



ABAC Adjudication Panel Final Determination No. 75, 80 & 81/19

Product: Kelloggs Cornflakes Nitro Milkshake IPA
Company: One Drop Brewing Company
Media: Packaging
Date of decision: 8 November 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) concerns packaging for Kelloggs Cornflakes Nitro Milkshake IPA, an alcohol beverage brand produced by One Drop Brewing Company (“the Company”) and arises from complaints received 3 and 10 October 2019.
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 3 and 10 October 2019. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.
8. 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 communication.

The Marketing Communications

9. The packaging of Kelloggs Cornflakes Nitro Milkshake IPA is included following.



The Shake Down

When two Botany neighbours want to get together, naturally it is done over a beer. This collab between Kellogg's® and One Drop Brewing Co sees a couple of Botany locals coming together and creating something truly unique. Fruity, creamy and utterly delicious. A true milkshake with copious amounts of famous Kellogg's Corn Flakes® added into in our mash tun, with milky lactose, sweet fruits, and rich vanilla. Sabro, Citra, and Simcoe add just the right slice of hoppiness without distraction from the huge hits of ripe strawberry, passionfruit, coconut and mango. Served with Nitro for ultimate creaminess.

PROUDLY BREWED & CANNED AT OUR BREWERY & TAPROOM // 5 ERITH ST BOTANY NSW 2019. MADE IN AUSTRALIA.

Standard Drinks **X.X**
375mL

ONE DROP BREWING CO

Kellogg's
== CORN FLAKES ==

NITRO MILKSHAKE IPA

6.4%

Follow these Nitro Pouring Instructions to ensure the creamiest, milkiest result.

Shake
Flip this can hard three times. Wait 10 seconds

Down
Pour it hard, straight down into your glass

10c REFUND AT COLLECTION DEPOTS/POINTS IN PARTICIPATING STATE/TERRITORY OF PURCHASE FOR BEST BEFORE. SEE BOTTOM OF CAN.

Don't Waste. Drink Wisely. org.au



The Complaint

10. The first complainant is concerned that the product's packaging could attract children to the product due to references to 'Kelloggs Cornflakes' and 'milkshake'.
11. The second complainant is concerned that Kelloggs is a brand mostly advertised to children, toddlers and mothers and that Kelloggs' association with a high alcohol beer and milkshake contents is entirely inappropriate as clearly it is appealing to minors.
12. The third complainant is concerned that Kelloggs Cornflakes are marketed to children, milkshakes are broadly consumed and have appeal to minors and this product will have appeal to minors and is not appropriate.

The ABAC Code

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (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 Company responded to the complaint by letter dated 14 October 2019. The principal points made by the Company were:

- We did not submit the product packaging through the Alcohol Advertising Pre-vetting Service Approval system. However, all our advertising is reviewed internally to ensure it meets regulatory and self-regulatory obligations.
- As this complaint is directed at a Facebook post made by Broadsheet Sydney, Crafty Pint and Delicious.com.au we confirm that One Drop ensures its own advertising spend on digital platforms is targeted to adults over 18 years of age.
- One Drop does not consider that the product packaging and advertisements complained of, has a “strong or evident appeal to Minors”, nor that it creates confusion with confectionary or soft drinks, for the following reasons:
 - The theme of the packaging is a tropical sunset scene. This is inspired by the product's tropical fruit taste, and also highlights the reggae music that inspired One Drop's name and is in line with their overall brand guidelines. The style, imagery and colours are not particularly child-like and are designed to appeal to adults.
 - The reference to Kellogg's Corn Flakes on the packaging and use of it's logo in the advertisement recognises that the product utilises Corn Flakes as an ingredient in the beer. The copy on the packaging and in the advertisement describes the local collaboration between the two companies (both based in Botany, NSW). Communicating this interesting fact was an important part of the design of the packaging.
 - Corn Flakes is a product that is not targeted to, or primarily consumed by, minors. Kellogg's has been manufacturing (in Botany NSW), selling and advertising Corn Flakes for over 90 years, and it has been consistently marketed as a product for the whole family. As such, the rooster character used on the front of the packaging, is a character that is easily recognisable by people of all ages, particularly adults with a nostalgic connection with the brand.
 - The product is described as a “nitro milkshake IPA”. IPA is commonly known as Indian Pale Ale, a type of beer, and a milkshake IPA is a substyle of the Indian Pale Ale. The description of “milkshake” is increasingly common and popular in the craft beer industry and has been given to the beer as it contains copious amounts of lactose, and has a creamy, full-bodied and slightly sweet flavour profile in line

with the technical creation of this beer. Because the product was also canned in a “Nitrogenated” can, the serving instructions require the can itself to be shaken three times and poured vertically into the glass before it is consumed. Therefore “milkshake” is an accurate description of the ingredients, the flavour experience, it also indicates the process that the brewers have followed along with highlighting serving instructions of the product.

- Indian Pale Ale is very commonplace as a type of beer in Australia and around the world, and is understood by consumers as simply “IPA”, which is why the packaging does not spell the name out in full.
- The ‘One Drop Brewing Co’ logo sits most prominently on the front of the can, which also indicates to the consumer that the product is alcoholic due to the inclusion of the word “brewing”, a word most commonly associated with the production of beer.
- The text “6.4%” is included at the bottom of the front of the can. In the context of the above indicators, we are of the view that a reasonable consumer would view the can and understand that the product (1) was a craft beer containing 6.4% alcohol, and (2) contained alcohol.
- The top of the can also features a sticky label (see Appendix A) communicating the unique serving instructions of the product, which must be removed before a consumer can actually open the can. This label states, “This beer is a Nitro Beer...”.
- The advertisements complained of featured on;
 - The Broadsheet Sydney Facebook page. Whilst we cannot comment on Broadsheet Sydney’s advertising, we do note that due to the nature of the publication (“Broadsheet is Sydney’s online magazine covering food and drink nightlife fashion art and entertainment-A guide for people who love to go out and get involved in city life, Broadsheet will keep you in the know about the best of what Sydney has to offer”), it is a publication primarily directed to adults.
 - The Delicious.com.au Website. Whilst we cannot comment on Delicious.com.au’s advertising, we do note that due to the nature of the website also containing articles about eating out, travelling, Wine, Alcohol and Cocktails it is a website primarily directed towards adults.

- The Crafty Pint’s Website. We note that due to the nature of the publication (“The Crafty Pint is Australia’s leading beer site visited by more than twice as many people as any other beer news source in the country. It was born out of a desire to provide coverage of the craft beer resolution that was sweeping Australia.”) It is a publication directed to adults.
 - The product was only available for purchase for a limited time at the One Drop Brewing Co. venue in Botany NSW (a venue compliant with responsible service of alcohol laws) and Dan Murphys Online (a retailer that also takes necessary steps to ensure that it does not sell alcohol to minors) and a small handful of other local bottle stores (who are also all compliant with responsible service of alcohol laws). The limited edition product has since sold out in packaged. In our view, when considered overall, the elements of the packaging, unique serving instructions, the nature and placement of the advertising, and the limited availability of the product for retail consumption, do not appeal strongly to or target Minors, nor does it create confusion with confectionary or soft drinks. The packaging includes sufficient information for the reasonable consumer to indicate that the product contains alcohol. The packaging of the beer makes clear that the unique product is the result of a unique collaboration between two local brands.
16. On 22 October the Panel made a provisional determination that the packaging was in breach of Part 3(b)(i) of the Code. In response to the provisional determination the Company exercised its entitlement to a rehearing and made additional submissions by letter dated 1 November 2019. The principal points made by the Company were:
- The Panel cites ABS data from 2014 on consumption of cereals *in general*, which shows that 36% of the overall population consume cereals in general (no particular brand) and of the children that feature in this 36%, just over half of children aged 2-3 and aged 4-8 consume cereals in general. To use this general data regarding all breakfast cereals to support the complainant’s assertion that Corn Flakes is consumed primarily by children, would not be accurate.
 - We understand that there is a lack of publicly available data on consumption of specific brands as this kind of data is generally proprietary. To provide the Panel with some more specific and relevant data, we note that Kellogg has previously commissioned a large global consumer research agency to conduct Demand Chain research into consumption trends and habits for specific products. Demand Chain research is a type of study that delves into consumer usage and attitudes on particular products. Kellogg, and many other organisations, frequently use Demand Chain Research to identify drivers of consumer demand, to better understand how different segments of

consumers use their products. In 2016, Demand Chain research covering a significant sample size of breakfast cereal consumers in Australia (4,500 adults consumers aged 18+) showed that in respect of Corn Flakes, the heavy majority of Corn Flaked consumers are adults (defined as aged 18 and over) – specifically 75% of Corn Flakes consumers are adults. Further, the research showed that of the Corn Flakes consumers, the core consumer segment is “Plain Traditionalists”, which is defined in the research as tradition and taste driven adults, with emphasis on a plain palate.

- This data is proprietary to Kellogg, however, in order to correct the record, Kellogg has provided to One Drop this specific information in order for us to provide the Panel with data and context.
- This data provides Kellogg with insights regarding how different segments of consumers use Corn Flakes and the core consumer base and audience for this product. Indeed, and contrary to the assertion of one of the complainants, Kellogg takes great care to ensure the marketing of all its products, particularly Corn Flakes, is primarily directed to adults (the main grocery buyer).
- This data clearly demonstrates that the clear majority of Corn Flakes consumers are adults aged 18+ and that the Corn Flakes product as a whole (including the brand name, the imagery and logos) is preferred by and of stronger appeal to adults aged 18+, than to minors.
- We also note that One Drop is careful to ensure that all its advertising is restricted to adults 18+ utilising the audience restrictions on Facebook and digital platforms. Combined with the fact that the limited product was only for sale on limited platforms restricted to 18+ (the One Drop Brewery venue in Botany NSW and Dan Murphys online as part of a One Drop Craft Beer “Variety Pack” – i.e. this beer was not able to be purchased on its own from Dan Murphys), the reality is that minors under 18 would be unlikely to ever see or be exposed to this product.
- The beer is not appealing or marketing to minors as its only available through retailers where adults can legally purchase the product, therefore not available to or targeting those under 18 years old.
- It is extremely clear from the special label on top of the beer can (which cannot be ignored before one opens the can) that the product is alcoholic. The label leads with, “This beer is a Nitro Beer.”
- The above information together with One Drop’s original response, clearly refutes the unsubstantiated assertions set out in the complaints provisionally upheld by the Panel, namely that: i) Corn Flakes is consumed primarily by minors and is marketed to children and toddlers; and that ii) taken as a whole,

a reasonable person would consider that the One Drop packaging has strong or evident appeal to minors.

- One Drop is not a signatory to the ABAC Code at this point in time. However, One Drop and Kellogg are responsible marketers that ensure that all packaging and advertising is subject to a robust internal review process in compliance with all Australian laws, regulations and industry codes. One Drop appreciates the opportunity to provide its further response and requests that the Panel considers the further evidence set out above, to dismiss the complaints.

The Panel's View

Introduction

17. The backdrop to this determination is a 'collaboration' between the long-established cereal manufacturer Kelloggs Australia and a recent addition to the alcohol industry, One Drop Brewing. Both companies are located in the Sydney suburb of Botany. According to the Kellogg's website, 'Kellogg's has partnered with One Drop Brewing Co to produce a unique limited-edition Kellogg's Corn Flakes Beer'. It is the packaging of this product which has drawn three complaints raising concerns about the strong appeal of the packaging to minors.
18. Kelloggs first began manufacturing corn flakes in Australia in 1924 and has been located at its Botany site since 1928. Corn flakes branding featuring 'Cornelius Rooster' was introduced in 1957 and the rooster, subject to updating in the 1990's, has remained a constant on the corn flakes packaging since then.
19. In contrast to the near 100 years Kelloggs have operated in Australia, One Drop Brewing commenced operations in January 2019. In its short history its products have proved popular and award winning. Branding across its range feature a stylised black and white version of the company name, and this also features on the Corn Fakes IPA.
20. In September 2019 the product was introduced to the market. The director of research and technology at Kelloggs was publicly quoted at the time that, Kelloggs had 'a love of combining innovation with great tasting product' and 'the beer is a fun way to remind Aussies of the versatility of cereal'.
21. Before turning to the substance of the complaints it is necessary to explain the scope of the ABAC scheme and state:
 - the ABAC scheme does not regulate actual alcohol beverages but is directed at the marketing of alcohol;
 - the scheme applies to alcohol industry participants and not the activities of non-alcohol companies; and

- Panel decisions are formally binding on alcohol companies which have committed contractually to the scheme.
22. This means that the Panel will not be assessing if it was desirable or not for Kelloggs to lend its well-known corn flakes branding to an alcohol product, nor if the physical product (i.e. the actual beverage in the can), should or should not be available for sale. The regulation of foodstuffs rests with government and State liquor licensing regimes generally contain power to remove alcohol products from the market in certain circumstances. Hence, the Panel's focus is on the marketing of the product and not the physical product itself.
23. One Drop Brewing is not a signatory to the ABAC Scheme, meaning Panel decisions are not formally binding on the Company. That said, the Company has cooperated with the complaint process and it is the experience of the Panel that the emerging craft beer sector has in practice accepted ABAC standards and adjudication determinations.
24. The complaint goes to the name and packaging (the artwork on the can) of Kelloggs Cornflakes Nitro Milkshake IPA. The ABAC Scheme provides a differential process for complaints that go to product names and packaging as compared to complaints that go to advertising or other marketing of alcohol. For name and packaging complaints the decision-making process is in two parts when the Panel makes a finding of a breach of an ABAC standard, with the marketer able to seek a rehearing of a provisional determination. This second stage of the process recognises that the consequences of an adverse ruling on a Company will be significant if it is obliged to remove a product's branding from the market as opposed to a single advertisement or even an entire marketing campaign.
25. The Panel made a provisional determination to uphold the complaint on 22 October and the Company has sought a rehearing of this decision. A rehearing means that the Panel looks at the complaint afresh and makes a new decision having regard to the complaint, the submissions of the Company and the product materials.

The Provisional Determination

26. In the provisional determination the Panel concluded that the product name and packaging was in breach of the ABAC standard in Part 3(b)(i) namely that a marketing communication must not have strong or evident appeal to minors. In reaching this conclusion the Panel had regard to the following:
- the strong impression created by use of the familiar Kelloggs name, font style, rooster character and corn flakes description clearly establish the product's direct association with corn flakes;
 - indications that the product is a style of beer are less prominent than the corn flakes references;

- the 'milkshake' descriptions, while less prominent than the corn flakes reference add some weight to creating confusion with a soft drink i.e. a non-alcoholic drink such as a breakfast milk drink;
- while corn flakes are consumed and have appeal across age groups, the corn flakes imagery would be readily identified by minors and would strongly attract the attention of minors; and
- taken as a whole, a reasonable person would likely believe the packaging has strong or evident appeal to minors.

Arguments by the Complainant and the Company

27. The concerns of the complainants are based on the potential for minors to be drawn to the product by packaging features which:
- associate the product with corn flakes and milkshakes;
 - will confuse the product with corn flakes which are assumed to be marketed mostly to 'children, toddlers and mothers'; and
 - link the high consumption of corn flakes and milkshakes by minors with the product.
28. The Company's arguments drawn both from its initial response to the complaint and its additional submissions to the provisional determination can be summarised as follows:
- the marketing of the product was targeted via online platforms utilising audience restrictions and directed towards adults;
 - the product was only available for sale on limited platforms restricted to 18+ (One Drop Brewery venue and Dan Murphys online only as part of a "variety pack") such that minors would be unlikely to ever see or be exposed to the product;
 - references to Kelloggs Corn Flakes recognise the use of corn flakes as an ingredient in the beer and local collaboration between the two Botany businesses;
 - corn flakes are not targeted towards, nor primarily consumed, by minors but are directed to the whole family, with Kelloggs Demand Chain research showing that the clear majority (75%) of Corn Flakes consumers are Adult and the core consumer segment is "Plain Traditionalists" defined in research as tradition and taste driven adults, with emphasis on a plain palate;
 - therefore, the Corn Flakes product as a whole (including the brand name, the imagery and logos) is preferred by and of stronger appeal to adults aged 18+ than to minors;

- the packaging theme is a tropical sunset consistent with the product's taste and uses imagery and colours that are not child-like and appeal to adults;
- the rooster character is recognised across age groups and has nostalgic connections for adults;
- the 'milkshake' reference refers to the sub style of IPA and is 'increasingly common and popular in the craft beer industry'. Given the type of product and the need to shake the product in serving it as designed, the milkshake description is factually accurate;
- the packaging contains various references to the product being an alcoholic type of beer, including the special label on top of the beer can, "This beer is a Nitro beer" (which can't be ignored before one opens the can); and
- overall considering the packaging and the targeted way it was marketed, it does not strongly or evidentially appeal to minors.

Strong or Evident Appeal to Minors

29. The issue raised by the complaints is the consistency of the packaging with the ABAC standard which provides that alcohol marketing must not have strong or evident appeal to minors (under 18 year olds). This standard might be breached by marketing communications which, for instance:
- are likely to appeal strongly to minors;
 - specifically target minors;
 - have a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - use imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionary or soft drinks.
30. In assessing compliance with the Code, the Panel is to adopt the standpoint of the probable understanding of the marketing item by a reasonable person. This means that the attitudes, values and life experience common in a majority of the community is to be the benchmark.
31. Over time the Panel has made a number of decisions about alcohol marketing and product names and packaging, in particular in relation to consistency with the standard going to strong appeal to minors. From these previous cases the following general considerations can be derived:
- each case has to be considered on its own merits and it is the overall impression created by the packaging that is to be assessed by a combination

of features such as imagery, colour, use of language, product name and type of product container;

- it is possible that a marketing item might have some residual or incidental appeal to minors while not strongly or evidentially appealing to minors; and
- the intention of the marketer as to its intended audience is not the test but the understanding of the marketing item by a reasonable member of the community.

32. In part the complaints invite the Panel to reach conclusions about the appeal of Kelloggs Corn Flakes and milkshakes to under 18 year olds and then extrapolate this to the appeal of the product packaging to minors. This is a difficult task, as the Panel is not a research body. Available public research data indicates that cereals generally are consumed across age groups and are a common staple with minors. For instance, Australian Bureau of Statistics data on cereals and cereal products issued in 2014 as part of the Australian Health Survey show:

- 36 % of the population overall consume cereals, but
- 54% of children aged 2 to 3 and 52% of children aged 4 to 8 consume breakfast cereals and these are the two largest segments of the population consuming the products

33. The same survey indicates that sweet products derived or based on milk (ice cream, flavoured milk etc) are also more heavily consumed by children than adults. This public data would tend to suggest that corn flakes and milkshakes are consumed extensively by under 18 year olds.

34. In its further submissions the Company placed considerable weight on Demand Chain Research undertaken by Kelloggs and which Kelloggs has released in part. This research drew on a sample of 4,500 adult breakfast cereal consumers and showed that 75% of corn flakes consumers are adults. Further, the core consumer segment of corn flakes consumers were “plain traditionalists” who are described as tradition and taste driven adults with an emphasis on a plain palate.

35. From this information the Company argues that the Panel was mistaken to believe that the product packaging would have strong or evident appeal to minors. The Panel accepts that neither the Company nor Kelloggs had the intention of seeking to market the beer to minors, however, the intention of marketers is not the test, but rather, how the marketing would be understood by a reasonable person. In relation to the additional research it can be noted:

- The Demand Chain Research was of adult consumers and not under 18 year olds;
- The research showed that 25% of corn flake consumers were under 18; and

- ABS census data from 2016 shows that under 18 year olds comprise 22.25% of the population and this suggests that corn flake consumers are more prevalent in the under 18 year old population than the general population.
36. The Company also points to instructions on the top of the can that reference “beer” and references to “brewing”, “6.4%” and “IPA” on the front of the can as clearly establishing that the product is alcoholic.
37. In assessing the compliance of the product packaging with the ABAC standard the packaging has to be assessed as a whole. This requirement means that it is not valid, for instance, to take a few seconds of a 30 second TV advertisement as meaning a marketing communication is inconsistent with a Code standard when the probable understanding of a reasonable viewer is to be drawn from the entire advertisement.
38. In applying this guidance, the Panel believes the way in which a reasonable person would likely absorb the message from a marketing communication needs to be reflected. So, for a roadside billboard, it's the impression a person would get from paying some attention to the billboard from a passing motor vehicle. For a beer can and/or the packaging around a six pack of beer, it is the impression obtained from looking at the packaging when viewed from the shelf of a bottle shop, or from a picture of the product packaging in a catalogue or shown on a website or other digital platform.
39. It is not reasonable to believe that an average consumer is going to pick up an individual beer can and examine it in fine detail while turning the can around the full 360 degrees. Accordingly, the Panel does not accept that the probable understanding of the packaging will be drawn from the small print mentions of 'beer' and similar alcohol references identified by the Company in its response. Rather the probable understanding will arise from:
- the overall colouring of the product packaging;
 - larger and principal design graphics;
 - the product name and other easily visible language/messages; and
 - all of these in combination.
40. Taking into account the two sets of submissions by the Company and weighing up the arguments, the Panel believes the packaging does breach the Part 3 (b)(i) standard. In reaching this view the Panel noted:
- the strong impression created by use of the familiar Kelloggs name, font style, rooster character and corn flakes description clearly establishes the product's direct association with corn flakes;

- indications that the product is a style of beer are less prominent than the corn flakes references;
- the 'milkshake' descriptions, while less prominent than the corn flakes reference add some weight to creating confusion with a soft drink i.e. a non-alcoholic drink such as a breakfast milk drink;
- in absolute terms corn flakes are consumed far more by adults than minors, although available data indicates under 18 year olds consume corn flakes at a higher rate than the general population;
- the corn flakes imagery is highly recognisable and would likely be readily identified by minors and the novelty of the corn flakes connection with a “Nitro Milkshake” is likely to be strongly appealing to minors; and
- taken as a whole, a reasonable person would likely believe the packaging has strong or evident appeal to minors.

41. The complaint is upheld.