



## **ABAC Adjudication Panel Determination Nos 113, 114, 115 & 116/21**

<b>Product:</b>	Stroh Rum
<b>Companies:</b>	Dan Murphy's (Endeavour Drinks) Nick's Wine Merchants Hairydog Porter's Liquor St Ives Village
<b>Media:</b>	On-line shopping websites
<b>Date of decision:</b>	8 June 2021
<b>Panelists:</b>	Professor The Hon Michael Lavarch (Chief Adjudicator) Ms Debra Richards Professor Richard Mattick

### **Introduction**

1. This determination by the ABAC Adjudication Panel ("the Panel") arises from four complaints received from a single complainant on 17 May 2021 and concerns the advertising of Stroh Rum ("the Product") on the on-line shopping websites of the following retailers ("the Companies"):
  - Dan Murphy's
  - Nicks Wine Merchants,
  - Hairydog
  - Porter's Liquor St Ives Village.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

## The Complaint Timeline

7. The complaints were received on 17 May 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.

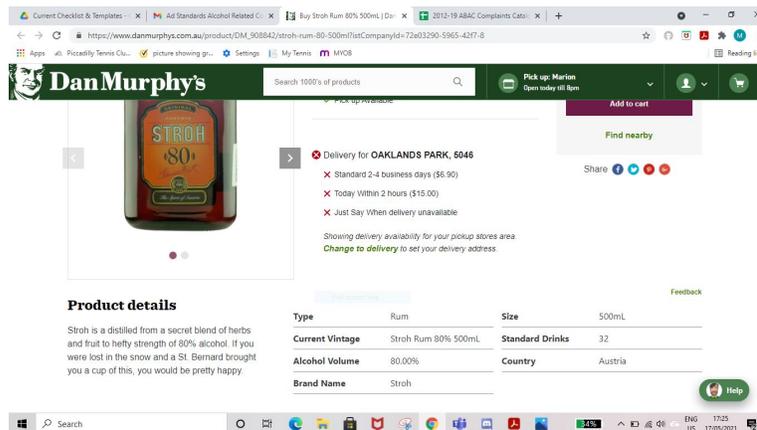
## Pre-vetting Clearance

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 the marketing.

## The Marketing

10. This determination relates to the following product description on the on-line shopping websites of the Companies.

### Dan Murphy's:



### Nick's Wine Merchants:

Current Checklist & Templates | Ad Standards Alcohol Related Co. | Stroh 80 Rum (500ml) - Rum & | 2012-19 ABAC Complaints Cata. | +

https://www.ricks.com.au/stroh-80-rum-500ml



**\$1,079.88** dozen

ABV: 80%

Austrian rum is hard to come by in Australia. This one from Stroh weighs in at a hefty 80% alcohol and is limited to 500ml bottles. Stroh is unusual in that it is distilled from herbs and fruit, as opposed to sugar cane and will come as something of a novelty for the rum connoisseur or may be equally appreciated as a cough soother. The unmistakable aroma of Stroh makes it indispensable for the creation of typical Austrian sweet dishes.

**Tasting note:** Deep sienna brown / old copper colour. Penetrating aroma opens with notes of caramelised onion and burnt herbs. Aeration draws out a sweet core of over-cooked fruits while the spirit probes the nostrils. The palate is bitter and tannic on entry before an astutely intense, prickly and hot, bitter-sweet attack. Hints of toasted almond and fruit cake are followed by a touch of rubber band on the finish. The tongue piercing spice and spirit heat continues to flame the mouth well into the aftertaste, turning bone dry as the fruit cake flavours fade. Lip numbing, and just way too much spirit heat to make this enjoyable straight 80% ABV.

**Other reviews...** Unusual brick orange and metallic copper hue. Caramel and sweet buttered nut aromas with a whiff of sharp alcohol. A fantastic, hot entry leads to a fiery off-dry full-bodied palate with roasted nut, treacle, and intense spices. Finishes with a mouth numbing wash of heat, rubber and cardboard favours. Addition of water tames the heat and mutes, rather than enhances, the favours. Too manipulated 80% alcohol.

**International Review of Spirits Award: Bronze Medal**  
**RATED: 80 points (Recommended)**  
 Tasting note sourced from tastings.com

4.9 ★★★★★  
 Google Customer Reviews

STORE CLOSED FOR WALK IN BROWSING, ONLINE, PHONE & PICK UP ORDERS ONLY.  
 SPEND \$200 & GET FREE DELIVERY TO MOST OF AUSTRALIA  
 Click here for all Australian freight rates

NO GUARANTEED DELIVERY TIMES\*  
 DUE TO HIGH PARCEL VOLUMES SOME AREAS MAY EXPERIENCE LONGER THAN NORMAL DELIVERY TIMES.  
 Click & Collect is available (local turnover) 14-18 hours.

Minor label and/or packaging scuff is impossible to avoid in every instance. We request that customers have realistic expectations in this regard.  
 Click here to read our Terms & Conditions.

## Hairydog:

Current Checklist & Templates | Ad Standards Alcohol Related Co. | Hairydog | 2012-19 ABAC Complaints Cata. | +

https://www.hairydog.com.au/product/stroh-rum-80-500-ml



**\$100.00** single

**\$500.00** per case of 6

Subtotal: **\$0.00**

**UPDATE CART**

Back to Top

Stroh is a distilled from a secret blend of herbs and fruit to hefty strength of 80% alcohol. If you were lost in the snow and a St. Bernard brought you a cup of this, you would be pretty happy.

Style: Dark Rum  
 Varietal: Rum  
 Region: Austria

## Porter's Liquor – St Ives Village:

Current Checklist & Templates | Ad Standards Alcohol Related Co. | STROH 80 RUM 500ml - Porter's | 2012-19 ABAC Complaints Cata. | +

https://porterstivesvillage.com.au/products/stroh-80-rum-500ml



**STROH 80 RUM 500ml**  
**\$84.99**

**ADD TO CART**

**BUY IT NOW**

Stroh is a distilled from a secret blend of herbs and fruit to hefty strength of 80% alcohol. If you were lost in the snow and a St. Bernard brought you a cup of this, you would be pretty happy.

Vol. 500ml  
 ABV. 80%

**SHARE** **TWEET** **PIN IT**

## The Complaint

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

### **Dan Murphy's, Hairydog, Porter's Liquor St Ives Village:**

*The Product Description lists the 80% alcohol as a hefty strength, this is beyond describing the high alcohol it is using it to promote the rum. Alcohol should not be promoted based on its high alcohol.*

*The line about the St. Bernard also implies that this rum could create a change in mood. This is also a breach of the code.*

### **Nicks Wine Merchants**

*The listing for Stroh's uses the word "hefty" to describe the 80% ABV, this descriptive term is being used to promote the rum's high alcohol.*

*The product description also mentions that the rum could be appreciated a cough soother. Alcohol advertising should not imply that the alcohol has any therapeutic benefits/*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverage's low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol;
  - (c)(i) suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment;
  - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

## The Companies' Responses

13. **Dan Murphy's** responded to the complaint by letter emailed on 27 May 2021. The principal points made by the Company were:

- 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.

### **Alcohol Advertising Pre-vetting Service Approval**

- Dan Murphy's submits the following:
  - 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.
  - 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);
    - 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'.
  - 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.

- Dan Murphy's notes that the Advertisement was not specifically promoted on its website (for instance by promoting it on the main landing page of the website). Individuals were able to view the Advertisement by manually searching for the Product or navigating the product categories on the Dan Murphy's website. As such, Alcohol Advertising Pre-Vetting Service Approval was not sought for the Advertisement.
- Dan Murphy's periodically reviews the content on its website. As part of the review, Dan Murphy's has modified the Advertisement on the basis that it did not fit Dan Murphy's current brand proposition.

### **Responsible and moderate portrayal of Alcohol Beverages**

- Dan Murphy's submits the following:
  - Part 3 (a)(iv) of the Code prohibits a marketing communication from encouraging the choice of a particular alcohol beverage by emphasising its alcohol strength. A marketing communication breaches this Part if 'the reference to alcohol strength adopts emotive terms or becomes a primary as opposed to a secondary focus of the marketing material.'<sup>1</sup>
  - 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.'<sup>2</sup>
  - Taken as a whole, the Advertisement does not emphasise the Product's alcohol strength, given that:
    - the Advertisement does not use special formatting for the Product's alcohol strength to distinguish it from other product information (for example, the alcohol content is not in bold text or larger font that distinguishes it from other information);
    - the alcohol strength of the Product is not repeated in the Advertisement to a greater level than other factual information contained in the Advertisement (for example, the name, size and type of the Product);

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<sup>1</sup> ABAC Adjudication Panel Determination No. 180/20 para 18

<sup>2</sup> Part 5 of the Code.

- being a product page on a retailer's website, the primary focus of the Advertisement is to let customers know the price that a particular product can be purchased for. This is supported by the fact that the image of the Product is the largest element of the Advertisement and the price is emphasised in a large shaded box. In contrast, the Product's alcohol content is given secondary focus in a table below the Product image and price, together with other information, and mentioned briefly as part of the product details blurb.
- Furthermore, the Advertisement does not contain a call to action that the Product should be purchased due to its alcohol strength. While the complainant is concerned with the use of the adjective 'hefty' to describe the Product's alcohol strength, this would be understood by a reasonable viewer to be a factual and descriptive term of the Product's significant alcohol content, and is a particularly dull and unemotive term.
- For the reasons outlined above, Dan Murphy's believes that the Advertisement does not breach Part 3 (a)(iv) of the Code.

### **Responsible depiction of the effects of alcohol**

- Dan Murphy's submits the following:
  - Part 3 (c)(i) of the Code prohibits a marketing communication from suggesting that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment.
  - The Complaint suggests that the following text in the Advertisement breaches this Part: 'If you were lost in the snow and a St. Bernard brought you a cup of this, you would be pretty happy' (the Quote). It should be noted that the Quote forms a relatively insignificant part of the Advertisement, and it is the Advertisement (not the Quote) that is to be assessed for compliance with the Code.
  - As previously stated above, the Advertisement has not been promoted and would most likely only be seen by customers who actively searched for the Product or who navigated the product categories to identify products in the rum category from Austria. As such, any person viewing the Advertisement is most likely to be someone who has at least some knowledge about the Product.

- Furthermore, Dan Murphy’s submits that the Product is not intended to be consumed straight. Rather, the Product is intended to be consumed as part of a hot beverage or baked goods.<sup>3</sup> This is supported by the description on the back of the Product, which, when translated, states ‘We don’t drink it straight [...]. [Use it] in a heart-warming tea [...] and other hot drinks. [...] in cooking, cakes and desserts.’
- A reasonable viewer would, therefore, understand the Quote to mean that a person who was in a cold environment would be happy to be served a cup of a hot beverage. The fact that the Quote refers to ‘a cup of this’ further suggests the association to a hot beverage (such as cup of tea or coffee), as ‘a cup’ is not a unit of measurement used for alcoholic beverages.
- The Quote does not suggest or imply that the arrival of alcohol (or this Product) will change the mood in any way. Even if a viewer was not aware of the Product’s intended use, they would understand the Quote to be a humorous and nonsensical cutaway line that puts the viewer in the fanciful situation that they are lost in the snow and a dog would bring them alcohol. Given the unrealistic nature of the setting and the near impossibility of a dog being able to deliver alcohol, the Quote would not be interpreted by such a viewer to mean that the presence of alcohol has contributed to a change in mood.
- For the reasons outlined above, Dan Murphy’s believes that the Advertisement does not breach Part 3 (c)(i) of the Code.
- Therefore, Dan Murphy’s believes that the Advertisement does not breach any Part of the Code and requests the Panel to dismiss the Complaint.

14. **Nicks Wine Merchants** responded to the complaint by email on 19 May 2021. The principal points made by the Company were:

- It is an entry that was created quite some time ago and has not since been updated but was vetted at its original time of writing.
- The word ‘hefty’ is a simple statement of fact and there is no intention to promote it for sale based on its alcohol volume. Further to this the following statement is made in the tasting note: “Lip numbing, and just way too much spirit heat to make this enjoyable straight” which contradicts any claim that we are promoting this product based on its alcoholic strength.

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<sup>3</sup> See, for example, <https://www.stroh.at/en/>, <https://www.stroh.at/en/recipe-inspirations/hot-drinks> and <https://en.wikipedia.org/wiki/Stroh>.

- We in no way make any claim as to any medical or health benefits by stating that it ‘may be appreciated as a cough soother’.
- Whilst we feel we have certainly done no wrong we are more than happy to make changes to description if recommended to do so.

15. **Hairydog** responded to the complaint by letter emailed on 27 May 2021. The principal points made by the Company were:

- At the outset, Hairydog apologises if there was any breach of the Code, and is mindful to ensure that there are no further breaches in the future.
- In our submission, if there was a breach of the Code (which is not admitted), the breach was of a very minor nature and not one that would have led to any change in consumer behaviour or perceptions.
- The communication did not receive Pre-vetting Service Approval for its content or placement. That said, Hairydog is cognisant of its obligations under the Code and conducts its own internal vetting, with the complained of communication being an atypical instance that may not have received adequate internal consideration.
- We do not consider that the communication breaches Part 3 (a)(iv) of the Code by encouraging the choice of beverage by emphasising its strength or the intoxicating effect of alcohol, noting that there is scope for a difference of subjective opinion on this point.
- We do not consider that the communication breaches Part 3 (c)(i) of the Code by suggesting that the consumption or presence of the beverage may create or contribute to a significant change in mood or environment. The words “if you were lost in the snow and a St Bernard brought you a cup of this you would be pretty happy” are clearly intended to be tongue-in-cheek and fanciful and do not pertain to any situation that would actually be likely to occur.
- There is no prospect that any consumer would actually be lost in the snow and receive a beverage from a dog. As such, applying the Code’s standard of interpreting content from the perspective of “a reasonable person to whom the material is likely to be communicated and taking its content as a whole”, no actual or prospective consumer would be misled into thinking that this translates to any real-life situation, nor any parallels with real-life experiences of the product.
- Further, we submit that the following mitigating factors should be taken into account when determining whether any breach has occurred, and its seriousness, if found to have happened:

- As you would be aware, the complaint relates only to a product description listed on our website. The description did not appear in any other marketing or other communications whatsoever. The listing appeared only for a very brief time (8 March 2021 until receipt of your letter on 20 May 2021). The listing has had very minimal exposure, in the sense that very few consumers are believed to have seen it and the product in question has not proven to be popular with consumers. Hairydog has made no sales of the product in question, and has received no enquiries about the product from members of the public.
- The listing appeared in small text, was not a headline and even if the product listing had been viewed by consumers was easily missed. It was not intended to, nor, it is submitted, did have, the effect of actually providing any meaningful information about the properties of the product. It has acted promptly to remove the communication and will not repost it nor anything with any similar connotations.
- In light of the above, and the trivial nature of the impugned conduct, we submit that the complaint ought to be dismissed.
- Hairydog nevertheless remains committed to responsible and compliant marketing of alcohol products, and will be vigilant to ensure that its marketing communications do not give rise to any possible further issues under the Code.

16. **Porter's Liquor St Ives Village** initially responded to the complaint by email on 18 May 2021, when they advised that they had removed the product and description from their website. The Company provided a further response by email on 26 May 2021. Its principal additional comments were:

- Firstly, once we were informed of the complaint, we immediately removed the description from our website.
- As a responsible retailer with more than 40 years of experience in the liquor industry, I am acutely aware of how important it is for the liquor industry to be presenting itself in a responsible way to our customers and the public at large.
- The comments that were on our website about Stroh Rum were the same as used on another retailer's website and as such we believed they would not have offended anyone or breached the ABAC code.

## **Alcohol Advertising Pre-vetting Service Approval**

- As far as pre- vetting is concerned, we did not consider this process as the Stroh Rum description was one of many product descriptions contained within the website, and did not feel it necessary to apply.

## **Responsible and moderate portrayal of Alcohol Beverages**

- I do not consider that the words contained in the product description breach Part 3 (a)(iv) of the code as I do not believe they 'promote' the use of the product due to its alcoholic strength – in fact the description 'hefty' I believed to be an indication that the alcoholic strength is greater than most other alcoholic products and would therefore act as a 'warning' to consumers of that fact.

## **Responsible depiction of the effects of alcohol**

- I do not believe that in using the description of a 'St Bernard dog bringing you a cup of this, you would be pretty happy' indicates a 'change in mood' as it is really just a humorous comment to indicate the 'warmth' that a product of such alcoholic strength would feel like when you drink it.

## **The Panel's View**

17. The Panel has received complaints relating to four separate online retailer websites that include details in relation to a product, Stroh Rum. The concerns raised relate to the product description and are similar varying slightly across the websites and raise three separate ABAC provisions:
  - All four websites describe the high alcohol strength of the product as 'hefty strength of 80% alcohol' or similar.
  - Dan Murphy's, Hairy Dog and Porters St Ives included the message 'If you were lost in the snow and a St Bernard brought you a cup of this, you would be pretty happy.'
  - Nick's Wine Merchants includes the following 'Stroh is unusual in that it is distilled from herbs and fruit as opposed to sugar can and will come as something of a novelty for the rum connoisseur or may be equally appreciated as a cough soother.'
18. The complaints raise issues relating to the following ABAC standards and will be considered in turn:
  - Part 3 (a)(iv) – encouraging the choice of a particular Alcohol Beverage by emphasising its alcohol strength or intoxicating effect;

- Part 3(c)(i) – suggesting that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or environment;
  - Part 3 (c)(iv) suggesting that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.
19. The purpose of the ABAC standard in Part 3(a)(iv) is that the alcoholic strength of a product is not to be emphasised as a selling point for the product. This does not mean that the alcohol to volume content should not be mentioned, as this is important information for consumers to make an informed purchase. The issue therefore is whether a marketing communication is providing information about the strength of a product which is permitted or is using the strength as a selling point to choose the product which is not permitted. The standard is breached if the reference to alcohol strength adopts emotive terms or becomes a primary as opposed to a secondary focus of the marketing material.
20. Some considerations in assessing if a marketing communication is consistent with the standard include:
- the highlighting of the strength by enlarged font so as to give prominence to the product's strength beyond providing factual information;
  - use of bold colours relative to other words or features to emphasise strength;
  - overly prominent positioning of the strength of the product in proportion to other messaging;
  - repetition in messaging of the strength; or
  - use of straplines, slogans, imagery or other creative techniques which promote the strength of the product as a key distinguishing feature of the product vis a vis other product of a similar kind.
21. These considerations are not exhaustive and each case is to be assessed on its own merits taking the content of the marketing item as a whole.
22. The Companies contend that the references are the provision of factual information rather than emphasising the strength as a selling point, noting:
- the reference to alcohol strength is not in bold text or larger font that distinguishes it from other information;
  - the use of the adjective 'hefty' to describe the Product's alcohol strength would be understood by a reasonable viewer to be a factual and descriptive term of the Product's significant alcohol content, and is a particularly dull and unemotive term and more of a warning than a selling point;

- the alcohol strength of the Product is not repeated in the Advertisement to a greater level than other factual information contained in the Advertisement (for example, the name, size and type of the Product);
  - the primary focus of the Advertisement is to let customers know the price that a particular product can be purchased for (the image of the Product is the largest element of the Advertisement and the price is emphasised, however the product's alcohol content is given secondary focus in a table below the Product image and price, together with other information, and mentioned briefly as part of the product details blurb); and
  - the Advertisement does not contain a call to action that the Product should be purchased due to its alcohol strength; and
  - Nick's Wine Merchants notes that they also include the text "Lip numbing, and just way too much spirit heat to make this enjoyable straight" which contradicts any claim they are promoting this product based on its alcoholic strength.
23. The Panel does not believe the website entries breach the Part 3 (a) (iv) standard. The description does not place undue emphasis on the product's strength and to refer to an 80% alcohol content as 'hefty' is merely a colloquial way of saying it has high alcohol content. This is factual. The description is not encouraging the choice of the product over an alternative by giving undue stress to the alcohol content - emotive language is not used, nor are other indicators placing undue emphasis on the strength of the product e.g. different font sizes etc.
24. The complaints also raise concerns in relation to Part 3(c) that:
- 'if you were lost in the snow and a St Bernard brought you a cup of this, you would be pretty happy' suggests the consumption of the product may create or contribute to a significant change in mood in breach of Part 3(c)(i);
  - 'Stroh is unusual in that it is distilled from herbs and fruit as opposed to sugar cane and will come as something of a novelty for the rum connoisseur or may be equally appreciated as a cough soother' suggests that the consumption of the product offers a therapeutic benefit in breach of Part 3(c)(iv).
25. The Panel does not believe the advertisements breach the Part 3(c) standards raised. In the Panel's view, a reasonable person would read the first statement as a historical reference to the legend of St Bernard rescue dogs carrying whisky to aid stranded travellers and the reference to 'cough soother' in the context of the full description as a humorous reference and warning to potential purchasers about the unusual taste of the product.
26. The complaints are dismissed.