



## ABAC Adjudication Panel Determination No 53/21

**Product:** Brookvale Union Seltzer  
**Company:** Asahi Beverages  
**Media:** TV – Free-to-air  
**Date of decision:** 10 May 2021  
**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 television commercials for Brookvale Union Seltzer (“the Product”) by Asahi Beverages (“the Company”). It arises from a complaint received on 1 April 2021.
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 1 April 2021.
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 obtained for the marketing (Approval Numbers 19144 and 19232).

## The Marketing

10. This determination relates to two television advertisements for the Product, both substantially the same, with the main difference being that one has a male lead character, whereas the lead of the other is female. The advertisement with the male lead is described below:



### **Voice Over (VO):** Brookvale Union Boozy Seltzer

*[At a backyard gathering, a hand reaches into an ice filled esky for a can of Brookvale Union Boozy Seltzer, from which the person takes a sip.]*



*[The person's tongue grows abnormally long and twists around. A miniature of the person is then shown riding in a modified can of Brookvale Union Boozy Seltzer, excitedly smiling and waving their arms, as they zoom along the tongue and through the garden.]*

**VO:** Refreshalicious (drawn out for the duration of this and the next scene).



*[The full-sized person's tongue retracts into their mouth, and everything returns to how it was prior to taking a sip of product].*

**VO:** Brookvale Union. It's refreshalicious.

## The Complaint

11. The complainant has the following concerns about the marketing:

*Several ads depicting a male and a female drinking the product and then having hallucinations of their tongue twirling around as a result of being intoxicated by the product.*

*The ad depicts that the product alters perceptions of reality and causes effects that are not consistent with normal reality.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.

## The Company's Response

13. The Company responded to the complaint by letter emailed on 19 April 2021. The principal points made by the Company were:

### Alcohol Advertising Pre-vetting Service Approval

- Both assets were submitted under AAPS Application 475/20 and were approved on 11 January 2021 and 4 February 2021, with respective approval numbers 19144 and 19232.

## Responsible depiction of the effects of alcohol

- The advertisements do not breach Part 3 (c)(i) of the Code by suggesting that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
- I will refer to the advertisements in aggregate as they both follow the same construction, the only substantive difference is one features a male protagonist and the other a female protagonist. Both advertisements feature a person taking a sip of a Brookvale Union seltzer at a daytime backyard party, a depiction of the experience of being struck by the flavoursome taste and refreshing mouthfeel of the product, and a return to the situation of a daytime backyard party.
- In developing this collateral the Brookvale Union team have worked very closely with AAPS to ensure the overall impression of the advertisement remained on the right side of the ABAC Part 3(c)(i) standard. Part 3(c)(i) states:

*A Marketing Communication must NOT suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.*

- To this end, the ‘extending tongue’ device is used to ensure that the effects and experiences are linked clearly back to flavour and palate, in the whimsical manner associated with the Brookvale Union seltzer brand. ‘Whimsy’ is not a prohibited territory under any part of the ABAC, and the clear implication of the tongue device is to give meaning to the whimsical brand tagline, “refreshalicious”.
- The cues within the advertisements all speak to taste and refreshment sensations: we see, variously, a squirt of grapefruit or orange juice, ice cubes, a gushing garden sprinkler, and similar illustrative devices to the ones featured on the can. Importantly, when the whimsical depiction of taste ends, the individuals do not appear to have their mood appreciably changed by the experience, and this is a distinction that we were very careful to make. The individuals featured in the ads clearly experience a flavour sensation, depicted by the ‘unrealistic’ extended tongue sequence, but in the ‘reality’ of the backyard party environment there is no change to their prior state.
- The complainant states that the advertisements depict “a male and a female drinking the product and then having hallucinations of their tongue twirling around as a result of being intoxicated by the product”. This could not be further from the intended interpretation of the advertisement. At no point is it

implied that the protagonists are intoxicated; as I have stated, the tongue device is a very clear reference to the pleasing flavour and bright, refreshing palate of the product. Again, we emphasise that as the experience of ‘tasting’ ends, the individuals are in no way altered by the experience – their facial expressions and stance are precisely the same.

- The ABAC standard clearly speaks to the need to avoid the perception that drinking an alcoholic beverage will result in a participant having a better time than they would were alcohol absent from the situation. I refer to the ABAC Guidance Note on Part 3(c)(i), which states:

*There can be no portrayal of the presence of alcohol as having any causal relationship with mood change, a celebration, success of any kind, a therapeutic benefit or being necessary to relax.*

*There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success.*

- As I have stated, the mood of the protagonists does not change as a result of the product. The clear intent of the collateral is to depict the flavour and mouthfeel of the product in the offbeat, quirky and humorous manner that the Brookvale Union brand is known for. When viewed in context, the advertisement does not depict a situational transformation, it depicts the specific experience of tasting the flavour of the product.
- To address the complainant’s point that “the product alters perceptions of reality and causes effects that are not consistent with normal reality”, we feel confident that the whimsical and slightly ‘unreal’ nature of the brand has already been canvassed extensively in ABAC Determination 146/20, and that Part 3(c)(i) is not intended to prohibit brands from inhabiting a slightly offbeat or eccentric persona. I refer to our response to complaint 146/20, in which we stated:

*[The depiction of an enlarged mouth] is a characteristic that aligns to the Brookvale Union brand proposition of eccentricity and ‘Quality Nonsense’. In this image, the mouth has been enlarged to further add to the sense of eccentric whimsy associated with the Brookvale Union brand, in particular calling back to the use of the ‘mouth’ device as a signifier for taste that is employed within the whole Brookvale Union brand family.*

- In keeping with our prior statement in Determination 146/20, we contend that the extended tongue device is both an extension of the focus the Brookvale

Union brand has with respect to taste, and is fully in keeping with the eccentricity deployed in the brand advertising as a unique part of the Brookvale Union creative proposition.

- Asahi Beverages is committed to ensuring our promotional and marketing material does not promote or encourage any irresponsible consumption of alcohol. Our goal is for consumers to enjoy our great tasting products responsibly and in moderation, and to uphold community standards when it comes to the placement and content of our advertising.

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

14. Part 3 (c)(i) of the ABAC provides that an alcohol marketing communication (which includes a television ad) must not suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment. This determination considers whether two television ads from the Company breach this standard.
15. The ads are set in a backyard party. In each ad a person consumes a mouthful of Brookvale Union boozy seltzer which results in a fanciful scene of the person's tongue extending and the person is then depicted in a scene where a can of the product transforms into a carnival ride through images of fruit and ice. The ad ends with the 'ride' going back into the person's mouth. This occurs while the person is saying the word 'refreshalicious'. The complainant takes the ad as showing the product as altering perceptions and causing hallucinations. The Company argues the ad uses the fanciful scenes as highlighting the taste and refreshing qualities of the product.
16. Assessment of an ad against an ABAC standard is based upon the probable understanding of the ad by a reasonable person taking the content of the ad as a whole. This means that the life experiences, values and opinions found commonly in most of the community is the benchmark.
17. The Panel does not believe the ad is in breach of the ABAC standard. In reaching this conclusion the Panel noted:
  - the person is shown having one mouthful of the product and does not appear intoxicated;
  - the most striking feature of the ad is the highly exaggerated and elongated tongue apparently created by drinking the product, and this establishes the theme of the ad is the taste of the product;
  - the taste theme is demonstrated by the fanciful journey through fruit images and the person saying the word 'refreshalicious';

- the mood of the person does not alter, and the environment at the party remains constant. For instance, the product is not shown transforming the person's mood from sad to happy, or stressed to relaxed and the party does not move from dull to enlivened; and
- a reasonable person would most likely understand the ad is using the imaginary scene to highlight the striking taste of the product, and it is not being suggested that the product causes hallucinations.

18. The complaint is dismissed.