



ABAC Adjudication Panel Determination No. 185/20

Product: Victoria Bitter (VB) Beer
Company: Carlton & United Breweries
Media: Internet and Apparel
Date of decision: 21 December 2020
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 the advertising of Victoria Bitter Beer (“the Product”) by Carlton & United Breweries (“the Company”) on Volley shoes, which were promoted on Volley.com.au. It arises from a complaint received on 3 December 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

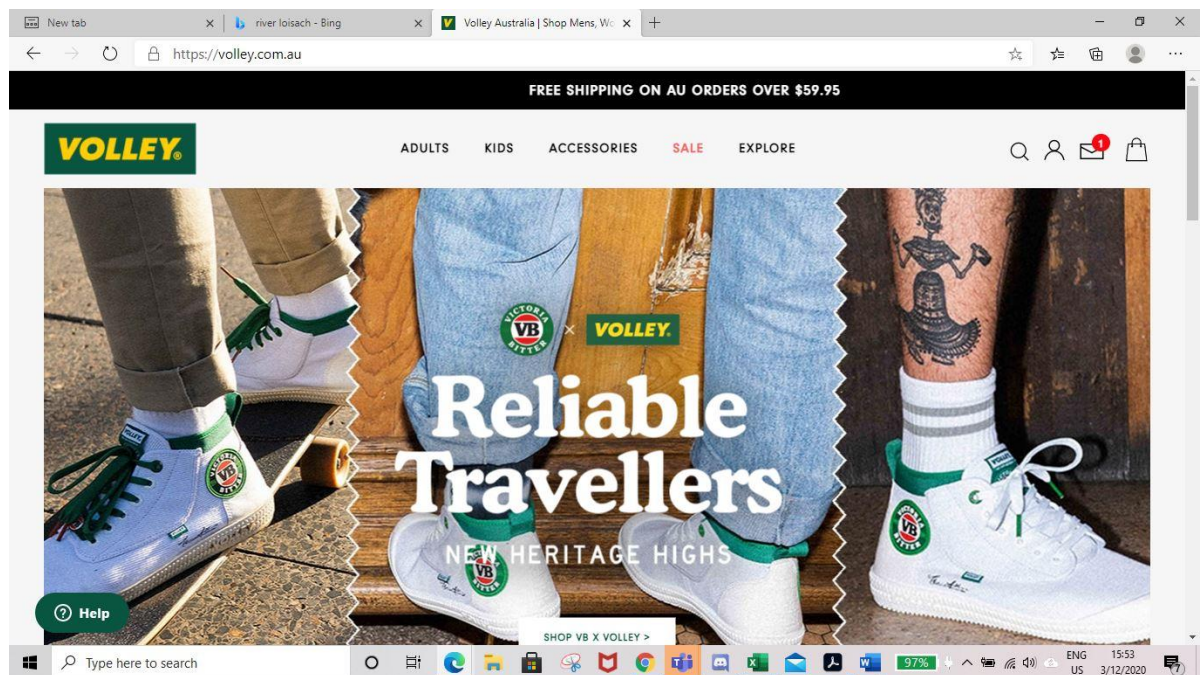
7. The complaint was received on 3 December 2020.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

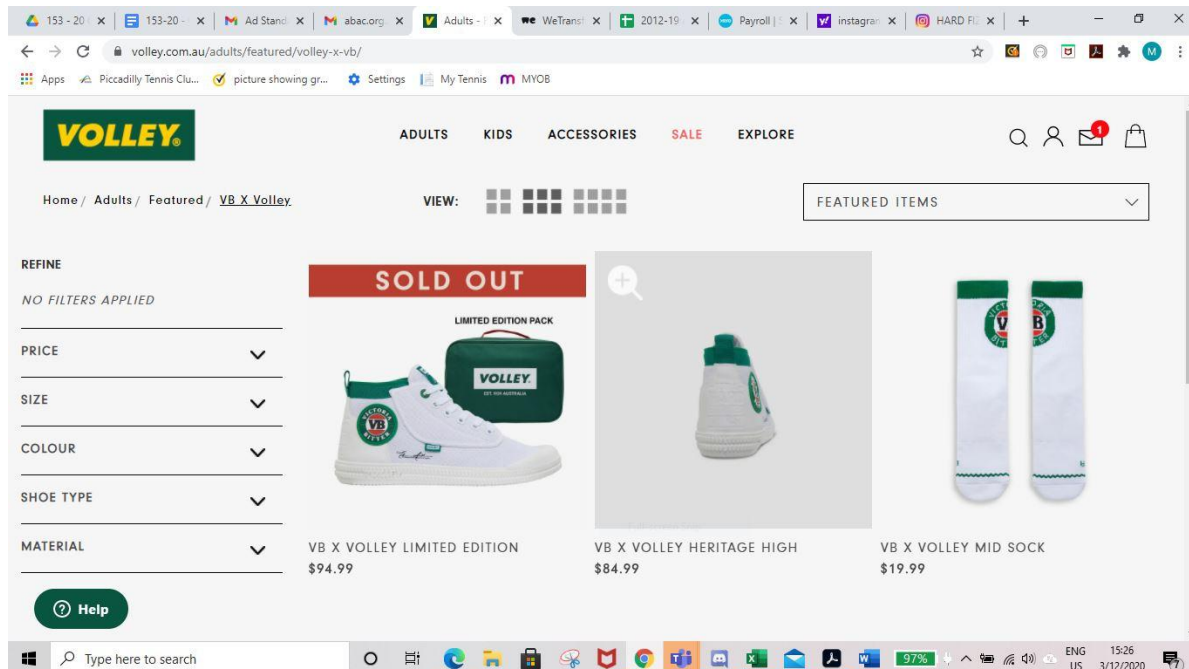
Pre-vetting Clearance

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. ABAC pre-vetting approval was not obtained for the advertising.

The Marketing Material

10. The complaint relates to the Product logo appearing on shoes, which were promoted on the internet. Screenshots of the internet pages are shown below:





The Complaint

11. The complainant objects to the marketing as follows:

- *Alcohol promotion via shoe brand - Children underage exposed, glorifying alcohol consumption.*
- *It is a marketing strategy to lure the purchase of their shoes and promotes drinking.*

The ABAC Code

12. Part 2 of the ABAC Part 2 of the ABAC Code provides that:

- (a) 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)(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 emailed on 15 December 2020. The principal points made by the Company were:

The Campaign

- Victoria Bitter is one of Australia's most beloved and longstanding beer brands. Frequently, VB engages in co-marketing arrangements with other iconic Australian brands.
- In this instance, the idea originated as an April Fool's joke on social media when Volley announced a collaboration. The hoax went viral; both brands were impressed with the level of consumer response and immediately reached out to each other to bring the ultimate sneaker collaboration to life.
- The two brands have a longstanding history in Australia – together dating back over a century – and so it made sense for Volley and Victoria Bitter to team up to create this bespoke product.

AAPS Pre-vetting Approval

- AAPS approval was not sought.

Relationship with VB X Volley shoes

- The product is not manufactured by CUB, the shoes are manufactured by Volley using the Victoria Bitter brand under an agreement.
- CUB has granted use of the Victoria Bitter brand to Volley for the purpose of manufacturing these items.
- CUB has been actively involved in ensuring the marketing of these products meets ABAC requirements. Great care has been taken to ensure the marketing is adult in tone, and primarily intended to appeal to an audience over the age of 18, with the target consumer aged 25-34.
- CUB has been actively involved in ensuring the marketing of these products meets ABAC requirements.

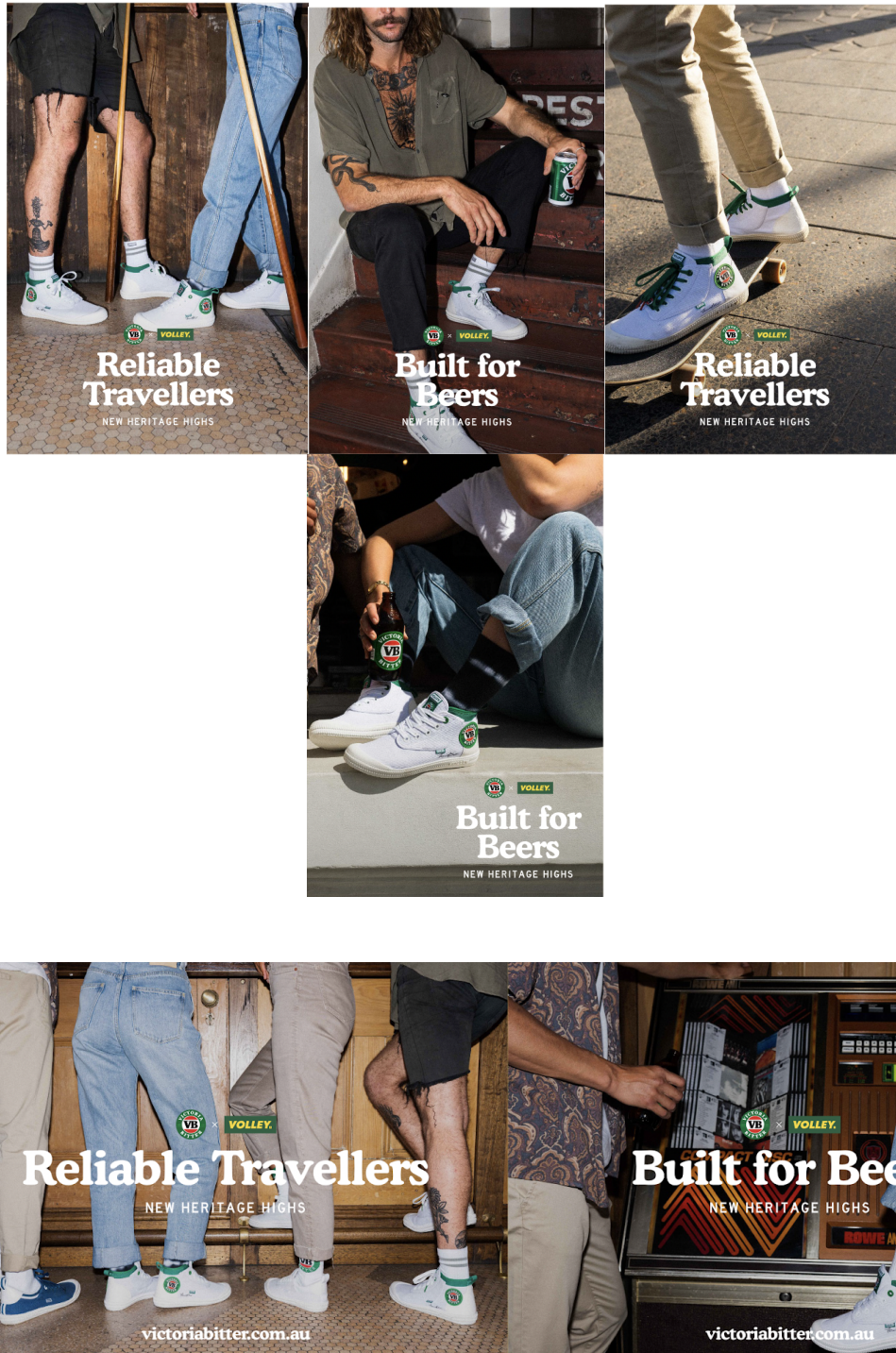
Brand Extension

- The VB branding on the VB X Volley shoes is a 'brand extension to a non-alcohol beverage product' within the scope of Part 2(a) of the ABAC.
- CUB intends that marketing of the shoes occurs consistently with the requirements of the ABAC.

Part 3 (b)(i) of the Code - Strong or Evident Appeal to Minors

- Part 3 (b)(i) of the ABAC states “*A Marketing Communication must NOT have Strong or Evident Appeal to Minors.*”
- CUB does not accept that the Volley brand holds strong or evident appeal to minors. Volley is an Australian brand that has been in operation since 1939, having a strong association with Australian tennis. Volley maintain the target demographic for their products is the 25-34 year-old age group¹.
- Great care has been taken to ensure the VB x Volley shoe is only available in adult sizes: the shoe is not available in the ‘Kids’ section of the website, it is only available under the ‘Adults’ tab, and has never been manufactured in a size smaller than AUS Women’s 7 – well outside the size range for minors.
- The press release pack photographs for this product depict a skateboard as an incidental background prop. We do not believe that skateboarding is an activity that necessarily appeals strongly to minors over and above the appeal it has to young adults aged 18+, however, we note that it is part of a suite of creative material that depicts a range of activities undertaken by young people in their 20s and early 30s, such as playing pool and standing in bars. Please see below for examples of the campaign:

¹ <https://www.news.com.au/finance/business/retail/how-volley-shoes-pulled-off-a-stunning-comeback/news-story/bc9dc7e6a57f591e6a4ed98b96e8fc57#:~:text=AN%20AUSSIE%20ICON&text=He%20succeeded%2C%20and%20the%20original,Heritage%20International%20Volleys%20on%20court>



- The skateboard is a device that shows this product is broadly suitable for 18+ urban sneaker enthusiasts; the creative is intended to enhance the appeal and identification for and with this product within that cohort of consumers.

Placement Rules

- As this product is retailed by a third-party partner with a primary focus on retailing non-alcohol products, there is no requirement for the website to include age restriction controls, consistent with the following definition in the ABAC:

Available Age Restriction Controls means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a third-party platform, website or account that is not primarily related to alcohol to be age-restricted in its entirety before it can be used to place a Marketing Communication.

- The volley.com.au Home/landing page and click through pages, which promote VB branded Volleys are expected to have at least 75% adult viewership. The brand's primary demographic is the 25-34 age group, and it is worth noting in the referenced article that the brand has used distinctly adult-focused creative imagery before, indicating that it is not primarily intended as a brand for under 18s.
- CUB, and its parent entity Asahi Beverages, is committed to ensuring our promotional and marketing material, and that of our associated entities such as Victoria Bitter, does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to our advertising.

The Panel's View

Introduction

16. The origin of Volley sandshoes is attributed to Australian Davis Cup tennis player Adrian Twist who in 1939 produced a prototype version of the shoe using a pair of boat shoes. Mr Twist was an employee of Dunlop, the rubber goods and tyre producing company, and it was Dunlop which first manufactured the shoes which were known for many decades as Dunlop Volleys. The shoes became a staple for players in the golden era of Australian tennis and reputedly by 1969 the vast majority of all competitors at Wimbledon wore Volleys. During this period, the shoes became an iconic brand in Australia akin to Victa lawnmowers and Hills clothes hoists.

17. By the 1980s however the sheen of the Volley brand began to dim. Responsibility for the manufacture and marketing of the shoe moved between different corporate entities within the Pacific Dunlop group and with the opening of the Australian economy through the reduction of tariffs on imported footwear and clothing, the production of the shoes moved offshore. Ultimately the brand was sold in 2014 to a private equity firm and the shoes are now housed within the company Brand Collective.
18. It seems that Brand Collective have tried several innovative and sometimes provocative campaigns to revive the market for Volleys. In 2016/17 a campaign entitled “grassroots” saw the shoes back on a grass tennis court but pictured with a group of naked men and women. Media reports indicate that a recent surge in Volley sales has occurred in China following the publication of a photograph of Faye Wong wearing Volleys. (Ms Wong is a songwriter, singer, and actor with an enormous following on social media in China.) Brand Collective has opened a retail store in Shanghai dedicated to Volleys and, prior to the Covid pandemic at least, this store was to be one of 50 retail outlets planned for China.
19. In Australia, one marketing approach for Volleys employed by Brand Collective has been to form relationships with alcohol companies for cross promotion of products. In May 2019, the whiskey-based liqueur Southern Comfort ran a promotion which saw a free pair Volleys given to purchasers of a pack of 10 Southern Comfort and Cola cans. There was no Southern Comfort branding on the giveaway Volleys.
20. Brand Collective and CUB, the producers of Victoria Bitter (VB) have now entered a relationship (VB X Volley) whereby VB branding appears on a version of Volley shoes and Volley white socks. The complainant came across the relationship via the Volley website and a link to this website was included with the complaint. The Volley site displays images of people wearing VB branded shoes on the website landing page. It is noted that the VB website also contains a “store” page which features various VB branded merchandise including several clothing items. The Volley shoes and socks are included in the merchandise which can be purchased directly from the VB store.
21. The complainant takes exception to the VB branding on the shoes. It is argued that the promotional technique “glorifies alcohol consumption” and as a parent, the complainant believes the practice will expose children to alcohol. It is contended the cross promotion of alcohol and shoes in this way should be prohibited. The balance of this determination examines the complaint in the context of what the ABAC Scheme does and does not require of alcohol marketers in using marketing techniques of this kind.

ABAC Scheme and Brand Extensions

22. The ABAC Scheme applies to the marketing of alcohol beverages by Australian alcohol producers, distributors, and retailers. The focus of the Scheme is on individual marketing communications meeting standards of good practice in how alcohol use is portrayed. A marketing communication is defined widely and includes alcohol brand extensions to non-alcohol products. This means that the placement of VB branding on Volley Shoes and socks is capable of being regarded as a marketing communication for ABAC purposes if the branding appeared on the shoes and socks either at the direction or approval of CUB.
23. CUB has advised that its branding appears on the Volley products under an agreement between it and Brand Collective. While the terms of the commercial agreement between the companies is beyond the scope of this determination, CUB has advised that:
- the shoes are manufactured by Volley;
 - it has granted use of its VB branding to Volley for the shoes (and socks); and
 - it has been actively involved in the marketing of the Volley products and it is intended the marketing occur consistently with the ABAC standards.
24. Accordingly, the VB branding on the Volley products is a brand extension and hence a marketing communication for ABAC purposes.

Consistency of the VB brand extension to Volley with ABAC requirements

25. The complaint argues that as a matter of principle VB branding should not be permitted on the Volley shoes. While the complainant is entitled to hold this view, there is no restriction within the ABAC on alcohol companies employing the technique of brand extensions as such. In other words, CUB can enter into an agreement with Brand Collective to have its branding extended to Volley products provided the actual execution of the brand extension and its associated marketing occurs consistently with ABAC requirements. The content standard raised by the complaint is whether the brand extension has strong or evident appeal to minors (under 18-year old's). The complaint also raises the consistency of the placement of marketing for the VB branded products on the Volley website and this brings into play the ABAC Placement Rules. Both requirements will be examined in turn.

26. Part 3 (b) of the Code and the Code definitions provide that a marketing communication (including a brand extension) must not have strong or evident appeal to minors. This content standard might be breached if the marketing material:
- is specifically targeted at minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors;
 - uses brand identification, including logos on clothing, toys, or other merchandise for use primarily by minors.
27. In assessing if an alcohol marketing communication is consistent with a Code standard the Panel is to adopt the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means that the life experience, values, and opinions common in a majority of the community is to be the benchmark. If the message to be derived from the marketing item can be understood in several ways, then it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.
28. CUB argues that the Code standard has not been breached. It is contended:
- Volley is a longstanding brand with a target demographic for its shoes of 25-to-34-year old's;
 - the VB branded shoes are only available in adult sizes and feature under the adult tab on the Volley website;
 - shoes are not shown under the “kids” tab of the Volley website;
 - various photographs of the shoes being worn are used in marketing copy and these images depict adult activities i.e. standing in a bar, playing pool; and
 - an image of the shoes being worn while skateboarding is used but skateboarding does not appeal to minors beyond its appeal to adults and the image “shows the product is broadly suitable for 18+ urban sneaker enthusiasts”.

29. The ABAC standard would be breached if Volley shoes were a product worn primarily by minors. While the Panel is not a research body, a review of internet sources indicates that the sneaker market for minors, particularly teenagers, is dominated by shoes produced by Nike and Adidas. There are a wide range of brands in the under 18-year-old shoe market including Volleys however there is no strong indication that Volleys are currently popular with minors. Other media sources indicate that Volley sales in Australia slumped when the brand was no longer carried by Kmart around a decade ago and that the strongest market for the brand appears to be adults aged 25 to 34. While some minors wear Volleys, the Panel does not believe Volleys are merchandise primarily used by minors.
30. While the VB branded Volley products may not of themselves be strongly appealing to minors, marketing communications containing images of the products need also to meet the Code standards. The complaint referenced the images of the VB Volley shoes on the Volley website. These images showed the shoes being worn in different settings i.e. men in a public bar, men holding pool cues and a person riding a skateboard. The issue is whether any of these images are marketing communications for ABAC purposes and if so, do they offend the strong or evident appeal to minors' standard.
31. The ABAC imposes obligations on alcohol companies, not footwear and clothing apparel producers such as Brand Collective. That said, the agreement between CUB and Brand Collective is such that CUB does have a sufficient level of control over how its brand is used in marketing material produced by Brand Collective to bring the Volley website images into the ambit of the ABAC standards. The Panel does not believe bar and pool cue images have strong appeal to minors. The images establish the shoes are being worn by men and don't have features which can be considered to be relatable or appealing to minors.
32. The skateboarding image is different. The Panel has previously examined skateboarding in Determination 10/2011 and Determination 51/2018 and noted that while the activity is performed by a range of age groups, the largest cohort is under 18-year old's e.g., a survey for the City of Melbourne showed 60% of skaters are under 18 and statistics on reported injuries from skating indicate the majority of skaters are minors. The Panel believes emphasising the VB branding by showing skateboarding by a person wearing the VB Volleys does breach the Part 3 (b) standard.
33. The final issue is the ABAC Placement Rules which have the goal that alcohol marketing should be directed towards adults and away from minors. The Volley website is a third-party site which is not related primarily to alcohol and hence the Placement Rules do not require the website as a whole to be age restricted for alcohol marketing i.e. the pages showing the VB branded products. The

applicable requirement is that the traffic to the Volley website needs to be 75% adult. CUB advises given that the primary demographic for Volley products are adults aged 25 to 34, it can be reasonably expected that the website meets this requirement. Given the market for Volleys, the Panel agrees that the Placement Rule requirement has not been breached.

Conclusions

34. Drawing all this together, the Panel has concluded:

- the VB branded Volley products are an alcohol marketing brand extension for VB within the scope of the ABAC;
- the products themselves i.e. the VB branded shoes and socks are not merchandise primarily used by minors;
- the Volley website and the images contained on the website showing the VB branded products are marketing communications for ABAC purposes;
- the images showing the VB Volleys worn by adult men in a bar and with pool cues do not have strong appeal to minors;
- the image showing a person skateboarding wearing the VB Volleys does have strong appeal to minors given the prominence of minors as the group who use skateboards; and
- the ABAC Placement Rules are not breached by having the VB brand extension marketing communication located on the Volley website.

35. Accordingly, the complaint is upheld in relation to the skateboarding image and otherwise dismissed.