

# **The ABAC Scheme: ALCOHOL BEVERAGES ADVERTISING (AND PACKAGING) 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 1<sup>st</sup> 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.

## **Standards to be applied**

### 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;
- 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 [the commencement date].

# **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 Executive Director of the Advertising Federation of Australia 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.

The position of Chairman will rotate between the Brewers Association, DSICA and WFA representatives on an annual basis. The Chairman will arrange for the provision of secretarial services to the Management Committee.

### **1.2 Role**

To manage and review the operation of The ABAC Scheme and to consider amendments to the Code and to the voluntary system of compliance with a view to:

- Encouraging industry members, large and small, to participate in the self-regulatory system;
- Playing an active role to ensure an effective self-regulatory system;
- Monitoring the implementation of The ABAC Scheme and improving it where necessary;
- Co-ordinating the development and completion of an annual report with copies to be provided to the Ministerial Council on Drug Strategy and the Advertising Standards Bureau (“ASB”); and
- Managing the Alcohol Advertising Pre-Vetting Scheme (“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 AAB, 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 Management Committee has 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 AAB, 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 through the appropriate industry association.

### 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 two (2) reserve members.

The Management Committee will appoint a Health Sector representative as one of the three regular members of the Adjudication Panel. A shortlist of three candidates for this position will be supplied by the relevant Federal Minister 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.

## 3.0 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 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.

- (c) (i) The Chief Adjudicator will look at all complaints received from the ASB to determine if the complaint raises issues which are solely within the province of the AANA Code of Ethics.
  - (ii) If it is so determined the complaint will not normally be further considered under The ABAC Scheme (and will be handled by the ASB in accordance with their own procedures) 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 are solely within the province of the AANA Code of Ethics.
- (d) In all other cases (including 2.5(c) (iii)) the complaint will be referred on to the Adjudication Panel for adjudication and the Health Sector representative will sit on the Adjudication Panel for all adjudications. Copies of the advertisement against which a complaint has been lodged will also be provided to Adjudication Panel members to assist them with their deliberations.
- (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.

#### 4.0 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.
- (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 copy 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 five (5) 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 [the commencement date]. 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 the Chief Adjudicator for consideration. The Chief Adjudicator must ensure that any such proposal(s) are dealt with in a timely and confidential manner.
- (o) The Chief Adjudicator 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) and will have the discretion to consult with the Adjudication Panel on any such proposal.
- (p) Where the Chief Adjudicator has 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 (e.g. 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.

## **5.0 Alcohol Advertising Pre-Vetting Scheme (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 and spirits producers all advertisements for alcohol beverages (excluding internet advertisements) should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics. For wine producers all television and cinema advertising should be pre-vetted against the ABAC Code and may be pre-vetted against the AANA Code of Ethics.

For all producers pre-vetting for the promotion of alcohol at events or internet advertisements 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 relevant industry association 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 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 Scheme, 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 –

- (c) be a current employee of a participant or member of the alcohol beverages industry; or
- (d) 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 three 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, AAPS is to be funded on a user-pays basis by those industry members seeking pre-vetting of advertisements.

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.