



ABAC Adjudication Panel Determination No. 58/21

Product: Various
Company: Endeavour Group
Media: Dan Murphy's website
Date of decision: 13 May 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel ("the Panel") concerns content on the Dan Murphy's website and arises from a complaint received 6 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 6 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 not obtained for this marketing communication.

The Marketing Communication

10. The complaint relates to recipes included on the Dan Murphy's website.

[Home](#) > [Liquor Library](#) > [Events](#) > [Easter Sweet Treats](#)

Sweet treats for Easter

Great recipes for your Easter basket this year



Easter – a time for relaxing with family, friends... and chocolates! Whether you get your chocolate fix via an Easter bunny, an Easter egg hunt or just with some delicious Easter desserts, these recipes for great Easter treats are sure to raise the egg-itement in your house!

Easter bunny cupcakes

Get everyone hopping with delight! There's nothing that says 'Easter' better than a fun and tasty Easter Bunny Cupcake...



What you'll need:

- Cupcakes (any flavour)
- White frosting
- Large marshmallows
- Pink sprinkles

Start with your favourite cupcake recipe or use a store-bought cupcake as a base. Slice large marshmallows diagonally in half. Dip smooth, flat side of marshmallow into pink sprinkles. Pipe frosting on cupcakes (cooled down if you made them yourself) and top them with ears (2 half marshmallows).

To go that extra hop and give your bunny cupcake a bunny face, just add two candy eyes, a large pink sprinkle for the nose, and four Chocolate sprinkles for the whiskers. Fun, simple and delicious!

For the adults, you can enjoy these with a nice [red wine](#) or a [Prosecco](#).

Easter basket cookie cup

A delicious alternative for basket cases – almost too fun to eat, these baskets are the perfect Easter egg container...



What you'll need:

- 1 pack readymade cookies dough (or you can make your own)
- 1/2 cup chocolate creamy frosting
- 1 can green decorating icing
- 1/2 cup mini Easter eggs
- 24 mini baking cupcake cups

Heat oven to 180°C, then place the mini paper baking cup in a mini muffin tray. Slice dough rounds in half, and then mould the dough to the cups by pressing each half firmly into the bottom and up the side of each cup to form a crust. Bake for 14 to 16 minutes or until golden brown. Cool in baking tray for 5 minutes, then remove them to cool for a further 20 minutes.

Spoon 1 teaspoon of chocolate frosting into each cookie cup, then pipe green icing on top. Just before serving, place the mini Easter eggs in the baskets.

For the adults, you can enjoy these with a refreshing [beer](#) or a [moscato](#).

Peanut butter cups

Deliciously simple, incredibly more-ish. There's more ways than just Easter eggs to satisfy your sweet tooth this Easter!



What you'll need:

- 2 bags semisweet chocolate chips
- 1/2 cup creamy peanut butter
- 1/4 cup powdered sugar
- 2 tablespoons softened unsalted butter
- 12 mini baking cupcake cups

Set mini paper baking cups on a mini cupcake tin. Melt 1 bag of the chocolate then spoon 1 teaspoon of melted chocolate into each cup evenly. Tap the tin on the kitchen top to smooth out the chocolate and freeze for 15 minutes.

Meanwhile, in a medium bowl, whip peanut butter, powdered sugar and butter until smooth. Remove pan from freezer and place small dollops of peanut butter on top of each chocolate layer. Tap the tin on the kitchen top again and freeze once more for 15 minutes.

Melt remaining bag of chocolate then quickly portion small spoonfuls of chocolate into each cup. Ensure the chocolate is even and flat again by tapping the tin onto the bench. Freeze pan for 15 minutes to set the top layer of chocolate.

For a peanut butter cup with a firmer texture, serve chilled or serve at room temperature for a softer, creamier texture.

For the adults, you can enjoy these with a refreshing [cider](#) or a [Topaque](#).

Check out our [Easter lunch](#) recipes or [Easter cocktails](#) recipes for even more inspiration.

Share



Enjoy These Sweet Treats With:

Showing 1-5 of 17 products

<p>★★★★★ (154 REVIEWS)</p> <p>Kirin Megumi Beer Bottles 330mL</p>  <p>\$45.95 per case of 24 \$18.45 per pack of 6 \$4.69 per bottle (in store)</p> <p>Add to cart ↗</p>	<p>★★★★★ (18 REVIEWS)</p> <p>The Hills Cider Company Pear Cider 330mL</p>  <p>\$20.49 per pack of 6 \$61.99 per case of 24 \$4.99 per bottle (in store)</p> <p>Add to cart ↗</p>	<p>★★★★★ (8 REVIEWS)</p> <p>Santa Margherita Superiore 52 Prosecco Di Valdobbiadene</p>  <p>\$24.70 in any six \$148.20 per case of 6 \$25.00 per bottle</p> <p>Add to cart ↗</p>
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The Complaint

11. The complainant objects to the marketing as:

It is unacceptable that a liquor organisation has children's recipes on its website. It refers to easter bunny, easter egg hunts. These are children events. The recipes are designed for children, made clear that there are other options for the adults. Then to say that the children's recipes can be enjoyed with alcohol. Complete disregard for the community just like with Darwin.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

(b)(i) have Strong or Evident Appeal to Minors

13. Part 6 of the ABAC Code 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.

The Company's Response

14. The Company responded to the complaint by letter dated 14 April 2021. The principal points made by the Company were:

- a) Dan Murphy's thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. Dan Murphy's understands that the Panel is considering whether or not the Advertisement breaches Part 3(b)(i) of the ABAC Responsible Alcohol Marketing Code (the Code).
- b) Dan Murphy's maintains the position that the Complaint does not breach any Part of the Code for the reasons outlined below and it, therefore, requests the Panel to dismiss the Complaint.

- c) It is Dan Murphy's aim to be Australia's most responsible retailer of alcoholic beverages. This is highlighted by the fact that Dan Murphy's formalised its status as a signatory to the Alcohol Beverages Advertising Code Scheme in 2013 and it prepares all its advertising in accordance with the Code.
- d) Furthermore, Dan Murphy's maintains strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Dan Murphy's has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
- ID25 (ask for ID from anyone who looks under 25 years of age);
 - Don't Buy It For Them (stopping secondary supply to minors);
 - our Intoxication Policy (refusal of service to anyone who may be intoxicated); and
 - staff training that exceeds legal requirements, including 'Don't Guess, Just Ask', team talkers, regular refresher and reminder courses, and
 - implementation of the award-winning training program 'Safe'.
- e) The processes outlined above provide Dan Murphy's with a compliance framework to ensure that it serves customers in accordance with its obligations under the various applicable laws.
- f) It should be noted that the Advertisement was posted on the Dan Murphy's website various years ago. As such, Alcohol Advertising Pre-Vetting Service Approval was not sought for the Advertisement.
- g) Dan Murphy's further notes that the Advertisement was not promoted for the Easter period on its website (for instance by promoting it on the main landing page of the website). Individuals were only able to view the Advertisement by manually searching for Easter recipes on Google or by clicking through various webpages on the Dan Murphy's website. Dan Murphy's can confirm that only a very limited number of individuals have ever viewed the Advertisement since it was first published.
- h) Dan Murphy's periodically reviews the content on its website. As part of the review, Dan Murphy's has now removed the Advertisement on the basis that it does not fit Dan Murphy's current brand proposition.
- i) Dan Murphy's submits the following:
- Part 3(b)(i) of the Code prohibits a marketing communication from having strong or evident appeal to minors.

- In assessing the Advertisement’s compliance with the Code, it must be considered from the perspective of a ‘reasonable person to whom the material is likely to be communicated and taking its content as a whole. (Part 5 Code)
- As stated above, the Advertisement was published some years ago, has not been promoted for a significant period of time, and was only accessible after doing detailed searches via Google or by searching the Dan Murphy’s website. As such, any person viewing the Advertisement is most likely to be an adult who has actively searched for Easter articles posted by Dan Murphy’s (Viewer), given that:
 - the Advertisement was placed as an article on the Dan Murphy’s website, which is a liquor website that has no appeal to minors; and
 - the Advertisement would only be viewable to a person who conducted a manual search of webpages of the Dan Murphy’s website, which is a relatively complex process.
- The Advertisement is furthermore clearly aimed at adults, and a Viewer would not likely consider the Advertisement to have a strong or evident appeal to minors given that:
- Easter is a holiday that is celebrated by the wider community, and is not one specifically celebrated by minors;
- desserts are enjoyed by the wider community, particularly more so by adults during the pandemic (https://aifs.gov.au/sites/default/files/publication-documents/covid-19-survey-report_5_what_we_did_during_lockdown.pdf, refer to p 2);
- minors would more likely be interested in the consumption of desserts, not the making of desserts (as is the focus of the Advertisement);
- the Advertisement uses advanced English language and has professional photographs that do not appeal to minors. In particular, the Advertisement does not specifically state that the recipes are “children’s recipes” as alleged;
- the recipes contained in the Advertisement and language used are complex, and the recipe steps contain assumed cooking knowledge that would unlikely be held by a minor (For example, one recipe assumes knowledge of how to make cupcakes (‘[s]tart with your favourite cupcake recipe’) and another recipe assumes knowledge of how to melt chocolate (simply stating [m]elt 1 bag of the chocolate);

- the recipe steps are set out in a blocks of text, and are not set out in easy numbered steps which would be more appealing to minors; and
 - the Advertisement makes no suggestion that minors should purchase or consume alcohol, and only offers the suggestion that alcohol may be consumed by adults (The Advertisement states 'For the adults, you can enjoy these with a nice wine or a Prosecco', or similar, each time an alcoholic product is referred to).
- j) For the reasons outlined above, Dan Murphy's believes that the Advertisement does not breach Part 3(b)(i) of the Code and requests the Panel to dismiss the Complaint.

The Panel's View

15. Dan Murphy's is an off-premise retailer of alcohol beverages. This complaint relates to Easter images and recipes included on the Dan Murphy's website. The complainant is concerned that:
- a liquor organisation has children's recipes on its website, referencing easter bunny and easter egg hunts which are children events.
 - The recipes are designed for children, making clear that there are other options for the adults and says that the children's recipes can be enjoyed with alcohol.
16. Part 3(b) of the ABAC provides that an alcohol beverage marketing communication (which includes product packaging) must not have strong or evident appeal to minors. 'Strong or evident appeal' is expanded upon in the Code definitions to mean:
- likely to appeal strongly to minors;
 - specifically targeted at minors;
 - having a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - 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
 - using brand identification, including logos, on clothing, toys, or other merchandise for use primarily by minors.

17. The Company argues that the packaging does not breach the ABAC standard. It is submitted:

- any person viewing the Advertisement is most likely to be an adult who has actively searched for Easter articles posted by Dan Murphy's (Viewer), given that:
 - the Advertisement was placed as an article on the Dan Murphy's website, which is a liquor website that has no appeal to minors; and
 - the Advertisement would only be viewable to a person who conducted a manual search of webpages of the Dan Murphy's website, which is a relatively complex process.
- The Advertisement is clearly aimed at adults, and a Viewer would not likely consider the Advertisement to have a strong or evident appeal to minors given that:
 - Easter is a holiday that is celebrated by the wider community, and is not one specifically celebrated by minors;
 - desserts are enjoyed by the wider community, particularly more so by adults during the pandemic ;
 - minors would more likely be interested in the consumption of desserts, not the making of desserts (as is the focus of the Advertisement);
 - the Advertisement uses advanced English language and has professional photographs that do not appeal to minors. In particular, the Advertisement does not specifically state that the recipes are "children's recipes" as alleged;
 - the recipes contained in the Advertisement and language used are complex, and the recipe steps contain assumed cooking knowledge that would unlikely be held by a minor (For example, one recipe assumes knowledge of how to make cupcakes ('[s]tart with your favourite cupcake recipe') and another recipe assumes knowledge of how to melt chocolate (simply stating [m]elt 1 bag of the chocolate);
 - the recipe steps are set out in a blocks of text, and are not set out in easy numbered steps which would be more appealing to minors; and
 - the Advertisement makes no suggestion that minors should purchase or consume alcohol, and only offers the suggestion that alcohol may be consumed by adults (The Advertisement states 'For the adults, you can

enjoy these with a nice wine or a Prosecco', or similar, each time an alcoholic product is referred to).

18. 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.
19. The Panel has considered the 'strong or evident appeal' standard in numerous past determinations. Further, in 2020 the ABAC Scheme commissioned Youth Insight (the research arm of Student Edge) to advise on themes, designs and imagery which youths aged 13 to 17 find strongly appealing and unappealing in marketing. Based on these two sources, some characteristics within a marketing communication which may make it strongly appealing to minors include but are not limited to:
 - 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 appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more appealing to adults); and
 - use of a music genre and artists featuring in youth culture.

20. It should be noted that only some of these characteristics are likely to be present in a particular marketing communication and that 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. Each case must be assessed on its own merits and it is the overall impact of the marketing communication rather than an individual element which shapes how a reasonable person will understand the item.
21. On balance the Panel does not believe the pages breach the standard. It is noted:
- Easter desserts have a general appeal across age groups that is not particularly stronger for minors than it is for adults;
 - the webpages contain cooking instructions and are adult in focus;
 - the images of the desserts have a general appeal; and
 - the pages are housed in a website, which could be accessed by minors, but taken as a whole does not create an environment likely to strongly appeal to minors.
22. Accordingly, the complaint is dismissed.