



ABAC Adjudication Panel Determination No. 128 & 130/18

Product: Various
Company: Various Premix King Outlets
Media: Digital (Facebook)
Date of decision: 27 November 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Facebook posts promoting a variety of products by various Premix King outlets (“the Companies”) and arise from complaints received 30 and 31 October 2018.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

(b) Industry codes of practice:

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

The Complaint Timeline

7. The complaints were received on 30 and 31 October 2018.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaints have been determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing communications.

The Marketing Communication

10. The complaints refer to posts on various Premix King outlet Facebook pages. Specific mention is made of seven posts.

Post 1

 **Premix King Ocean Grove**
8 August · 🌐

🔥 Here's a deal to bring you into your weekend !!

- INDIE DRAUGHT full strength selling for \$29.99 a 30 BLOCK. That's right \$1 a CAN !
- INDIE GOLD mid strength selling for \$19.99 a 30 BLOCK. You heard right under \$0.70 a CAN !
- We also have BIG BOY CANS of VB at 1.9 standards and GREAT NORTHERNS at 1.4 standards! All at 6 fa \$20 !!

If ya not shopping at the premix king ya getting ripped off ! !



13 Likes 32 Comments

Post 2

This post includes a video. The post was removed prior to the complaint being received by ABAC.



Premix King Bacchus Marsh



1 March · 🌐

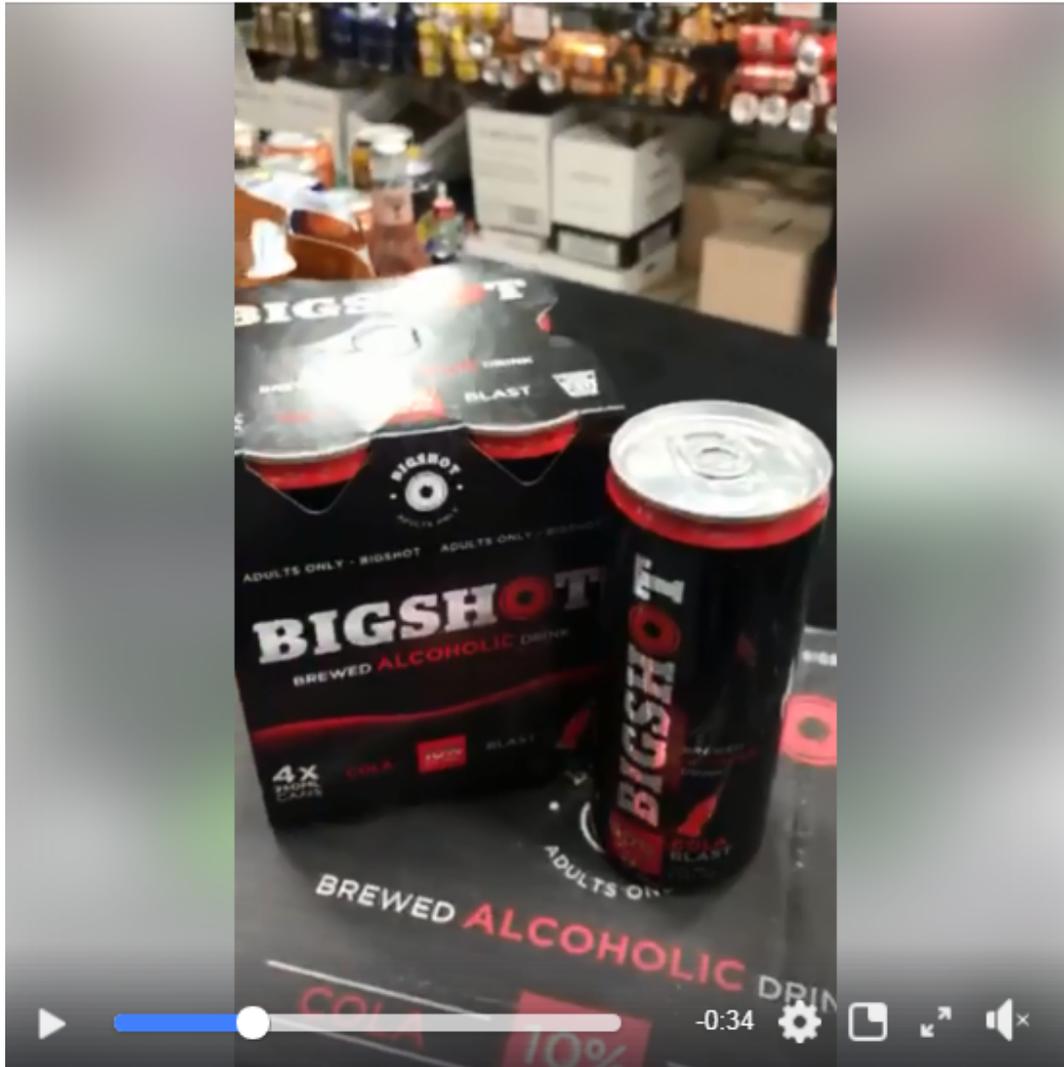
Let's get ready for a BIG ONE!!

☀️☀️BIG SHOTS \$2 EACH!!☀️☀️

10% ABV per can so that's 2 standard drinks per can!!

Tomorrow only (Friday 2/3/18) while stocks last!! They will go bloody quick so let's send off summer with one last big one!!

Only @ PMK Bacchus Marsh 🕶️🕶️



26

59 Comments 5 Shares 3.4K Views

Post 3

This post includes a video. The complainant states that the video uses the following dialogue “we all know, Fat Lamb’s everyone’s favourite, but we’ve got to get rid of these bad boys”. The post had been removed by the time the complaint was received by ABAC.



Premix King Greensborough

18 September at 08:01 · 🌐



🌟🌟Tight Ass Tuesday is Back🌟🌟

This Tuesday at the King were throwing out Phats 1.25lt 8% for \$3.99 🍷🍷



It's simply first in best dressed

If I was you I'd be getting in early!!

If ya Not Shoppin at the Premix King Ya Gettin Ripped Off!!



👍 8

48 Comments 1.7K Views

Post 4



Premix King Williamstown added 4 new photos.

28 August · 🌐

Hold onto your hats we guest got another pallet in of Somersby Apple Cider....!!

440ml cans for a ridiculous \$16.99 for a 10 pack ... That's just \$1.69 a can! Cheaper than water!!

Feel free to pay \$25 a 10 pack, or \$5.50 a can with our competitors!!

Also in 6 packs for \$12.....

Limited time only. Hurry, while stocks last

#pmkwilliamstown

#pmkrocks



👍 Like

💬 Comment

Bernie Weber, Caleb Hudson, John Andrew Vanderhorst and 6 others like this.

Oldest ▾

Post 5



Premix King Williamstown added 4 new photos.

27 August · 🌐

What do we want....

Cheap grog....

When do we want it????

NOW!!!!!!

Founders All Day IPA Session Ale.....

Only \$24.99 for a 15 pack ... YES YOU READ THAT RIGHT ... that's less than \$1.70 a can. Cheaper than coke!!!

Usually \$75 a 15 pack ... or \$7 a can!!

This Brewer's dozen is Exclusive to the King...

HURRY WHILST STOCKS LAST

#foundersipa

#pmkwilliamstown

#pmkrocks



UNTAPPD RATING ★★★★★ 3,738

Founders (USA)

Founders All Day IPA Can

👍 Like

💬 Comment

Post 6

This post includes a video that begins with dance music playing as the camera scrolls between 1.25L bottles of Phats 8% Alcoholic drinks in flavours of Lemon, Lime & Bitters, Guava, Blueberry, Tropical Punch, a group of 3 bottles of the product on a loop for 20 seconds under the heading “O.M.G... It’s Phats Fridy ...”

Premix King Portland
April 6 · 🌐

#phats
🌟NEW FLAVOURS🌟
1.25L Phats at 8% FA .<<\$5.99 each👍
7.9 standard drinks, full of flavour that really packs a 🍷
via ripl.com

O.M.G...
Its Phats Fridy...

ALCOHOLIC
Phats
Guava
8%
Alc Vol
1.25 L

PMK

Watch this video with your friends Start Watch Party

130 Views

👍 Like 💬 Comment ➦ Share

Post 7



Premix King Central Victoria

October 27 at 2:54 PM · 🌐

🔥🔥 RED HOT 🔥🔥

BIGSHOT 10% cans just \$2 each!!

Available in Cola, Berry, Margarita and the all new Passionfruit flavor!

Check us out in Plumridge street White Hills, Strath Hill shopping centre and Heygarth street Echuca 🏰👑

#pmkrocks 🙌



10 Comments



Like



Comment



Share

The Complaint

11. The complaints are set out in full at Annexure 1. The complainant is primarily concerned that the posts:
 - encourage the choice of products by emphasising their alcohol strength
 - encourage the excessive or rapid consumption of alcohol, misuse or abuse of alcohol or consumption inconsistent with Australian Alcohol Guidelines by:
 - prominently emphasising, through the use of appealing and emotive language, the number of standard drinks and strength of each product
 - aggressively promoting very cheap prices
 - promoting alcohol products that are cheaper than water or coke encouraging people to consume without moderation by that comparison
 - promoting a sense of urgency for the purchase of the products
 - promoting ready to drink or single serve products that are more likely to be consumed on a single occasion immediately or shortly after purchase and highly unlikely to be stored and consumed in moderation over time
 - strongly appeal to minors through the use of language, capitals, exclamation marks, emojis, emotive language, sense of urgency, call and response and the sweet flavours and ready to drink products that appeal to young people
12. The complainant also calls for:
 - ABAC to engage with the advertiser to encourage them to avoid any future advertising likely to encourage irresponsible consumption of alcohol.
 - The ABAC Adjudication Panel to strongly recommend that ABAC encourages Premix King and associated social media outlets to become a signatory to the ABAC Code.
 - The ABAC Adjudication Panel to request that the ABAC Rules & Procedures are updated to ensure all signatories to the ABAC Scheme and their agencies must pre-vet marketing communications that fall within the digital media category.

The ABAC Code

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines

(a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol

(b)(i) have Strong or Evident Appeal to Minors

14. Definition in Part 6 of the ABAC provides:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

The Company's Response

15. The complaints relate to seven different Facebook posts by six different Premix King stores in Victoria. Initially Premix King Holdings were provided with an opportunity to respond to each of the complaints but they advised that each store is individually owned and operated and each individual store would need to be contacted. Each store was then provided with an opportunity to respond to the complaints by letters emailed or posted on 1 and 2 November 2018. Of the six stores contacted, only two responded as set out following.

16. Premix King Greensborough responded to the complaint in relation to Post 3 by email dated 6 November 2018 advising that this store has been sold and the Facebook page and therefore post no longer exist.

17. Premix King White Hill responded to the complaint in relation to Post 7 by email dated 2 November 2018. The principal points made by Premix King White Hill were:

- Firstly, we take our marketing and advertising very seriously and have always adhered to the recommended guidelines. I believe the post that has been referred to you is no exception.

- While I take on board some posts from our fellow Premix King stores may get very close to the accepted standards, I feel our post did not do anything that would be deemed questionable.
- All that was displayed were the flavours and actual variants that the products come in which is a single can and 4 pack. No additional items or quantities were presented in the post. The products weren't depicted in any other way other than to list the flavours available for purchase. Nowhere in the post does it promote the fact that it equates to \$1 for a standard drink.
- The post does not promote the fact the product is 10% at all, it simply states the fact that the drink is 10% ABV and available in four flavours. The use of the hashtag #pmkrocks is simply a marketing term that we associate with our brand. It has nothing to do with any products that we sell. Emojis can be interpreted in many different ways to many different people; I strongly disagree that a fist pump or fire emoji draws an emotive or dominant association with the strength of the alcoholic beverage. They are simply an illustration of what we perceive to be the power of our brand, not the products we sell.
- The use of block capitals, exclamation points and emotive language have been used in all sorts of marketing and advertising campaigns for decades on a variety of products to both young and old. I feel the use of these captions have absolutely no bearing on the promotion of this product. There is absolutely no evidence to suggest that the emojis and hashtags in the post would relate to minors. It is purely an interpretation or opinion of some and cannot be used to blanket our customer base or draw conclusions to what they are thinking. I accept that marketing a single can may not be the ideal way to promote a product however associating it with pre loading of less experienced drinkers is again pure speculation.
- The wording in our Facebook post does nothing except list the product, the ABV, the available flavours, the price and where our stores are located. All these things are present in most advertising or marketing engagements from small business to major chains. Nowhere in the post is there any provocative statements or offers, it simply states the facts of the product being advertised.

The Panel's View

Introduction

18. The Premix King is the brand name of a series of alcohol retailers operating in several States with some 23 stores in Victoria. It seems the retailers are franchisees with the franchisor being Premix King Holdings Pty Ltd. This complaint concerns seven social media posts from six of the Victorian stores.

19. The Holding Company appears to operate a website which promotes the brand generally and provides links to the individual stores. Contained on this website is a Mission Statement which explains the brand's commitment to responsible service of alcohol. In part the statement asserts that the Company is 'committed to support Regulatory Authorities in every way possible'. Unfortunately the Panel's experience of Premix King in this and an earlier determination demonstrates that the aspiration of supporting regulatory work in 'every possible way' is not entirely matched with action.
20. As a group, Premix King is not collectively nor by individual franchisee signatories to the ABAC scheme. This means the stores are not contractually bound to abide by Panel determinations. Almost universally marketers who are not ABAC members have nonetheless cooperated with complaint processes and complied with determinations. In this case the Holding Company responded to the complaint by advising that the stores in question would need to be contacted and respond individually. In turn, two of the six stores gave a response to the complaint and questions posed by the Panel.
21. The net outcome is that the Panel has sufficient information to make a decision although it has not been able to source videos referred to in the complaint but which had been removed from the social media sites prior to the complaint process commencing.
22. As alluded to in paragraph 2, the regulation of alcohol marketing is a shared space. Each of the Premix King stores is required to be licensed under Victorian law. The State regulator of liquor licensees is the Victorian Commission for Gambling and Liquor Regulation (The Commission). The Commission has produced Guidelines for responsible liquor advertising or promotion which licensees should follow. The Guidelines are based on 16 principles which in part cover ground also contained in the industry codes of practice namely the ABAC and the AANA Code of Ethics.
23. In large measure The Commission's Guidelines operationally sit more relevantly with licensees with premises on which alcohol is actually consumed eg pubs and clubs rather than off premises retail outlets like Premix King. The provisions in the Guidelines however do apply to off-site outlets and to marketing via social media. Hence the potential exists for a particular marketing communication to be subject to both an ABAC determination and action by the Commission (or the equivalent agency in other jurisdictions). This occurred earlier in 2018 when the Panel made Determination 33/18 dated 9 April 2018 concerning the Premix King at Ascot Vale in Victoria. The Commission some months later on 31 October 2018 announced that it had banned two social media posts which had been found by the Panel to be in breach of the ABAC.
24. The take out from this is that in a shared regulatory space marketers such Premix King would be well advised to cooperate in ABAC processes, preferably become signatories to the ABAC scheme and gain advice from the ABAC pre-vetters prior

to undertaking marketing campaigns. Marketing in a manner that fails to meet ABAC standards can also mean the marketing is not meeting State law and result in action from liquor licensing bodies. In recent times exchanges and meetings between ABAC and State regulators have been aimed at increasing cooperation in the shared goal of responsible alcohol marketing.

General Observations on the Posts

25. The Premix King has its own brand and style of marketing maybe best summed by the strapline- 'if ya not shopping at the Premix King ya gettin ripped off'. It is a larrikin approach with a focus on the price value proposition of promoted products. The ABAC is neutral on the brand positioning of alcohol companies. The Code does not mandate a particular style of marketing or branding. What is required is compliance with standards of good practice in modelling alcohol use irrespective of product or retailer brand attributes.
26. The complaint argues that collectively the posts are inconsistent with ABAC standards going to the responsible consumption of alcohol and the requirement that marketing not have strong or evident appeal to minors. It is contended that some of the posts give improper emphasis to the cheap price of products particularly given the alcoholic strength of the product. Further it is argued that the use of emotive language, emojis and the type of products being promoted could both encourage excessive or rapid consumption and be strongly appealing to minors.
27. The price of alcohol products has been identified in public policy documents as one potential element within an overall strategy of harm minimisation in alcohol use. Governments can impact alcohol pricing through measures such as volumetric taxation and through direct regulatory interventions such as minimum pricing requirements. Government policies on the promotion of alcohol products such as the Commission Guidelines tend to focus on price promotions conducted by on premise liquor sellers. This recognises that there is an important distinction between promotions where alcohol is being purchased and immediately consumed and the marketing of products which are purchased and then consumed sometime later- possibly weeks, months or even years later depending on the nature of the alcohol product.
28. The ABAC does not purport to directly regulate the use of product price in marketing communications. The ABAC standards in Part 3 (a) go to patterns of alcohol consumption rather than purchase. This means price incentives to purchase a product cannot usually be taken as implying a subsequent irresponsible pattern of consumption given that alcohol has a long shelf life and can be stored and consumed over a period of time and by numerous people after purchase. This means aggressive price promotion is more likely to be potentially problematic for on premise alcohol retailers such as a pub than it will be for a takeaway bottle shop.

29. Part 3 (a) (iv) of the ABAC does go to the promotion of products by reference to alcohol strength. Specifically the Code provides that a marketing communication must not encourage the choice of a particular alcohol beverage by emphasising its alcohol strength unless this emphasis is on low alcohol strength relative to typical strength for similar beverages. While a provision of this type has been in the ABAC since the Code's commencement in 1998, it is notable that very few complaints in that time have raised concerns requiring determinations to be made on how the provision is to be understood.
30. The intent of the provision is that the marketing of a product should not seek to differentiate the product from other products based upon having a greater alcoholic strength. This does not mean the fact that a product is alcoholic cannot be mentioned nor that the alcoholic strength cannot be mentioned. In fact, information about the alcoholic strength of a product is important for consumers in making informed choices. What is not permitted is an undue emphasis on the strength of the product so that a reasonable person would take that a key selling point of the product was its greater strength as compared to other products of a similar kind. Some considerations in assessing if a marketing communication breaches this provision may include:
- the highlighting of the strength by enlarged font so as to give prominence to the products strength beyond providing factual information;
 - use of bold colours relative to other words or features to emphasise strength;
 - overly prominent positioning of the strength of the product in proportion to other messaging;
 - repetition in messaging of the strength; or
 - use of straplines, slogans, imagery or other creative techniques which promote the strength of the product as a key distinguishing feature of the product vis a vis other products of a similar kind.
31. Finally, it is noted that a number of the posts depict photographs of various products. This determination deals with the Facebook posts and not the labelling of the products pictured. The complaint did not go to the packaging of the products as such and accordingly brand owners of the products have not been asked to respond to the complaint.

The Social Media Posts

32. The complaint goes to posts on the individual Facebook Pages of six stores. Each of the stores was invited to respond to the complaint. The response from the Greensborough store (post 3) is that the store has now closed. Only the Central Victoria store (post 7) made a substantive response to issues raised in the complaint.
33. In assessing if a marketing communication is consistent with a Code standard the Panel is to have regard to the probable understanding of the communication by a

reasonable person taking the content of the marketing item as a whole. This means the values, opinions and life experiences commonly held in a majority of the community is to be the benchmark.

34. The Panel believes that a number of the posts do breach standards Part 3 (a)(i) and (a)(iv). It has been noted some posts:
 - use as a key selling point an emphasis of alcoholic strength and/or the number of standard drinks per serving and the intoxicating effect of the product through language such as 'really packs a (punch emoji)'; and/or
 - use messages such as 'let's send off summer with one last big one' when combined with other messaging and graphics which endorse consumption levels in excess of Australian Alcohol Guidelines.
35. The promotion of the products by reference to price is not considered to be in breach of Part 3(a)(i). The posts are a call to action to purchase the products. To the extent a sense of urgency is created, this would be taken to mean that the products should be purchased while available at the favourable prices and not that the product should be purchased and then consumed in a rapid or excessive manner. Price could be messaged in a way which breaches the Part 3(a)(i) standard through say words to the effect of - 'at these prices you can drink all weekend long and not break the budget'. Here the message about price goes to purchase and not the pattern of consumption.
36. The complainant believes the type of products being promoted are of a kind likely to be purchased and then consumed quickly rather than be stored. The products are across a range of alcohol types such as beer, cider and vodka based RTD's. There is nothing inherent in these types of products which make them unsuitable to be stored and consumed over time. The ABAC does not go to the types of products which can be marketed but how the products are marketed. Some of the posts do encourage excessive consumption as explained in paragraph 34 but this doesn't flow from the type of product as such, but the messaging used by the retail store.
37. It was contended by the complainant that the posts amount to marketing that will have strong or evident appeal to minors. This arises through a combination of the type of products promoted, the price offered, and messaging by use of emotive language and emojis. In reality the complainant is extrapolating underlying concerns about price regulation and product type which is not within the remit of the ABAC with the posts which reference price and product type. The issue about how products should be priced is one for government as is whether say, RTD's should be freely able to be sold. The posts do adopt a style which is direct and emotive but this is not able to be fairly said as strongly appealing to minors.

Conclusion

38. The Panel believes posts number 2 and 6 are in breach of Part 3 (a)(i) and (iv) of the Code.

39. Premix King adopts a marketing style which might be said to be at one end of the spectrum for off premise retailers. As a group, this determination and an earlier determination demonstrate the benefit to the franchise of full engagement with the ABAC scheme. It could be that participation in training on not only Code standards but the promotional guidelines of State Liquor authorities will assist in marketing which more comfortably matched the brand attributes the franchise wishes to convey with responsible marketing requirements. This would also be consistent with the Mission Statement of the group regarding responsible service of alcohol. As it stands, the stated commitment and actual marketing behaviour of individual stores may not be in alignment. More generally the Management Committee might consider the issues raised in the complaint and determination when reviewing the operation of the scheme.
40. The complaint is upheld in part.

Annexure 1 – ABAC Complaints 128 & 130/18

ABAC Complaint 128/18

Description of posts

Post 1

The Facebook post from Premix King Ocean Grove (<https://www.facebook.com/pmkoceangrove/photos/a.1824707191116814/2173349406252589/?type=3&theater>) dated 8th August 2018 depicts three offers for alcoholic beverages. The post is captioned:

“ Here’s a deal to bring you into your weekend ?

INDIE DRAUGHT full strength selling for \$29.99 a 30 BLOCK. That’s right \$1 a CAN

INDIE GOLD mid strength selling for \$19.99 a 30 BLOCK. You heard right under \$0.70 a CAN

? We also have BIG BOY CANS of VB at 1.9 standards and GREAT NORTHERNS at 1.4 standards! All at 6 fa \$20

If ya not shopping at the premix king ya getting ripped off?”

The post features images of two crates of 30x330ml Indie Draught Lager, two crates of 30x330ml Indie Gold Lager, six cans of 500ml Great Northern Brewing Co. ‘Big Catch’ Super Crisp Lager and one can of 330ml Great Northern Brewing Co. Super Crisp Lager, 6 cans of 500ml Victoria Bitter ‘The Big Cold One’ Lager and one can of 330ml Victoria Bitter.

Advertisement Description

Overall, this constitutes 142 standard drinks:

- 66 standard drinks of Indie Draught Lager (1.1 standard drinks per 330ml bottle of Indie Draught Lager)
- 54 standard drinks of Indie Gold Lager (0.9 standard drinks per 330ml bottle of Indie Gold Lager)
- 9.3 standard drinks of Great Northern Lager (1.4 standard drinks per 500ml can of Great Northern Brewing Co. Super Crisp Lager plus 0.9 standard drinks per 330ml can)
- 12.8 standard drinks of Victoria Bitter (1.9 standard drinks per 500ml can of Victoria Bitter plus 1.4 standard drinks per 375ml can)

This marketing communication prominently features aggressive price promotions for these beverages alongside the strength of these drinks. These marketing communications promote the purchase of these products at a price per standard drink of \$0.91 (Indie Draught Lager) and \$0.74 (Indie Gold Lager).

Post 2

The Facebook post from Premix King Bacchus Marsh (<https://www.facebook.com/pmkbacchusmarsh/>) dated 1st March 2018 depicts 250ml cans of Bigshot Brewed Alcoholic Drink, multiple 4-pack crates, and multiple larger crates of these cans. The post is captioned:

“Let’s get ready for a BIG ONE!!

BIG SHOTS \$2 EACH!!

10% ABV per can so that’s 2 standard drinks per can!!

Tomorrow only (Friday 2/3/18) while stocks last!! They will go bloody quick so let's send-off summer with one last big one!!
Only @ PMK Bacchus Marsh ”

This marketing communication promotes the purchase of 'alcoholic drink' for just \$1.00 per standard drink.

Post 3

The Facebook post from Premix King Greensborough (<https://www.facebook.com/pmkgreensborough/>) dated 18th September 2018 depicts multiple bottles of 1.25 litre bottles of 'Phats Hard Alcoholic Cider' (containing 7.9 standard drinks) in different sweet flavours, alongside multiple other crates of alcoholic beverages. The post is captioned:

“ Tight Ass Tuesday is Back
This Tuesday at the King were throwing out Phats 1.25lt 8% for \$3.99
It's simply first in best dressed
If I was you I'd be getting in early!!
If ya Not Shoppin at the Premix King Ya Gettin Ripped Off!!”

This marketing communication promotes the purchase of the product at just \$0.51 per standard drink.

Post 4

The Facebook post from Premix King Williamstown (<https://www.facebook.com/premixkingwilliamstown/>) dated 29th August 2018 depicts 440ml cans of Somersby Apple Cider, and multiple 10-pack crates of these cans. The post is captioned:

“Hold onto your hats we guesst got another pallet in of Somersby Apple Cider....!!
440ml cans for a ridiculous \$16.99 for a 10 pack ... That's just \$1.69 a can! Cheaper than water!!
Feel free to pay \$25 a 10 pack, or \$5.50 a can with our competitors!!
Also in 6 packs for \$12.....
Limited time only. Hurry, while stocks last
#pmkwilliamstown
#pmkrocks”

This marketing communication promotes the purchase of this cider at just \$1.06 per standard drink.

In addition to this Post on the 29th August 2018, this post was also replicated on two other occasions. These were the 16th August 2018 and the 9th August 2018. The screenshots of these Posts are attached below, and we would like them to be included in this complaint.

Post 5

The Facebook post from Premix King Williamstown (<https://www.facebook.com/premixkingwilliamstown/>) dated 28th August 2018 depicts 355ml cans and multiple 15-pack crates of Founders All Day IPA, and is captioned:

“What do we want....
Cheap grog....
When do we want it????
NOW!!!!!!

Founders All Day IPA Session Ale.....
Only \$24.99 for a 15 pack ... YES YOU READ THAT RIGHT ... that's less than \$1.70
a can. Cheaper than coke!!!
Usually \$75 a 15 pack ... or \$7 a can!!
This Brewers dozen is Exclusive to the King...
HURRY WHILST STOCKS LAST

#foundersipa
#pmkwilliamstown
#pmkrocks"

This marketing communication promotes the purchase of this IPA at a price per
standard drink of just \$1.28.

Posts 1-5 are in clear breach of the ABAC Code

Breach of clause 3(a)(iv)

Posts 1, 2 and 3 clearly contravene Clause 3(a)(iv) stating a marketing
communication "must not encourage the choice of a particular alcoholic beverage by
emphasising its alcohol strength". These Posts explicitly and persuasively use the
strength of alcoholic beverages to influence consumer choice. They do not present
alcohol strength in a "secondary, factual and non-emotive way", as required by the
ABAC Guidance Note Section 3(a). This guidance is published to assist marketers to
comply with the "essential meaning and intent of the [ABAC Responsible Alcohol
Marketing] Code", with Guidance Note Section 3(a) applying to Clause 3(a)(iv).

Guidance Note Section 3(a) states that "marketers should avoid descriptive words or
imagery which draw attention to the strength of the product", and that "the strength of
the product must not be a dominant part of the communication". According to this
guidance, post 1 directly contravenes clause 3(1)(iv), by using the descriptive words,
"BIG BOY" and highlighting the number of standard drinks per can to draw attention
to the strength of the product in a manner that dominates the . Further, Post 1
promotes two larger alcoholic beverages compared to smaller 330ml and 375ml cans
of the same brands, and uses an exclamation mark and emotive tone to emphasise
the increased number of standard drinks.

**Advertisement
Objection
Reason**

Similarly, Post 2 is a marketing communication that directly encourages the
purchasing of 'Bigshot alcoholic drink' based on its strength. The wording "10% ABV
per can so that's 2 standard drinks per can!!" in the text and "at 2 bucks for 2
standard drinks, that is called bang for your buck" in the video clearly uses descriptive
words to draw attention to the strength of the alcoholic beverage. Using multiple
exclamation marks and an excitable tone to communicate the number of standard
drinks further presents alcohol strength in an emotive manner. As a result of this
emphasis and tone, the strength of the alcoholic beverage forms a dominant part of
the marketing communication.

The strength of the alcoholic beverage in Post 3 is drawn attention to in a dominant
and emotive manner, through the wording "This Tuesday at the King were throwing
out Phats 1.25lt 8% for \$3.99 ". Using multiple love heart emoji's creates a positive
association between the strength of the alcoholic beverage and emotions of
desirability, admiration and adulation. It is a clear emotive association to draw
attention to the strength of the alcoholic beverage. This emotive appeal will likely be
particularly persuasive for minors and adolescents, for whom emoji's are likely to be a
more salient form of communication. The term "throwing out" infers an excessive
abundance of alcohol available for purchase. Post 3 further uses descriptive wording
in the video, stating "we all know, Fat Lamb's everyone's favourite but we've got to
get rid of these bad boys".

For the reasons set out above, these marketing communications all clearly breach Clause 3(a)(iv).

Breach of clause 3(a)(i)

Posts 1, 2, 3, 4 and 5 promote the cheap price per each unit of the alcoholic product in a way that is likely to "encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines", in clear contravention of Clause 3(a)(i).

These marketing communications encourage consumers to consume alcoholic beverages in a manner inconsistent with Australian Alcohol Guideline 1, that "for healthy men and women, drinking no more than two standard drinks on any day reduces the lifetime risk of harm from alcohol-related disease or injury" (<https://www.nhmrc.gov.au/health-topics/alcohol-guidelines>). ABAC Guidance Note Section 3(a) notes "there can be no encouragement of consumption contrary to these guidelines" in marketing communications. This Guidance is published to assist marketers to comply with the "essential meaning and intent of the [ABAC Responsible Alcohol Marketing] Code", and applies to Clause 3(a)(i).

By including one or more of the following techniques, Posts 1, 2, 3, 4 and 5 are marketing communications that influence the choice of consumers to increase or maximise the volume of alcohol they purchase:

Firstly, prominently emphasising the number of standard drinks and/or strength of alcoholic beverages available for purchase. Post 1 explicitly emphasises "BIG BOY CANS of VB at 1.9 standards" and "GREAT NORTHERN at 1.4 standards". Post 2 goes further, detailing the ABV alongside standard drinks for the consumer, stating "10% ABV per can so that's 2 standard drinks per can!". Post 3 states "This Tuesday at the King were throwing out Phats 1.25lt 8% for \$3.99 ", explicitly using emoji's and appealing language to emphasise the high strength of these beverages. For young and non-dependent drinkers, describing alcohol in a way that is likely to interact with their everyday lexicon influences their alcohol cravings and how desirable they find alcoholic beverages, influencing their consumption behaviours (doi: 10.1016/j.addbeh.2013.11.023).

Secondly, stating that the alcoholic beverage available for purchase is cheaper than purchasing water or cola. Post 4 promotes an alcoholic beverage as "That's just \$1.69 a can! Cheaper than water!!" and Post 5 states "YES YOU READ THAT RIGHT ... that's less than \$1.70 a can. Cheaper than coke!!!". This comparison irresponsibly highlights just how cheap these products are, and implicitly encourages people to consume these alcoholic products without moderation and in the same or a more excessive manner than they might consume soft drink or water.

The comparison between alcohol and water is wholly inappropriate. Water is essential to life and health, whereas alcoholic beverages are addictive and cause cancer. Water does not need to be consumed in moderation, while alcoholic beverages are not essential to any bodily function, and not required for hydration, digestion or nutrient absorption. Comparing alcoholic beverages to staple household commodities is likely to increase and normalise people's alcohol consumption, inferring they are interchangeable products to be consumed on a routine and regular basis.

Thirdly, emphasising how cheap the products are per can or alcoholic volume. Post 1 states "selling for \$29.99 a 30 BLOCK. That's right \$1 a CAN " and "\$19.99 a 30 BLOCK. You heard right under \$0.70 a CAN ". Post 2 states "Let's get ready for a

BIG ONE!! BIG SHOTS \$2 EACH!! 10% ABV per can so that's 2 standard drinks per can!!". Post 3 states "were throwing out Phats 1.25lt 8% for \$3.99 ". Post 4 states "Feel free to pay \$25 a 10 pack, or \$5.50 a can with our competitors!!" and "cans for a ridiculous \$16.99 for a 10 pack... That's just \$1.69 a can!". Post 5 states "Only \$24.99 for a 15 pack ... YES YOU READ THAT RIGHT ... that's less than \$1.70 a can" and "Usually \$75 a 15 pack ... or \$7 a can!!".

In Post 1, the per bottle price of Indie Gold lager (\$0.67 per 330ml bottle) is less than one-third of the price of a 330ml bottle of unflavoured still water currently retailing at \$2.10 in Woolworths (<https://www.woolworths.com.au/shop/productdetails/42729/evian-spring-still-water>), with the other beverages cheaper at a per-can price than a 450ml bottle of unflavoured sparkling water currently on sale in Coles (<https://shop.coles.com.au/a/a-national/product/mount-franklin-water-sparkling-chilled>). Post 1 encourages the purchase of alcoholic drinks for as little as just \$0.71c per standard drink, Posts 2-4 for \$1.06 per standard drink, and Post 5 for \$1.28 per standard drink. As such, these Posts all encourage the purchase and consumption of alcohol inconsistent with the Australian Alcohol Guideline 1, aggressively promoting the cheap prices of beverages which would allow consumers to exceed this Guideline for the cost of just \$1.42 in Post 1, \$2.00 in Post 2, \$1.01 in Post 3, \$2.12 in Posts 4 and \$2.56 in Post 5.

These promotions associate an aggressively-low pricing strategy with the opportunity for increased consumption, using block capitals and emotive language to emphasise the appeal of this message. Aggressive pricing is a significant factor in encouraging excessive alcohol consumption. Peer-reviewed academic research identifies low pricing strategies are likely to make Victorian adults increase their consumption of alcoholic beverages, even when using conservative estimates that underestimate how much alcohol people drink (doi: 10.1371/journal.pone.0080936, doi: 10.1093/alcalc/aggv066). Aggressive pricing is also associated with fuelling alcohol-related harm among the Australia public (doi: 10.1016/j.drugalcdep.2016.04.026).

Fourth, instilling a need to purchase alcohol quickly to encourage consumers to increase their overall alcohol consumption. Post 2 states "They will go bloody quick so let's send off summer with one last big one!!". Post 3 states "It's simply first in best dressed If I was you I'd be getting in early!!". Post 4 states "Limited time only. Hurry, while stocks last". Post 5 instills a sense of urgency to purchase alcoholic beverages through the wording "What do we want.... Cheap grog.... When do we want it???? NOW!!!!!" and "HURRY WHILST STOCKS LAST".

These references, combined with the use of block capitals, emotive language and/or a call and response is likely to enhance the persuasive appeals of these promotions to be acted on as quickly as possible. Instilling a sense of urgency to purchase alcoholic beverages is particularly problematic for young adults. The Australian Medical Association note neurological changes in adolescence give rise to distinctive vulnerabilities that amplify the effects of alcohol marketing, notably the appeal of impulsivity that urges risky behaviours (https://ama.com.au/sites/default/files/documents/alcohol_marketing_young_people.pdf).

When exposed to social marketing communications, adolescents experience heightened emotional arousal relative to adults that impairs their rational decision-making to consume alcohol (<https://www.maine.gov/legis/opla/judcommrevNPLAN.pdf>). A sense of urgency is a predictor of young adults' likelihood to drink alcohol, and engage in risky behaviours associated with alcohol consumption (doi: 10.1016/j.addbeh.2013.10.024). As such, using urgency as a dominant part of the marketing communication is an irresponsible

technique likely to make adolescents more susceptible to consume alcohol excessively.

This sense of urgency is also particularly problematic for Australians when used to promote 'ready-to-drink' (RTD) beverages, as occurs with the 'Bigshot Alcoholic Drink' in Post 2. Research associates consuming these beverages with episodic heavy drinking and alcohol-related injuries (doi: 10.2105/AJPH.2014.302349, doi: 10.1080/09595230802093802). Australian adolescents and young adults identify RTDs as having a perpetual similarity with soft drinks, and are likely to be consumed by younger, less-experienced drinkers more vulnerable to the negative harms of alcoholic beverage consumption (doi: 10.1111/j.1360-0443.2007.01970.x, doi: 10.1037/0893-164X.21.4.564), particularly in the practise of 'pre-loading' (doi: 10.1111/dar.12543).

Further, all the products promoted by the posts are RTDs or single-serve products, which are likely to be consumed on a single occasion immediately or shortly after purchase. They are highly unlikely to be stored and consumed in moderation over time, as might be the case for some other alcoholic products, such as bottles of spirits. Therefore, the posts' implicit encouragement to purchase large quantities of the products, and creation of a sense of urgency, are likely to encourage excessive or rapid consumption of the products in breach of clause 3(a)(i).

Individually, each of these techniques encourages the consumption of alcohol in a manner that constitutes a breach of Clause 3(a)(i). When more than one technique is combined, as occurs in Posts 1, 2, 3, 4 and 5, the breach of this Clause becomes even more significant. By combining techniques, the inappropriate nature of these marketing communications is exacerbated, as is the potential for negative consequences from excessive alcoholic beverage consumption inconsistent with Australian Alcohol Guideline 1.

These marketing communications have serious practical consequences for Australians' health. It is clear that these marketing communications are likely to breach Clause 3(a)(i).

Request for action

Firstly, we ask that you request the advertiser to withdraw these posts which, for the reasons discussed, are in clear breach of the ABAC code. We also strongly encourage additional action from ABAC to engage with the advertiser to encourage them to avoid any future advertising of alcoholic beverages likely to encourage irresponsible consumption.

Secondly, we are extremely concerned that the Premix King Facebook pages mentioned in this complaint do not appear to be signatories to the ABAC code. For the ABAC code to add any value in addressing irresponsible alcoholic beverage advertising, marketers must be subject to the code. Thus, we ask the adjudication panel to strongly recommend that ABAC encourages Premix King and associated social media outlets to become a signatory to the ABAC code.

Thirdly, we note that the Alcohol Advertising Pre-Vetting Service is mandatory for TV, outdoor, cinema and radio marketing communications, but not for digital media. We note ABAC has repeatedly expressed concern in quarterly reports and in individual determinations that irresponsible marketing communications had not been pre-vetted. As detailed in this complaint and others, there have been a number of irresponsible communications promoted on digital media that have breached the ABAC code. Digital media is also less likely to be captured in a reactive complaints process than TV or outdoor advertising, with digital media likely to be more prevalent and promoted

for a shorter period of time.

Given the ambition of the ABAC code to ensure responsible marketing, there is no reason for this inconsistency to exist. Therefore, we ask the adjudication panel to request that the ABAC Rules and Procedures are updated to ensure all signatories to the ABAC Scheme and their agencies must pre-vet marketing communications that fall within the digital media category.

ABAC Complaint 130/18

Post 1

The Facebook post from Premix King Portland

(https://www.facebook.com/Premix-King-Portland-223720874786803/?_tn_&eid=ARB7dEZZq7hwUoNbOMrhlsx4QIYs5CDRnHvVNkm3XLnuehxM2yDxV-7sivJ0AHR-LjMA7PYLSJZ-EAh-&hc_ref=ARR39ISPMLjvDmuLAHuJFlx_R4EV0m-Ya1pY1vICZm5KursYllwMUIY1WFIE3_UYhKo&fref=nf)

dated 6th April 2018

depicts multiple bottles of 1.25 litre bottles of 'Phats Hard Alcoholic Cider' (containing 7.9 standard drinks) in different sweet flavours. These beverages are featured in a video with electronic techno music and captioned 'O.M.G... Its Phats Fri'dy...'. The post is captioned:

#phats

[star emoji]NEW FLAVOURS[star emoji]

1.25L Phats at 8% FA [two down arrows emoji] \$5.99 each [thumbs up emoji]

7.9 standard drinks, full of flavour that really packs a [punch emoji]

via ripl.com

Advertisement Description

This marketing communication promotes the purchase of the product at just \$0.76 per standard drink.

This marketing communication promotes the purchase of the product at just \$0.76 per standard drink.

Post 2

The Facebook post from Premix King Central Victoria

(<https://www.facebook.com/PMKCentralVic>) dated 27th October 2018 depicts multiple 250ml cans of Bigshot Brewed Alcoholic Drink and multiple 4-pack crates. The post is titled:

[two fire emojis] RED HOT [two fire emojis]

BIGSHOT 10% cans just \$2 each!!

Available in Cola, Berry, Margarita and the all new Passionfruit flavor!

Check us out in Plumridge street White Hills, Strath Hill shopping centre and Heygarth street Echuca [fist pump emoji][crown emoji]

#pmkrocks

This marketing communication promotes the purchase of 'alcoholic drink' for just \$1.00 per standard drink.

This marketing communication promotes the purchase of 'alcoholic drink' for just \$1.00 per standard drink.

Posts 1 and 2 are in clear breach of the ABAC Code

Advertisement Objection Reason

Breach of clause 3(a)(iv)

Posts 1 and 2 clearly contravene Clause 3(a)(iv) stating a marketing communication "must not encourage the choice of a particular alcoholic beverage by emphasising its alcohol strength". These Posts explicitly and persuasively use the strength of alcoholic beverages to influence consumer choice. They do not

present alcohol strength in a “secondary, factual and non-emotive way”, as required by the ABAC Guidance Note Section 3(a). This guidance is published to assist marketers to comply with the “essential meaning and intent of the [ABAC Responsible Alcohol Marketing] Code”, with Guidance Note Section 3(a) applying to Clause 3(a)(iv).

Guidance Note Section 3(a) states that “marketers should avoid descriptive words or imagery which draw attention to the strength of the product”, and that “the strength of the product must not be a dominant part of the communication”. According to this guidance, Post 1 directly contravenes clause 3(1)(iv), by using the descriptive words “O.M.G... Its Phats Fri'dy...” and “7.9 standard drinks, full of flavour that really packs a [punch emoji]” and highlighting the number of standard drinks per can to draw attention to the strength of the product in a manner that dominates the marketing communication. Further, Post 1 uses a series of emojis and hashtags such as “[star emoji]NEW FLAVOURS[star emoji]”, “1.25L Phats at 8% FA [down arrow emojis] \$5.99 each [thumbs up emoji]” and “#phats” to adopt an emotive tone to emphasises the number of standard drinks in the marketing communication.

Similarly, Post 2 is a marketing communication that directly encourages the purchasing of ‘Bigshot alcoholic drink’ based on its strength. The wording “[two fire emojis] RED HOT [two fire emojis]” and “BIGSHOT 10% cans just \$2 each!!” in the text use multiple exclamation marks and an excitable tone to clearly communicate the number of standard drinks in a manner that presents alcohol strength in an emotive manner. The use of this messaging at the start of the Post suggests they are a primary part of the marketing communication. As a result of this emphasis and tone, the strength of the alcoholic beverage forms a dominant part of the marketing communication.

For the reasons set out above, these marketing communications clearly breach Clause 3(a)(iv).

Breach of clause 3(a)(i)

Posts 1 and 2 promote the cheap price per each unit of the alcoholic product in a way that is likely to “encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines”, in clear contravention of Clause 3(a)(i).

These marketing communications encourage consumers to consume alcoholic beverages in a manner inconsistent with Australian Alcohol Guideline 1, that “for healthy men and women, drinking no more than two standard drinks on any day reduces the lifetime risk of harm from alcohol-related disease or injury” (<https://www.nhmrc.gov.au/health-topics/alcohol-guidelines>). ABAC Guidance Note Section 3(a) notes “there can be no encouragement of consumption contrary to these guidelines” in marketing communications. This Guidance is published to assist marketers to comply with the “essential meaning and intent of the [ABAC Responsible Alcohol Marketing] Code”, and applies to Clause 3(a)(i).

By including one or more of the following techniques, Posts 1 and 2 are marketing communications that influence the choice of consumers to increase or maximise the volume of alcohol they purchase:

Firstly, prominently emphasising the number of standard drinks and/or strength of alcoholic beverages available for purchase. Post 1 explicitly emphasises “7.9 standard drinks, full of flavour that really packs a [punch emoji]” and “1.25L Phats at 8% FA [two down arrow emojis] 5.99 each [thumbs up emoji]”. Post 2 goes

further, detailing the ABV alongside standard drinks for the consumer, stating “BIGSHOT 10% cans just \$2 each!!”. For young and non-dependent drinkers, describing alcohol in a way that is likely to interact with their everyday lexicon influences their alcohol cravings and how desirable they find alcoholic beverages, influencing their consumption behaviours (doi: 10.1016/j.addbeh.2013.11.023).

Secondly, emphasising how cheap the products are per can or alcoholic volume. Post 1 states “1.25L Phats at 8% FA [two down arrow emojis] \$5.99 each[thumbs up emoji]”. Post 2 states “BIGSHOT 10% cans just \$2 each!!”. In Post 1, the per volume price of Phats Hard Alcoholic Cider (\$5.99 per 1.25L bottle) is cheaper than the price of a 330ml bottle of unflavoured still water currently retailing at \$2.10 in Woolworths (<https://www.woolworths.com.au/shop/productdetails/42729/evian-spring-still-water>). Post 1 encourages the purchase of alcoholic drinks for as little as just \$0.76c per standard drink, and Post 2 for \$1.00 per standard drink. As such, these Posts encourage the purchase and consumption of alcohol inconsistent with the Australian Alcohol Guideline 1, aggressively promoting the cheap prices of beverages which would allow consumers to exceed this Guideline for the cost of just \$1.52 in Post 1 and \$2.00 in Post 2.

These promotions associate an aggressively-low pricing strategy with the opportunity for increased consumption, using block capitals and emotive language to emphasise the appeal of this message. Aggressive pricing is a significant factor in encouraging excessive alcohol consumption. Peer-reviewed academic research identifies low pricing strategies are likely to make Victorian adults increase their consumption of alcoholic beverages, even when using conservative estimates that underestimate how much alcohol people drink (doi: 10.1371/journal.pone.0080936, doi: 10.1093/alcac/agv066). Aggressive pricing is also associated with fuelling alcohol-related harm among the Australia public (doi: 10.1016/j.drugalcdep.2016.04.026).

Further, all the products promoted by the posts are RTDs, sweet-tasting or single-serve products, which are likely to be consumed on a single occasion immediately or shortly after purchase. They are highly unlikely to be stored and consumed in moderation over time, as might be the case for some other alcoholic products, such as bottles of spirits. Therefore, the posts’ implicit encouragement to purchase large quantities of the products, and creation of a sense of urgency, are likely to encourage excessive or rapid consumption of the products in breach of clause 3(a)(i).

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