



ABAC Adjudication Panel Determination No. 93/19

Product: Feral Brewing Biggie Juice, Imperial Biggie & Tusk IIPA
Company: Coca Cola Amatil
Media: Packaging & Digital (Instagram & Website)
Date of decision: 6 December 2019
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 digital marketing promoting Feral Brewing products by Coca Cola Amatil (“the Company”) and arises from a complaint received 30 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 Code”) – 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 and Policies – which place 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 other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, 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 Ad Standards 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 the 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 30 October 2019.
8. The Panel endeavours 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 complaint was completed in this timeframe.

Pre-vetting Clearance

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 these marketing communications.

The Marketing Communication

10. The complaint relates to the following marketing communications:

- Packaging 1 Boar Biggie Juice



- Packaging 2 Imperial Biggie



- Website Post 1 - <https://www.feralbrewing.com.au/beer/biggie-juice/> - "B.I.G. Juicy and enough tropical fruits to pimp out a 2 time Olympic gold medal winning coxless 4 man rowing team."



EAST COAST/ NEW ENGLAND IPA

BIGGIE JUICE

B.I.G. Juicy and enough tropical fruits to pimp out a 2 time Olympic gold medal winning coxless 4 man rowing team.

~~It was all a dream...~~
~~To make an East Coast out the Valley.~~

Ok, so we're a little awful on the rhyme front, but we did manage to hustle a Juicy West Coast v East Coast collab brew with Melbourne's Royston Hotel. Turf wars aside – the Royston crew joined us over in the West to brew a beer teaming with punchy tropical hip hop aromas full of apricot, peaches and passionfruit. Day dreamin in a cloud of haze, this IPA is intentionally cloudy contributing to a creamy mouth feel.

This New England style IPA was so notoriously juicy, we've decided to launch it in cans, now available all year round!

Find Stockists [HERE](#)

6% ABV

AVAILABLE - BOTTLE & KEG

OG 1060

FG

40 IBU

ON TAP AT THE VALLEY NOW

- Website Post 2 - <https://www.feralbrewing.com.au/beer/imperial-biggie/> - “More malt, more hops and more alcohol make this juiced up brew bigger, juicier and hoppier than ever before.”



- Instagram Post 1 –

<https://www.instagram.com/p/B39KdOYJEnm/?igshid=8265yrzzzijw> A picture of a four pack of Imperial Biggie with the slogan Bigger Hoppier Juicier in the top left corner. (24 October 2019)



- Instagram Post 2 –

<https://www.instagram.com/p/ByrGpFMpi6u/?igshid=nkx9oovxulti> - A picture of a can with the caption “Our booziest, juiciest and hoppiest East Coast IPA to date. This limited edition imperial version of Biggie Juice is everything you know and love, only BIGGER ?? : @thecraftbeerwanker” (14 June 2019)



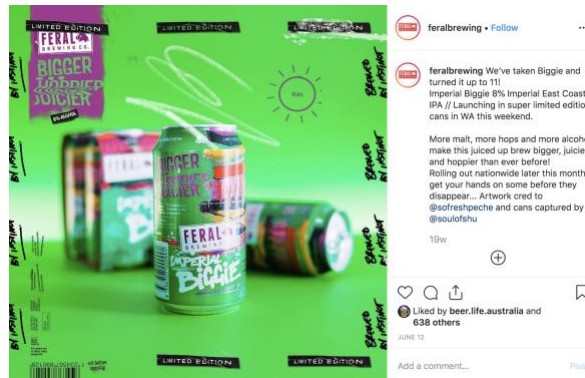
- Instagram Post 3 –

<https://www.instagram.com/p/Bym0bW9pH3D/?igshid=1pugathkmijn1> A warped photo of a six pack of Imperial Biggie with the caption “We’ve taken Biggie and turned it up to 11! Imperial Biggie 8% Imperial East Coast IPA // Launching in super limited edition cans in WA this weekend. More malt, more hops and more alcohol make this juiced up brew bigger, juicier and hoppier than ever before!” (12 June 2019)



- Instagram Post 4 –

<https://www.instagram.com/p/Bymn9OLJfEj/?igshid=2hcho6gqxbev> - A photo of some cans and the caption “We’ve taken Biggie and turned it up to 11! Imperial Biggie 8% Imperial East Coast IPA // Launching in super limited edition cans in WA this weekend. More malt, more hops and more alcohol make this juiced up brew bigger, juicier and hoppier than ever before! Rolling out nationwide later this month, get your hands on some before they disappear..“ (12 June 2019)



- Instagram Post 5 –

<https://www.instagram.com/p/BwtdJs0pnx2/?igshid=vigtasyvw04d> - A picture with the words Bigger Hoppier Juicier and the caption “BIGGER // BOOZIER // HOPPIER // JUICIER. We are bringing our Imperial Biggie to GABS Festival Brisbane as our latest release... Plus 10 more specialty brews flowing all day at our Biggie Bar! Get around it!” (26 April 2019)



- Instagram Post 6 –

<https://www.instagram.com/p/BqHdfh7Bt3W/?igshid=1i77hsicbwad9> -A picture of the Tusk aesthetic and the caption “This Friday we are releasing TUSK IIPA at 13.5% ABV making it the biggest, boldest, booziest Tusk yet! ??? An IIPA born out of the ambition to bring Australian’s the freshest beer possible, Tusk is best drank as soon as you can get your mouths on it. Come find us as we hand deliver kegs of this beastly brew around 28 venues in Australia kicking off in WA. ??? #drinkfreshdrinktusk #freshisbest #feralbrewing #rewedbyinstinct #tusksday2018 #tuskiipa #iipa #enjoyresponsibly”



The Complaint

11. The complainant is concerned about the marketing as:
 - Biggie Juice and Imperial Biggie are beers named in reference to the notorious song Juicy by The Notorious B.I.G. and Biggie Juice packaging originally showed a picture of Christopher Wallace (Notorious BIG/Biggie Smalls music artist) wearing a crown (recently changed to feature a boar with a crown, drawn in the likeness of Christopher Wallace). Juicy is a popular song by Christopher Wallace that tells the story of his life and growing up. The beer is an East Coast IPA style which is a further allusion to the East Coast/West Coast rap feud in the 90s. The relationship between the beer and artist is confirmed by the @feralbrewing Instagram post dated 20 September 2018 (includes an image of Christopher Wallace and plays the song, Juicy). Christopher Wallace presented himself as the character of Notorious BIG and Biggie Smalls. These characters/stage names were reflections of himself and who he aspired to be,

a mix of historical truths and exaggerations. These characters are centred around the idea of being a gangster drug dealer. His songs and music videos feature advice on how to sell drugs, the pleasure he takes in taking drugs and sexual success he has achieved due to his financial success. The artist himself was clearly involved in several violent assaults that he was arrested for. The song juicy makes reference to “smoking weed” and “packin gats” (gats are guns). The song is also a narrative of rise to fame and achieving financial and sexual success. The relationship between the artist, the characters he portrays and the song implies the drinker could aspire to be like Biggie or live his lifestyle vicariously through the beer. A lifestyle that encourages irresponsible, offensive and criminal activities (Part 3(a)(ii)) and a lifestyle leading to financial and sexual success according to the song (Part 3(c)(ii)).



- The reference to “Juice” in the name of the Biggie Juice product could create confusion with soft drinks like juice (Part 3(b)(i));
- The description of the product on the website as “B.I.G. Juicy and enough tropical fruits to pimp out a 2 time Olympic gold medal winning coxless 4 man rowing team.” is not appropriate for beer advertising. The reference to “tropical fruits” could be some crude double entendre for gay prostitution. I don’t know where to start with this but its utter trash;
- The phrases on the website in relation to “Imperial Biggie” - “turned up to 11” and “more alcohol make this juiced up brew bigger” - are emphasising the high alcohol content. Advertising beers based on their alcohol content is a breach of 3(a)(iv);
- The Instagram posts referenced in the complaint emphasise the high alcohol content of the products in breach of Part 3(a)(iv) by referencing the alcohol content as “bigger”, “booziest”, “turned up to 11”. “more alcohol makes this juiced up brew bigger”, “boozier” and “TUSK IIPA at 13.5% ABV making it the biggest, boldest, booziest Tusk yet!”; and
- Feral’s handling of the branding and marketing of these beers completely disregards the code and any form of decency. A drug dealing misogynist who is responsible for multiple violent assaults should not be idolized in a beer label.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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;
 - (c)(ii) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

13. 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

14. The Company responded to the complaint by letter dated 14 November 2019 advising that:
- Feral is committed to promoting a culture of responsible drinking, which includes ensuring our brands are marketed within the guidelines specified by the Alcohol Beverages Advertising Code and comply with the Coca-Cola Amatil Group Alcohol Advertising and Marketing Standards.
 - We would like to provide some information outlining the style of beers covered by the complaint, as we believe this is instructive and relevant in helping the panel understand the terms and descriptors we use in both our packaging and

marketing materials. Feral Biggie Juice is a New England India Pale Ale (NEIPA), sometimes referred to as an East Coast India Pale Ale (East Coast IPA), a style that has gained recent prominence in the craft beer market. The NEIPA is a relatively new style originally brewed out of Vermont, a small state in the New England region of north-eastern United States. A New England IPA is a style of American IPA that features an intense, tropical fruit centric, hop aroma and flavour. It's heavily dry hopped to the point of being hazy and has a fuller body, smoother flavour and less perceived bitterness than typical IPAs. According to the Brewers Association 2019 Beer Style Guidelines (15 April 2019, <https://www.brewersassociation.org/edu/brewers-association-beer-style-guidelines/#216>), the style (also known as a Hazy or Juicy India Pale Ale) also includes the following Additional Notes: *"The term "juicy" is frequently used to describe taste and aroma attributes often present in these beers which result from late, often very large, additions of hops."* Imperial Biggie is a more intense version of Biggie Juice, with a higher intensity of flavour, aroma, body and a higher alcohol content.

- We would also like to confirm that this complaint is the only complaint that we are aware of relating to our packaging and marketing communications.
- In our view, the packaging of Biggie Juice or Imperial Biggie does not directly imply irresponsible or offensive behaviour. Therefore, it is not in breach of Part 3(a)(ii) of the Code. We dispute the suggestion that there is any reference, express or implied, to violence or drug-related activity on any of Feral's packaging. The use of "Biggie" in the name of the products was chosen primarily as a descriptor for the big flavour and aroma intensity of this style of beer. In keeping with the Feral brand, which is alternative and humorous in its style, the use of Biggie also conveys an association with the competition between the East Coast (USA) and West Coast (USA) music scenes, drawing a parallel with NEIPAs often being compared and contrasted to traditional American IPAs, which originated on the West Coast (USA). Accordingly, the use of Biggie captures both the high intensity flavour and aroma of the beer, as well as the East Coast USA origin of this style of beer. The complaint noted that the original Biggie Juice packaging showed an image of the artist known as Biggie. We would like to point out, however, that this was only true of a limited release that no longer exists in the market. When the product was officially launched in pack and on tap, the brand was redesigned to remove any reference to Christopher Wallace and instead features an illustrated wild boar, following the packaging convention of the Feral beers, which depict various wild (or "feral") animals in illustrative form.
- The term Juice (or Juicy where it appears) is a reference to the flavour and character of this particular style of beer. It is a common descriptor used throughout the market to define the NEIPA style of beer (as shown by several examples of NEIPA / East Coast IPA packaging in the Appendix), and one well understood by craft beer drinkers. We reference the style name (East Coast

IPA) in close proximity to the appearance of the brand name and descriptor on the front of the pack, to further highlight the descriptive nature of the word Juice in relation to the beer style.

- In our view, the description on our website of Biggie Juice as “B.I.G. Juicy and enough tropical fruits to pimp out a 2 time Olympic gold medal winning coxless 4 man rowing team” does not breach Part 3 (a)(ii) of the Code as it does not directly imply irresponsible or offensive behaviour. The statement quoted is in fact a humorous reference to a series of Australian TV advertisements. The reference is to the ‘Oarsome Foursome’, an Australian men’s rowing coxless four crew who competed between 1990 and 2012, and a series of TV commercials they did for a fruit cup brand in around 1997 (see <https://www.youtube.com/watch?v=ZIG117OefUE> for an example). It is a pop-culture reference again highlighting the highly fruity, intensely tropical nature of NEIPAs as a beer style. This was a humorous reference to highlight the functional attributes of this particular beer. The expression ‘pimp out’ is common vernacular meaning to modify or upgrade something to an extreme or ridiculous degree. It’s often used across social and mainstream media to describe a computer, car or property that has been fitted out to the highest specification (in a light-hearted way). In this context, the tropical fruit flavour of Biggie Juice is being described as even more extreme compared to the tropical fruit flavour references in the fruit cup ad. On the last point regarding the reference to tropical fruits being a crude double entendre, despite having since researched this, we still do not understand what is meant by this claim. We are unsure how to respond except to refute any suggestion that any such association was intended (or even exists!).
- In each of the references referred to in the complaint, our intention was to factually convey the functional characteristics of each of our styles or variants of beer. The words ‘more alcohol’ and ‘booziest’ are intended as descriptors, their presence is not intended to encourage the choice of beverage but to factually convey that these drinks contain more alcohol than our other beers. Whilst we believe these descriptions are factual and do not breach Part 3 (a)(iv) of the Code (i.e., they do not encourage choice of beverages based on alcoholic strength), as a demonstration of our commitment to upholding our responsible marketing standards, and without admission, upon receiving the complaint we deleted these references from the relevant posts. All references to “bigger”, “hoppier”, “juicier” and “turned up to 11” (which is a pop culture reference to the ‘This Is Spinal Tap’ movie – indicating higher than normal levels) are clear references to the beer itself and its intense flavour, and aroma. We do not agree, therefore, that these statements are breaches of the Code.
- We do not believe that the reference to “juice” on the packaging of the “Bergie Juice” breaches the Code. As previously discussed, the term “Juice” on the packaging of Biggie Juice is a reference to the taste characteristics of this particular style of beer and is a common (and endorsed by the Brewers

Association (<https://www.brewersassociation.org/edu/brewers-association-beer-style-guidelines/>) descriptor for NEIPAs or East Coast IPAs. In particular:

- This is industry standard terminology for the NEIPA style of beer (as shown by several examples of NEIPA / East Coast IPA packaging in the Appendix).
 - This description is specified in the Brewers Association Style Guidelines and countless online sites referencing and describing this style of beer as an apt and appropriate term to describe NEIPAs. The reference of juice to describe this style of beer is seen and used commonly both in Australia and overseas (as shown by the examples in the Appendix).
 - On the packaging, the East Coast IPA style name is inserted directly next to the brand name, which is intended to make the connection clear for consumers.
 - The Feral Brewing Logo is the primary design device shown in contrasting and distinctive colour on the packaging hierarchy, clearly indicating this is a brewed product from a brewery, not a fruit juice, and we don't believe this could in any way be confused with soft drinks.
 - There are no pictorial images of fruit as is common of fruit drinks. The colours of the packaging are quite dark and harsh, not like the style often found on fruit juice or soft drink products. The product is in a can, rather than packaging that might be similar to that used for fruit juices such as a fruit box or plastic bottle. There are also multiple alcohol warning statements and alcohol percentage content on the pack, which make it clear that this product is alcoholic.
 - The illustrative style of design is consistent with the broader Feral brand packaging range and the depiction of the illustrated wild boar on the Biggie Juice packaging in a mature, 'robust' style could in no way be construed to be designed to be appealing to, or targeting minors. In contrast, we believe the 'ugliness' and 'intense' gnarled nature of the design would be very off-putting.
- In summary we see no similarity, correlation, or potential confusion with the packaging of Feral Biggie Juice East Coast IPA that could lead anyone to mistake this for a soft drink or fruit juice, and that it in no way has a strong or evident appeal to minors.
 - The naming of Biggie Juice and Imperial Biggie (as discussed above), represents a strong reference to the 'big', intense flavour and profile of these styles of craft beer (i.e., the intensity of flavour and aromas), with a loose

reference to the late Christopher Wallace, due to his association with the East Coast music scene (and the link to this being an East Coast style of IPA). Any direct likeness of Christopher Wallace is absent from the packaging. Imperial Biggie has no mention of the word Juice / Juicy on the front packaging. The descriptor “Juice” is not in reference to the song “Juicy” by Christopher Wallace, but rather a product descriptor referencing the flavour profile of the beer. We see absolutely no link to perceived financial or sexual success in either the naming or designs of these products given the tenuous at best perceived link to the song referenced or the artist.

- The depictions, naming and graphics used in promoting and displaying Feral’s Biggie Juice and Imperial Biggie products:
 - have no appeal to minors;
 - are descriptive in nature as is standard within the brewing industry for this style of beer; and
 - have no specific reference to any of the content of songs by Christopher Wallace, but rather indicate the origins of the beer style (East Coast (USA)) and the flavour profile of this style of beer.
- We have removed any references to higher alcohol from social posts and will review internal procedures to ensure the continued compliance by Feral going forward.

The Panel’s View

Introduction

15. Feral Brewing commenced operations in October 2002 in Western Australia's Swan Valley. In October 2017 the brewery was acquired by Coca Cola Amatil. The Company produces an extensive range of beers including three marketed as 'Biggie Juice' and 'Imperial Biggie' which are both types of beer known as New England India Pale Ale (NEIPA) or East Coast India Pale Ale (East Coast IPA). This determination concerns the packaging and some digital channel marketing of these two products and an Instagram post marketing another Feral Brewing product, Tusk IIPA.
16. In short, the complainant believes the marketing of the products draws heavily on the life, music and imagery associated with the American rap and hip hop artist Christopher Wallace who was known as the 'Notorious B.I.G' or sometimes 'Biggie Smalls' or 'Biggie'. Mr Wallace was very well known in rap and hip hop for a short time between the release of his hit 'Juicy' in 1994 and his death in 1997. The dramatic nature of his death and the posthumous release of material has however helped maintain his profile.
17. Against the backdrop of the association with Mr Wallace, it is argued that packaging of the two products together with a number of posts on the Company's website and its Instagram account breach a number of ABAC standards. The Company believes

all of the marketing is consistent with ABAC standards. The determination therefore moves through the issues at a general level and then each individual marketing communication is considered.

The Notorious B.I.G

18. Mr Wallace grew up in Brooklyn in the United States and was from a disadvantaged family. He was a large boy and gained the nickname 'Big'. He became involved in low level drug dealing at a young age, was arrested and charged for several drug and weapons offences and served a brief time in jail. During this same period, he began to emerge as a rap artist and was first recorded after his release from jail in 1991. Initially known as 'Biggie Smalls' he quickly adopted other names to avoid confusion with another artist.
19. The 1994 release 'Juicy' told of his life, early struggles and then success. He was prominent in the East Coast of the USA rap scene which prior to his emergence had been dominated by West Coast performers. A bitter and violent feud developed between East Coast and West Coast rap artists and Mr Wallace was murdered on 9 March 1997 following attendance at the after party of music awards in Los Angeles.

The Products' Packaging and Mr Wallace

20. The complainant makes the argument that the products' name and packaging is inspired by the life story of Mr Wallace and particularly his song 'Juicy'. This is described as a story of being a gangsta drug dealer, who takes pleasure in taking drugs and then achieves social and sexual success through the wealth and fame of becoming a popular rap artist. It is contended that a drinker of the products 'could aspire to be like Biggie or live his lifestyle vicariously through the beer'. This connotation is asserted to encourage irresponsible, offensive and criminal activities inconsistent with Part 3 (a)(ii) of the ABAC. Further, it is contended the products are claiming a lifestyle leading to financial and sexual success in breach of Part 3 (c)(ii) of the Code.
21. The Company acknowledges the link to Mr Wallace but maintains this is a 'loose reference' and that the term 'Juice' used in the products' name and packaging relates to the style of beer which is not uncommonly referred to in describing the taste and aroma of NEIPA. It is argued that there are no express or implied references to violence or drug use in the packaging and no connection to the song 'Juicy'.
22. The Panel believes the Company was drawing on Mr Wallace in the packaging design. This is evident from:
 - the original marketing (now discontinued) which expressly used an image of Mr Wallace;
 - the use of the crown image on the Biggie Juice packaging which references a well-known series of photographs of Mr Wallace;
 - the admitted play on the East Coast v West Coast rivalry between rap artists of the 1990's and the East Coast IPA beer type; and

- the colouring used on the Imperial Biggie packaging which is reminiscent of the clothing of Mr Wallace easily found from a cursory internet search of images of the artist.
23. While the influence of Mr Wallace to the Company in the creative design of the packaging can be accepted, it doesn't automatically follow that the packaging breaches the ABAC. Firstly, the packaging has to be assessed on its own content and it can't be assumed that a reasonable person would recognise the connection with Mr Wallace. On two occasions the Panel has accepted that packaging was referencing images or concepts which have almost universal recognition in the community i.e. Star Wars in Determination 34/19 and The Simpsons in Determination 37A/14.
24. With due respect to the late Mr Wallace, it would be highly unlikely that persons outside the sub-culture of rap and hip hop would immediately know of him and a smaller number would readily recognise the references in the product packaging design to him. Mr Wallace is no Homer Simpson or Princess Leia when it comes to cultural level impact.
25. Secondly, even if a consumer does recognise the references to Mr Wallace, the issue is whether the packaging would be probably understood as:
- encouraging offensive or irresponsible behaviour related to alcohol use; or
 - implying the presence or consumption of the product may cause or contribute to the achievement of social or sexual success.
26. The Panel does not believe the products' packaging of itself could be fairly said to breach the ABAC standards on these two points. While Mr Wallace had a short and eventful life, a reasonable person would not believe that the packaging is encouraging violence or drug use nor would it be understood that the packaging is suggesting the use of the product will lead to success in life. No doubt the Company is seeking an edgy feel to the products, but it is a long bow to think a reasonable person on viewing the designs on the cans will be encouraged to embark on anti-social behaviours by choosing the 'Gangsta' life.
27. The complainant raises a second concern about the packaging namely that the reference to the term 'juice' could create confusion with a soft drink. This alludes to Part 3 (b) of the ABAC which provides that an alcohol marketing communication must not have strong or evident appeal to minors. One way this may arise is if the marketing item uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with soft drinks.
28. The Company responds to this by arguing that the reference to 'juice' relates to the taste of the style of beer and is not uncommonly used. Further, it is contended the Feral Brewing logo, appearance and colouring establishes the product is not a fruit juice and the type of container is a can used for beer and not the type of containers typically used for fruit juices. Finally, the packaging is said to be robust and mature and even ugly and intense and would be off putting to minors.
29. The Biggie Juice packaging's most dominant features are the boar depiction, Feral Brewing logo, product name, white background colouring and then the references to East Coast IPA. While the packaging could do more to clearly identify the product

as alcoholic, this failure of itself is not a breach of the ABAC. It does lend weight however to a concern that the less than clear identification of the product as a beer together with the term 'juice' might create confusion with a soft drink.

30. On the other hand, the packaging does not resemble any readily identifiable fruit juice product and the boar image is not something expected to be found on a soft drink of the fruit juice kind. Further, it is not considered that the packaging as a whole would have strong or evident appeal to minors. In reaching this conclusion the Panel has noted:
- the product would not be confused with a fruit juice given its style, use of imagery and colouring;
 - the boar imagery does not resemble any cartoon characters likely to be familiar to minors; and
 - the packaging has thematic likely to resonate with older males.
31. The Imperial Biggie packaging's dominant features are its distinctive colour pattern, product name and the Feral Brewing logo. The complainant did not mount an argument that this product's packaging would be appealing to minors as it does not use the term 'juice'. The Panel does not believe the packaging has a combination of features likely to particularly appeal to minors and its colour scheme doesn't raise confusion with soft drinks which tend to use block colours e.g. orange or lemon.

The Website Posts

32. The complaint nominates two posts on the Company's website which are argued to be offensive and/or breach ABAC standards. Website Post 1 is for Biggie Juice and references the product having 'enough tropical fruits to pimp out a 2 time Olympic gold medal winning coxless 4 man rowing team'. It is argued the post may be homophobic and 'is utter trash'. The Company denies any homophobic intent and states the reference is to a series of TV commercials for a brand of tinned fruit which featured the 'Oarsome Foursome' Olympic rowers.
33. The ABAC does not deal with issues of discrimination or standalone offensive connections in alcohol advertising. This is because all alcohol ads as well as needing to comply with the ABAC are required to meet the generic standards applying to marketing irrespective of the product or service involved, contained in the AANA Code of Ethics. While Part 3 (a)(ii) of the ABAC references 'offensive behaviour' this is behaviour related to alcohol use e.g. drunken loutish behaviour. The post does not link alcohol use to offensive behaviour even if the complainant's suspicions were well founded. It does seem more likely however that the post is relating to the TV ads showing the Olympic rowing team.
34. Website Post 2 concerns Imperial Biggie and makes reference to 'everything ... turned up to 11' and 'More malt, more hops and more alcohol ...'. The complainant believed this was encouraging the choice of the product based on its alcohol strength in breach of Part 3 (a)(iv) of the Code. The Company argues the language refers to the taste and aroma of the beer and is not selling the product based on its strength.

35. The intent of this ABAC standard is not to preclude the identification of the alcohol strength of a beverage as this is important information for a consumer to make an informed choice. Rather, the purpose of the standard is to prohibit the marketing of alcohol products based on their higher alcoholic strength compared to other products. Here, the post is comparing Imperial Biggie to the Biggie Juice product and in doing so is claiming Imperial Biggie has 'more' in certain characteristics i.e. malt, hops and alcohol and these things make the product desirable. The Panel believes a reasonable person could well interpret the post as encouraging the choice of Imperial Biggie in part at least due to its higher alcohol content. Therefore, this post breaches the Code.

The Instagram Posts

36. The complainant identifies six posts on the Company Instagram account all of which are contended to be in breach of the ABAC standard regarding encouragement of the choice of a product by emphasising the product's alcohol strength. For brevity the Panel has concluded as follows:
- Post 1 - not in breach as 'fresher and hoppier' would be taken as going to the product's taste and not alcohol strength while 'Bigger Hoppier Juicier' would be taken as going to the product style rather than alcohol strength.
 - Post 2 - in breach as the reference to 'booziest' would be regarded as referring to the product's strength and in the context of the post as a whole it can be reasonably interpreted that the product's strength is in part at least being promoted to encourage the choice of the product.
 - Post 3 -in breach as reference to 'turn up to 11' and 'more alcohol' would be reasonably understood as promoting the choice of the product based on its strength.
 - Post 4- in breach as reference to 'turn up to 11' and 'more alcohol' would be reasonably understood as promoting the choice of the product based on its strength.
 - Post 5- in breach as references to 'boozier' would also influence the understanding of the terms 'bigger' and when these references are combined the post would be understood as promoting the choice of the product based in part at least on it strength.
 - Post 6- in breach as the reference to the 13.5% ABV is then linked to the term 'booziest' and taken as whole the high strength of the product would be understood as more than factual information, but also as a selling point.

Conclusion

37. The complaint raised multiple issues about the marketing of several products by the Company. The Panel has found:
- Product packaging for 'Biggie Juice' and 'Imperial Biggie' is not in breach of the standards raised by the complainant.
 - Website Post 1 - not in breach.

- Website Post 2 - in breach Part 3 (a)(iv).
- Instagram Post 1 - not in breach.
- Instagram Post 2 - in breach Part 3 (a)(iv).
- Instagram Post 3 - in breach Part 3 (a)(iv).
- Instagram Post 4 - in breach Part 3 (a)(iv).
- Instagram Post 5 - in breach Part 3 (a)(iv).
- Instagram Post 6 - in breach Part 3 (a)(iv).

Appendix

Appendix

A small sample of NEIPA or East Coast IPA beers including the word "Juice" or "Juicy" as a distinguishing descriptor. This is common vernacular within the brewing industry for this style of beer:



SOURE PEACH NEIPA

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