



## ABAC Adjudication Panel Determination No 211/24

**Product:** Hard Fizz  
**Company:** Fizzy Mates Pty Limited  
**Media:** Marketing Collateral and Social Media - Instagram  
**Date of decision:** 23 January 2025  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 19 December 2024 about a “Shoey” collateral marketing item, along with social media posts marketing Hard Fizz (“the product”) by Fizzy Mates Pty Limited (“the Company”).
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice that regulate and guide the content and, to some extent, marketing placement. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The essential provisions applying to alcohol marketing are:
  - (a) Commonwealth and State laws:
    - Australian Consumer Law – which applies to the marketing of all products or services and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
    - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free-to-air television;
    - State liquor licensing laws – which regulate the retail and wholesale sale of alcohol and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
  - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol-specific code of good marketing practice;
  - Specific broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
  - The Outdoor Media Association Code of Ethics and Policies restricts the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes address the placement and content of alcohol marketing or deal with both matters. The ABAC deals with the placement of marketing, i.e., where the marketing was located or the medium by which it was accessed, and the marketing content, irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes and meet the standards contained in the ABAC.
  4. Ad Standards provide a common entry point for alcohol marketing complaints for ease of public access. Upon receiving a complaint, Ad Standards supplies a copy to the ABAC’s Chief Adjudicator.
  5. The Chief Adjudicator and Ad Standards independently assess the complaint and stream into the complaint process that matches the nature of the issues raised in the complaint. Occasionally, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
  6. The complaint raises concerns under the ABAC Code and is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 19 December 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, and this determination was made within the target timeframe.

## Pre-vetting Advice

9. A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards before public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the marketing items.

## The Marketing

10. The complaint relates to a “Shoey” collateral marketing item and social media posts.

**Hard Fizz “Shoey”**

☰ **FIZZ** 🛒

**THE HARD FIZZ "SHOEY"**

\$60.00  
Tax included.

— 1 +

Add to Cart - \$60.00


Buy with **shop Pay**

[More payment options](#)

AS SEEN AT LIV GOLF - ADELAIDE, THE HARD FIZZ SHOY IS HERE AND FOR A SUPER LIMITED TIME ONLY!!!

THE PERFECT VESSEL FOR YOUR MANTLEPIECE

☰ **HARD FIZZ** 🛒



**THE HARD FIZZ "SHOEY"**

\$60.00  
Tax included.

— 1 +

Add to Cart - \$60.00

Buy with **shop Pay**

[More payment options](#)

AS SEEN AT LIV GOLF - ADELAIDE, THE HARD FIZZ SHOY IS HERE AND FOR A SUPER LIMITED TIME ONLY!!!

THE PERFECT VESSEL FOR YOUR MANTLEPIECE

Post 1 – 24 October 2024

<https://www.instagram.com/p/DBf2OfzStkN/>

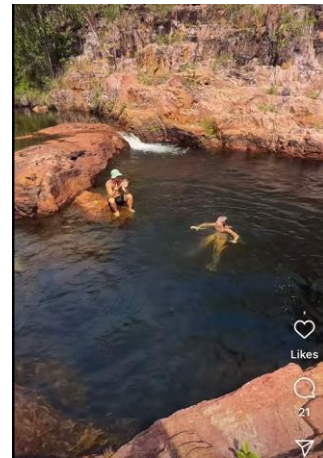
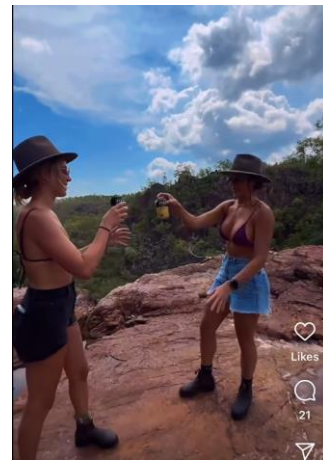
Post 1 is a video showing people driving through the Northern Territory (Litchfield), drinking Hard Fizz, and swimming. It was made by @elleschembri and shared on the Hard Fizz Instagram account. The song "Now it's Gone" by In Parallel plays throughout.



**elleschembri** 10w

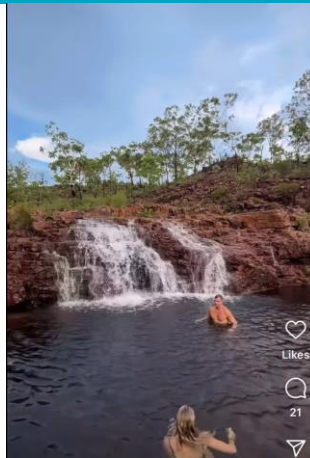
If you're wondering, yes, we do bring water 🍹🍹

#letsgetfizzy #hardfizz #passionfruit #ntaustralia #cuinthent #topend #outdoors #hiking #bikini #darwin #litchy #litchfield #explore #waterfall #reel #australia #foryou #weekend



Post 1 – 24 October 2024

<https://www.instagram.com/p/DBf2OfzStkN/>



Post 2 – 24 October 2024

<https://www.instagram.com/p/DBf4QWhSVf9/>

Post 2 is a video.

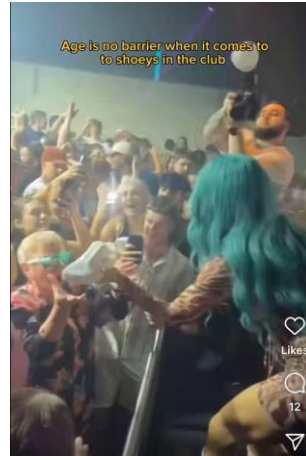
It is accompanied by original audio.

The post was made by @djtigerlily and shared to the Hard Fizz Instagram account. Hard Fizz also commented on the post.

A screenshot of the comment section for the second Instagram post. The post is by 'djtigerlily and hard\_fizz' with 'Original audio'. The first comment is from 'djtigerlily' (verified) posted 10 weeks ago, saying 'This queen stole the show' with a hand icon. The second comment is from 'raftanjuatco' (verified) posted 10 weeks ago, saying 'Shooeeyy!!!' with a hand icon, a thumbs up, a laughing face, and a thumbs up. The third comment is from 'hard\_fizz' (verified) posted 10 weeks ago, saying 'UR KIDDING' with two laughing faces. The fourth comment is from 'djtigerlily' (verified) posted 10 weeks ago, replying to '@hard\_fizz' saying 'how good'. Each comment shows the number of likes and a 'Reply' button. There are also options to 'View all 2 replies' and 'Hide all replies'.

The performer passes a Hard Fizz “Shoey” to a person in the crowd.

The video is captioned, “Age is no barrier when it comes to shoey’s in the club”.



The person then drinks from the “Shoey”.

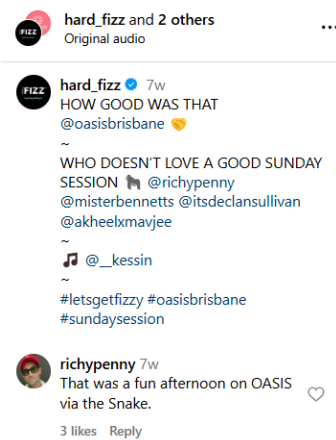


### Post 3 – 12 November 2024

<https://www.instagram.com/p/DCQ4xlwJj-4/>

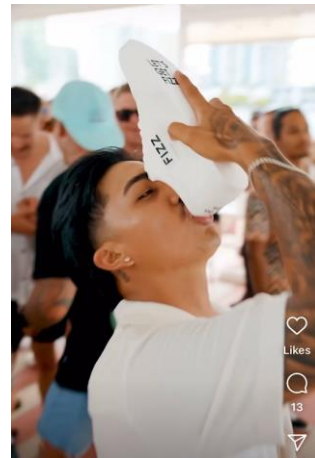
Post 3 is a video of a Sunday session on a boat. Several people are shown dancing, drinking Hard Fizz, and drinking from the Hard Fizz “Shoey.”

Music is playing throughout.



Post 3 – 12 November 2024

<https://www.instagram.com/p/DCQ4xlwJj-4/>





Post 4 – 23 November 2024

<https://www.instagram.com/p/DCs6tWgzklW/>

Post 4 is a video of a person speaking at a golf tournament.


The video has been posted to the golf\_gods Instagram account and shared with Hard Fizz's account..

**A person with a microphone:**  
*"I've been told by no uncertain terms am I to do a shoe out here today."*

[Encouragement from crowd]

**Person with microphone:** *"If you want it bad enough, I will entertain it".*

A person with a microphone then drops to one knee and drinks from a shoe.

 **golf\_gods** and 2 others  
Original audio

 **golf\_gods** 6w  
The party king does what he wants!  
@tim.naki 🍷



Post 5 – 23 November 2024

<https://www.instagram.com/p/DCtL2YhJ900/>

Post 5 is a video. It primarily consists of a person with a microphone speaking over several scenes at the PGA Championship in Brisbane.

 **nicka35** and **hard\_fizz**  
Bellini • Samba de Janeiro (Album Version)

 **nicka35** 6w  
Wow what a day hanging up in Brissy for the PGA Golf!  
10/10 🍷🍷🍷🍷



Post 5 – 23 November 2024

<https://www.instagram.com/p/DCtL2YhJ900/>

**Voice Over (VO):** *“Hey, I’ve seen a few party holes in my life, but not quite like the BMW Australia PGA championship here in Brisbane.”*

The commentator is holding a can of Hard Fizz.



**VO:** *“And the day started like all good gold days should, with 200 beers – a couple of legends.”*

*And the crowd turned up in huge numbers early [unintelligible] power standing, power walking, and they were getting the fricking shot. So unbelievable.”*



**VO:** *“Ken Smith gliding past the Fisher head. Unbelievable support from the big dog himself. And the crowd goes wild.”*

*Are you kidding me?”*



Post 5 – 23 November 2024

<https://www.instagram.com/p/DCtL2YhJ900/>

The scene changes to the commentator standing beside a man in a yellow hat.

**VO:** *“Fantastic.”*

The man in the yellow hat is drinking from a can of Hard Fizz.

**Man in yellow hat:** *“That’s good juice. There it goes. That’s really good juice.”*

**VO:** *“He knows what’s good.”*

**VO:** *“Then JP fires up the crowd, so skits.”*



The scene changes to the commentator speaking to a man in a purple hat.

**VO:** *“What are the odds someone does a shoey here when they win?”*

**Man in purple hat:** *“I’ll tell you what, you have my word, by the end of day I would have done one without someone winning.”*



Post 5 – 23 November 2024

<https://www.instagram.com/p/DCtL2YhJ900/>

The scene changes to the man in a purple hat doing a shoey.

**VO:** *“Tim Nak true to his work sculls a shoey like an absolute mad dog. So good. And then [unintelligible] and the crowd goes wild. Except for these guys who are watching the races.”*

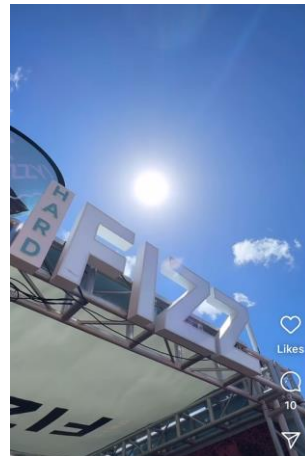
We are shown a scene of men watching televisions.

**VO:** *“K Boys men of the match were absolutely frothing the crowd up all day. Unbelievable performance. So good.”*

The scene changes to what appears to be a Hard Fizz bar.

**VO:** *And then a huge catch [unintelligible] are you kidding me and the spirit of Fizz is all around us as people froth and drank shoeys like absolute mad dogs.”*

The video shows three different men doing shoeys.

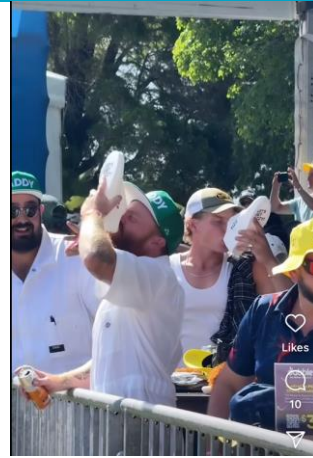


Post 5 – 23 November 2024

<https://www.instagram.com/p/DCtL2YhJ900/>

VO: "There he is again turning up. Are you kidding me?"

The video returns to footage of the match, where the commentator congratulates a player on a good result and explains that the crowd goes wild.



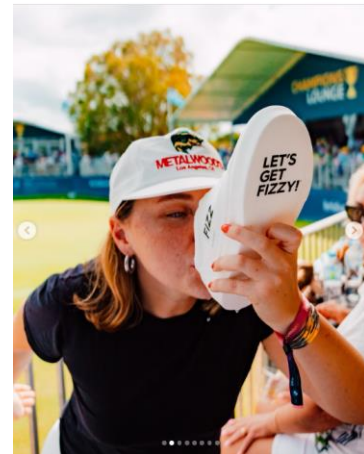
Post 6 – 24 November 2024

[https://www.instagram.com/p/DCuWRMCTnFq/?img\\_index=2](https://www.instagram.com/p/DCuWRMCTnFq/?img_index=2)

Post 6 comprises five still shots, three of which show people doing shoeys, and three videos also show people doing shoeys.

 **hard\_fizz**  • Follow  
Brisbane, Queensland, Australia

 **hard\_fizz**  6w  
CAMERON ASKED ~ YOU DELIVERED  
   
~  
LAST DAY OF THE PGA , STAY  
HYDRATED FOLKS 😊  
~  
#letsgetfizzy #shoeys #pga





Post 6 – 24 November 2024


[https://www.instagram.com/p/DCuWRMCTnFq/?img\\_index=2](https://www.instagram.com/p/DCuWRMCTnFq/?img_index=2)



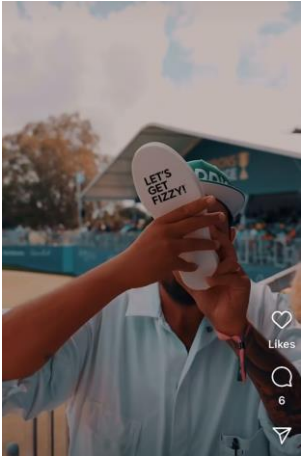
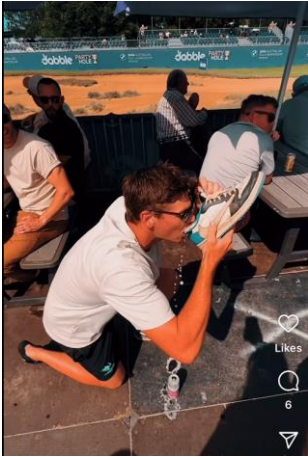
Post 7 – 25 November 2024

<https://www.instagram.com/p/DCycL3sJUFU/>

Post 7 is a video showing a number of golf scenes, with Percolator by Cajmere playing in the background. There are four scenes showing people doing shooeys.

 **hard\_fizz** • Follow  
Original audio

 **hard\_fizz** 6w  
A COUPLE OF RIPPING DAYS AT  
@pgaofaustralia @pgatouraus  
~  
#letsgetfizzy #pgatour #brisbane



Post 8 – 26 November 2024

<https://www.instagram.com/p/DC01IkASd9z/>

Post 8 it is a video of two people consuming Hard Fizz while fishing from a boat.

Boost Up by Fisher and Flowdan is played throughout.

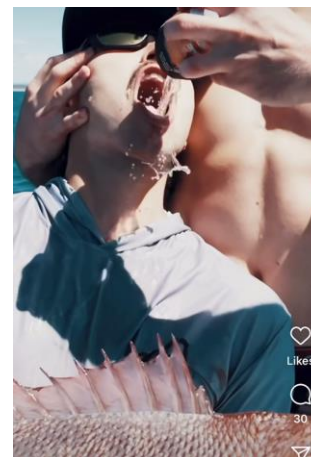
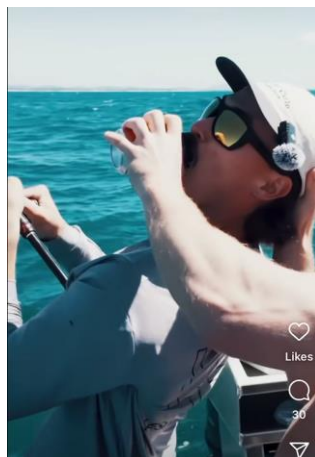
There are two instances in the video where a person's head is held as Hard Fizz is poured into their mouth.

 **\_less\_ordinary\_and\_hard\_fizz**  
FISHER, Flowdan • Boost Up

---

 **\_less\_ordinary\_**  6w  
Maiden voyage in the new boat went  
offfffff 🌟

#lurefishing #snapper #hardfizz





Post 9 – 29 November 2024


<https://www.instagram.com/p/DC8cpQEJlvz/>


Post 9 is a video showing people fishing from a boat.

Restless Bones by Disco Lines is playing throughout.

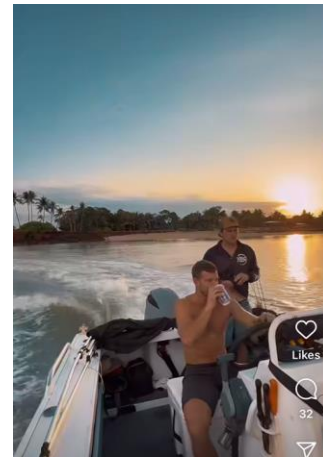
Three people are shown doing shoeys.

The video was posted by @elleschembri, who has shared it with Hard Fizz.

 **elleschembri and 4 others**  
Disco Lines • Restless Bones

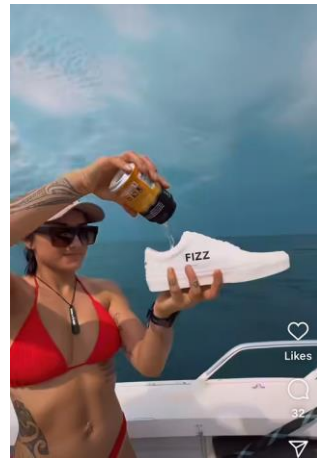
 **elleschembri** 5w  
does it get better than this though? 🤔

#ntaustralia #fishing #adventures  
#topend #explore #cuintent #territory  
#fishinglife #outdoors #mission  
#darwin #dundee #fishon #letsgetfizzy  
#shoey #australia #hardfizz #bluewater  
#stormseason #monsoon #weekend  
#fun #living



Post 9 – 29 November 2024


<https://www.instagram.com/p/DC8cpQEJlvz/>



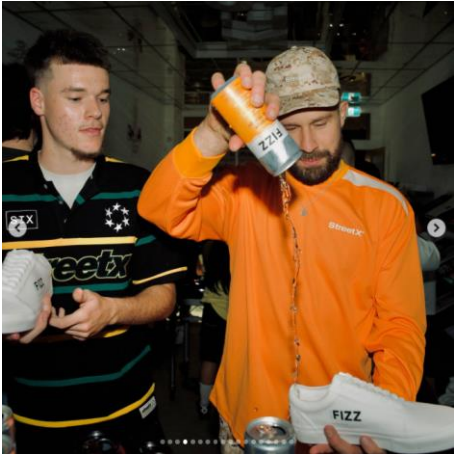
Post 10 – 9 December 2024

[https://www.instagram.com/p/DDVezkgzGzh/?img\\_index=18](https://www.instagram.com/p/DDVezkgzGzh/?img_index=18)

Post 10 consists of 18 static photos, six showing people preparing to do or doing shoeys.

 **hard\_fizz** and **guccismoothie** StreetX ...

 **hard\_fizz** 4w  
THEY KNOW 🗨  
~  
@hard\_fizz x @streetx  
~  
#westisbest #letsgetfizzy #theyknow



Post 10 – 9 December 2024

[https://www.instagram.com/p/DDVezkgzGzh/?img\\_index=18](https://www.instagram.com/p/DDVezkgzGzh/?img_index=18)



Post 11 – 20 October 2024

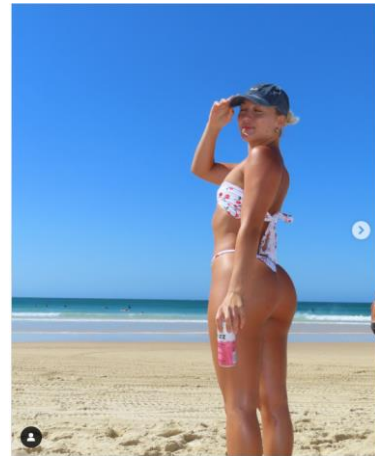
[https://www.instagram.com/p/DBVo4SrsudG/?img\\_index=1](https://www.instagram.com/p/DBVo4SrsudG/?img_index=1)

Post 11 consists of two static images.

 **hard\_fizz** • Follow  
Burleigh Heads Beach

---

 **hard\_fizz** 11w  
FIZZ FOR THE WIN 🍷 @jetayagc  
~  
#letsgetfizzy #lightontherig #hardfizz



Post 11 – 20 October 2024

[https://www.instagram.com/p/DBVo4SrsudG/?img\\_index=1](https://www.instagram.com/p/DBVo4SrsudG/?img_index=1)



Post 12 – 25 October 2024

<https://www.instagram.com/p/DBh5HVtPkuH/>

Post 12 shows three people sitting on a beach watching a fourth person in the water. There are Hard Fizz cans alongside two people on the beach.



hard\_fizz • Follow  
Original audio

...



hard\_fizz 10w  
IMAGINE IF LAKE MCKENZIE HAD WAVES 🤔  
~  
@afends @tubzxx @itsdeclansullivan  
@fishscales\_ @taja.richmond  
~  
#fraserisland #letsgetfizzy  
#lightontherig





## Complaint

11. The complainant objects to the marketing as follows:

- *We believe that these posts are in breach of Standard 3 (a) Responsible and moderate portrayal of Alcohol Beverages (i) and (ii) as well as Standard 3 (d) Alcohol and Safety of the ABAC Responsible Marketing Code.*
- *The promotion of Hard Fizz using their Instagram has consistently depicted the irresponsible consumption of alcohol. Posts 1 through 10 showcase specific examples of this through their Instagram account. While there are several posts regarding this complaint, we can summarise our concerns:*
  - *Posts 1 and 8 display individuals pouring or 'skolling' cans of Hard Fizz. Post 1 depicts a man pouring the drink from a height into his mouth, while Post 8 shows a group of men on a boat with what appears to be another person pouring alcohol into their mouth.*
  - *Hard Fizz's Instagram profile consistently uses the 'shoey' action, a popular Australian skolling method. A recent article discussing the action defined a shoey as the action of 'filling up a shoe with an alcoholic beverage and drinking the contents, ideally in one draught'. The posts document eight instances where the act of a 'shoey' was featured in a Hard Fizz post. This appears to be a strong feature in their promotion, with the brand having its own specially designed shoes for the activity.*
  - *We assert that Post 1 through 10 encourage people to consume the product inappropriately and excessively. This is evidenced by the overwhelming posts depicting individuals either 'skolling' or doing a 'shoey'.*
- *We would also like to highlight the promotion of risky drinking activities depicted on Hard Fizz's Instagram. Posts 1, 8, 9, 11 and 12 highlight notable examples from the Hard Fizz Instagram account, which shows individuals drinking whilst participating in activities that involve water, including swimming, driving a boat and ocean fishing.*
- *Posts 1, 8, 9, 11 and 12 promote alcohol consumption while near a body of water and on or operating a boat. Alcohol can heighten the risk of drowning because it impairs judgment, increases risk-taking behaviour, reduces coordination, impairs reaction time and hypothermia.*
- *We assert that the advertisements in Posts 1, 8, 9, 11, and 12 showcase and encourage risky drinking behaviours, such as consuming alcohol while swimming or around water, such as on a boat.*

## The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol.
  - (d) show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or, machinery or swimming.
13. Part 8 of the Code provides that:

**Marketing Collateral** means material to promote a brand and support the sales and marketing of Alcohol or an Alcohol Alternative, including but not limited to, Point of Sale Marketing, gifts with purchase, competition prizes and branded merchandise.

## The Company Response

14. The Company responded to the complaint by email on 3 January 2025. Its primary comments were:
- Thank you for the opportunity to respond to the complaint regarding Hard Fizz's social media marketing activities. We take the ABAC Responsible Alcohol Marketing Code seriously and strive to ensure our campaigns reflect responsible and compliant alcohol marketing practices.
  - Below, we provide detailed responses to the concerns raised.
  - The complaint alleges that our posts encourage "skolling" and excessive consumption. However:
    - Limited Volume: In all instances, the liquid featured is less than 100 ml, which cannot reasonably be classified as excessive or rapid consumption under Part 3(a)(ii) of the ABAC Code.
    - Cultural Context: The Shoey, a culturally significant tradition in Australia, is featured as a novelty item to celebrate light-hearted and humorous occasions rather than to promote irresponsible drinking.
  - Several flagged posts were created collaboratively with influencers and partners:



- Lack of Direct Control: We ensure our partners are aware of and align with ABAC standards, but our team cannot always fully dictate content created by third parties. ABAC guidance acknowledges that some marketing outside direct brand control may not meet compliance tests.
- Proactive Efforts: We include ABAC compliance clauses in our agreements with partners and address any deviations promptly to ensure alignment in future collaborations.
- The concern about alcohol consumption near water assumes the risk that is not substantiated:
  - Contextual Framing: Posts depict individuals in stationary, controlled, and social settings near water. No individuals are shown swimming, operating boats, or engaging in high-risk activities while consuming alcohol.
  - Responsible Portrayals: The presence of water does not inherently constitute a breach of Part 3(d) of the ABAC Code.
- The use of the Shoey in our marketing has been mischaracterised:
  - Celebration of Culture: The Shoey is a celebratory, fun novelty item. Depictions emphasise humour and Australian culture rather than rapid or excessive consumption.
  - Alignment with Precedent: Past ABAC determinations have recognised culturally specific promotional tools as acceptable when responsibly presented.
  - Would the complaint have been raised if each image was replaced with a schooner glass? At no point is 'consuming a full can ever shown - the 'shoey' is merely operating as a light-hearted drinking vessel.
- Audience Restrictions: All of our social media platforms are age-restricted to prevent minors from accessing our content. This ensures compliance with Part 4 of the ABAC Code.
- Educational Messaging: Responsibility messaging is consistently included in our marketing to promote moderate and safe alcohol consumption.
- We are actively enhancing our processes to ensure ongoing compliance with ABAC standards, including:
  - Partner Agreements: Strengthening compliance clauses in contracts with influencers and collaborators.

- Training: Conducting internal training for our team to ensure alignment with ABAC standards.
- We respectfully ask the panel to consider the following:
  - Quantity Context: There is no evidence that the flagged content depicts rapid consumption or excessive drinking.
  - Collaborative Content: Posts created through collaborations should be assessed in the context of the brand's reasonable efforts to ensure compliance.
- Hard Fizz remains committed to upholding the ABAC Code.

## **The Panel's View**

### **Introduction**

15. In or about April 2024, the Company released an item of marketing collateral, namely a plastic 'shoe' as a container for the consumption of beverages. The Company's website explains that its 'Shoey' was seen at the LIV Golf event held at that time. The shoe carries the Company's branding, is clearly a novelty item, and is not intended for practical day-to-day use in consuming beverages. That said, the Company has employed its Shoey and images of people drinking from the item in its social media marketing, providing the backdrop for this determination.
16. The complainant contends the Company's social media marketing consistently represents and encourages the irresponsible consumption of alcohol. It supports this by pointing to 12 Instagram posts, which are argued to show rapid alcohol consumption (often featuring the performance of a shoey) and/or the use of alcohol with dangerous activities, i.e. swimming and operating a motorboat.
17. The Company rejects the complaint. It argues its marketing is responsible, does not show excessive or rapid alcohol use, and the posts with people on the water do not show alcohol misuse. The Panel will assess the marketing communications (the plastic shoe and the Instagram posts) raised by the complaint against the applicable Code standards, namely that an alcohol marketing communication:
  - must not show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid alcohol consumption, misuse or abuse of alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of alcohol – Part 3 (a)(ii); and

- must not show (visibly, audibly or by direct implication) the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming – Part 3 (d).

### **The Shoey Marketing Collateral**

18. The starting point is an understanding of what a 'shoey' is and what connotations a reasonable person would likely understand from marketing material featuring the performance of a shoey. From this, the assessment of whether it is consistent with the ABAC requirements for an alcohol marketer to have a Shoey as marketing collateral can be based.
19. The practice of consuming alcohol from a shoe has gained exposure in Australia over the last 10 years or so. A brief internet search reveals recent high profile shoeys, including Harry Styles at his 2023 Perth concert and Kylie Minogue at the 2024 Brit Music Awards ceremony.
20. The origins of drinking from a shoe are not entirely clear, with some sources attributing the practice to the military and others to drinking champagne from the slipper of a ballet dancer. Others claim examples can be traced to religious texts and stories. The first photographic evidence of the practice appears in 1951, when an American actor, Tallulah Bankhead, is shown drinking from a slipper at London's Ritz hotel.
21. While its recent profile in Australia is sometimes sourced to the punk music scene in the 2010s, the Formula 1 driver Daniel Ricciardo's performance of a shoey at the 2016 German Grand Prix was the springboard for the practice within the broader Australian community. Since then, high profile shoeys have often been associated with sports people celebrating success.
22. Shoeys at sports events also is the background to how the Company came to release its shoey marketing collateral item. An article in the industry trade publication, The Shout, explains that the Company's founder, the DJ and performance artist Fisher, offered golfer Cameron Smith a shoey at the 2023 LIV Golf tournament. This PR stunt apparently led to the Company securing rights to supply products at the 2024 LIV event and the consequent release of the plastic shoe as part of the associated marketing campaign.
23. Obviously, there is no reference to shoeys in the ABAC standards. The question of the compatibility of having a plastic Shoey as an item of marketing collateral with the ABAC standards arises because of the association of doing a shoey with either the excessive consumption and/or rapid consumption of alcohol. In short, would a reasonable person probably understand that the plastic shoey marketing collateral item is encouraging or treating as amusing:

- alcohol consumption in excess of the Australian Guidelines to Reduce Health Risks from Drinking Alcohol; and/or
  - rapid alcohol consumption.
24. The Company contends the shoey is a celebration of culture and the marketing collateral plastic shoe is simply a fun novelty item and does not emphasise rapid or excessive consumption. The complainant believes the plastic shoe invokes inappropriate alcohol use.
25. Provided an alcohol marketing communication does not show or encourage excessive or rapid alcohol consumption, the vessel used to drink from will generally be immaterial. The issue with the Company's plastic Shoey is whether the physical item itself is intrinsically linked to the volume or rate at which alcohol is consumed. For instance, a yard glass, by its design and use, is immediately linked to skulling a large volume of beer.
26. Depictions of shoeyes in the media invariably involve the entire alcohol contents of the shoe being consumed in a single motion. People are not shown sipping from a shoe at a sedate afternoon tea with cucumber sandwiches. A shoey invariably involves someone skulling alcohol, often being cheered on by the people watching.
27. The Company notes that someone can skull a drink from a standard glass, and it would be ridiculous to argue that a glass carrying an alcohol company's brand should not be permitted simply because it is possible alcohol can be consumed rapidly. However, the Company's marketing collateral item is not a standard drinking vessel. Its purpose is to be used in drinking alcohol through the conduct of a shoey.
28. The Company makes a fair point that the performance of a shoey is generally light-hearted and humorous. Humour will shape how a reasonable person understands an item of marketing, but it will not excuse marketing that promotes alcohol use inconsistent with the ABAC standards.
29. Drawing this together, the Panel believes the plastic shoey marketing collateral item is inconsistent with the standard in Part 3 (a)(ii). In reaching this conclusion, the Panel noted:
- the plastic shoe is a novelty item to promote the Company's brand and support the sale of its range of alcohol beverages and is captured by the concept of marketing collateral as defined in Part 8 of the Code;
  - the novelty of the item is because it refers to and would be understood by a reasonable person as being used in performing a shoey;

- the common understanding of a shoey involves the consumption of an alcohol beverage from a shoe, boot or other footwear often but not necessarily as part of a celebration;
- a reasonable person would associate doing a shoey as also involving (or at least attempting) the skulling of the entire alcoholic contents of the shoe;
- while this does not encourage excessive consumption (given it is unlikely a person would attempt more than a single shoey on any one occasion), it does encourage rapid and often uncontrolled consumption of the alcohol beverage;
- skulling the contents of the shoe is intrinsically part of the performance of the shoey;
- while a reasonable person would regard a shoey as humorous and light-hearted and not a reflection of the usual way alcohol is consumed, part of the humour is drawn from the skulling of the alcohol, and it is this implicit endorsement that rapid alcohol consumption is acceptable which makes a shoey inconsistent with the Code standard.

### **The Instagram Posts**

30. The complainant nominated 12 Instagram posts that were argued to breach ABAC standards. Posts 1 to 10 are contended to depict and encourage rapid alcohol consumption. Posts 1, 8, 9, 11 and 12 were argued to show alcohol use with the conduct of activities requiring a high degree of alertness or physical coordination to be conducted safely.
31. The Company submitted the posts are consistent with the ABAC standards. It was argued:
  - the shoey is an Australian cultural expression and would not be taken as encouraging excessive or rapid alcohol use;
  - in all instances of shoeys, the liquid featured is less than 100 ml, which cannot reasonably be classified as excessive or rapid consumption under Part 3(a)(ii) of the ABAC Code;
  - posts showing people with water depict individuals in stationary, controlled, and social settings near water. No individuals are shown swimming, operating boats, or engaging in high-risk activities while consuming alcohol;
  - the presence of water does not inherently constitute a breach of Part 3 (d) of the ABAC Code.

32. Several of the Instagram posts have been made by third parties and then shared to the Hard Fizz account. The Company advises that some of these posts were created collaboratively with influencers and partners, and these posts align with ABAC standards. The Company does not have creative control over other third-party posts.
33. It is acknowledged that the Company is adopting best practices by including ABAC compliance clauses in formal agreements with partners. For the purposes of the Company's own Instagram, the origin of the post is not decisive, as all posts on the account are the Company's responsibility.
34. Given the number of posts involved, the Panel will not provide a detailed analysis but simply give a short statement of findings on each post as follows:
- Post 1 - shows rapid consumption by a man conducting a long pour of product directly into his mouth - breach of Part 3 (a)(ii);
  - Post 2 - shows a man doing a shoey and rapidly consuming the entire contents of the shoe - a breach of Part 3 (a)(ii);
  - Post 3 - shows three men doing a shoey and rapidly consuming the entire contents of the shoe - a breach of Part 3 (a)(ii);
  - Post 4 - shows a man doing a shoey and rapidly consuming the whole contents of the shoe - a breach of Part 3 (a)(ii);
  - Post 5 - shows scenes from a PGA Golf tournament, including reference to the consumption of '200 beers' and multiple depictions of people performing shoeys - breach of Part 3 (a)(ii);
  - Post 6- shows multiple images of people doing a shoey with rapid consumption of the entire contents of the shoe reasonably implied - breach of Part 3 (a)(ii);
  - Post 7 - shows scenes from a PGA Golf tournament, including multiple depictions of people performing shoeys and rapid consumption - breach of Part 3 (a)(ii);
  - Post 8 - is set on a boat with men fishing. Rapid and uncontrolled consumption is depicted in breach of Part 3 (a)(ii). Consumption occurs while one of the men is reeling in a fish. While depicting alcohol consumption with fishing will generally not breach the Part 3 (d) standard, here the man is at the edge of the boat, there is a swell noticeably rocking the boat, and he is endeavouring to reel in a large fish requiring him to exert considerable effort to maintain balance. Showing alcohol use in these circumstances is a breach of Part 3 (d);

- Post 9 - is set on a boat with two men and two women fishing. Both women and one of the men are shown doing a shoey and rapidly consuming the product. Another scene shows one of the women who has consumed the product in control of the boat. This post breaches both Part 3 (a)(ii) and Part 3 (d);
- Post 10 - is scenes from an event at a store for the clothing brand StreetX. Several depictions of people doing shoey and rapidly consuming the product are directly implied - breach of Part 3 (a)(ii);
- Post 11 - shows two photographs of a woman in swimwear on a beach. On balance, the Panel does not believe the woman is likely to consume the product and swim but is more likely to sunbathe and not enter the water.
- Post 12 - shows three men in swimwear watching a fourth man entering a lake on a kickboard. Two of the men watching have cans of the product next to them. On balance, the Panel believes the Part 3 (d) standard is breached as while the man entering the water is not seen drinking, it is a reasonable implication that the men watching will swim after consuming the product.

## **Conclusion**

35. The Panel finds that:

- The 'Shoey' marketing collateral item breaches Part 3 (a)(ii) the Code;
- Posts 1 through 10 breach Part 3 (a)(ii) of the Code; and
- Posts 8, 9 and 12 breach Part 3 (d) of the Code.