

Annual Report 2013



THE
ABAC
SCHEME
LIMITED

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Report from the ABAC Management Committee

This was a year of introspection and review for The ABAC Scheme and alcohol advertising and packaging standards. A number of important initiatives that began in 2012 were concluded and an intensive review of the ABAC Code standards commenced. These important initiatives have been explained in detail in Section 3 of this report.

An important part of a quasi-regulatory scheme is ensuring its consistency with community standards. This is achieved on an ongoing basis by:

- utilising pre-vetters and panelists independent of the alcohol industry to consider alcohol advertising and packaging at the development stage and once in the marketplace and subject to a public complaint
- monitoring complaints made by the public about alcohol advertising and packaging.

A further initiative undertaken in 2013 was market research by Colmar Brunton Social Research on The ABAC Scheme and the consistency of ABAC Adjudication Panel decisions with community standards. In general decisions of the Panel were found to be consistent, if not slightly conservative, in comparison with community standards. This is in no small part due to the leadership of the Panel by its Chief Adjudicator, Professor the Hon Michael Lavarch AO and the commitment of the panelists, Jeanne Strachan, Debra Richards, Professor Richard Mattick and Professor Louisa Jorm. The panelists and pre-vetters continue to be involved in annual workshops with Professor Lavarch which reinforces knowledge and understanding of the Code and improves consistency of decision making by both groups.

The market research did show a low awareness of alcohol advertising regulation in Australia and the ABAC Management Committee is in the process of developing a campaign to raise awareness of the scheme. ABAC continues to raise awareness and understanding at an industry level via annual seminars on the Code and the pre-vetting and complaints systems.

The market research has been particularly useful as ABAC undertakes a comprehensive review of ABAC standards for alcohol advertising and packaging in Australia. The review commenced in mid-2013 and is continuing with the process of consultation with key stakeholders nearing conclusion.

The advent of digital media has been challenging for both industry and regulators. While ABAC has covered digital marketing for some time, in 2013 the ABAC Management Committee published a guide for alcohol advertisers and agencies on the management of digital marketing, "Best Practice for the Responsible Marketing of Alcohol Beverages". The guide was developed with support from the alcohol industry to encourage consistency and a high level of social responsibility in the way in which alcohol advertisers and agencies manage their digital marketing.

Another important development in 2013 was the agreement of Woolworths Liquor and Coles Liquor to become signatories to The ABAC Scheme. While alcohol retailers have cooperated with the Scheme on an informal basis in the past, this development has extended formal coverage of the Scheme and increased communication with and support from the two largest alcohol retailers in Australia. We congratulate Woolworths Liquor and Coles Liquor on taking this important step.

The Alcohol Advertising Pre-vetting Service continues to provide value to advertisers and the community by reducing the possibility of material in breach of ABAC standards reaching the marketplace. Pre-vetting requests increased in 2013 with 15% of requests being rejected. The pre-vetting service is used not only by signatories but is also increasingly being used by non-signatories.

*Report from
the ABAC
Management
Committee
(continued)*

At an operational level the Scheme continues to function well with regular review and improvement to its systems and procedures. In 2013 the ABAC website received a major upgrade in both function and form which has made it a more useful resource for all stakeholders.

Finally, I would like to thank all those that participate in and contribute to the successful operation of The ABAC Scheme. The signatories that have supported The ABAC Scheme over the past 15 years, my fellow Management Committee members and the panelists and prevetters that contribute to the operation of the Scheme are all to be congratulated. In particular I would like to thank the ABAC Executive Officer, Jayne Taylor, and the outgoing Chair, Denita Wawn for their work and oversight of various ABAC projects and initiatives and also the Chief Adjudicator, Professor the Hon Michael Lavarch AO, for his professionalism in operating the ABAC complaints scheme.

Gordon Broderick

ABAC Chair 2013

The ABAC Scheme Management Committee



**Gordon
Broderick
(ABAC Chair)**



Paul Evans



**Colleen
Krestensen**



Denita Wawn



Margaret Zabel

Overview of alcohol advertising regulation in Australia

The Alcohol Beverages Advertising (and Packaging) Code (the Code) and the associated Pre-vetting and Complaints Management Systems form the quasi-regulatory ABAC Scheme.

The ABAC Scheme was developed in agreement with all major Australian alcohol beverages' manufacturing and marketing industry associations and key advertising, media and consumer bodies.

The Federal Government is also a key stakeholder being represented on the Management Committee of the Scheme and a Professor of Public Health, nominated by government, is part of all adjudication panels.

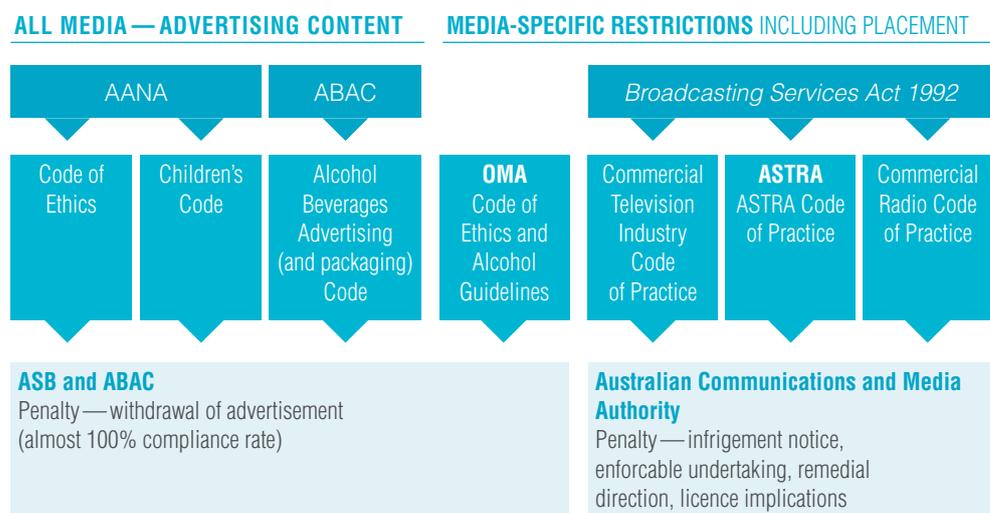
Under The ABAC Scheme, guidelines for advertising and packaging have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry.

The ABAC Scheme is the centrepiece of alcohol advertising regulation in Australia and is administered by a Management Committee which includes industry, advertising and government representatives.

The ABAC Scheme is not the only set of rules affecting advertising in Australia. Alcohol beverage advertising must also be consistent with other applicable laws and codes, for example:

- the Federal Competition and Consumer Act and State Fair Trading legislation
- the Australian Association of National Advertisers Code of Ethics
- the Commercial Television Industry Code of Practice
- the Commercial Radio Code of Practice
- the Outdoor Media Association Code of Ethics and Alcohol Guidelines.

Alcohol Advertising Regulation in Australia



Source: Australian Association of National Advertisers

Operation of The ABAC Scheme

The ABAC Scheme is responsible for:

- The **Code** (first introduced in 1998 and updated in 2004)(Annexure A) which regulates the content of alcohol advertising and packaging in Australia, and alcohol promotion at events. The Code aims to reflect community expectations and changes in the media and advertising industries. The Code applies beyond traditional forms of advertising (television, radio, print and outdoor) to alcohol beverage advertisements in emerging digital and social media, user-generated content on alcohol company controlled digital and social media, point of sale advertisements and surrogate marketing over which an alcohol company has control. The ABAC Guidance Notes (Annexure B) have been developed to assist advertisers and agencies in interpreting the Code.
- **The Alcohol Advertising Pre-vetting Service (AAPS)** which provides confidential advice to advertisers on whether proposed alcohol advertisements comply with the Code. This service is offered on a 'user pays' basis.
 - AAPS Pre-vetters approve, reject or suggest modification to material submitted to them for pre-vetting.
 - AAPS has the support of media associations that encourage their members to check that an alcohol advertisement has AAPS approval prior to placement of advertisements.
 - More than 1,000 advertisements, names or packaging are considered by AAPS each year. In 2013 1,394 advertisements or packaging were considered by AAPS.
 - AAPS Pre-vetters are independent of the alcohol beverage industry.
- **The ABAC Adjudication Panel**, headed by Chief Adjudicator the Hon Professor Michael Lavarch AO, considers public complaints about alcohol advertisements and packaging that fall within the ambit of the Code.
 - The Advertising Standards Bureau (ASB) accepts all complaints in relation to all types of advertising at no cost to the consumer. This avoids a duplication of entry points for advertising-related complaints. All alcohol-related complaints received by the ASB are provided to the ABAC Adjudication Panel and the Panel considers all complaints that raise ABAC Code issues subject to the exceptions set out in section 3(c)(i) of the ABAC Rules and Procedures (Annexure C).
 - The ASB considers complaints insofar as they raise AANA Code of Ethics issues. The AANA Code of Ethics aims to ensure that all advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society. This ensures that there is a consistent standard for issues such as discrimination, violence, sexual imagery, obscene language, health and safety across all advertising for every type of product.
 - The ABAC Adjudication Panel reports its decisions to the ASB, the ABAC Management Committee, the advertiser, and the complainant. Its decisions are also made publicly available through the ABAC website.
 - The Adjudication Panel and its deliberations are independent of the ABAC management committee and the broader alcohol and advertising industry.
 - The ABAC Adjudication Panel comprises:
 - the ABAC Chief Adjudicator, Professor The Hon Michael Lavarch AO, who has legal expertise
 - a health sector panelist, Professor Richard Mattick or Professor Louisa Jorm (both were appointed from a shortlist of health sector professionals provided by the relevant Federal Minister responsible for alcohol issues or his or her nominee)
 - a panelist with market research, media or advertising expertise, Jeanne Strachan or Debra Richards.

- Each quarter the Chief Adjudicator reports to the ABAC Management Committee on the operation of the ABAC Adjudication Panel and the Chief Adjudicator submits an annual report on the Panel's operation to the ABAC Management Committee for inclusion in its annual report.

Interaction between The ABAC Scheme and alcohol advertising and packaging

- ▼ Company and advertising agency staff check the advertising or packaging against the Code standards
- ▼ Independent AAPS Pre-vetters check the advertising or packaging against the ABAC (and in some cases AANA standards) and either approve or reject
- ▼ Once a campaign is in the marketplace consumers may lodge a complaint about the advertising or packaging to the Advertising Standards Bureau at no cost
- ▼ The Advertising Standards Bureau refers all alcohol advertising and packaging complaints to the Chief Adjudicator of the ABAC Adjudication Panel
- ▼ Complaints raising issues within the ambit of the ABAC Code are referred to the independent ABAC Adjudication Panel for a hearing on whether the advertisement or packaging meets ABAC standards
- ▼ If the ABAC Adjudication Panel finds the ABAC standards have not been met the advertiser is asked to withdraw or modify the material within five business days
- ▼ The written decision of the ABAC Adjudication Panel is sent to the consumer and published on the ABAC website

Management of The ABAC Scheme

The ABAC Management Committee manages and reviews the operations of The ABAC Scheme and considers amendments to the Code and Scheme procedures with a view to:

- encouraging industry members, large and small, to participate in the quasi-regulatory system
- playing an active role to ensure an effective quasi-regulatory system
- monitoring the implementation of The ABAC Scheme and improving it where necessary
- coordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy and the Advertising Standards Bureau
- managing AAPS as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members in AAPS.

The ABAC Management Committee comprises:

- the Chief Executive of the Brewers Association of Australia and New Zealand, Ms Denita Wawn
- the Executive Director of the Distilled Spirits Industry Council of Australia Inc, Mr Gordon Broderick
- the Chief Executive of the Winemakers Federation of Australia, Mr Paul Evans
- the Chief Executive of the Communications Council Limited, Ms Margaret Zabel
- a representative of Australian Governments nominated by the relevant Federal Minister responsible for alcohol issues, Ms Colleen Krestensen.

The ABAC Management Committee is supported in its role by the ABAC Executive Officer, Ms Jayne Taylor.

The members of the ABAC Management Committee each represent a group of stakeholders in alcohol beverage advertising and packaging regulation. Any member of the Committee may raise issues for consideration by the Committee and the Committee in practice operates on a consensus basis.

The representative of Australian Governments from the Federal Health Department provides updates on relevant ABAC meeting outcomes to Intergovernmental Committee on Drugs members as required to ensure all Australian Governments are informed.

The ABAC Management Committee meets at least four times a year and all issues raised by any member of the Committee or referred to the Committee by the ABAC Adjudication Panel or ABAC Pre-vetters receives full consideration by the Committee.

ABAC Scheme coverage

- Membership of, and compliance with the Scheme is voluntary. However, the individual members of the Brewers Association of Australia and New Zealand, Distilled Spirits Industry Council of Australia and Winemakers' Federation of Australia have agreed to be bound by the Scheme. This means that the majority of alcohol advertising in Australia is regulated by the Scheme.
- Other companies that advertise alcohol, including retail chains, are encouraged to become non-member signatories to the Scheme and to utilise the pre-vetting service. Both Woolworths Liquor and Coles Liquor took the important initiative of joining the scheme as non-member signatories during 2013.
- Many non-signatories currently use the pre-vetting service and the Scheme has the support of media associations. In 2013 11% of pre-vetting applications were from non-signatories.
- The alcohol industry (both signatories and non-signatories) and advertising agencies have access to biennial training sessions with the ABAC Chief Adjudicator and a pre-vetter in Sydney and Melbourne where all aspects and obligations of the Code, pre-vetting service and complaints scheme are explained. Training sessions are filmed and made available to advertisers. In addition the ABAC pre-vetters, alcohol beverage industry associations and ABAC executive officer are all available to explain the Code and the scheme to alcohol beverage advertisers and their agencies.
- The ABAC Adjudication Panel made 36 determinations resulting from 2013 complaints of which four were upheld and in each case the advertiser agreed to withdraw or modify the advertisement or packaging so as to comply with the ABAC standards, as required by section 3(e) of The ABAC Scheme Rules and Procedures. Three of the upheld complaints related to non-signatory advertisers that all cooperated with the scheme. All adjudication decisions are published to the ABAC website.

New ABAC Initiatives

Best Practice Guides for Industry

Best Practice Guides for Industry is a new initiative of The ABAC Scheme (Annexure D). It was recognised that while ABAC, as an industry content code, covered the content of digital marketing, there was no guidance to advertisers on how to best manage the placement of alcohol advertising through digital marketing. In response, ABAC developed best practice advice to assist the alcohol industry in maintaining high standards of social responsibility in the management of its digital marketing. The guide is intended to assist alcohol advertisers and agencies in the management of digital marketing particularly relating to age-affirmation and moderation of user-generated content. It is recognised that digital marketing and social media is evolving rapidly and therefore the best practice guide will be reviewed on a regular basis and updated where necessary.

Community Standards Research

Community Standards Research was undertaken by Colmar Brunton Social Research in early 2013 to explore whether decisions made by the ABAC Complaints Panel are in-line with community standards. Ten (10) face-to-face focus groups along with an online survey of 1,261 people tested 12 alcohol advertisements that had been subject to consideration by the Complaints Panel. Of those 12 advertisements, seven complaints had been upheld, while five had been dismissed, by the Complaints Panel.

Key findings

- Prior to being exposed to the Code, only two of the 12 advertisements were considered unacceptable by the majority of respondents.
- Overall, participants considered that the Complaints Panel had:
 - correctly dismissed three (3) advertisements that were deemed acceptable by the community
 - correctly upheld complaints against three (3) advertisements that were deemed unacceptable by the community
 - conservatively upheld complaints against three (3) advertisements that were deemed acceptable by the community
 - dismissed a complaint against one (1) advertisement that was deemed unacceptable
 - community opinions on two (2) advertisements were evenly split with the Complaints Panel upholding a complaint about one advertisement while dismissing the other.
- Knowledge of alcohol advertising regulation was low across all groups, but once prompted a majority (69%) were aware that they could complain to the Advertising Standards Bureau.
- In the last 12 months, 66% of participants had no concern or offence about advertising standards in general.
- The research found that 31% of respondents were not concerned about content of alcohol advertising, 35% were neither concerned nor unconcerned and 34% were concerned.

ABAC response to the research

- The unprompted assessment of the 12 advertisements (2 of the 12 were found to be unacceptable) against the decisions of the Complaints Panel (7 of the 12 complaints were upheld) is a positive finding.
- ABAC Complaints Panel decisions are consistent, if not slightly conservative, in comparison to community standards.
- ABAC acknowledges the low awareness of alcohol advertising regulation in Australia and is currently developing methods to improve the awareness of ABAC.
- ABAC will utilise the research to assist in a review of the Code standards.

The ABAC website

The ABAC website was redeveloped in 2013. The website includes scheme information and publications to assist alcohol beverage advertisers and agencies understand all aspects of the scheme and their obligations and to inform consumers about the scheme, in particular the ABAC standards and how complaints can be lodged. The upgrade to the website has updated the format and improved ease of navigation. It also now includes a useful search function for adjudication decisions.

2013 ABAC Statistics

Pre-vetting	2011	2012	2013
Number of advertisements, names and packaging pre-vetted	1059	1229	1349
Of the advertisements pre-vetted:			
Number that were accepted	938	978	1099
Number that were accepted subject to conditions	39	59	39
Number that were rejected	82	192	211

Complaints	2011	2012	2013
Number of complaints received:	119	98	182
Number of advertisements and packaging these complaints referred to:	74	63	78
Number of complaints considered by the Alcohol Beverages Advertising Adjudication Panel (ie complaints that resulted in a Panel determination):	63	53	69
Number of determinations from complaints received that year	45	36	36
Number of complaints upheld (at least in part):	20	7	20
Number of determinations upholding complaints	15	7	4

Observations

- Advertising complaints resulting in a determination took, on average, 26 business days to be completed (target of 30 business days).
- All companies agreed to withdraw or modify advertisements or packaging referred to in upheld complaints.
- Complaints about appeal to children or adolescents significantly decreased, while complaints about irresponsible consumption of alcohol and alcohol causing changes in mood or success both increased.
- Complaints about online advertising and social media fell significantly again this year, while complaints about television advertisements increased.
- Of the 36 determinations made, 17 related to advertisements that were pre-vetted. Of the four determinations upholding complaints, two related to advertisements that were pre-vetted.
- Detailed ABAC statistics are included in Section 6 of this report.

Report from the Chief Adjudicator

In undertaking its role of assessing alcohol advertisements against the standards in the ABAC, the preamble to the Code asks that the Panel have regard to the probable impact of an advertisement upon a “reasonable person”. The concept of the reasonable person is borrowed from the Australian common law system and means that the values, beliefs, and attitudes which prevail in a majority of the community are to be the benchmark. In short, prevailing community standards are the cornerstone in the Panel assessing how an advertisement would be interpreted.

While panel members are drawn from a variety of backgrounds and each member brings to the role their own different professional and life experiences, it is daunting for a small group of people to endeavour to reflect community standards. It was for this reason that the Panel took particular interest in the research project completed in 2013 which compared Panel determinations against community expectations. This project enabled the Panel to obtain direct feedback on 12 separate determinations, and provided a reality check as to whether the Panel's view on alcohol advertisements against ABAC standards were broadly in line with attitudes in the wider community.

The results of the research indicate that the Panel's decisions on the 12 advertisements and complaints were in line with wider community expectations of how the ABAC standards should be interpreted. If anything, the Panel seemed to adopt a somewhat more restrictive approach as to what matters can be portrayed within alcohol advertisements consistent with the ABAC requirements. In one of the determinations, the view of research participants was that a particular complaint should have been upheld whereas the Panel dismissed the complaint. On closer examination, however, it appears the particular case involved, whether a 'giveaway' or promotional item which was taken by the research participants to have strong or evident appeal to children or adolescents was an appropriate marketing strategy. The Panel's decision, however, was not about the appropriateness of the giveaway, but rather whether an advertisement which made mention of the availability of the giveaway item was consistent with the ABAC standards.

Of course, both the Panel and the research participants were assessing advertisements against the current ABAC standards. It is a different question whether the standards, as currently in place, are sufficiently reflective of best practice in terms of alcohol marketing and are appropriately robust in terms of meeting the broad policy objectives of the scheme.

In recent times, as Chief Adjudicator I have raised with the ABAC's Management Committee the desirability of a comprehensive review of the Code provisions, given that the last root-and-branch review of the Scheme occurred in 2003. It is pleasing that the Management Committee in 2013 commenced this review, and it is expected that a remodelled Code based on the outcome of the review will be implemented by the end of 2014. The Panel had the opportunity to provide comments to the review process based on its experience in applying the current Code. It is, however, the responsibility of the Management Committee and not the Panel to settle the actual terms of the Code,

which is then given to the Panel to apply. This separation between the Panel's role as an independent arbiter of public complaints and the Management Committee's role as the owner of the Code standards is an important one, and has been properly maintained through the current review process.

In operational terms, The ABAC Scheme ran smoothly in 2013. Public complaints received by the Advertising Standards Bureau were distributed quickly to the Panel's Executive Officer and enabled the Panel processes to be commenced in a timely fashion. Equally, the Panel was able to determine the vast majority of the complaints, resulting in a determination within the target 30 day timeframe. In most cases, determinations were made well in advance of the 30 day target.

As commented in previous annual reports, a considerable number of complaints received and examined by the Panel relate to the advertising of retailers of alcohol products, rather than the owners of the alcohol beverage brands. The ABAC Scheme in its conception was targeted very much at the owners of individual alcohol brands and not the retail sector. Changes in the alcohol industry over time have made this distinction less important and, accordingly, an extremely pleasing development in 2013 was the decision of Australia's two major alcohol retailers, namely Coles and Woolworths Liquor, to become signatories to the Scheme. This means that Panel decisions will have binding effect on these two major alcohol retailers, as well as committing the retailers to utilise the pre-vetting services available under the Scheme in a larger number of occasions. This development augers well for the comprehensive reach of the Scheme.

I would like to take this opportunity to thank my fellow panel members for their cooperation and contribution to the operation of the Scheme during the last 12 months. Particular thanks go to the Scheme's Executive Officer, Ms Jayne Taylor, for her outstanding support to the logistics and operation of the Panel's processes.

Professor The Hon Michael Lavarch AO

Chief Adjudicator

ABAC Adjudication Panel

Annexure A

Alcohol Beverages Advertising (and Packaging) Code

Preamble

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

The Code is designed to ensure that alcohol advertising, naming and packaging 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, name or packaging 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 or product material is directed and other persons to whom the advertisement or product material 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 *Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1–2)* published by the National Health & Medical Research Council (NHMRC) as at 1 January 2010;

child means a person under 14 years of age; and

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

PART 1Standards to
be applied to
advertisements
for alcohol
beverages**Advertisements for alcohol beverages must –**

- a** present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
 - i** must not encourage excessive consumption or abuse of alcohol;
 - ii** must not encourage under-age drinking;
 - iii** must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
 - iv** must only depict the responsible and moderate consumption of alcohol beverages;
- 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 (1)(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.

PART 2

Standards to be applied to the naming and packaging of alcohol beverages

- 1 The naming or packaging of alcohol beverages (which is also referred to within these standards as 'product material') 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 product material must be over 25 years of age and be clearly depicted as adults;
 - ii** children and adolescents may only appear in product material 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** not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
 - g** not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.
- 2. These standards, (Part 2 (1) (a)–(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.**

Annexure B Alcohol Beverages Advertising (and Packaging) Code: **Guidance Notes**

Overview of The ABAC Scheme

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

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

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

For beer producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics. For spirits producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For wine producers all television, cinema and outdoor advertising should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For all producers pre-vetting of naming and packaging is optional.

Purpose of the Guidance Notes

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

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

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

With respect to the AAPS, the initial AAPS Pre-vetter may seek the opinion of a second pre-vetter where the initial AAPS Pre-vetter is in the first three months of their term or where a new concept or new medium is being assessed and the pre-vetter believes that they may be operating without precedent and is unsure of the approach to take. Likewise, an advertiser may request an assessment or a review by more than one AAPS Pre-vetter either when submitting the advertisement or upon the initial decision by the first pre-vetter. In all instances, the initial AAPS Pre-vetter will coordinate the decision-making process.

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

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

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

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

Preamble

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

The Code is designed to ensure that alcohol advertising, naming and packaging 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, name or packaging 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 or product material is directed and other persons to whom the advertisement or product material may be communicated, and taking its content as a whole.

Guidance note 1

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

For relevant ABAC Adjudications see Appendix A

Guidance note 2:

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

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

Definitions

For the purpose of this Code –

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

alcohol beverage includes any particular brand of alcohol beverage;

adolescent means a person aged 14–17 years inclusive;

Australian Alcohol Guidelines means the electronic document *Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1–2)* published by the National Health & Medical Research Council (NHMRC) as at 1 January 2010;

child means a person under 14 years of age; and

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

PART 1

Standards to be applied to advertisements for alcohol beverages

Advertisements for alcohol beverages must –

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

Guidance note 3

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

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

For relevant ABAC Adjudications see Appendix B

- b not have a strong or evident appeal to children or adolescents and, accordingly –
 - i adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
 - ii children and adolescents may only appear in advertisements in natural situations (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;

Guidance note 4

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

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

ABAC Adjudications see Appendix C

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

Guidance note 5

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

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

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

For relevant ABAC Adjudications see Appendix D

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

Guidance note 6

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

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

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

For relevant ABAC Adjudications see Appendix E

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

For relevant ABAC Adjudications see Appendix F

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

Guidance note 7

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

PART 2

Standards to be applied to the naming and packaging of alcohol beverages

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

For relevant ABAC Adjudications see Appendix G

Appendix A

ABAC Adjudications:

14/01/12 (Crown Lager)
22/12/08 (Kahlua)
01/11/07 (Tooheys Extra Dry)
16/04/07 (Absolut cut Vodka)

Appendix B

ABAC Adjudications:

01/05/12 (Jim Beam)	section (a)(i)(ii)(iii)(b)	Dismissed
26/10/11 (Wild Turkey)	section (a)(i)(iii)	Dismissed
21/02/11 (VB Beer)	section (a)(iii)	Upheld
24/12/10 (Agwa de Bolivia)	section (a)(i)(iii)(c)(i)(iii)	Upheld
26/04/10 (Tooheys New)	section (a)(i)(iii)(g)	Dismissed
21/10/09 (Wine Doctor)	section (a)(i)(iii)(c)(iii)(g)	Upheld
21/10/09 (Pre-mix Kings)	section (a)(i)(iii)	Upheld
23/12/08 (Natural Beer x 3)	section (a)(ii)(iii)(b)(d)	Dismissed
14/10/08 (Carlton mid)	section (a)(i)(iii)	Dismissed
15/09/08 (Jim Beam 'stalker')	section (a)(i)(ii)(iii)(b)	Upheld
25/03/08 (Black Douglas)	section (a)(iii)	Upheld
08/02/08 (Corona)	section (a)(i)(iii)	Upheld
27/11/07 (James Boag Draught)	section (a)(i)(iii)(iv)	Upheld
31/07/07 (Toohey's New)	section (a)(i)(iii)	Dismissed
16/05/07 (Johnnie Walker)	section (a)(ii)	Dismissed
19/05/05 (Jim Beam)	section (a)(iii)(e)	Upheld

Appendix C

ABAC Adjudications:

26/11/12 (Cellarbrations)	section (a)(ii)(b)	Upheld
16/08/12 (Jack Daniels Honey)	section (a)(ii)(b)(d)	Dismissed
22/08/11 (Infused Rush Vodka)	section (a)(ii)(b)	Upheld
21/02/11 (Jim Beam)	section (a)(ii)(b)(c)(d)	Upheld
17/12/10 (Three Kings)	section (a)(ii)(b)	Upheld
14/10/10 (BWS)	section (a)(ii)(b)	Dismissed
02/12/09 (Go Vodka)	section (a)(ii)(b)	Upheld
03/03/09 (Dominos)	section (a)(ii)(b)	Dismissed
29/02/08 (Cellarbrations)	section (a)(ii)(iii)(b)(c)(iii)	Dismissed
14/11/07 (Little Creatures)	section (a)(ii)(b)	Upheld
01/11/07 (Pure Blonde)	section (a)(ii)(b)	Dismissed
16/05/07 (Toohey's New)	section (a)(ii)(b)	Dismissed
25/04/06 (Bundaberg Rum)	section (b)	Upheld

Appendix D

ABAC Adjudications:

03/12/12 (First Choice Liquor)	section (c)	Dismissed
28/09/12 (BWS)	section (c)	Upheld
03/08/12 (Tooheys Extra Dry)	section (c)(i)	Dismissed
14/06/12 (Canadian Club)	section (a)(c)(i)	Dismissed
08/09/11 (Bundaberg Five)	section (c)(i)	Upheld
07/01/11 (Liquor Barons)	section (a)(i)(iii)(c)(ii)(iii)	Upheld
28/10/10 (VB)	section (a)(c) (i)(iii)	Upheld
21/12/09 (Coopers)	section (a)(c) (iii)	Upheld
05/02/09 (Moorilla Wines)	section (c) (i)	Upheld
22/12/08 (Johnnie Walker)	section (c) (i)	Dismissed
02/12/08 (Bacardi)	section (a) (ii) (b)(c)(i)	Dismissed
30/10/08 (Budweiser)	section (a) (i)(iii)(iv)(c)(i)	Upheld
23/05/08 (Cockatoo Ridge)	section (a) (ii) (b)(c)(i)	Upheld
25/10/07 (Tooheys New)	section (c) (i)(ii)	Dismissed
31/07/07 (James Boag)	section (c) (i)	Upheld
10/04/07 (Victoria Bitter)	section (a)(i)(iii)(iv)(c)(iii)	Dismissed
26/02/07 (James Boag)	section (a)(i)(iii)(c)(i)(d)	Dismissed
03/11/06 (James Boag)	section (a) (iii)(c) (ii)	Dismissed
20/06/06 (Toohey's New)	section (c) (ii)	Upheld
07/02/06 (Hahn Light)	section (a) (iii)(c)(i)	Dismissed
13/01/06 (Cascade)	section (c) (i) and (ii)	Dismissed
14/01/05 (St. Agnes Brandy)	section (c) (i)	Upheld
09/12/04 (James Boag)	section (c) (i)	Upheld
09/12/04A (James Boag)	section (c) (i)	Upheld

Appendix E

ABAC Adjudications:

22/03/12 (Strongbow Cider)	section (d)	Dismissed
05/07/11 (Carlton Draught)	section (c)(d)	Dismissed
23/12/10 (XXXX Gold)	section (a)(d)	Upheld
28/10/10 (Tooheys New)	section (a)(d)	Dismissed
04/08/09 (Bundaberg Rum)	section (d)	Upheld
15/06/09 (Sip'n'save)	section (d)	Dismissed
10/06/09 (Sip'n'save)	section (d)	Upheld
22/12/08 (XXXX Gold)	section (a)(d) (i)	Dismissed
15/09/08 (XXXX Gold)	section (a)(iii)(d)(i)	Dismissed
21/12/07 (Corona)	section (d) (i)	Dismissed
12/07/07 (Pure Blonde)	section (a)(d) (i)	Upheld
09/07/07 (McKenna Bourbon)	section (d) (i)	Upheld
26/02/07 (James Boag)	section (a)(i)(iii)(c)(iii)(d)	Dismissed
17/11/05 (Toohey's New)	section (d)	Upheld
17/12/04 (Guinness)	section (d) (i)	Dismissed
31/08/04 (Carlton Draught)	section(a)(iii)(d)D	Dismissed

Appendix F

ABAC Adjudications:

19/05/05 (Jim Beam)	section (a)(iii)(e)	Upheld
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Appendix G

ABAC Adjudications:

26/11/12 (Three Bears)	Part 2.1 (a)(ii)(b)	Upheld
22/03/12 (Skinnygirl)	Part 2.1 (a)(ii)(b)	Upheld
12/01/12 (Midori)	Part 2.1 (a)(ii)(b)	Dismissed
13/02/12 (Bacchus Shot Bucket)	Part 2.1(a)(i)(ii)(iii)(b)(f)	Upheld

Annexure C

The ABAC Scheme: Rules and Procedures

1 Management 1.1 Management Committee

The management and operation of The ABAC Scheme will be undertaken by a Management Committee consisting of –

- a** the Executive Director of the Brewers Association of Australia and New Zealand Inc or their nominee (“Brewers Association”);
- b** the Executive Director of the Distilled Spirits Industry Council of Australia Inc or their nominee (“DSICA”);
- c** the Chief Executive of the Winemakers Federation of Australia or their nominee (“WFA”);
- d** the Chief Executive of The Communications Council Limited or their nominee.
- e** a Representative of Australian Governments with a nominee put forward by the relevant Federal Minister for consideration by the other members of the Management Committee, who will be appointed for a one (1) year term but will be eligible for re-appointment by the Management Committee.

An Independent chair may be appointed to the Management Committee by the Directors of The ABAC Scheme Ltd, who have been appointed by the members that fund the appointment. The position of deputy chair (or chair in the absence of the appointment of an independent chair) will rotate between the Brewers Association, DSICA and WFA representatives on an annual basis.

1.2 Role

To manage and review the operation of The ABAC Scheme and to consider amendments to the Alcohol Beverage Advertising (and Packaging) Code (“the Code”) and to the voluntary system of compliance with a view to:

- encouraging industry members, large and small, to participate in the quasi-regulatory system
- playing an active role to ensure an effective quasi-regulatory system
- monitoring the implementation of The ABAC Scheme and improving it where necessary
- coordinating the development and completion of an annual report with copies to be provided to the relevant Ministerial Council for alcohol policy and strategy and the Advertising Standards Bureau (“ASB”)
- managing the Alcohol Advertising Pre-Vetting Service (“AAPS”) as an effective mechanism to support and strengthen the aims of The ABAC Scheme and to encourage participation by industry members in AAPS.

1.3 Meetings of the Management Committee

The Management Committee must meet at least four times a year.

Any of the representatives of the Brewers Association, DSICA, or WFA may convene a meeting of the Management Committee which, if not a telephone meeting, must be held by giving not less than fourteen (14) days prior written notice of the meeting to the other members of the Management Committee.

1.4 Funding

The Directors of The ABAC Scheme have a responsibility to ensure that The ABAC Scheme is adequately funded.

2 Adjudication 2.1 Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel

An Alcohol Beverages Advertising (and Naming and Packaging) Adjudication Panel (“the Adjudication Panel”) will be formed to adjudicate upon complaints concerning:

- advertisements for alcohol beverages, and
- naming and packaging for alcohol beverages.

Complaints made to the Advertising Standards Bureau will be referred to The ABAC Scheme for consideration under the relevant complaints procedure.

Adjudication by the Adjudication Panel will be in addition to any other legal right or remedy which may exist.

2.2 Code signatories

All Code signatories, including members of Brewers Association, DSICA and WFA will be asked to:

- a in respect of advertising: agree to comply with any recommendation of the Adjudication Panel that they not publish or broadcast or permit to be published or broadcast any advertisement which the Panel decides does not comply with the Code; and
- b in respect of product names and/or packaging: agree to act in good faith to uphold the principles of The ABAC Scheme in considering recommendations of the Adjudication Panel relating to this section of the Code.

Non-members are strongly encouraged to become Code signatories, by filling out a form approved by the Management Committee for the purpose, which are to be available from the ABAC Executive Officer, and submitting it for approval by the ABAC Management Committee.

2.3 Disputes between competitors

The Panel will have no role in the adjudication of a complaint by an alcohol beverages manufacturer about the advertising of a competitor. Such competitive complaints will be dealt with by the Advertising Claims Board established by the AANA.

2.4 Appointment of the Adjudication Panel

The Adjudication Panel will be appointed by the Management Committee and will consist of three (3) regular members and at least two (2) reserve members.

The Management Committee will appoint a Health Sector member as one of the three regular members of the Adjudication Panel. The relevant Federal Minister with responsibility for alcohol issues, or his or her nominee, will be invited to nominate a shortlist of candidates to the Management Committee for consideration.

The Management Committee will appoint one (1) member of the Adjudication Panel as the Chief Adjudicator of the Panel.

No member of the Panel may, at the time of or during the term of his or her appointment to the Panel –

- a be a current employee of a participant or member of the alcohol beverages industry; or
- b have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.

Each member of the Panel will be appointed for a one (1) year term but will be eligible for re-appointment.

Determinations of the Panel will be by a simple majority vote and no member of the Adjudication Panel will have a casting vote.

2.5 Indemnity of Adjudication Panel Members

If a complaint made to the Advertising Standards Bureau and referred to the Adjudication Panel is from an advertiser, advertising agency, government agency or statutory authority, the AANA must ensure that the members of the Adjudication Panel receive the benefit of the indemnity provided to the Advertising Standards Board by the complainant.

2.6 Annual Report

The Panel must prepare a report summarising the complaints received and dealt with by the Adjudication Panel and the recommendations made during the preceding year and provide a copy of that report to the Management Committee.

3 Complaints procedures for advertising

(The complaints procedures for naming and packaging are described in Section 4.)

The complaints procedures for advertising are as follows:

- a** The ABAC Management Committee has a duty to oversee that the process for handling complaints is running efficiently, and in performing this duty must have regard to:
 - (i) A target of 30 business days on average for the handling of complaints, and
 - (ii) A need to ensure privacy, where required by law, and
 - (iii) Any natural justice considerations.
- b** All complaints received from the ASB will be considered within the ABAC complaints procedure and all decisions must be recorded in writing for statistical purposes and communicated to the complainant.
- c**
 - (i) The Chief Adjudicator will look at all complaints received from the ASB to determine if the complaint raises issues which:
 - a) are solely within the province of the AANA Code of Ethics; or
 - b) are solely within the province of an alternative code of practice or legislative regime for which there is a separate complaints resolution mechanism; or
 - c) have been fully considered and determined in an earlier determination in relation to a particular advertisement; or
 - d) have been consistently dismissed by the Panel as not being in breach of the Code; or
 - e) are not under the Code on a broad interpretation of the complaint.
 - (ii) If it is so determined the complaint will not normally be further considered under The ABAC Scheme excepting
 - (iii) Where the Chief Adjudicator exercises his or her discretion to refer the complaint to the Adjudication Panel notwithstanding his or her determination that it raises issues which fall within 3(c)(i).

In all other cases (including 3(c)(iii)) the complaint will be referred on to the Adjudication Panel for adjudication.

- d** A Health Sector representative will sit on the Adjudication Panel for all adjudications. Copies of the advertisement against which a complaint has been lodged will be provided to Adjudication Panel members to assist them with their deliberations. The ABAC Adjudication Panel will not consider any issues raised under the AANA Code of Ethics except in the circumstance set out in 3(c)(iii).
- e** If the Adjudication Panel decides that the complaint should be upheld the advertiser or its agency must advise the Adjudication Panel within five (5) business days as to whether the advertiser agrees to modify the advertisement or its use must be discontinued.

- f** Decisions of the Panel, and the response (if any) of the advertiser/agency, must be advised to the ASB and the ABAC Management Committee, within five (5) business days after –
 - (i) in the case where the Adjudication Panel has not upheld the complaint, the date of the decision of the Adjudication Panel; or
 - (ii) in the case where the Adjudication Panel has upheld the complaint, the date the response is received (or due) from the advertiser/agency pursuant to paragraph (e) above.
- g** A record of all decisions must be maintained to assist with establishing statistical patterns over time for use in drafting the Annual Report etc.

4 Complaints procedures for naming and packaging

- a** The ABAC Management Committee has a duty to oversee that the process for handling complaints for naming or packaging is running efficiently, and in performing this duty must have regard to:
 - (i) The efficient handling of complaints, and
 - (ii) A need to ensure privacy, where required by law, and
 - (iii) Any natural justice considerations.

All complaints to be considered

- b** All complaints received from the ASB will be considered within the ABAC complaints procedure and all decisions must be recorded in writing for statistical purposes.
- c** If the complaint also relates to advertising, the complaint will also be considered under Section 3 of the Rules & Procedures.
- d** The Chief Adjudicator will look at all complaints against naming and packaging (received by the ASB) to determine if the complaint raises issues under the ABAC Code.
- e** If it is so determined the complaint will be referred to the Adjudication Panel for consideration unless the complaint relates to product material that has been certified pursuant to paragraph 4(p).
- f** Where a complaint is referred to the Adjudication Panel for consideration, the Chief Adjudicator will, prior to consideration of the complaint by the Adjudication Panel, notify the Supplier of the complaint and its referral to the Adjudication Panel.
- g** For the purposes of Section 4 of the Rules & Procedures, a “Supplier” is deemed to be either:
 - (i) the Australian named manufacturer; or
 - (ii) the Australian distributor(s) of the Product either as shown on the labelling or packaging of the Product or otherwise identified in good faith by the Chief Adjudicator on the information available to him or her.

Materials to be supplied to the Adjudication Panel

- h** When the Adjudication Panel considers the complaint, it should have before it:
 - (i) a copy of the complaint
 - (ii) either a sample or picture of the product name and/or packaging or product or product material in question, or a fair description of both (and the text of any determination issued by the Adjudication Panel should stipulate which)
 - (iii) any correspondence from the Supplier, either in response to the complaint, or any questions/issues raised with it by the Chief Adjudicator.
 - (iv) any other materials the Chief Adjudicator deems fit.

Review processes

- i** If the Adjudication Panel decides to uphold the complaint, then a provisional determination must be provided to the Supplier, who will be able to seek a rehearing of the provisional determination, by providing a formal written response and further submission within ten (10) business days of receipt of the provisional determination.
- j** All or part of this appeal period may be waived by the Supplier, and will be deemed to have been waived upon receipt of a formal written response to the provisional determination.
- k** After considering any material provided by the Supplier, or after the elapse of ten (10) business days from the date that the provisional determination is provided to the Supplier, the Adjudication Panel is free to issue a final determination whenever it deems fit.
- l** When a complaint has been upheld against a product's name or packaging, the Supplier must advise the Chief Adjudicator within ten (10) business days of being informed of the Adjudication Panel's decision, as to whether they intend to either discontinue or modify the affected product.
- m** The onus is on the Supplier to demonstrate to the Chief Adjudicator that a product name or trademark was in use in the Australian market prior to 31 October 2009. The Supplier may do so at any stage of the process prior to the end of the five (5) business day period the Supplier has to respond to a final determination.

Agreement to modify name or package

- n** Where a Supplier has agreed to modify the affected product, then it may put proposals for doing so before two pre-vetters for consideration. The pre-vetters must ensure that any such proposal(s) are dealt with in a timely and confidential manner.
- o** The pre-vetters shall determine whether the proposed modifications bring the product name and/or packaging into line with the Code (not just the section(s) on which the original complaint and determination hinged). Where the pre-vetters do not both agree that the proposed modifications bring the product name and/or packaging in line with the Code certification may not be given for that name and/or packaging.
- p** Where the pre-vetters have certified that modifications to naming and/or packaging are sufficient to bring it in line with the Code, then the Adjudication Panel will not consider any further complaints against the product so modified. Any minor modifications to the packaging (eg bar codes, use-by dates, date or place of manufacture, grape sources etc.) will be deemed to not alter the compliant status of the product. Complaints in respect of advertising in which the name and/or packaging is featured will still be considered by the ABAC Adjudication Panel.

5 Alcohol Advertising Pre-vetting Service (AAPS)

5.1 Role of AAPS

Individual alcohol beverage producers may use the AAPS pre-vetting service to assess whether proposals conform to either or both of the following codes the Australian Association of National Advertisers Code of Ethics (AANA) or the Alcohol Beverages Advertising Code (ABAC).

For beer producers all advertisements for alcohol beverages (excluding internet and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics. For spirits producers all advertisements for alcohol beverages (excluding internet

and point of sale advertisements and promotion of alcohol at events) should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For wine producers all television, cinema and outdoor advertising should be pre-vetted against the ABAC Code and the AANA Code of Ethics. For all producers pre-vetting of naming and packaging is optional.

Pre-vetters have no public role in representing the scheme. Their role is to provide pre-vetting services. Any inquiries or correspondence from third parties to pre-vetters must be referred on to the ABAC Executive Officer or ABAC Management Committee to be dealt with.

To encourage the frank exchange of views within The ABAC Scheme, any opinion expressed by a pre-vetter in respect to a matter which is submitted for pre-vetting is confidential to the producer, the pre-vetter, the ABAC Executive Officer and the representative of their respective industry association.

5.2 Appointment of pre-vetters

There will be a minimum of two pre-vetters within the AAPS, appointed by the Management Committee.

No pre-vetter may, at the time of or during the term of his or her appointment to the Panel –

- a** be a current employee of a participant or member of the alcohol beverages industry; or
- b** have been an employee of a participant or member of that industry during the period of five (5) years prior to the date of his or her appointment.

Each of the pre-vetters will be appointed for a three (3) year term and will be eligible for re-appointment after a minimum period of one (1) year out of The ABAC Scheme. These provisions may be varied by the Management Committee.

5.3 Funding

Where appropriate, all services provided by AAPS Pre-vetters (including pursuant to paragraphs 4 (n)–(p)) are to be funded on a user-pays basis by those industry members seeking pre-vetting of alcohol advertisements, names or packaging.

The Management Committee is to be responsible for the setting of any retainers and hourly rates for pre-vetters and approving any related expenses. Further, the Management Committee is to ensure that a system is in place for the orderly collection of debts incurred through use of the pre-vetting service by producers.

Annexure D Best Practice for the Responsible Marketing of Alcohol Beverages in Digital Marketing

Introduction

The Alcohol Beverages Advertising (and Packaging) Code (the Code) sets high standards for the content of alcohol marketing including the content of alcohol advertising in digital marketing including social media. Alcohol advertising in digital marketing has been the subject of a number of ABAC adjudication decisions.

Digital marketing means advertising through digital platforms including social media, applications, blogs, brand websites, Instant Messaging, livecasting, microblogs, mobile communications and messaging, online/banner advertising, online gaming, photo sharing, Pinterest, podcasts, proximity marketing, QR codes, relationship marketing, RSS feeds, search engine marketing and optimisation, social networking, social news sites, user-generated content, video sharing, and wikis.

Standards for the placement of alcohol advertising are covered by complementary media specific Industry Codes of Practice. However, there is no specific code of practice for the placement of alcohol advertising in digital marketing.

In response, ABAC has developed this best practice advice to assist the alcohol industry in maintaining high standards of social responsibility in the management of alcohol advertising in digital marketing. This advice is non-binding and is not intended to replace or extend the provisions of the Code. Rather, it is intended as guidance to assist advertisers and agencies.

It is recognised that digital marketing is evolving rapidly and therefore the best practice advice will be reviewed on a regular basis and updated where necessary.

Interaction with other regulation

- 1 All digital marketing communications must comply with the Alcohol Beverages Advertising (and Packaging) Code and the Australian Association of National Advertisers Code of Ethics.
- 2 All digital marketing communications must comply with guidelines for digital marketing published by the Australian Association of National Advertisers and the Communications Council.
- 3 All digital marketing communications must respect user privacy and laws governing the collection of personal information.
- 4 All digital marketing communications must comply with all other relevant laws in Australia.

Responsible drinking message

- 5 All websites and social media forums controlled by alcohol beverage advertisers should include a responsible drinking message. Advertisers should also identify to users an appropriate responsible drinking website.

Age affirmation

Age affirmation is a process by which users provide their full date of birth and country of access to affirm they are of legal purchase age.

- 6 **Age restriction, targeting or affirmation technologies** should be used, where available, for all digital marketing controlled by alcohol beverage advertisers, to restrict access to users of legal purchase age or over.

Examples of how to use these techniques to meet best practice include:

- 6.1 **Direct marketing communications** directed to a specific person, for example email, SMS and Twitter, should only be directed to consumers who have provided an age affirmation that they are of legal purchase age or over.

- 6.2 **Download advice, forwarding notices, responsible drinking messages or age affirmation** mechanisms should, where possible, be included on all digital marketing communications that are intended to be shared, such as with a 'share', 'download' or 'email' option.

Download advice and forwarding notices are instructions to individuals forwarding or downloading the content that they should not forward the material to individuals below the legal purchase age.

- 6.3 **Website age affirmation pages** (website landing pages that require visitors to confirm they are of legal purchase age before they can enter a website) should be used on all websites controlled by alcohol beverage advertisers.

It is recommended that the following age affirmation measures be adopted:

- Users should be required to input their date of birth and country of access to affirm they are of legal purchase age (for example from a drop down menu) rather than being allowed access through clicking a default option.
- If a user enters a birth date that equates to being under legal purchase age they should be given an appropriate alcohol social responsibility message, or redirected to an appropriate responsible drinking website.
- Repeat users may be invited to set up a "remember me" option but the invitation should warn on the appropriateness of this option if the computer may be used by someone under the legal purchase age.
- Users that have affirmed their age on a site may access a related site without being required to re-affirm their age.
- Corporate websites with a primary purpose of communicating company information do not require an age affirmation page.

- 6.4 Digital marketing communications on a site or web page controlled by the brand advertiser that involve **direct interaction with a user** should require age affirmation by the user prior to full user engagement of that communication to determine that the user is of legal purchase age or over.

Direct interaction is a two-way communication between the user and the advertiser on a site or web page controlled by the advertiser.

- 6.5 A **nanny tag** should be placed on all websites controlled by alcohol beverage advertisers. A nanny tag describes the site's content in a format that parental control software detects.

- 7 **Proximity marketing** should only be used in situations where people will be of legal purchase age or over, for example, in age restricted venues such as nightclubs or when directed to users who have been verified as legal purchase age or over.

Proximity marketing is a digital communication directed to recipients in a particular proximity via SMS or MMS.

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- 8 **Digital marketing communications should be placed** only in media where at least 75% of the audience is reasonably expected to be of legal purchase age or over.
 - 9 **Downloadable applications** should only be made available where at least 75% of the audience is reasonably expected to be of legal purchase age or over.

User-generated content

User-generated content (UGC) is material that has not been created by or for a brand owner but by a person interacting on the digital platform.

- 10 **UGC** within digital platforms, controlled by an alcohol beverage advertiser is within the scope of the ABAC.
- 11 To contribute UGC a user must affirm by their date of birth that they are legal purchase age or over.
- 12 House rules should be accessible to registered users and clearly set out what is and isn't acceptable UGC. Attachment A is a sample set of house rules that cover the ABAC standards, which should be adapted into the style/voice of the brand to encourage uptake.
- 13 Where possible, a mechanism should be available to provide users with an opportunity to notify the advertiser of any content they consider is unacceptable (such as "report inappropriate content" links, "alert administrator" buttons or the provision of contact details).
- 14 Moderation of UGC within a digital platform, controlled by alcohol beverage advertisers, should be carried out by either pre-moderation or post moderation.
 - 14.1 Pre-moderation is where UGC is approved before it appears on brand controlled digital platforms.
 - Where possible, automated software should be used to identify and remove inappropriate content.
 - 14.2 Post-moderation is where UGC is checked by an alcohol advertiser after it appears and is removed if considered to be in breach of the ABAC Code or the AANA Code of Ethics.

If post moderation is used the following measures should be taken:

 - Where possible, automated software should be used for identifying and removing inappropriate content.
 - The site should be moderated at least once every business day and also on non-business days if the brand undertakes activity on the site during those non-business days.
 - The site should be moderated immediately after the brand posts or engages and for at least two hours following the post.

For more information please contact ABAC Administrator at info@abac.org.au

Attachment A: Sample user-generated content house rules

[This sample set of house rules address compliance with the ABAC only. A company may expand its guidelines to address other issues, including legal obligations and other relevant codes of practice and use its own language designed to encourage users to engage with the house rules.]

All content on our website, including content posted by users of the site, must comply with the Alcohol Beverages Advertising (and Packaging) Code to ensure all our marketing communications are socially responsible.

Accordingly all content posted by users of this site must comply with the following rules. Any content that does not comply with the Rules will be removed and may result in de-registration from this site.

- It must present a mature, balanced and responsible approach to the consumption of alcohol beverages.
- It must not encourage or promote offensive behaviour, misuse or abuse of or excessive consumption of alcohol beverages.
- It must not encourage underage drinking or have a strong or evident appeal to children or adolescents.
- It must not suggest that the consumption or presence of alcohol beverages can change a mood or environment.
- It must not show the consumption or presence of alcohol beverages as leading to personal, business, social, sporting, sexual or other success.
- It must not imply or suggest that an alcohol beverage shown as part of a celebration was a cause of the success or achievement.
- It must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation.
- It must not associate consumption of alcohol beverages with operating a motor vehicle, boat or aircraft or engaging in any sport or potentially hazardous activity.
- It must not challenge or dare people to drink or sample a particular alcohol beverage.
- It must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content.
- It must comply with community standards of taste and decency, particularly as to discrimination, vilification, objectification of people, violence, sex sexuality or nudity, language, health and safety.
- It must not bring The ABAC Scheme into disrepute.
- Any images uploaded to the site must only include people over 25 years clearly depicted as adults unless they are children and adolescents pictured in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication they will consume or serve alcohol beverages.

Annexure E

ABAC statistics

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
AAPS Pre-vetting										
Ads pre-vetted	754	761	936	1,267	1,110	1,369	1,050	1,059	1,229	1,349
Ads rejected	84	86	182	293	232	238	77	82	192	211
Ads accepted with conditions	63	34	53	61	29	85	44	39	59	39
Complaints										
Total complaints received	212	105	53	87	162	117	87	119	98	182
Number of ads and packaging to which the complaints relate	23	29	26	38	44	42	38	74	63	78
Complaints considered by Panel	8	29	13	25	49	47	41	63	53	69
Determinations made by Panel	5	12	10	22	36	39	31	45	36	36
Complaints upheld (at least in part)	3	2	3	8	12	12	15	20	7	20
Determinations upheld	3	2	2	8	7	10	11	15	7	4
Average business days – Panel determinations	35.1	33	78.6	29.3	19.8	22.5	26.5	25	20	26.3

Percentage of complaints relating to each ABAC standard

	2009	2010	2011	2012	2013
Maturity and balance	23%	48%	27%	33%	58%
Excessive consumption	26%	35%	22%	11%	44%
Encourage underage drinking	46%	48%	44%	53%	22%
Offensive behaviour and misuse	26%	35%	20%	14%	50%
Irresponsible consumption	-	-	2%	-	8%
Appeal to children and/or adolescents	53%	45%	49%	44%	28%
Alcohol cause of success	13%	29%	16%	19%	31%
Alcohol cause of celebration	3%	3%	-	-	8%
Therapeutic benefit	5%	16%	-	6%	8%
Motor vehicle use or sport	15%	13%	9%	25%	17%
Challenge or dare to consume alcohol	-	-	-	-	6%
Inconsistent with NHMRC Guidelines	3%	10%	7%	-	8%
Bringing ABAC into disrepute	3%	-	-	-	-
Naming and packaging	N/A	2%	7%	3%	-

**Percentage of determinations relating to
different media/product material**

	2009	2010	2011	2012	2013
Outdoor media	5%	23%	16%	22%	19%
Digital media	21%	16%	31%	22%	11%
Television	41%	61%	27%	31%	50%
Cinema	-	3%	4%	3%	6%
Radio	3%	3%	2%	3%	3%
Print	23%	32%	22%	19%	14%
Point of sale	5%	-	-	-	-
Packaging	3%	3%	6%	3%	-



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