

ABAC Complaint Statistics for calendar year 2007 to date

(arising from 2007 complaints and determined in 2007)

Total number of all advertisement complaints received by the ASB in 2007	2602
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Of the total number of complaints received by the ASB, **only 2.44%** were complaints against alcohol advertising (compared with 3.14% in 2006, 7.07% in 2005, and 21.38% in 2004)

Of complaints received, the number relating to alcohol advertisements: (relating to 38 separate advertisement campaigns)	87
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Of these, the number of complaints that received ABAC determinations NB: three complaints were dealt with in the one determination	25
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Number of ABAC determinations	22
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Number dismissed by Adjudication Panel	14
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Number upheld by Adjudication Panel	8
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Percentage of advertising campaigns complained about that received a determination	53
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Comments on 2007 statistics:

- Some advertising campaigns attracted higher than usual numbers of complaints. There were nine complaints related to the Toohey's (Pom) campaign (no determination as it did not raise ABAC issues) and a further nine for the Hahn Superdry (Heart) campaign (complaint dismissed). Otherwise, there were up to five complaints about an ad campaign.
- One complaint was rejected as it related to point of sale advertising (Crown Liquor retail outlet window poster).
- One complaint was rejected as the advertisement (James Boag) was an out-of-print ad seen only during a VicHealth presentation.
- One complaint did not proceed to a determination as the issues raised had been fully determined in 2006 and 2005.

ALCOHOL BEVERAGES ADVERTISING CODE

Preamble

Australasian Associated Brewers Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal of all advertisements for alcohol beverages, other than point of sale material, produced for publication or broadcast in Australia complying with the spirit and intent of this Code.

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

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

Definitions

For the purpose of this Code –

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

alcohol beverage includes any particular brand of alcohol beverage;

adolescent means a person aged 14-17 years inclusive;

Australian Alcohol Guidelines means the electronic document ‘Guidelines for everyone (1-3)’ published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

child means a person under 14 years of age; and

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

Advertisements for alcohol beverages must –

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

- b) not have a strong or evident appeal to children or adolescents and, accordingly –
 - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
 - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
 - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
 - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
 - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
 - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
 - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

Internet advertisements

The required standard for advertisements outlined in (a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to

be made available in Australia, and to banner advertising of such products on third party sites.

Retail Advertisements

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

Promotion of alcohol at events

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and
- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and

- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

Third Parties

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

Public Education

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.

ABAC complaints handling process

Step 1 is to receive the complaint from the ASB.

Step 2 is for the Chief Adjudicator "to determine if the complaint raises issues which are solely within the province of the AANA Code of Ethics³".

Step 3 for complaints which go to the ABAC Adjudication Panel, is for the advertisement and product to be identified.

Step 4 is to procure a copy of the advertisement.

Step 5 is to draft and send a 'show cause' letter to the advertiser.

Step 6 is to receive the advertiser's response.

Step 7 is to prepare a draft determination for consideration by the full Panel.

Step 8 is to set a meeting and for each Panel member to consider the materials before them.

Step 9 is to re-draft the determination to reflect the outcome of the meeting, and then re-circulate it to Panel members.

Step 10 is to approve the final document and then issue the determination.

Alcohol Beverages Advertising Code: Guidance Notes

Overview of The ABAC Scheme

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

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

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

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

Purpose of the Guidance Notes

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

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

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

With respect to the AAPS System, the initial AAPS Pre-vetter may seek the opinion of a second or third pre-vetter in order to widen the decision-making process in cases where there is uncertainty as to whether an advertisement may be in breach of the code. Likewise, an advertiser may request an assessment or a review by more than one AAPS Pre-vetter either when submitting the advertisement or upon the initial

decision by the first pre-vetter. In all instances, the initial AAPS Pre-vetter will coordinate the decision-making process.

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

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

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

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

Preamble

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

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

Guidance Note 1: The ABAC is a code which principally deals with the content and not the placement of advertisements within a particular medium, location or timeslot. This can be contrasted with the Commercial Television Code of Practice which does contain provisions that restrict when an alcohol beverage advertisement can be broadcast. The preamble does however indirectly raise the placement of advertising by reference to “the class of persons to whom the advertisement is directed and other persons to whom the advertisement may be communicated”. This means decision makers will take placement into account when assessing the class of persons to whom the ad may be communicated.

For relevant ABAC Adjudications see Appendix A

Guidance Note 2: For the purposes of the ABAC Code, and as it is applied in Australian law, the test of the *reasonable person* is intended as a reflection of the standards and attitudes of contemporary Australian society. In this context we consider a fair, tolerant, multicultural society and decisions by those responsible for doing so within The ABAC Scheme aims to satisfy the expectations of such a community.

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

Definitions

For the purpose of this Code –

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adolescent means a person aged 14-17 years inclusive;

Australian Alcohol Guidelines means the electronic document ‘Guidelines for everyone (1-3)’ published by the National Health & Medical Research Council (NHMRC) as at 1st January 2004.

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Advertisements for alcohol beverages must –

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

Guidance Note 3: There can be no association with violent, aggressive, dangerous, anti-social or illegal acts or behaviour, nor can there be any suggestion of illegal, irresponsible or immoderate consumption of alcohol. It is of no consequence whether the presence or consumption of alcohol in this context has caused the circumstance being portrayed; as such issues are not to be presented in any form.

The Australian Alcohol Guidelines for low risk alcohol consumption advise that to limit health risks men should drink no more than 4 standard drinks per day on average, and not more than 6 in any one day and women should drink no more than 2 standard drinks per day on average, and not more than 4 in one day. Notwithstanding this, where alcohol consumption is depicted in advertising, it should always be done in an appropriate and responsible manner, depicting consumption in moderation.

For relevant ABAC Adjudications see Appendix B

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

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

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

ABAC Adjudications see Appendix C

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

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

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

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

For relevant ABAC Adjudications see Appendix D

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

Guidance Note 6: There is no intention to exclude the consumption of alcohol prior to or during engagement in every sport, only engagement in sports where a prior or concurrent moderate consumption of alcohol could be perceived as hazardous. In addition, the clause precludes consumption prior to or during engagement in
- the operation of machinery/equipment which could be dangerous
- any other potentially dangerous activity.

For relevant ABAC Adjudications see Appendix E

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

For relevant ABAC Adjudications see Appendix F

- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.
- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.

- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

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

Appendix A

ABAC Adjudications: 29/07/07 (<i>Absolut cut Vodka</i>)

Appendix B

ABAC Adjudications:		
31/07/07 (<i>Toohey's New</i>)	Clause A (i) and (ii)	Dismissed
30/07/07 (<i>Jaegermeister</i>)	Clause A (i) (ii) and (iii)	Upheld
16/05/07 (<i>Johnnie Walker</i>)	Clause A (ii)	Dismissed
16/05/07 (<i>Toohey's New</i>)	Clause A (ii) and Clause B	Dismissed
16/04/07 (<i>Absolut Vodka</i>)	Clause A (ii)	Upheld
19/05/07 (<i>Jim Beam</i>)	Clause A (iii) and Clause E	Upheld

Appendix C

ABAC Adjudications:		
25/04/06 (<i>Bundaberg Rum</i>)	Clause B	Upheld
16/05/07 (<i>Toohey's New</i>)	Clause A (ii) and Clause B	Dismissed

Appendix D

ABAC Adjudications:		
21/07/07 (<i>James Boag</i>)	Clause C (i)	Upheld
10/04/07 (<i>Victoria Bitter</i>)	Clauses A (i) (iii) (iv) & C (iii)	Dismissed
26/02/07 (<i>James Boag</i>)	Clauses A (i), (iii), C (i) and D	Dismissed
03/11/06 (<i>James Boag</i>)	Clauses A (iii) and C (ii)	Dismissed
20/06/06 (<i>Toohey's New</i>)	Clause C (ii)	Upheld
07/02/06 (<i>Hahn Light</i>)	Clauses A (iii) and C (i)	Dismissed
13/01/06 (<i>Cascade</i>)	Clause C (i) and (ii)	Dismissed
14/01/05 (<i>St. Agnes Brandy</i>)	Clause C (i)	Upheld
09/12/04 (<i>James Boag</i>)	Clause C (i)	Upheld
09/12/04A (<i>James Boag</i>)	Clause C (i)	Upheld

Appendix E

ABAC Adjudications:		
12/07/07 (<i>Pure Blonde</i>)	Clause D (i)	Upheld
09/07/07 (<i>McKenna Bourbon</i>)	Clause D (i)	Upheld
26/02/07 (<i>James Boag</i>)	Clauses A (i), (iii), C (iii) & D	Dismissed
17/11/05 (<i>Toohey's New</i>)	Clause D	Upheld
17/12/04 (<i>Guinness</i>)	Clause D (i)	Dismissed
31/08/04 (<i>Carlton Draught</i>)	Clauses A (iii) and D	Dismissed

Appendix F

ABAC Adjudications:

19/05/05 (*Jim Beam*)

Clauses A (iii) and Clause E Upheld