



## ABAC Adjudication Panel Determination No. 124/19

**Product:** Feral Brewing Imperial Biggie  
**Company:** Coca Cola Amatil  
**Media:** Packaging & Digital (Facebook & Website)  
**Date of decision:** 13 January 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns packaging and digital marketing promoting Feral Brewing Imperial Biggie by Coca Cola Amatil (“the Company”) and arises from a complaint received 17 December 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 17 December 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.

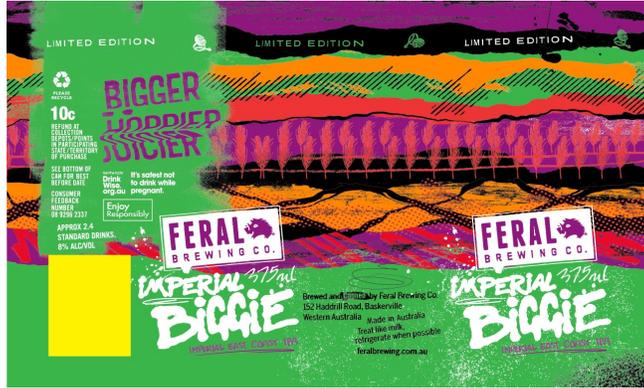
### **Pre-vetting Clearance**

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 - Imperial Biggie



- Website Post – “Bigger, Juicier, Hoppier 8% ALC/VOL We’ve taken Biggie Juice and turned it up to 11! More malt, more hops, more alcohol and juicier as ever.”

BREW PUB & RESTAURANT ABOUT FERAL NEWS & EVENTS **FERAL BREWING CO.** CONTACT SHOP OUTLET

## IMPERIAL BIGGIE LAUNCH

BREW PUB & RESTAURANT ABOUT FERAL NEWS & EVENTS **FERAL BREWING CO.** CONTACT SHOP OUTLET FINDER

### WE'VE TAKEN BIGGIE JUICE AND TURNED IT UP TO 11!

More malt, more hops, more alcohol and juicy as ever.

**NATIONAL STOCKISTS:**

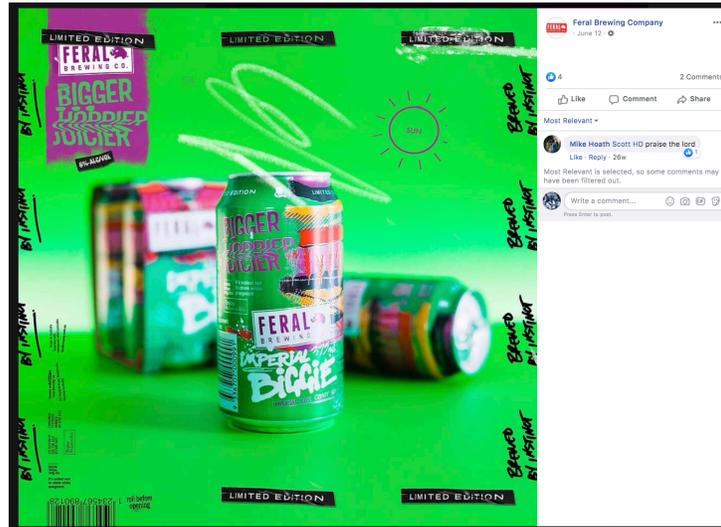
Dan Murphy's

**FULL LIST OF NSW STOCKISTS BELOW:**

Warners  
 Bottlo Lambton  
 Oldfield Cellars  
 Boozebud  
 Cromer Cellars  
 Tacking Point Tavern  
 Prince Bottlo  
 Cutty Cellars  
 Ambarvale Hotel  
 Leura Cellars

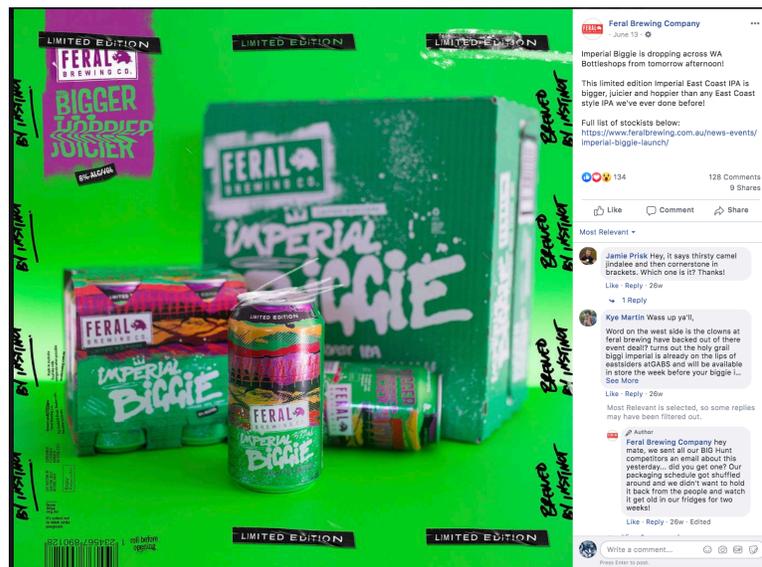
- Facebook Post 1-

<https://www.facebook.com/FeralBrewing/photos/a.697917866904057/2664391996923291/?type=3&theater> - A picture of a four pack and two individual cans of Imperial Biggie with the slogan Bigger Hoppier Juicier 8% ALC/VOL in the top left corner. (12 June 2019)



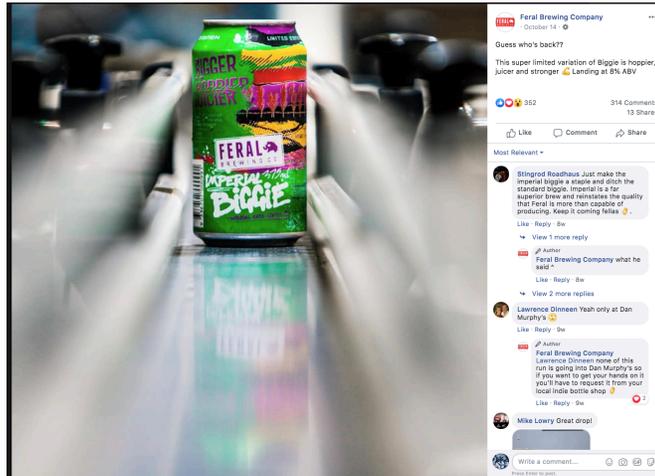
- Facebook Post 2 –

<https://www.facebook.com/FeralBrewing/photos/a.203584226337426/2666260723403085/?type=3&theater> - A picture of a carton, four pack and two individual cans of Imperial Biggie with the slogan Bigger Hoppier Juicier 8% ALC/VOL in the top left corner and the caption “Imperial Biggie is dropping across WA bottleshops from tomorrow afternoon. This limited edition Imperial East Coast IPA is bigger, juicier and hoppier than any East Coast style IPA we’ve ever done before!” (13 June 2019)



- Facebook Post 3 –

<https://www.facebook.com/FeralBrewing/photos/a.697917866904057/2907066292655859/?type=3&theater> - A photo of a can of Imperial Biggie with the caption "Guess who's back?? This super limited variation of Biggie is hoppier, juicier and stronger 🍷 Landing at 8% ABV" (14 October 2019)



## The Complaint

11. The complainant is concerned about the marketing as Feral Brewing are consistently promoting the high ABV of the Imperial Biggie product in the Bigger, Juicier, Hoppier logo on the packaging and digital marketing and the copy accompanying the posts.

## 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

## The Company's Response

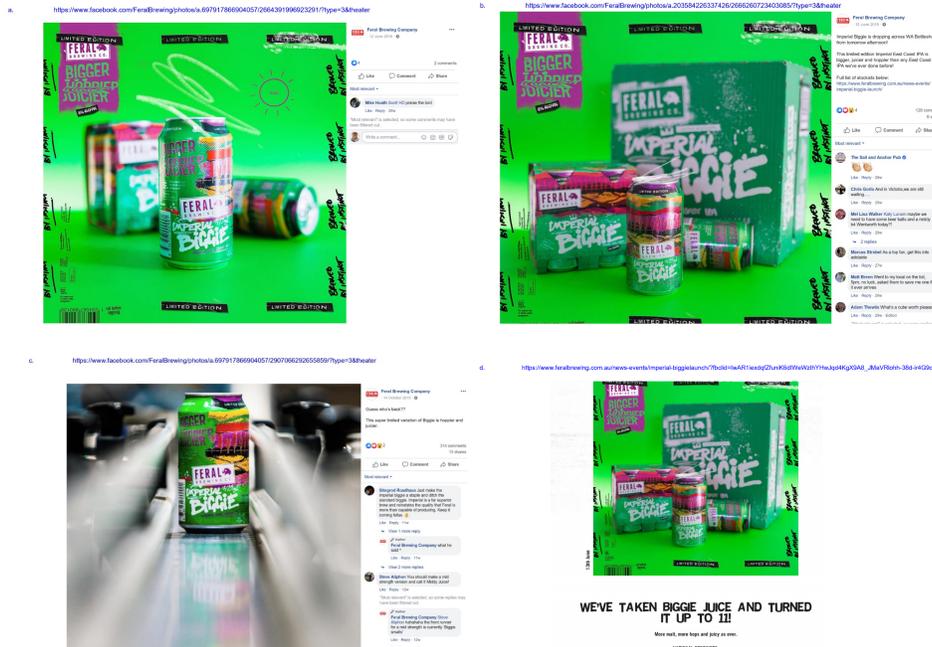
13. The Company responded to the complaint by letter dated 9 January 2020 advising that:
  - We would like to start by again confirming that Feral Brewing Co. (Feral) is committed to promoting a culture of responsible drinking, which includes ensuring our brands are marketed within the guidelines specified by the Alcohol Beverages Advertising Code and comply with the Coca-Cola Amatil Group Alcohol Advertising and Marketing Standards.
  - As such, we have thoroughly reviewed each of the concerns raised by the complainant and submit our response below. In summary, in our opinion the

statement “Bigger, Juicier, Hoppier” is not in breach of the Code as it describes the product style rather than the alcohol strength, and the marketing messages had all been amended since receipt of ABAC Complaint 93/19 and therefore are not in breach of the code. Furthermore, the inclusion of the statement of the product’s ABV% in proximity to this statement should not be construed as promoting the sale of the product based on its alcohol strength, rather it is a simple statement of fact.

- As outlined in the previous response to ABAC Complaint 93/19, Imperial Biggie is a stronger and more intense version of Feral Biggie Juice, a New England India Pale Ale (NEIPA) style beer, with a higher intensity of flavour, aroma and body, which also has a higher alcohol content. We refer to the background information we provided in response to the ABAC Complaint 93/19 for context.
- The marketing did not receive Alcohol Advertising Pre-vetting Service Approval (Pre-vetting). Pre-vetting is not mandatory for digital-led campaigns or new packaging.
- As outlined in the ABAC Adjudication Panel Determination No. 93/19 at paragraph 36, point 1, the statement “Bigger, Hoppier, Juicier” was not in breach of the Code as the terms “would be taken as going to the product style rather than alcohol strength”. We therefore submit that this statement, as it appears on packaging and marketing materials, does not breach the Code. Further, as shown by the following screen grab, the mention of 8% ALC/VOL is in no way directly associated with the statement “Bigger, Hoppier, Juicier” either graphically or from a messaging perspective – particularly as it is in a different font and placement and is clearly a simple statement of fact.



- As shown above, the “8% ALC/VOL” statement is included as a factual indication of alcohol strength, rather than inducing or promoting a sale based on being a higher ABV drink – and we believe this would be very clear to consumers. We would also remind you that as per our earlier submission to ABAC Complaint 93/19, upon receiving that complaint all highlighted references to “more alcohol”, and “booziest” were deleted immediately. To the best of our knowledge, all such statements no longer exist and we continue to search through all posts and websites to identify any others that may exist and delete these, and we include screen shots of the references noted below as they now appear:



- If there is a reference on any of these posts to “higher alcohol” that you believe we may have inadvertently missed, please advise and we will adjust accordingly.
- In terms of the packaging for Imperial Biggie (packaging artwork shown below), the only reference to alcohol strength is included as a required mandatory statement under Australian law.



- In summary:
  - The inclusion of the “8% ALC/VOL” statement is included as information only, and in no way could be inferred to be promoting the sale or consumption of this product by way of its higher ABV. The reference to “Bigger, Hoppier, Juicier” as adjudicated on with regards to the earlier ABAC complaint is clearly a reference to the flavour and aroma profile of this style of beer and has already been found by you not to be a breach of the Code.

- We also do not believe that these two statements could be interpreted as being a singular message encouraging sale due to being of higher alcohol.
  - We had previously removed any references to “higher alcohol” from social posts and websites, and believe the links included in the complaint are all compliant with the Code.
  - The packaging has no reference to alcohol strength other than that required by law.
- We thank you for bringing this to our attention and trust you will agree with our above viewpoints.

### **The Panel's View**

14. In Determination 93/19 dated 6 December 2019 the Panel considered a range of marketing communications from the Company including for the product 'Imperial Biggie'. The current complaint follows this earlier decision and raises further concerns about the packaging of the product, a Website post and several Facebook posts. The background to the product is contained in Determination 93/19 and will not be repeated here.
15. The Panel decided in the earlier decision that the packaging of the product- namely the design of the beer can - was not in breach of the standards contained in Part 3 (a)(ii) and (c)(ii) of the Code. On this occasion the argument advanced is that the packaging encourages the choice of the product by emphasising the beverages alcohol strength. If this is the case, then the packaging would breach Part 3 (a)(iv).
16. In assessing packaging, the viewpoint of a reasonable person is to be adopted. A consumer of the product is likely to draw their understanding of the packaging from the prominent features such as highlighted language, colour plate and overall design impressions. It is unlikely a consumer would pick up a can, turn it around the full 360 degrees and study it closely.
17. The principal features likely to be noticed from the Imperial Biggie can are:
  - the active multi coloured pattern; and
  - the name Imperial Biggie and the Feral Brewing logo.
18. These features are on the front of the can. On the side and back of the can is more information including the words in large font 'bigger, hoppier, juicer'. Taken as a whole, the Panel does not believe the packaging breaches the standard. The overall impression does not place particular emphasis on the alcoholic strength of the beverage. The terms of bigger, hopper and juicer would be taken to be references to product style rather than alcohol strength.
19. The complaint then identifies a Website post and three Facebook posts which are also argued to encourage the choice of the product based on its alcoholic strength. For brevity the Panel concludes:

- Website post- in breach as the reference to 'turned it up to 11!' and 'more alcohol' would be reasonably understood as promoting the product based in part at least on its strength.
- Facebook post 1- not in breach as the reference to the 8% alc/vol is factual and is not given undue prominence within the layout of the post as a whole. The reference to bigger, hoppier and juicer would be taken to describe the style of beer.
- Facebook post 2- not in breach as the reference to 8% alc/vol is not given undue prominence and is factual. The text explaining that the product is 'bigger, juicer and hoppier than any East Coast style IPA we've done ever before' would not be taken as giving particular emphasis to the alcoholic strength of the product. Rather it would be taken as descriptors and usual marketing puffery about the style of product.
- Facebook post 3 - in breach as the text 'This super limited variation of biggie is hoppier, juicer and stronger 🍷 landing at 8% ABV' would be taken as suggesting that the strength of the product is a reason to choose it.

20. Accordingly, the complaint is dismissed in relation to the packaging and Facebook posts 1 and 2 and upheld in relation to the Website post and Facebook post 3.