer show the consumption of alcohol before or during activities that, for safety reasons, require a high degree of alertness or physical co-ordination in breach of Part 3 (d) of the ABAC.

The posts were removed on receipt of the complaint.



Culture Kick Sour Ale Packaging varieties (complaint regarding content)

Complaint: Concern that cans include images of ice-cream and a pie which look appealing to young children.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel held the view the packaging was not compliant with the Code standard, noting:

- the products are not unambiguously identified as being alcoholic;
- the descriptors 'cherry berry choc sundae', 'pine lime creamsicle' and 'blueberry pastry' would be far more associated with non-alcoholic products than an alcoholic beverage;
- the principal imagery on each of the packaging evokes an impression of desserts popular across age groups and recognisable and relatable to minors;
- the imagery and name of the products create an illusion of a smooth transition from non-alcoholic products to an alcohol beverage;
- the packaging employs bright colours that are likely to be eye-catching and appealing to minors; and
- while no one factor of itself is decisive, taken as a whole, a reasonable person would probably understand the packaging has a strong and evident appeal to minors.

The products were limited edition one off releases with no stock remaining.



Marketing Consistent with ABAC Standards

Boozebud Outdoor Advertisement (complaint regarding content)

Complaint: The advertisement looks like a children’s cartoon and is on a street with a primary school, passed by hundreds of children every day.

ABAC standard: Alcohol marketing cannot:

- have strong or evident appeal to minors;
- be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel decided there was no breach of the ABAC Placement Rules as the mural was located more than 150 metres from the nearest school, and also did not have strong or evident appeal to minors, noting:

- the scene depicted draws on outdoor/summer themes and would be familiar across age groups including but not specifically minors;
- the written messages relating to the Company name and its range of booze is directed towards adults and would not have a strong appeal to minors;
- the BBQ depiction and the magpie taking a sausage would more strongly resonate with a person most likely to operate a BBQ namely an adult rather than a minor;
- the backyard cricket imagery would resonate with minors and adults, although the broken window trope is generally more associated with a children’s mishap;
- the colours employed on the whole are deeper and richer rather than bright and contrasting; and
- overall the illustrative style would have some appeal to minors but this is considered to be incidental rather than strong or evident.



Grey Goose Vodka Television Advertisement (complaint regarding placement)

Complaint: The advertisement was placed during a family show, Lego Masters Bricksmas, on 9 Now during the daytime.

ABAC standard: Alcohol marketing cannot be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel decided there was no breach of the ABAC Placement Rules, noting:

- the age restriction controls available on the 9Now BVOD platform were utilised to exclude account holders who are minors from being served with alcohol ads;
- the audience for Lego Masters Bricksmas did not exceed 17% under 18 which is within the 75% adult requirement of the Placement Rules; and
- Lego Masters Bricksmas has wide appeal, including to minors, but the program cannot be said to be primarily aimed at minors.

Hard Fizz Instagram Post (complaint regarding content)

Complaint: The Instagram post features the Island Boys who are 20 years old.

ABAC standard: Alcohol marketing cannot depict a visually prominent adult under 25 years of age unless they are not a paid model or actor and are shown within an age restricted environment.

Decision: The Panel believes that the Instagram post falls within the exception in Part 3 (b)(iii), namely, the two visually prominent 20-year-olds depicted in the Instagram post cannot be considered to be paid models or actors remunerated by the Company. As the post was placed within an age-restricted environment, there has been no breach of the ABAC requirements.



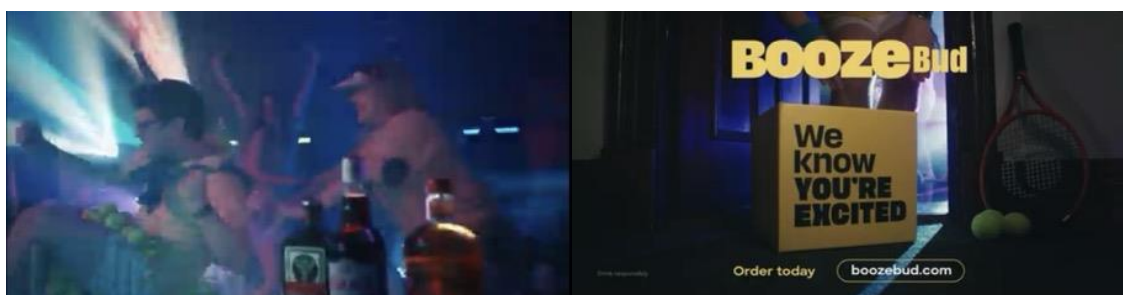
Boozebud Television Advertisement (complaint regarding content)

Complaint: The ad shows tennis players dancing crazily after drinking tequila.

ABAC standard: Alcohol marketing cannot suggest the consumption or presence of alcohol may create or contribute to a significant change in mood or environment or be a cause of success or achievement being celebrated.

Decision: The Panel believed the advertisement does not breach the Part 3 (c) standard, noting:

- the ad is a parody of a dance club by positioning somewhat nerdy and older tennis players in a high energy scenario of an event more associated with young adults;
- the mood of the ad's scenario is set prior to the introduction of alcohol and remains constant;
- although it could be reasonably expected that alcohol would be consumed at a dance party, no actual alcohol consumption is shown;
- the premise of the ad, supported by the voiceover "Whatever you're excited for, we're here for it" is that the Company will deliver to events that you are excited about, suggesting that the excitement is due to the event itself rather than the alcohol delivery;
- it is permissible under the Code to show alcohol as part of a celebration provided alcohol is not depicted as a cause of the celebration; and
- taken as a whole, the ad would be understood as promoting the delivery service of the Company to events of all types rather than alcohol use significantly changing a mood or causing a celebration.



White Claw Television Ad (complaint regarding content and placement)

Complaint: The advertisement shows young people skateboarding and rollerblading and during time frames when alcohol advertising is not permitted.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors or be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel decided there was no breach of the ABAC Placement Rules, noting:

- the Commercial Television Industry Code of Practice only applies to free to air television and does not apply to digital advertising placements (the ad was only shown on digital television);
- available age restriction controls were activated to exclude account holders who are minors from being served with alcohol ads on the 7Plus platform;
- recent viewership data for Sunrise indicates that it is reasonable to expect that its audience would exceed 75% adults; and
- Sunrise cannot be fairly said to be a program aimed primarily at minors.

In addition, the Panel did not believe the ad breached the Part 3 (b) standard, noting:

- the ad is predominately in black and white, and therefore less eye-catching and engaging than an ad that uses bright, contrasting colours;
- the skateboarding scene is not the defining feature of the ad and in fact a skateboard is not actually seen but its use is implied;
- the characters shown are all adults aged 25 or more and are depicted as adults;
- the overall context of the ad establishes adults engaging in activities which culminate with a group of friends coming together where some moderate consumption of the product occurs;
- the laidback feel and messaging is probably more attractive to adults than minors; and
- the tone is adult and is not considered highly relatable to children or adolescents.



Ampersand Extra Strength Packaging (complaint regarding content)

Complaint: The packaging promotes 'extra strength' for their higher alcohol strength product.

ABAC standard: Alcohol marketing cannot encourage the choice of an alcohol beverage by emphasising its alcohol strength or intoxicating effect.

Decision: The Panel believed the packaging was consistent with this standard, noting that the words 'extra strength' and the ABV of 6% are factual rather than emotive and not a prominent or eye-catching feature of the packaging design. A reasonable person would view these aspects of the packaging as providing relevant, important and helpful information, rather than as an encouragement to purchase the product because of its relatively high alcohol strength.



Newy Distillery Television Ad (complaint regarding content)

Complaint: Showing girls drinking alcoholic beer in their swimwear when it is possible they will go swimming afterwards.

ABAC standard: Alcohol marketing cannot show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that there was no breach of the Code standard. The text accompanying the first post reads *'How good's a beer when you're done swimming...'* while the second reads *'Nothing like a cold longneck on the beach after you're finished swimming'*. Each post would be understood through a combination of the photograph and the accompanying text. Taken as a whole, the posts establish that alcohol consumption is occurring after swimming. Accordingly, the messaging is consistent with the ABAC standard.



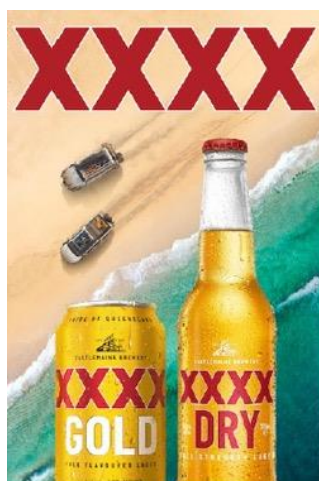
XXXX Outdoor Advertisement (complaint regarding content)

Complaint: The poster encourages drink driving.

ABAC standard: Alcohol marketing cannot show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that the ad did not breach the standard, noting:

- the scene depicted does not show or reasonably imply that alcohol consumption has occurred; and
- placing two oversized images of bottles of the product on the poster would be understood by a reasonable person as establishing the brand and not that the beer is being consumed by the drivers of the vehicles at that moment.



DRNKS Email Marketing (complaint regarding content)

Complaint: Concern that the email message ‘*Speaking of PRONTO - we’ll be delivering ice cold drinks to your door / office / beach / park all day Thursday, Friday and Saturday*’ promotes delivery inconsistently with the NSW Liquor Act and to the beach, which is a dangerous combination.

ABAC standard: Alcohol marketing cannot:

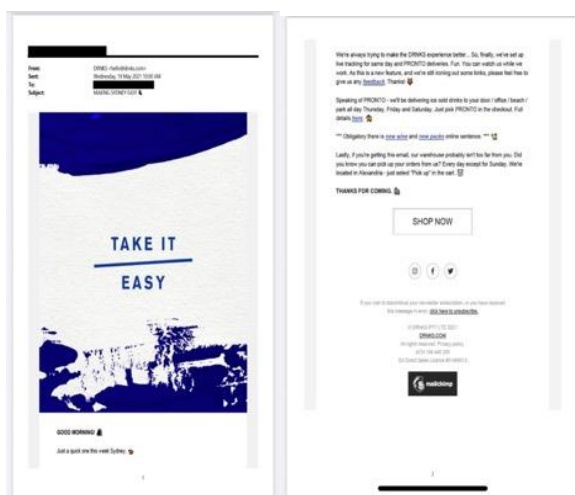
- show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage;
- show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel noted that alcohol marketing that advocated that a person use alcohol in a criminal or unlawful way would be a breach of the Part 3 (a) standard, and while the sentence in the email referenced by the complainant (as conceded by the Company) does not employ the most precise language, the Panel does not believe the email breaches the standard. In reaching this conclusion the Panel noted:

- Liquor Act provisions making it unlawful to deliver alcohol to an alcohol free zone or area had not come into effect when the email was sent;
- there is a fair amount of nuance in how local government designations of alcohol exclusion areas actually operate. For instance:
 - some restrictions are not outright but go to times of day;
 - Randwick City Council (given by the complainant as an example of alcohol restrictions) has website advice that “alcohol and glass is prohibited on all Randwick City beaches (all sand areas and rock platforms), but you can drink alcohol in a number of beachside parks during daylight hours”;
- ‘beach’ could readily be understood to include areas adjacent to the sand such as foreshores and grassed areas where alcohol consumption is more often permitted; and
- taken as a whole the messaging in the email is primarily about the new tracking system for orders and would not be reasonably understood as a call for customers to act unlawfully or engage in anti-social behaviours.

The Panel also did not believe the email marketing breaches the Part 3 (d) standard, noting:

- there is nothing in the email suggestive that swimming might be contemplated;
- simply mentioning ‘beach’ does not raise a reasonable implication that swimming is to occur;
- it is not inconsistent with the ABAC standard to associate alcohol products with outdoor settings such as a beach or park; and
- it is a very long bow to draw from the description of ‘ice cold drinks’ a sequence of actions involving alcohol consumption and subsequent swimming when no words or images in the marketing point to swimming occurring.



Balter Beer Television Advertisement (complaint regarding content)

Complaint: The song happy birthday used in the ad is recognisable to children.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel noted that 'Happy Birthday' is reputedly the most well-recognised song and tune in the English language and the complainant's contention that the tune used on the TV ad will be recognised by minors was accepted. The Panel then considered whether the ad inclusive of the song/tune has a strong appeal to minors and on balance found the marketing to be consistent with the Part 3 (b)(i) standard, noting that:

- the main characters in the ad are middle-aged men and the ad is set in a bar that is unlikely to appeal to minors;
- the play on the 'happy birthday' song would be recognisable to minors as well as adults;
- the scene created in the ad is not reminiscent of a birthday party for children or adolescents, nor does it include any other imagery that would appeal strongly to minors; and
- taken as a whole, the ad is directed towards adults and any appeal to minors would be incidental rather than strong or evident.



Good Tides Hard Seltzer Packaging (complaint regarding content)

Complaint: The packaging is appealing to minors due to the inclusion of the whale and bright colours.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors

Decision: The Panel found that the ad did not have strong or evident appeal to minors, noting:

- the product packaging clearly establishes the beverage as alcoholic through the use of the descriptor 'sparkling water + vodka' and there is no reasonable prospect the product would be confused with a soft drink;
- while an image of animals or sea creatures, such as a whale, can increase the appeal of packaging to a minor, the whale image used in this case is of a simple line design, is not coloured and is integrated into the design elements of the logo;
- the predominant colour of the packaging is white, with muted colours that are not considered to be contrasting or eye-catching;

- the design elements and the overall tone of the product packaging are simple and stylised, rather than juvenile and do not bring to mind any particular children’s cartoons or products;
- taken as a whole, the appeal of the packaging to minors would likely be incidental rather than strong or evident.



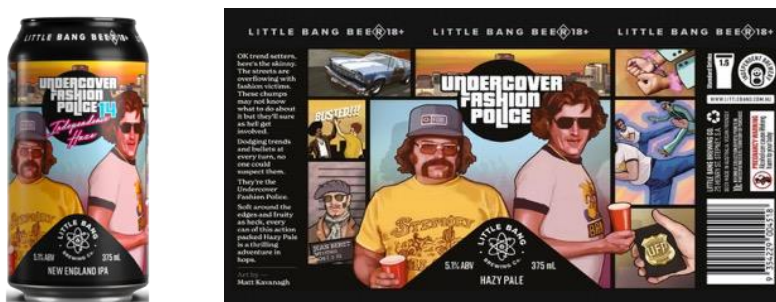
Undercover Fashion Police NEIPA Packaging (complaint regarding content)

Complaint: The label is derived from the popular video game franchise ‘Grand Theft Auto’ which strongly appeals to minors..

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors

Decision: The Panel found that the ad did not have strong or evident appeal to minors, noting:

- it is clear the product is an alcohol beverage and there is no reasonable prospect the product would be confused with a soft drink;
- the stylistic similarity between the product packaging and GTA label of separate panels containing different drawn images is not as apparent from viewing the front of the can. The dominant images of the product are the product name and the images of the two men and the Company logo;
- the overall tone of the product packaging is mature;
- while the similarities between the labelling of GTA and the product might be recognised by some minors, the fact the game is played more heavily by adults and is rated unsuitable for minors and the differences between the packaging and game labelling diminishes the potential impact on minors; and
- taken as a whole, the packaging would primarily appeal to older males and any appeal to minors would likely be incidental rather than strong or evident.



4 Pines Facebook & Instagram Post (complaint regarding content)

Complaint: The promotion encourages excessive consumption of alcohol.

ABAC standard: Alcohol marketing cannot encourage excessive consumption.

Decision: The Panel did not believe the post would be understood as encouraging excessive consumption. The two men are drinking a bottle of beer each and don’t appear affected by alcohol. The drawn graphics distinguish the cases of beer from the ‘live’ scene of the two men. Most likely the post would be understood as simply representing an image of the product and not be taken as giving a message about excessive consumption levels. The comments on the post, while not created by the

Company, are the Company's responsibility. While the ABAC doesn't go to imposing moderation obligations as such, if comments are made so that the probable understanding of the post becomes inconsistent with Code standards, then the Code will be breached. Neither the Facebook nor Instagram posts elicited many comments and the comments in this case would not alter the probable understanding of the post.



Big Shed Brewing Facebook Post (complaint regarding content)

Complaint: The promotion advertises to parents to get children to attend the venue and encourages drink driving.

ABAC standard: Alcohol marketing cannot:

- have strong or evident appeal to minors
- show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that the ad did not have strong or evident appeal to minors, noting:

- the ABAC Scheme needs to be understood as operating consistently with government regulation of alcohol and South Australian liquor licensing expressly permits minors to attend licensed premises;
- the post is targeted to adults by positioning the venue as a child-friendly dining option; and
- a reasonable person would not understand the post as encouraging underage drinking or otherwise as being strongly appealing to minors.

In considering whether the promotion of its non-alcoholic beer met ABAC standards, the Panel observed that the intent of the ad is clear – driving is an activity that cannot be combined with alcohol consumption, but which can be done consistently with consuming Desi Driver. The Panel believed a reasonable person would not understand that drink driving is being encouraged by the Facebook post.



Fizzer Facebook Post (complaint regarding Fizzer Facebook Post (complaint regarding content))

Complaint: This promotion attempts to blur the line between soft drinks and alcohol to the point where it is appealing to minors and creates a transition between soft drinks and alcohol.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel found that the ad was not in breach of the ABAC standard, noting that while the complaint raises a novel point, offering a post-mix machine as a prize is not considered likely to be strongly appealing to minors as:

- the competition is not open to minors;
- a post-mix machine is not considered likely to be an item like, for instance, a game console, that will be regarded by minors as a desirable item to own and to use;
- while a generic post-mix machine will be associated with the dispensing of soft drinks, this does not make the machine or a competition to win a machine strongly appeal to minors; and
- the Facebook post advising of the competition and its terms and conditions is essentially factual and does not employ language or imagery considered likely to be appealing to minors.



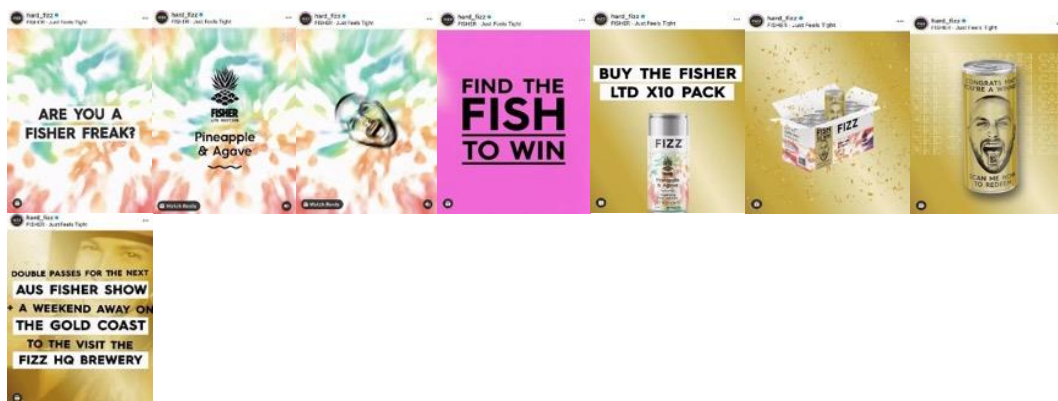
Hard Fizz Facebook & Instagram Post (complaint regarding content)

Complaint: The promotion encourage excessive purchase of alcohol and appeals to minors through a Charlie & The Chocolate Factory style 'golden can' game.

ABAC standard: Alcohol marketing cannot encourage excessive consumption or have strong or evident appeal to minors.

Decision: The Panel found that the ad was not in breach of the ABAC standards, noting:

- the ABAC standard goes to the encouragement of consumption rather than the encouragement of the purchase of alcohol and there is a significant difference between an incentive to consume alcohol quickly or immediately eg 'happy hour' at a pub or club and an incentive to promote the purchase of alcohol which is taken away from a retailer and consumed at a later time;
- even if the competition encouraged a consumer to purchase more than a usual amount of alcohol products in order to maximise the chance of finding a golden can, it does not follow that the purchased products will be consumed excessively given:
 - alcohol has a long shelf life and can be stored for many months before being consumed; and
 - the purchased product might be consumed by multiple people not just one person in an excessive manner.
- there is nothing in the marketing which suggests a particular pattern of consumption and it's more likely that the impact of the marketing is to encourage a consumer to purchase the Company's product over a competitor product which does not offer a possible prize than it is to encourage binge drinking or other excessive consumption;
- the complainant's point about the origins of the 'golden can' and links to 'Charlie and the Chocolate Factory' is acknowledged, however, the golden ticket trope has moved well beyond its origins as a children's story and now is recognised as meaning something that gives the holder the chance of a significant opportunity;
- the competition is not open to minors;
- FISHER is not a performer aimed at minors and the competition prizes of attending a FISHER show and a tour of the Company's distillery is not likely to appeal strongly to minors; and
- the video post promoting the competition is engaging and would have appeal across age groups including minors.



Newy Distillery Television Ad (complaint regarding content)

Complaint: Concern about mixing alcohol with swimming.

ABAC standard: Alcohol marketing cannot show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that there was no breach of the Code standard as the advertisement depicts fully clothed people walking and picnicking on a beach, without towels or any other items that would suggest they will swim in the ocean after their picnic.



The Bottle-O Television Advertisement (complaint regarding content)

Complaint: Concern that the packaging is designed around cartoon images that appeal to minors and that two Instagram posts show images of alcohol consumption while driving a boat and swimming.

ABAC standard: Alcohol marketing cannot:

- show or encourage the excessive consumption or the misuse or abuse of alcohol;
- have strong or evident appeal to minors;
- show 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; or
- show or directly imply the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as swimming.

Decision: The Panel found that the advertisement did not breach the standards, noting:

- the advertisement does not show the consumption of any alcohol, and does not portray anyone who looks or is behaving as though they have consumed an excessive amount of alcohol;
- the employee is standing alongside a stocked shelf, which looks very much like that found often in alcohol retail outlets and in this setting, a reasonable person would understand that the alcohol present would be purchased and consumed by multiple customers over a period of time, and that excessive consumption by any one individual cannot be inferred;
- there is no ABAC standard that prohibits alcohol consumption being portrayed as 'normal' if normal equates to a pattern of consumption by adults no greater than that detailed in the Australian Alcohol Guidelines;
- bottle-shops are staffed by people who live and may be active within the community;
- like other retailers, bottle-shop employees may be appreciated by their clientele for providing good customer service and stocking a wide range of products;

- the marketing is seeking to differentiate the Bottle-O from its competitors (including online sales channels) by highlighting its local community connections and attentive customer service;
- the standard goes to the introduction of alcohol causing the achievement of success whereas the ad positions the main character as being popular prior to his role at the Bottle-O is established;
- although a person is depicted as being in control of a motor bike, there is no indication that they are or have been drinking alcohol;
- the soundtrack does not have particular attractiveness for a minor beyond the general attractiveness it has for an adult, is likely to appeal most to those who remember it from the peak of its popularity in the 1980s and it is unlikely the revised lyrics would appeal to children; and
- taking into consideration the advertisement as a whole, there is no strong or evident appeal to minors as the ad does not specifically target minors, does not use imagery designed to appeal to children and the people featured are clearly adults, undertaking typically adult activities that are unlikely to capture the attention of minors.



Ginfinity Packaging (complaint regarding content)

Complaint: Packaging is attractive to minors through bright colourful packaging and bubblegum reference which is a kids confectionery item.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors

Decision: The Panel found that the packaging does not breach the standard, noting:

- the packaging establishes the product as being an alcohol beverage and would not be confused with a soft drink or confectionery;
- the bubble-gum descriptor does not dominate the labelling but is secondary to other features such as the GinFinity brand name and the geometric design;
- the labelling provides information as to the use of the bubble-gum descriptor, and while this is of less impact given its placement on the rear of the packaging, it does provide context;
- the overall colour scheme is restrained rather than bright and contrasting; and
- while the bubble-gum term would be familiar to minors, this element does not overpower the total labelling design and the overall impact is considered more appealing to adults than to minors.



Peroni Television Ads (complaint regarding placement)

Complaint: Ads are shown from 5pm when not permitted during Who wants to be a Millionaire, the News and other programs on Channel 9 and affiliated channels.

ABAC standard: Alcohol marketing be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel decided there was no breach of ABAC Placement Rules:

- the Commercial Television Industry Code of Practice only applies to free to air television broadcasts and does not apply to digital advertising placements (Peroni ads were only shown on digital television);
- available age restriction controls were activated to exclude account holders who are minors from being served with alcohol ads on the 9Now platform;
- the audience of Millionaire Hot Seat and the News did not exceed 6% under 18 which was greater than the 75% adult requirement; and
- neither Millionaire Hot Seat nor the News can be said to be primarily aimed at minors.

Thirsty Camel Radio Ads (complaint regarding content and placement)

Complaint: Ads include jokes that are suitable or aimed at minors.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel observed that the jokes are in the 'daggy dad' range and are cringeworthy and predictable, which means the ads would have friendly resonance but would not have strong or evident appeal to minors, noting:

- the ad would appeal most strongly to the potential teller of the joke- i.e. a middle-aged man;
- the pace of the ad and its background music is mature and not of a style likely to attract the attention of minors;
- while the jokes are simple and understandable to a child, this needs to be assessed against the overall messaging of the ad which provides price information about alcohol products that is not likely to be strongly appealing to minors;
- the alcohol products are not given attributes considered likely to encourage underage drinking; and
- overall, the appeal to minors is likely to be incidental rather than strong or evident.

Smirnoff Vodka / Actual Vodka Seltzer Digital Television Ads (complaint regarding content and placement)

Complaint: Ads are attractive to minors and shown during a family show, The Voice.

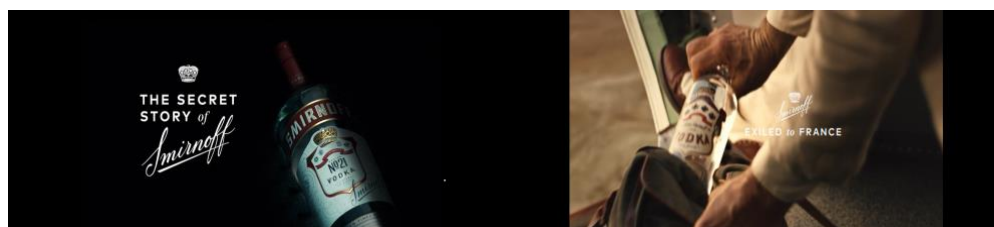
ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors or be directed at minors by a breach of ABAC Placement Rules.

Decision: The Panel had previously considered the Actual Vodka Seltzer ad and found it would not have strong or evident appeal to minors. The Panel made the same finding in relation to the Smirnoff Vodka ad, noting:

- the characters shown are all clearly adults;
- historic settings are used for most of the advertisement; and
- the dark style and tone of the ads is mature and not considered highly relatable to children or adolescents.

The Panel also decided there was no breach of ABAC Placement Rules:

- the Commercial Television Industry Code of Practice only applies to free to air television broadcasts and does not apply to digital advertising placements;
- available age restriction controls were activated by both brands;
- the audience of the Voice was greater than 75% adults (highest audience of minors reported was 11.7% for the linear free to air broadcast – with a smaller audience of minors reported for digital broadcasts); and
- the Voice broadcast would have wide appeal, including to minors, but cannot be said to be aimed primarily at minors.



Lark Distilling Instagram Post (complaint regarding content)

Complaint: An animated ad makes alcohol look kid friendly.

ABAC standard: Alcohol marketing cannot have strong or evident appeal to minors.

Decision: The Panel found that the ad was not in breach of the ABAC standards, noting:

- the style of animation is not particularly engaging for minors;
- the 'storyline' of the video shows the lark, fruit, a cask and a bottle being filled, which is hardly engaging for minors familiar with popular cartoons; and
- the accompanying text with the video provides product information and does not contain messaging which is appealing to minors.



VB Television Ad (complaint regarding content)

Complaints: An alcohol company shouldn't be promoting vaccination or using the COVID pandemic to promote its products.

ABAC standard: Alcohol marketing cannot show or directly imply offensive behaviour related to the consumption of alcohol.

Decision: The Panel found the Company's ad is consistent with ABAC standards. It does not promote excessive consumption and the messaging is clearly adult in tone and would not be regarded as strongly appealing to minors. The Company has met the TGA requirements and a reasonable person would not consider the promotion of vaccinations as irresponsible.



The ABAC Complaints Panel is headed by Chief Adjudicator Professor The Hon Michael Lavarch AO. For more information on ABAC, visit: <http://www.abac.org.au>.