

# Australia's Responsible Alcohol Marketing Scheme

2024 Third 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 against community expectations. The Code regulates content and placement of marketing across all advertising mediums.

ABAC Panel determinations continue to highlight where care is needed when developing marketing. Suggesting alcohol offers a health benefit or overcomes problems attracted the most Code breaches last quarter. Four complaints were upheld for claims ‘good wine is cheaper than therapy’, ‘Australia’s new boozy coconut water is a party starter and hangover cure in one’, ‘feeling like a healthy sip this weekend’ and describing a product as having ‘energy’, ‘calming’ and ‘the magic of healing’.

Additional guidance in Panel decisions:

- Alcohol marketing must not include visually prominent images of under 25 year olds. There is a limited exception for certain age restricted marketing. The Panel clarified that an under 25 year old with a public profile and direct financial interest in the alcohol business will be considered a ‘paid model, actor or influencer’ and their images cannot be used in an age restricted social media post. Recent decisions on the age of persons in social media [here](#), [here](#) and [here](#).
- Care is needed to ensure alcohol marketing does not have strong or evident appeal to minors. Last quarter the Panel found that associations with iceblocks, grape bubblegum, green apple and Snickers bars caused breaches of packaging and social media. Refer [here](#), [here](#) and [here](#).
- The Code prevents the promotion of alcohol consumption beyond Australia’s recommended guidelines. The Panel found that social media for a competition to win a pallet of alcohol did not meet this standard. The determination is available [here](#).
- Placement of ads needs care to ensure available age restriction controls are applied and time of day restrictions are observed for product placement.

ABAC will shortly commission compliance monitoring to check age restriction controls are in place for alcohol/ alcohol alternative Instagram, Facebook and Youtube accounts. Both signatory and non-signatory accounts will be audited. Checklist with links explaining how to apply age restrictions [here](#).

**We strongly encourage marketers to self-audit all of their brand social media accounts now.**

## PRE-VETTING TIPS

- When lodging a request use the same application number for an entire campaign.
- ‘Reasonable person’ is the perspective of an average person in the community, not an informed consumer of the product.

## KEY STATISTICS

<b>Complaints</b>	<b>51</b>
Raising Code issues and referred for determination	33
Not raising Code issues*	14
Raising an issue consistently dismissed by the Panel	3
Complaint subsequently withdrawn	1
<b>Determinations</b>	<b>28</b>
Dismissed	14
Upheld	12
Upheld - Expedited	2
<b>Pre-vetting</b>	<b>690</b>
Rejected	82
Pending	2

\* Complaints not raising Code issues fell outside the scope of the scheme as they raised concerns outside ABAC standards such as marketing not being for an alcohol product, religious offence, offensive language and misleading claims which fall within the scope of other regulators, including Ad Standards.

## RECENT ALCOHOL MARKETING COMPLAINTS

### Breach of ABAC Standards

#### Hard Fizz – Orange Extra Strength (complaint regarding content)

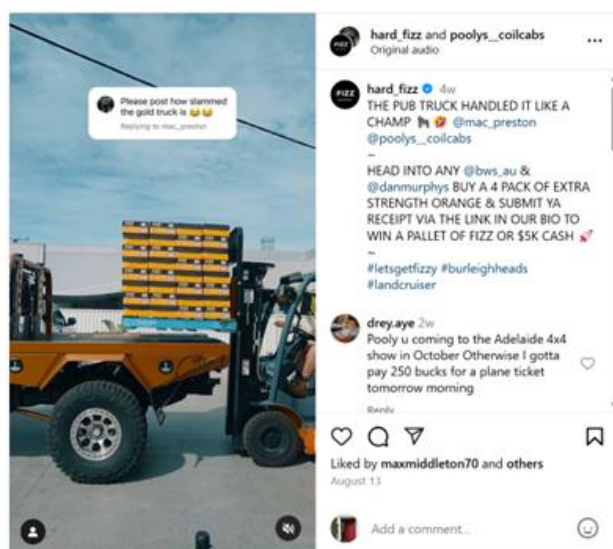
**Complaint:** The complainant alleged that a competition and social media posts promoting the competition are irresponsible. They argued that the promotion encouraged binge drinking and high consumption of alcohol.

**ABAC standard:** An alcohol marketing competition must not show, encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day).

**Decision:** The Panel found, on balance, that a reasonable person would understand that the competition prize of a pallet of product does encourage alcohol consumption beyond that recommended by the Australian Guidelines. In reaching this conclusion the Panel noted:

- the sheer quantity of the alcohol offered as a prize is inconsistent with its subsequent moderate consumption over a realistic period of time even acknowledging the long shelf life of alcohol and that multiple people might consume the product;
- while a reasonable person would likely take the alcohol prize as a means to promote the product and would choose the cash prize option, the offering of a huge quantity of alcohol implicitly endorses excessive alcohol use as a socially acceptable option;
- while none of the Instagram posts depict excessive consumption of alcohol nor do the people shown appear affected by alcohol, the promotion of the pallet of product as a prize means the posts would be understood as endorsing excessive alcohol use;
- taken as a whole, the competition and its promotion via the social media posts showing the pallet and its availability as a prize option would be likely understood as endorsing alcohol consumption beyond that recommended by the Australian Guidelines.

The advertiser advised that the promotion was no longer being actively promoted but declined to remove the social media posts. ABAC will refer the determination to the Queensland Office of Liquor, Gaming and Racing.



## Knickers Agave Spirit (complaint regarding content)

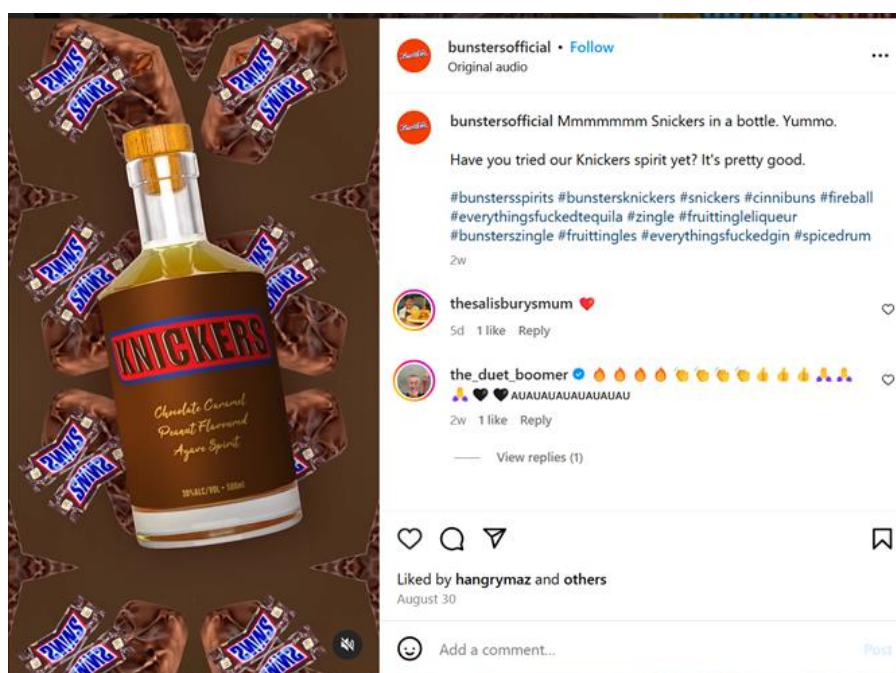
**Complaint:** The complaint stated that the post advertised the product as a chocolate bar. While the complainant didn't expand further on the concern, the Panel took the complaint to be that by associating a bottle of alcohol with the Snickers chocolate bar, the social media post will have strong or evident appeal to minors.

**ABAC standard:** An alcohol marketing communication must not have strong or evident appeal to minors.

**Decision:** The Panel found that the social media post has strong appeal to minors and hence is in breach of the Code. In reaching this conclusion the Panel noted:

- the product's name of 'Knickers' combined with images of Snickers bars readily identifies the post's imagery with a confectionery product likely to be familiar and popular with many minors;
- the association with the confectionery is further reinforced by the accompanying text;
- the post's imagery is relatable to minors and creates an illusion of a smooth transition from a non-alcoholic to alcoholic beverage;
- while the Snickers imagery might appeal to adults this does not mean it cannot have strong or evident appeal to minors; and
- taken as a whole, a reasonable person would probably understand that the post has a strong or evident appeal to minors.

The Company has removed the Instagram post.



## Barry RTD (complaint regarding content)

**Complaint:** The complainant contended that by featuring young and famous footballers, five Instagram posts target young, easily influenced teenagers.

**ABAC standards:** An alcohol marketing communication must:

- not have Strong or Evident Appeal to Minors; and
- not depict in a visually prominent manner paid models, actors or Influencers that are and appear to be Adult but are under 25 years of age.

**Decision:** On balance, the Panel found that the posts would not strongly appeal to minors. In reaching this conclusion the Panel noted:

- the use of current and relatively young footballers in marketing will elevate the appeal of the marketing material to minors, particularly male teenagers, and great care will be needed with the marketing featuring the footballers;
- that said, the posts show casual adult settings and not activities likely to be highly engaging to minors;
- the imagery does not draw out that the men are footballers e.g. no football clothing or equipment is shown; and
- taken as a whole the appeal to minors would probably be understood as incidental rather than strong or evident.

However, the three footballers shown in the Instagram posts are aged under 25 and were found to have the public profile and following to be fairly regarded as influencers. As they each have a direct financial interest in the business the Panel found it would be an artificial distinction to conclude this interest in the Company does not bring them within the intended scope of being a paid model/actor/influencer.

Accordingly, the Panel found that as each of the posts features at least one person under the age of 25, the posts are in breach of Part 3 (b)(iii) of the Code.

The Company removed the Instagram posts.



## Pre's Bubblegum Grape Vodka and Green Apple Vodka (complaint regarding content)

**Complaint:** That the packaging of Pre's products have strong or evident appeal to minors.

**ABAC standard:** An Alcohol Marketing Communication must NOT have Strong or Evident Appeal to Minors.

**Decision:** The Panel found that the packaging of two Pre's products, being Bubblegum Grape Vodka and Green Apple Vodka have strong or evident appeal to minors after taking the following into consideration:

- while no one element of itself is decisive, the packaging would be probably considered by a reasonable person as strongly or evidently appealing to minors through a combination:
  - of the bright eye-catching colour; and
  - the use of the grape bubblegum and green apple names; and
  - using imagery familiar and relatable to minors; and
  - creating an illusion of a smooth transition from a non-alcoholic product to an alcoholic product; and
  - Pre's brand name for alcohol products would be associated by a reasonable person with 'preloading'; and
  - quite possibly bringing to mind a school formal pre-party; and
  - the product name of Bubblegum Grape would be readily associated with confectionery; and
  - possibly creating aspirational appeal for minors wishing to feel older.

The advertiser has undertaken to modify the packaging (label) used.



## Coastal's Hard Coco Water (complaint regarding content)

**Complaint:** That an article implies the product can be consumed excessively to cause a hangover and/or that the product offers a health benefit.

**ABAC standards:** An Alcohol Marketing Communication must NOT:

- show, encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such excessive Alcohol consumption;
- suggest that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment; and
- suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

**Decision:** The Panel found that an article shared by the advertiser to their Instagram page breached the ABAC standards, namely:

- by promoting the drink as a hangover cure, the article is promoting the excessive consumption of alcohol;
- by using the words 'Australia's new boozy coconut water is a party starter' the article is suggesting that the consumption or presence of Alcohol may cause or contribute to an improvement in mood or environment; and
- the suggestion that the consumer will receive the health benefit of not having a hangover by drinking the product, the article is promoting the health benefits of Coastal's Hard Coco Water.

The advertiser removed the article from their Instagram page on being advised of the complaint.

delicious.

DRINKS

**Australia's new boozy coconut water is a party starter and hangover cure in one**

## Terra Australis Distillery – Herbal Lore Liqueurs (complaint regarding content)

**Complaint:** That website and print marketing suggests that the Company's products offer therapeutic or health and healing benefits and/or improve a person's mood.

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

**Decision:** The Panel found that use of the words "calming", "the magic of healing" and "energy" used in five different website and print advertising items breached the Code.

The advertiser undertook to revise the marketing.



## Spirit Fingers Alcoholic Ice Blocks (complaint regarding content)

**Complaint:** That the packaging design together with the Instagram marketing of the products has strong or evident appeal to minors.

**ABAC standard:** An Alcohol Marketing Communication must not have Strong or Evident Appeal to Minors.

**Decision:** The Panel found that the product packaging breached the Code by having strong or evident appeal to minors. In reaching this conclusion the Panel noted:

- the packaging does not unambiguously establish the product as being alcoholic;
- the packaging is similar to that used for non-alcoholic ice blocks products that are popular with minors and will likely appear very familiar to minors;
- there is a high likelihood the product could be confused with non-alcoholic products;
- the packaging adopts bright colours and the ghost image is similar to that used in publications or cartoons familiar to minors and together enhances the likely relatability of the packaging to minors;
- these factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- taken as a whole, a reasonable person would probably understand that the packaging has strong or evident appeal to minors.

The Panel also believed that the social media post identified by the complaint has strong or evident appeal to minors.

The Instagram post was deleted, and the advertiser undertook to discontinue the packaging.



## Hahn Ultra (complaint regarding placement)

**Complaint:** Two complaints were received that marketing for Hahn Ultra was shown during the interview of a retired AFL player on Sunrise breakfast program.

**ABAC standard:** The Code requires that:

- An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code);
- Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication;



- If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults; and
- An Alcohol Marketing Communication must not be placed with programs or content primarily aimed at Minors.

**Decision:** The Panel upheld the complaints as breaches of Part 4 (a) of the Code. The broadcast of the segment at 7:50 am including the product placement was a breach of the time of day restrictions for alcohol marketing communications on linear free to air TV (Part 4 (a)). The balance of the ABAC standards were not breached as:

- there are no available age restriction controls for free to air broadcasts accessed by a TV aerial;
- the audience of the Sunrise program was 80% adult; and
- Sunrise is not a program aimed primarily at minors.



### Four Points by Sheraton (complaint regarding content)

**Complaint:** That a social media post shows children drinking champagne.

**ABAC standard:** An alcohol marketing communication must not depict a person who is or appears to be a Minor unless they are shown in an incidental role and there is no implication they will consume or serve Alcohol.

**Decision:** The Panel accepted that the Hotel did not serve alcohol to the girls and no doubt the beverage was a flavoured lemonade. It could be readily accepted that there was no intention to give the impression that it's okay for minors to drink alcohol. The test however is not what was the intention of the marketer, but how a reasonable person would probably understand the marketing material.

The complaint was upheld, and the Hotel has removed the post from Facebook and Instagram.



## St Johns Wine (complaint regarding content)

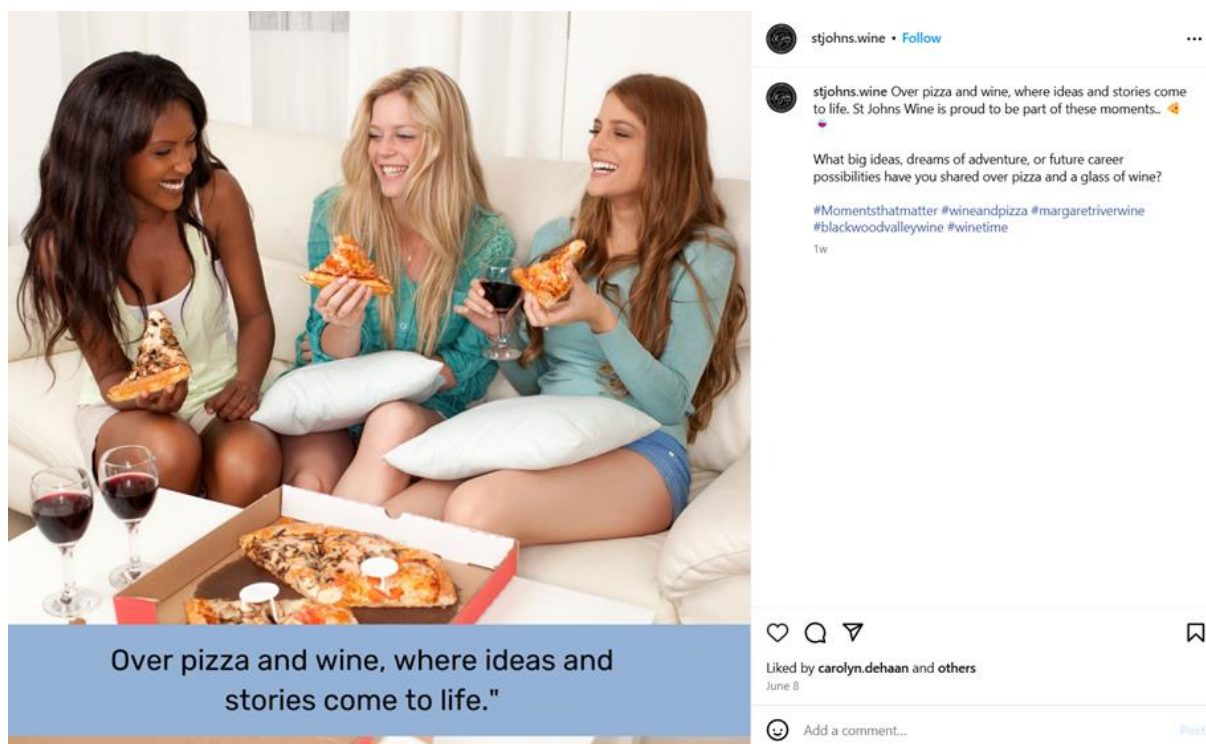
**Complaint:** The people featured in a social media post are underage.

**ABAC standard:** An alcohol Marketing communication must not depict in a visually prominent manner paid models, actors or Influencers that are and appear to be Adult but are under 25 years of age.

**Decision:** The question of the age of a person is obviously one of fact. Given that the actual identity of the women is unknown, the Panel was obliged to make its own assessment based on the appearance of the photo. It is often quite difficult to assess the age of someone, and factors such as clothing, the use of makeup and the setting a person is placed will all influence the perception of age.

The Panel believed the women are over the age of 18 and hence are not minors. It is a far more marginal assessment if each of the women are most likely aged under 25. On balance, the Panel believed that the blonde woman in the middle of the group appears a little younger than her companions and may well be aged under 25.

The advertiser deleted the post on being advised of the complaint.



## Expedited Determination – Breach accepted and marketing removed promptly

### River Road Liquor (complaint regarding content)

**Complaint:** The complaint concerns a social media post promoting zero carbohydrate beers with the words *‘Feeling like a healthy sip this long weekend?’*

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

**Decision:** By reading *‘Feeling like a healthy sip this long weekend?’* the social media post breaches Part 3 (c)(iv) of the Code by suggesting that the consumption of alcohol offers a health benefit.

The Company accepted the breach and advised that the social media post had been removed.



### Murrumbateman Winery (complaint regarding content)

**Complaint:** By reading *‘Good wine is cheaper than therapy’* the advertising encourages drinking to solve problems rather than seeking professional help.

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

**Decision:** The Company accepted the breach and advised that the roadside signs had been removed.



## No Fault Breach – Reasonably unforeseeable or outside reasonable control

### BWS (complaint regarding placement)

**Complaint:** That it was inappropriate for BWS to have posted about an alcohol product to a Facebook group called Sorority Sisters - Launceston.

**ABAC standard:** Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication.

**Decision:** The Panel found that the Facebook page for the group was not age gated and available age restriction controls were not applied to the post.

It was accepted that BWS did not have a marketing plan to target the Launceston Sorority Sisters and that the staff member acted on their own volition rather than as part of overall marketing strategy. It is welcomed that the Company took the breach seriously and has instigated additional training for its employees. Given the system in place, and an employee acting outside that system, it is believed a no fault finding is appropriate.

The advertiser advised that the Facebook post was removed upon the complaint being received and additional compliance training is being initiated.

### Liquor Legends (complaint regarding placement)

**Complaint:** The complainant alleged that Liquor Legends continued sending text marketing messages after being requested to stop on two different occasions.

**ABAC standard:** The Code provides that an Alcohol Marketing Communication must not be delivered directly to any person that has sought removal from the marketer's mailing list.

**Decision:** The Panel upheld the complaint but made a 'no fault' finding. This accepts that the complainant did honestly take the steps to seek to opt out as provided by the Company and this occurred twice as submitted. At the same time, the Company evidently has a developed system to both enable customers to opt out from receiving marketing communications and to action these requests.

The complainant granted permission for their text number to be provided to Liquor Legends, which has now confirmed that it has been removed from its text marketing list.

## Marketing Outside ABAC's Jurisdiction

### Carlton Dry/Draught (complaint regarding placement)

**Complaint:** A subliminal type of advertising is being used on TV program Gogglebox, by showing a participant, Keith, consuming alcohol in a 'Carlton' stubby holder.

**ABAC standard:** Alcohol Marketing Communication means a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in the Code.

**Decision:** Based on the information provided by the advertiser it was apparent that:

- there was no direct relationship between Keith or Gogglebox and the Company;
- the Company did not arrange for its products to be used in Gogglebox; and
- Keith, being a Melbournite, presumably is a follower of the AFL and apparently a supporter of the Carlton team.

In these circumstances, Keith holding and drinking what would appear to be alcohol (it might be a zero-alcohol alternate product) is not a marketing communication for ABAC purposes. This means the Panel has no jurisdiction to consider how alcohol use is depicted during Gogglebox.



## Marketing Consistent with ABAC Standards

### Hahn, West End, XXXX and Threefold Distilling (complaint regarding placement)

**Complaint:** That alcohol advertising at an oval is within line of sight of school classrooms.

**ABAC standards:** The Code provides that it does not apply to a Sponsorship Agreement.

**Decision:** Both Lion and Threefold Distilling advised that sponsorship agreements are in place with the SANFL and the Glenelg Football Club respectively. The signage at the grounds arises from this sponsorship. It follows that the signage at the Statarama Stadium that references the Lion beer brands, and Threefold Distillery outlet falls within the Part 2 (b) exception and hence the ABAC standards do not apply.

### Jameson Irish Whiskey (complaint regarding placement)

**Complaint:** The complainant raised a concern regarding the placement of an ad for Jameson Irish Whiskey on free-to-air television at approximately 2:30 pm on Saturday 10 August 2024.

**ABAC standards:** The Code requires that:

- An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice);
- Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication;
- If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults; and
- An Alcohol Marketing Communication must not be placed with programs or content primarily aimed at Minors.

**Decision:** At approximately 2:30 pm an ad was shown during the North Melbourne and West Coast game and presumably, this is the specific ad referred to by the complainant.

It is clear Placement Standard 1 has not been breached. This is because the CTICP, while generally restricting the broadcast of alcohol advertising to after 8:30 pm, does expressly permit alcohol advertising in conjunction with the broadcast of a live sports event. This means it was permitted to show alcohol advertising with live broadcasts of the AFL before 8:30 pm.

The Company has advised that ratings data obtained before the marketing was placed showed that in 2023 an average of 92.8% of the audience across all broadcasts of the AFL was aged over 18 years. It further advised that data shows that less 2% of the audience was under the age of 18 for the match between North Melbourne and West Coast. It is evident the placement rule benchmark of an 80% adult audience has not been breached.

Placement Standard 4 provides that irrespective of the actual audience, alcohol ads cannot be placed with content aimed primarily at minors. While the AFL has appeal across age groups, including minors, its broadcast cannot be said to be aimed primarily at minors. In fact, the audience data is highly suggestive that the appeal of the AFL is primarily to adults.

As there was no breach of the ABAC standards, the complaint was dismissed.

## Jim Beam (complaint regarding content)

**Complaint:** This determination arose from a complainant's concern about a Jim Beam television ad, which was argued to be portraying a group of intoxicated people in a bar singing Neil Diamond's 'Sweet Caroline'.

**ABAC standard:** An Alcohol Marketing Communication must not show encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as excessive alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day).

**Decision:** The Panel acknowledged the point being made by the complainant but did not believe that the ad breached the Code standard. In reaching this conclusion the Panel noted:

- while the product is placed in the bar and some consumption is implied, there are no images suggesting excessive consumption has occurred eg multiple empty glasses are not shown nor is any individual depicted actually drinking;
- no individual is depicted as apparently intoxicated eg no one is unsteady on their feet or appears uncoordinated;
- singing by the entire crowd is suggestive of organisation and structure such as occurs with a pub choir and the quality of the singing does not suggest the participants are collectively intoxicated;
- it is more likely that excessive consumption would result in a single table of people or a single individual singing in public rather than everyone in the location; and
- a series of extrapolations are needed to reasonably conclude that excessive alcohol consumption has caused the crowd to sing, and such extrapolations are not supported by the ad as a whole.



## Heineken (complaint regarding content)

**Complaint:** The complainant was concerned by an ad showing a group of friends in a car displaying a L plate on its dash.

**ABAC standards:** An Alcohol Marketing Communication must NOT:

- show, encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol; and
- show the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

**Decision:** The Panel found that the humour in the ad comes from Max Verstappen having to leave his glamorous sports car and drive the very mundane vehicles - one with a 'baby on board' sign and the second with the L plate. In the Panel's view a reasonable person would likely understand:

- it is not acceptable for a driver to consume alcohol;
- the person acting as 'designated driver' is Max Verstappen the World Champion as his identity is established by a super (text message) stating his name and Formula One status on a freeze frame at the beginning of the video;
- Max Verstappen is clearly not a learner driver needing to be supervised and the L plate on the car is a prop for humour; and
- the Heineken 0.0 product does not contain alcohol.

The Panel does not believe a reasonable person would take the ad as suggesting that it is acceptable for a person supervising a learner driver to consume alcohol. And while a person with an open licence should not in most parts of Australia drive a vehicle displaying an L plate, it is not likely this will be the point a reasonable person will take from the ad.



## Dan Murphy's and Hard Rated (complaints regarding placement)

**Complaints:** That alcohol advertising has been placed in areas frequented by minors.

**ABAC standard:** An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).

**Decision:** The complaint was dismissed by the Panel due to the outdoor advertising not being placed within 150 metres line of sight of a school.



## Hard Rated (complaint regarding content and placement)

**Complaint:** This determination arises from a complaint about the placement of a large novelty prop can of Hard Rated in the same location that an equally large depiction of a child friendly Minion was previously placed.

**ABAC standards:** An Alcohol Marketing Communication:

- must not have Strong or Evident Appeal to Minors; and
- must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example Outdoor Media Association Placement Policy).

**Decision:** The Panel found that placement was not within 150 metres of a school and there is no breach of the ABAC Placement standards by the Hard Rated promotion being located there.

The Panel did not believe the prop novelty can of itself has a strong appeal to minors or certainly no greater appeal to minors than it would have to adults. The prop is a straight representation of the actual design used for the product and it establishes the product is alcoholic, uses dark and mature colouring and otherwise would not be regarded as strongly appealing to minors.



## Guinness (complaint regarding placement)

**Complaint:** The complainant raised a concern regarding the placement of an ad for the Company on an electronic screen located in a lift in an office building in Melbourne.

**ABAC standards:** The Code requires that:

- An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy);
- Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication;
- If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults; and
- An Alcohol Marketing Communication must not be placed with programs or content primarily aimed at Minors.

**Decision:** The Panel found that there is no express ABAC prohibition on the placement of an alcohol ad on an electronic screen in a lift in an office building. While the ad is notionally subject to the placement standards mentioned above, it is improbable the location of the ad would breach these standards. Moreover, the expected audience of an ad in an office lift will be overwhelmingly adult office workers and not minors.

## Dan Murphy's and Tooheys (complaint regarding placement)

**Complaint:** The complainant is concerned about two bus shelters on Burraneer Bay Road in the Sutherland Shire which it is argued are used by school children and hence are unsuitable for alcohol advertising.

**ABAC standard:** Part 4 of the Code provides that an alcohol marketing communication must comply with code provisions regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).

**Decision:** The Panel dismissed the complaint. One of the advertisement placements was outside the 150 metre radius of a nearby school, while the other was within 150 metres of a school, but the shelter shed is not within the sightline of the school due to residential buildings that block the sightline.

The Panel believed the bus shelters within 150 metres of a school should not be used for alcohol ads and recommended that the Scheme Management Committee engage with the OMA with the view of revising the relevant OMA policies so as to:

- exclude alcohol advertising being placed on bus shelters within 150 metres of a school irrespective if the bus shelter is within the sightline of a school or not;
- further exploration be taken as to use of all reasonable steps to exclude alcohol marketing from placement on buses used for school routes; and
- testing the MOVE data and technology as a potential basis to more precisely eliminate specific OOH sites for alcohol advertising if the reasonably expected audience of an alcohol ad exceeds 20% minors.

## BOX Alcoholic Juice (complaint regarding content)

**Complaint:** That the packaging has strong or evident appeal to minors.

**ABAC standard:** An Alcohol Marketing Communication must not have Strong or Evident Appeal to Minors.

**Decision:** The Panel did not believe the packaging has strong or evident appeal to minors. In reaching this conclusion the Panel noted:

- the most distinctive feature is the bold 'BOX' name in black font and this is not considered strongly appealing to minors;
- while the product flavours would be more associated with non-alcoholic beverages, the packaging through its use of alcohol descriptors identifies the product as being alcoholic;
- the packaging does not resemble any well known soft drink and it is unlikely the product would be confused with a soft drink;
- the packaging does not resemble an established type of energy drink;
- 'alcoholic juice' would be understood as a descriptive term and not taken as suggesting the product is fruit juice;
- the pictograms may increase the appeal to minors, but this single element is not considered decisive to the overall impact of the packaging; and
- taken as a whole, the packaging would at its highest have incidental and not strong or evident appeal to minors.



## Diplomatico Rum (complaint regarding placement)

**Complaint:** The complainant contended that there were not any time restrictions over when marketing was shown on Optus Sport during Euro 2024, and it would be mistaken to believe the audience for the Euro's would be adults. It was surmised that over 50% of the audience watching would be children.

**ABAC standard:** The Code requires that:

- Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication;
- If a digital, television, radio, cinema or broadcast print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 80% Adults;
- An Alcohol Marketing Communication must not be placed with programs or content primarily aimed at Minors.

**Decision:** The Panel found that time of day restrictions for alcohol ads are not applicable to sports programming over Optus Sports and minors are, on the face of it, excluded from Optus Sports.

The Company supplied information on the viewing of football games in the period of April 2023 to March 2024 which included the ratings for the Women's World Cup. This showed that the audience of football is overwhelmingly adult (almost 95%). It is reasonable to expect that the viewership of the Euros would also be predominantly adult and that the audience of minors would not exceed the 20% benchmark in the standard.

## Tooheys (complaint regarding placement)

**Complaint:** The complainant contends that alcohol advertising should not be placed on a bus shelter shed given its near proximity to a school.

**ABAC standard:** Part 4 of the Code provides that an alcohol marketing communication must comply with code provisions regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Outdoor Media Association Placement Policy).

**Decision:** This was the first time that the Panel had considered a complaint regarding alcohol advertising on a bus shelter that is within 150 metres of a school but not within the sightline of the school.

While the complaint was dismissed, the Panel believed the bus shelter near the school should not be used for alcohol ads and recommends that the Scheme Management Committee engage with the OMA with the view of revising the relevant OMA policies.

It was noted that the Company, while arguing that the OMA/ABAC provisions have not been breached, nonetheless has directed that the bus shelter be excluded from future advertising in the spirit of complying with the ABAC standards.

## Tipsy Tea (complaint regarding content)

**Complaint:** The complainant contends the packaging and particularly the product name implies or encourages excessive alcohol consumption, rapid consumption and encourages the choice of the product by emphasising its alcohol strength.

**ABAC standards:** An alcohol marketing communication must not:

- show, encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day);
- show, encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol; and
- encourage the choice of a particular Alcohol product by emphasising its alcohol strength (unless emphasis is placed on the Alcohol product's low alcohol strength relative to the typical strength for similar products) or the intoxicating effect of Alcohol.

**Decision:** The Panel found that the packaging did not breach the relevant standards noting:

- the use of the term tipsy within the context of the can design as a whole would be most probably understood as a cue establishing that the product is alcoholic in nature;
- while a somewhat old-fashioned word, 'tipsy' would most likely be understood as invoking moderate rather than excessive pattern of consumption i.e. consumption which would be no more than the 4 standard drinks on a single day noted by the Australian health guidelines to be consistent with reducing the risk of adverse health harms;
- beyond the name tipsy there are no other elements of the packaging design that are suggestive that excessive or rapid consumption is being shown or encouraged;
- the packaging is not emphasising the alcoholic strength of the product; and
- taken as a whole, a reasonable person would not probably understand that the packaging is calling on a consumer to drink excessively.



## - 196 Suntory (complaint regarding placement)

**Complaint:** That alcohol advertising was shown on the side of a designated school bus.

**ABAC standard:** An Alcohol Marketing Communication must comply with code provisions regulating the placement of Alcohol marketing that have been published by Australian media industry bodies (for example, Outdoor Media Association Placement Policy).

**Decision:** The Panel found that the placement of alcohol advertising on buses is not captured by the OMA Placement Policy and as a result the applicable ABAC Placement Standard in Part 4 (a) of the Code is not breached by alcohol ads on buses. Hence the complaint was dismissed.

The Panel recommended to the ABAC Scheme Management Committee that discussions be held with the OMA with the view of revising the relevant OMA policies so as to:

- exclude alcohol advertising being placed on bus shelters within 150 metres of a school irrespective if the bus shelter is within the sightline of a school or not;
- further exploration be taken as to use of all reasonable steps to exclude alcohol marketing from placement on buses used for school routes; and
- testing the MOVE data and technology as a potential basis to more precisely eliminate specific OOH sites for alcohol advertising if the reasonably expected audience of an alcohol ad exceeds 20% minors.



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