



ABAC Adjudication Panel Determination No. 124/20

Product: VB Fragrance
Company: Carlton & United Breweries
Media: Outdoor & Point of Sale
Date of decision: 28 September 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor and point of sale marketing for VB fragrance and arises from a complaint received 26 August 2020.
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 26 August 2020.
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 this marketing communication.

The Marketing Communication

10. The complaint relates to the following outdoor and point of sale advertisements outside and within Chemist Warehouse.



The Complaint

11. The complainant objects to the marketing as:
- VB branded fragrance is being marketed as an appropriate gift for Father's Day, appealing to children and young people;
 - the outdoor advertisement includes an image of a child hugging a man next to the words "#1 for Father's Day"; and
 - children and young people visiting Chemist Warehouse would be exposed to the VB brand both inside (point of sale and on shelves) and outside (poster).

The ABAC Code

12. Part 2 of the ABAC Code provides that:
- (c) The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

...

- Alcohol brand extensions to non-alcohol beverage products;
13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example a family socialising responsibly) and where there is no implication they will consume or serve alcohol;
 - (b)(iv) be directed at Minors through a breach of any of the Placement Rules
14. Part 6 of the ABAC Code provides:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Alcohol Guidelines).
- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls available that are capable of excluding Minors from the audience, a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up to date audience composition data, if such data is available).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.
- (v) A Marketing Communication must not be sent to a Minor via electronic direct mail (except where the mail is sent to a Minor due to a Minor providing an incorrect date of birth or age).

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.

The Company's Response

15. The Company responded to the complaint by letter dated 7 September 2020. The principal points made by the Company were:
- a) *Thirst. A scent by VB* is a new fragrance, created as the result of a collaboration between Victoria Bitter and leading Australian perfumers, Game On Product Group. The scent is infused with the essence of Australian Super Pride hops, used to brew Victoria Bitter. The scent's olfactory notes describe 'bitter citrus notes give way to floral spice and sweet hoppy accents, with subtle imaginings of freshly cut barley'. The product has been made available for purchase at Chemist Warehouse and on the Victoria Bitter website.
 - b) We reject the assertions made by the complainant and reject the interpretation that the product or any associated advertising materials appeal to minors. We are confident that the advertisement meets the both the spirit and the letter of the ABAC. A television advertisement for the product received pre-vetting approval and the application number was 393/20.
 - c) *Thirst. A scent by VB* was the result of a collaboration between Victoria Bitter and the perfume manufacturer Game On Product Group. The relationship between the parties is supported by a licensing agreement which contains the usual provisions concerning approval to use the VB brand. Affixing the VB brand to a fragrance is a 'brand extension to a non-alcohol beverage product' within the scope of Part 2 (a) of the ABAC, and therefore the ABAC Code applies to both the product and supporting marketing collateral. From the conception of the product through to execution, CUB has taken all endeavours to ensure that all materials are consistent with the ABAC Code.
 - d) CUB was aware that the fragrance would be stocked for sale by Chemist Warehouse. CUB has creative control over the content of the marketing collateral promoting *Thirst. A scent by VB*. CUB does **not** have control of the final context of Chemist Warehouse advertisements; there has been no expectation that Chemist Warehouse will inform VB of other advertisements that may appear alongside the fragrance's collateral. We are confident that the nature of Chemist Warehouse's retailing operations means that its marketing materials are primarily intended for an adult audience. CUB has control over the creation of *Thirst. A scent by VB* assets and has taken all endeavours to ensure they comply with ABAC. CUB cannot control how an individual Chemist Warehouse franchise outlet seeks to promote occasions like Father's Day. The poster extracted by the complainant depicts Chemist Warehouse branding and promotional materials, which are positioned around three separate advertisements for three different, unrelated fragrances retailed in-store. One is the advertisement for the VB scent; there are also advertisements for Diesel and Abercrombie & Fitch that are featured on this poster. For the reasons outlined below, we consider that both the *Thirst. A scent by VB* advertisement, and the poster considered in its entirety, are compliant with the ABAC Code; however, we note the proportion of the asset in its entirety that is controlled by CUB is approximately 20%.
 - e) The poster advertisement does not breach Part 3(b)(i) of the Code, as it does not have strong or evident appeal to minors. As stated above, the poster is

comprised of various constituent parts, which all sit as separate elements on the poster. The top of the poster is dominated by the text '#1 For Father's Day', with a small image of a child and his father, which is clearly a nod to the upcoming Fathers' Day occasion. The largest part of the poster is split into three equal parts that promote three different, unrelated men's fragrances: *Thirst. A Scent by VB*, *Authentic Night* by Abercrombie & Fitch and *Spirit of the Brave* by Diesel. The base of the poster is dominated by text that states 'catalogue out now'. The overall impression conveyed by this poster is that there are various fragrances retailed within the store that could be purchased as gifts for Father's Day. Father's Day is an annual celebration that honours fathers. The general theme of Father's Day gifting in the poster, does not inherently breach Part 3(b)(i) of the Code, as the intended recipient of any gift on Father's Day, namely fathers, are predominantly adults. The median age of fathers for births registered in 2018 was 33.5 years. Additionally, Father's Day is not exclusively celebrated by minors and their fathers. Adult offspring also observe this honorary day with a father figure. It is common to see retail activations around the concept of 'Father's Day specials' across many categories of retail, including in both fragrance and liquor.

- f) Furthermore, the overall imagery and impression of the poster does not have strong or evident appeal to minors and complies with the ABAC guidance notes in respect of this obligation. The overall impression of the poster complies with these guidelines as:
- The bulk of the poster depicts fragrance advertisements targeted at adult men, they utilise muted, darker colours and depict men's fragrance bottles (targeted at men in their thirties or above), an item that is highly unlikely to be coveted by minors. The products pictured, including the VB fragrance product, have been placed on this poster as they are likely to be a good Father's Day gift for an adult man, therefore the bulk of this poster would appeal to fathers themselves, not the present giver. As noted, the median age of fathers is much higher than 17 years old or below.
 - The poster is not targeted at minors. This poster has been positioned at a Chemist Warehouse store. Approximately 85% of Chemist Warehouse customers are adults. The demographic targeted by this poster is adults who are shopping at a Chemist Warehouse store. As noted above, many presents purchased to commemorate Father's Day are purchased by adults.
 - As noted above the bulk of this poster contains advertisements depicting male fragrances and is intended to appeal to the recipients of Father's Day gifts, namely the fathers themselves, and therefore has a particular attractiveness for men of fatherhood age, not minors.
 - The poster does not contain cartoon characters or animation. The bulk of the poster contains darker, more muted colours which would not be confused with products designed to appeal to children.

- There is no brand identification on this poster that is likely to appeal to minors. All three brands shown on this poster appeal to adults and not minors. Whilst the ABAC panel is not bound by its prior determinations, we consider ‘brand identification that will appeal to a minor’ as being typified by movie franchises that have retailed \$700 million from toy sales in a calendar year (<http://www.abac.org.au/wp-content/uploads/2019/07/34-19-Final-determination-Jedi-Juice-1-July-2019.pdf>) or collateral inspired by food brands that target minors in their food brand advertising (<http://www.abac.org.au/wp-content/uploads/2020/08/70-20-Final-Determination-Howler-Brewing-Choc-Milk-Stout-27-July-2020.pdf>). Neither of these is suggested or depicted in this poster.
- g) We acknowledge that there is a small image of a child hugging his father on this poster. This image of a child is ancillary to the overall message. It is much smaller than all other images in the poster and is placed in the top right-hand corner, whereas all other imagery is central in the poster and is the clear visual focal point. In addition, the father/son image itself is focused on the father (who is clearly an adult), not the son. The father’s face is front on to the camera, seen smiling with a happy face. The son’s face is not visible, merely his forehead, and hair. Whilst there is an image of a minor’s forehead and skull on this poster, this in and of itself does not mean that the poster appeals to minors, and nor is it suggesting that minors should buy the products depicted. The clear intention of the poster is to demonstrate that these products are good gifts for men of fatherhood age, which, as noted, is well over the age of 18.
- h) The content of the VB Thirst collateral itself holds no appeal to minors. The bulk of the poster depicts comedian Harley Breen (aged 25+), in a dark green image. The foreground of the image contains an image of the *Thirst. A scent by VB* product which is dark brown and contains the classic VB branding. The colours depicted are dark, mature colours, and the text is a classic style that would in no way would draw the attention of a minor.
- i) The image meets the criteria set out in Part 3(b)(ii), as whilst there is the depiction of a minor, he is shown:
- **Incidentally.** As noted above the father/son image is significantly the smallest image on the poster and is incidental to the fragrance content that dominates the poster. Furthermore, in that image the son (whose face is not depicted), is incidental to his father, whose beaming face is dominant.
 - **In a natural situation, such as a family socialising.** This father/son image, is a classic scene that shows a family socialising (with no alcohol depicted in this small image). A son hugging his father is a quintessential example of a ‘natural’ family social setting.
 - **Without any implication that he will consume or serve alcohol.** There is no alcohol in the father/son image or on the poster in its entirety. The

VB branding is shown only on the fragrance, which is certainly not recommended for human consumption.

- j) The father/son image on the poster is not in breach of Part 3(b)(ii) of the Code, given all elements from this section have been complied with.
- k) Based on the information available to CUB, the audience composition of the Chemist Warehouse customer base is 85% adult. Therefore, both the outdoor poster and the point of sale materials comply with the ABAC Placement Rules. The complainant's description of advertisement location is 'At Chemist Warehouse in WA.' The poster has been placed as retailer advertising on the side of a Chemist Warehouse store and the point of sale materials appear to have been placed at the cashier / point of purchase inside the store. Both of the advertisement locations have been described as 'at Chemist Warehouse'. This meets the Placement Rule definition of a '*print media platform that does not have age restriction controls*'. Therefore, the Placement Rule requirement is an audience that is reasonably expected to comprise at least 75% adults. Chemist Warehouse customer composition is approximately 85% adult, which meets the 75% Placement Rule requirement and therefore both advertisements are in compliance with the Placement Rules. These figures have been provided to CUB from our partner Game On Product Group.
- l) CUB is committed to ensuring its promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products and any associated merchandise responsibly and in moderation. Despite *Thirst. A Scent by VB* not being an alcoholic beverage, we have taken all steps possible to ensure that it, like all our products, is promoted in a way that is compliant with the rules, principles and spirit of the Code.

The Panel's View

Introduction

- 16. Chemist Warehouse is a major chain of pharmaceutical retail outlets operating throughout Australia. As well as traditional dispensing of prescription medicines, Chemist Warehouse stocks an extensive range of beauty products including male and female fragrances and perfumes. Public reporting shows that Chemist Warehouse is within a group of other related companies namely 'My Chemist' and 'My Beauty Spot'. Reporting also indicates that Chemist Warehouse uses a franchise model for its 400 Australian stores.
- 17. The Game On Product Group is an Australian company which, under license, manufactures or imports a wide range products. One line of products within the company's range are fragrances and perfumes which carry well-known brands and logos. Some of the fragrances within the company's product line include Star Wars: Millenium Falcon Eau De Toilette, AFL Premiership Cup Eau De Toilette and Superman: Kryptonite Eau De Toilette. And since August 2020 the company has produced a scent branded as 'VB Thirst'.
- 18. VB Thirst was released onto the Australian market on 13 August 2020. Public reporting indicates that VB Thirst arose from a collaboration of CUB, Game On

Products, Chemist Warehouse, and sports talent management and media/events firm TLA. While the details of the commercial relationship between these collaborating partners is beyond the scope of this determination, the following features are reasonably clear:

- CUB as the owners of the VB alcohol branding have agreed to their branding being the centrepiece of the VB Thirst fragrance product;
 - the physical fragrance has been produced by Game On Products;
 - the role of project manager of the marketing of VB Thirst has been handled by TLA;
 - Chemist Warehouse and the related outlets of My Chemist and My Beauty Spot are the exclusive retail channel for the sale of VB Thirst (beyond a seemingly small quantity of the fragrance which was available directly from CUB via online orders through the official VB Website); and
 - the timing of the release of fragrance enabled VB Thirst to be marketed in conjunction with Father's Day 2020 (Sunday 6 September).
19. In the lead up to Father's Day 2020, Chemist Warehouse outlets undertook various promotions of its stocked products as potential gifts for Father's Day. As is typical within a franchise model, Chemist Warehouse utilised generic Father's Day marketing materials across its outlets, with one item of generic marketing collateral featuring a header which showed '-#1 Father's Day' with a picture of a man being hugged around his neck by a young boy. This generic marketing collateral was able to be combined with promotions for specific stocked products to give the pharmacy chain the benefit of a consistent marketing look.
20. One Chemist Warehouse outlet in Western Australia produced an external wall poster which featured three panels of equal size with each panel showing an advertisement for a different male fragrance. The poster was topped with the generic Father's Day framing including the photo of the boy hugging his father. One of the featured fragrances on this poster was VB Thirst. It is this poster and the placement at the store counter of a VB logo which has drawn the complaint. The complainant contends the marketing items are:
- marketing communications for VB beer and within the remit of the ABAC Scheme;
 - appealing to children and young people; and
 - located to be exposed to many minors.

Was the marketing by Chemist Warehouse captured by the ABAC?

21. The threshold question is whether the Chemist Warehouse poster and shop counter placement of a VB logo are captured by the ABAC Scheme. As a starting point, advertising by Chemist Warehouse would not be expected to be subject to alcohol beverage marketing regulatory obligations. The ABAC Scheme applies to alcohol marketing communications 'generated by or within the reasonable control' of a producer, distributor, or retailer of alcohol beverages. VB Thirst is not an alcohol beverage and Chemist Warehouse is not an alcohol beverage industry participant.
22. It is possible, however, that the Chemist Warehouse marketing could be captured if two pre-conditions are met. Firstly, the ABAC includes 'alcohol brand extensions to

non-alcohol beverage products' within the category of marketing communications used by alcohol companies. The VB Thirst branding could fall within that category. Secondly, the actual marketing items used by the individual Chemist Warehouse must have been 'generated or within the reasonable control' of CUB. On these points the Company contends:

- the VB Thirst fragrance itself is a 'brand extension' and hence an ABAC marketing communication;
- direct marketing of VB Thirst by the Company is therefore subject to ABAC standards (e.g. the Company sought ABAC pre-vetting approval of a television advertisement for the fragrance);
- it was 'aware' the fragrance would be stocked by Chemist Warehouse;
- it had 'creative control over the content of marketing collateral promoting Thirst';
- it did not have control over the 'final context of Chemist Warehouse advertisements'; and
- it 'cannot control how individual Chemist Warehouse franchise outlet seeks to promote occasions like Father's Day'.

23. It is clear that the first pre-condition has been met, namely VB Thirst is a 'brand extension' for ABAC purposes. It is less clear as to whether the second pre-condition has been satisfied. CUB does acknowledge it had creative control on 'marketing collateral promoting Thirst'. This would incorporate that part of the poster which specifically deals with VB Thirst i.e. the image of the product, the male character, and the slogan- 'the essence of hard work'. CUB states it did not have control over the manner in which the Thirst advertisement was combined with other images on the poster created by the individual Chemist Warehouse outlet.

24. The issue of 'reasonable control' by an alcohol company over third-party material which references an alcohol beverage product or brand is a question of fact and needs to be assessed on a case by case basis. For instance, Determination 59/19 dealt with a promotional display within a Big W department store which featured a BBQ set branded as 'Jack Daniels' the alcohol beverage. It was established that Jack Daniels had licensed the use of its brand to the manufacturer of the BBQ set and the product was a brand extension for ABAC purposes. The Panel concluded, however, that the promotional display was not an ABAC marketing communication:

- as there was no relationship between Jack Daniels and Big W (Jack Daniels had no role in the stocking of the BBQ set by Big W); and
- Jack Daniels had no control over the promotional display.

25. In contrast, in this case a relationship of a kind exists between CUB and Chemist Warehouse as indicated by:

- information on the VB Website which directs people to Chemist Warehouse if they wish to purchase VB Thirst;
- public CUB statements at the time of the launch of VB Thirst which describes CUB, Game On, TLA and Chemist Warehouse as 'partners' in the release of the product;
- the apparent fact that Chemist Warehouse (and related entities) is the only retail outlet from which VB Thirst can be purchased; and

- the use by Chemist Warehouse of marketing collateral over which CUB acknowledges 'creative control'.
26. It seems the direct contractual relationships were between CUB and Game On and then Game On and Chemist Warehouse, and the relationship between CUB and Chemist Warehouse was more indirect. Unlike the position in Determination 59/19 however, there is no doubt CUB was fully aware the marketing collateral for VB Thirst would be used by Chemist Warehouse as exclusive retailer of the product. While CUB was not involved in how an individual franchisee within the Chemist Warehouse chain employed the marketing collateral, on balance the Panel concludes the level of control CUB has over its branding via the marketing collateral and the layers of connection between CUB and Chemist Warehouse means the poster can be considered a marketing communication for ABAC purposes.

Did the marketing items have strong or evident appeal to minors?

27. The basis of the complaint is that VB Thirst is being marketed as an appropriate gift for Father's Day and this raises an appeal to children and young people. Further, it is pointed out that the poster has an image of a child hugging a man. Finally, it is argued that the poster and shop counter image of the VB logo will be seen by many minors who are in Chemist Warehouse stores with their families.
28. This complaint raises three issues under the ABAC, namely:
- does the content of the marketing have strong or evident appeal to minors (Part 3(b)(i));
 - does the poster depict a minor other than 'in an incidental role in a natural situation and where there is no implication they will consume or serve alcohol' (Part 3(b)(ii)); and
 - does the placement of the marketing at a Chemist Warehouse where it will be seen by minors offend any ABAC requirement.
29. The Company responds to the issues by mounting detailed arguments as follows:
- the poster is comprised of separate parts, with the largest part split between the ads for the three different fragrances, with the overall impression being that there are various fragrances retailed within the store which could be purchased for Father's Day;
 - the general theme of Father's Day gifting does not inherently breach Part 3(b)(i), as the intended recipient of any gift is predominantly an adult;
 - Father's Day is not exclusively celebrated by minors and their fathers, but also adult offspring and their fathers, and retail activities commonly seek to appeal to adult offspring;
 - the bulk of the poster depicts fragrances targeted at adult men and would not be coveted by minors;
 - the colour plate and design of the fragrance ads on the poster don't have features appealing to minors;
 - the image of the child is ancillary to the overall message, is much smaller than all other images on the poster and is positioned in the right-hand corner which is not the central focus of the poster;

- the father and child image focusses upon the adult male with the child's face not seen. The image establishes the man as a Father and the child is not the focus but secondary to this purpose;
 - taken as a whole, the man and child image places the child in an incidental role in a natural setting of a father and son socialising;
 - there is no implication that the child will consume or serve alcohol; and
 - the composition of the customer base of Chemist Warehouse is 85% adult and ABAC Placement Rules have been satisfied.
30. Assessment of the marketing communication against Code standards is from the probable understanding of the marketing item by a reasonable person taking its content as a whole. The 'reasonable person' benchmark is intended to align the assessment to prevailing community standards and hence the life experiences, values and opinions common in a majority of the community are a touchstone. It's not uncommon that a marketing message could be understood in more than one way, with the reasonable person test requiring that the most probable meaning is to be preferred over a possible, but less likely, interpretation of the marketing material.
31. The Panel has considered the Part 3(b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - illusion of a smooth transition from non-alcoholic to alcoholic beverages;
 - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
32. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element which shapes how a reasonable person will understand the item.
33. The underlying contention of the complainant is that a product carrying alcohol branding should not be marketed in association with Father's Day (or at all) as this extends the reach and appeal of alcohol branding to minors. While this is a point which can be argued, it essentially raises an issue of public policy which is beyond the remit of the Panel to decide. Alcohol is a lawful product able to be marketed consistently with the regulatory regime found in State liquor licensing requirements

and the applicable codes of practice including the ABAC. There is no prohibition in either the ABAC or other regulatory sources to the marketing of alcohol (including through brand extensions to non-alcohol products) in conjunction with occasions such as Father's Day or Christmas or like events.

34. Alcohol can be marketed as a potential gift for Father's Day provided the marketing communication meets the ABAC standards. While the application of the ABAC standards to non-alcohol beverage products is clunky, it is equally open to market such alcohol branded non-alcohol beverage products as Father's Day gifts, again provided the applicable standards are satisfied.
35. The Panel does not believe the poster is in breach of Part 3(b)(i) of the Code. In reaching this conclusion the Panel noted:
 - the primary message in the poster is the promotion of three different fragrances as potential gifts for Father's Day;
 - the design of the separate fragrance advertisements is mature, utilising dark colours and characters and themes which are adult in nature;
 - the positioning of the fragrances, including VB Thirst, as Father's Day gifts is permitted with the products clearly aimed at adult males;
 - juxtaposing the VB branding within a larger ad of three products diminishes the focus on the VB brand;
 - in any event the design of the VB branding is not inherently strongly appealing to minors;
 - while using the image of a minor makes the poster more relatable to minors compared to a poster for the fragrances without such an image, this does not alter the overall impression of the marketing item promoting products directed towards adult males.
36. Part 3(b)(ii) provides that a minor must not be depicted in an alcohol marketing communication unless shown:
 - in an incidental role; and
 - in a natural situation (such as a family socialising responsibly); and
 - where there is no implication they will consume alcohol or serve alcohol.
37. The standard does not prohibit outright the depiction of minors but does require each of the three conditions to be satisfied or otherwise the marketing communication will breach the standard. Clearly when a brand extension to a non-alcohol beverage is involved, the final condition about consuming or serving alcohol becomes inapplicable and hence the question is whether the poster depicts the minor in an incidental role and a natural situation.
38. The Panel does not believe the Part 3(b)(ii) standard has been breached. In reaching this conclusion the Panel noted:
 - the purpose of the poster is to promote three fragrances using the occasion of Father's Day as the backdrop for the promotion;
 - a young boy is depicted in the heading of the poster in order to establish the man as a 'father';

- the boy is not featured as a prominent individual with only a side view shown of the boy's head, with his pose designed to highlight his 'father's' face and expression; and
 - a father and son hugging are a natural family scene.
39. The final question is whether the placement of generic VB branding or VB Thirst marketing inside or on the external wall of a Chemist Warehouse outlet is consistent with ABAC Placement Rules. The Placement Rules create differential requirements on alcohol marketers to direct marketing towards adults and away from minors. The differences between the rules largely stem from the nature of the medium by which the marketing material is conveyed.
40. In this case the marketing items are the poster on the external wall of a Chemist Warehouse store and a VB logo on the sales counter of the store. The Placement Rules do not limit alcohol marketing in shopping centres as such. There is no suggestion that the poster on the external wall is in the vicinity of a school (Placement Rule 1). The Company contends the customers of Chemist Warehouse are predominantly adults (85%), and while some minors will see the marketing items, there is no breach of the Placement Rules.
41. The complaint is dismissed.