



ABAC Adjudication Panel Determination No 169/21

Product: Minus 196 Double Lemon
Company: Beam Suntory
Media: Internet
Date of decision: 26 July 2021
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”) arises from a complaint received on 21 June 2021 and concerns three articles (“the Articles”) featuring Minus 196 Double Lemon (“the Product”), which is produced by Beam Suntory (“the Company”).
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 21 June 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 Articles

10. This determination relates to the following Articles:

Description	Website name	Link
Article 1	PEDESTRIAN.TV	https://www.pedestrian.tv/bites/japan-strong-zero-australia-launch-196-double-lemon/
Article 2	delicious.	https://amp.delicious.com.au/drinks/article/strong-zero-196oc-double-lemon-launches-Australia/vuwpxmrs
Article 3	News.com.au	https://www.news.com.au/lifestyle/food/drink/awesome-Japanese-cult-drink-coming-to-Australia/news-story/dc41517e2c054aec5fda1a10e4c8760b

The Complaint

11. The complainant is concerned that the Articles:
- Encourage excessive or rapid consumption of alcohol by stating:
 - *“Prepare thine...livers..., Strong Zero is officially launching in Australia at long last”,*
 - *“You probably know someone who’s been to Japan and gotten absolutely feral on the Strong tins. It’s almost a rite of passage for anyone visiting.”*
 - *“I mean 6% will still blow your head off and disintegrate the socks from your feet, without giving you a night filled with missing scenes.”*
 - *“If you’ve visited Japan but don’t really remember it too well, chances are you discovered the country’s number one premix, Strong Zero, while you were there.”*
 - Encourage the choice of an Alcohol Beverage by emphasising its alcohol strength by stating:
 - *“The super-popular RTD is famous for its strong taste and even stronger ABV”*
 - *“...they have dialled down the alcohol content somewhat (from a super strong 9% to a still pretty strong 6%)...”.*
 - *“it packs a punch”*
 - *“It’s pretty strong too (6 per cent) so go easy tiger.”*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines.
 - (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.

The Company Response

13. The Company responded to the complaint by email on 24 June 2021. The principal points made by the Company were:

Opening comment

- Beam Suntory takes its adherence to the ABAC code seriously and believe we have acted in accordance with the alcohol marketing codes.

Alcohol Advertising Pre-vetting Service Approval

- The Articles were generated by the publications. They did not receive Alcohol Advertising Pre-vetting Service Approval for their content and/or placement.

Applicability of the Code

- The Articles are not Marketing Communications to which the Code applies. The Articles were not generated by or within the reasonable control of Beam Suntory. Liquid Ideas Public Relations agency released a consumer media release which caused the Articles to be published through an unpaid public relations campaign. The editorial is therefore published at the discretion of the journalists and publication editors.
- The Public Relations agency has limited ability to change the Articles only where the information published is factually incorrect, for example RRP or availability. This ability is also limited to outreaching to the journalists and requesting updates are made, and these updates are not guaranteed to be actioned.
- Categorically, the Articles outlined in the complaint were not sponsored by Beam Suntory or Liquid Idea. There were no monetary transactions exchanged, nor with any specific journalists within these media houses for the Articles. In addition, Liquid Ideas has no paid working relationship with Nine Media nor the outlets outlined in the complaint.
- The previous campaigns cited in the complaint were also published by different journalists.
- A copy of the press release distributed to the publications outlined in the Complaint is provided below.

For Immediate Release
9 June 2021
Images

CALLING ALL STRONG ZERO FANS: MINUS 196 IS ABOUT TO GET INTENSE DOWN UNDER

Get excited Strong Zero fans. The countdown is on with Beam Suntory today announcing they are launching **Minus 196 Double Lemon** in Australia this winter. The new -196 Double Lemon is set to bring the taste and intensity of Strong Zero, Suntory's number one premix in Japan* and ultimate Japanese refreshment drink, to Aussie shores.

For those who know Strong Zero, **-196** needs no further introduction. For those who don't, remember when you witnessed the explosion of liquid nitrogen in science class at school? Beam Suntory uses exactly that technique; a whole lemon frozen in liquid nitrogen at a temperature of (you guessed it) -196°C, then pulverized and soaked in alcohol – creating an extreme lemon drink. This is refreshment at a whole new level from a land famed for its very intense spirit.

-196 Double Lemon is an energising blend of shochu, vodka, soda and lemon and uses Suntory's unique Freeze Crush Infusion Technology™ to capture all the sourness, sweetness, and aroma of the fruit. With only 0.3 grams of sugar and 122 calories per can, it's the perfect drink to kickstart your night out.

"Aussies who've travelled to Japan show a genuine love for one of the country's biggest and fastest-growing brands **-196 C Strong Zero**, and we're excited to launch our very own **-196 Double Lemon** in Australia. We want Aussies to feel like they're enjoying the real deal straight from the fridge of a convenience store in Tokyo. Unmistakably Japanese, we can't wait for this next-level refreshment to hit Aussie shelves," says Beam Suntory Director of Innovation, Kay Oh.

-196 Double Lemon (ABV 6%) can be found across Liquorland and First Choice from July, Dan Murphy's and BWS in August with a few lucky independent retailers stocking it from June; priced at RRP \$22 (four pack) and \$47 (10 pack).

Minus196.com.au | Instagram: [@Minus.196](https://www.instagram.com/Minus.196) | Facebook: [Minus.196](https://www.facebook.com/Minus.196)
#minus196

**Based on 2020 IWSR sales data.*

-ENDS-

For further information, a tasting, images or interview requests please contact:
Stephanie Bercich, Liquid Ideas | StephanieBercich@liquidideas.com.au | 0405 822 543
Sidney Balfour, Liquid Ideas | SidneyBalfour@liquidideas.com.au | 0467 467 178

NOTES TO THE EDITOR

MINUS 196 DOUBLE LEMON (-196)

-196 Double Lemon is Beam Suntory's newest ready-to-drink (RTD) release from Japan. The premix blend is made from whole lemon frozen in liquid nitrogen at a temperature of -196°C, then pulverized and soaked in alcohol – creating an extreme lemon drink. It uses Suntory's unique Freeze Crush Technology™ that freezes and crushes real fruit to capture every bit of all-natural lemon flavour. With 0.3 grams of sugar and only 122 calories per can, it is refreshment at a whole new level from a land famed for its intense spirit.

ABOUT COCA-COLA EUROPEAN PARTNERS AND BEAM SUNTORY

Under the current agreement between Beam Suntory and Coca-Cola European Partners (signed in 2015), CCEP (previously CCA) is responsible for the sales and distribution of the entire Beam Suntory spirits range in Australia and New Zealand, including the top-selling Jim Beam Bourbon, Canadian Club, Midori and Japanese whiskies Yamazaki, Hakushu and Hibiki, as well as the manufacture, sales and distribution of its ready-to-drink (RTD) spirits portfolio.

As a world leader in premium spirits, Beam Suntory inspires human connections. Consumers from all corners of the globe call for the company's brands, including the iconic Jim Beam and Maker's Mark bourbon brands, Suntory whisky Kakubin and Courvoisier cognac, as well as world renowned premium brands including Knob Creek, Basil Hayden's and Legent bourbon; Yamazaki, Hakushu, Hibiki and Toki Japanese whisky; Teacher's, Laphroaig and Bowmore Scotch whisky; Canadian Club whisky; Hornitos and Sauza tequila; EFFEN, Haku and Pinnacle vodka; Sipsmith and Roku gin; and Midori liqueur.

Beam Suntory was created in 2014 by combining the world leader in bourbon and the pioneer in Japanese whisky to form a new company with a deep heritage, passion for quality, innovative spirit and vision of Growing for Good. Headquartered in Chicago, Illinois, Beam Suntory is a subsidiary of Suntory Holdings Limited of Japan. For more information on Beam Suntory, its brands, and its commitment to social responsibility, please visit www.beamsuntory.com and www.drinks mart.com.

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- The Articles do replicate factual statements in the press releases e.g., RRP, availability etc. However, the phrases outlined in the Complaint specifically do not come from the Marketing Materials or press release distributed by Liquid Ideas or generated by Liquid Ideas and Beam Suntory.
- The exact / same PR document is shared with all the media houses, and the articles are published by the journalists who chose to publish. Neither Liquid Ideas nor Beam Suntory have control over what is written, when and how it is published. In most cases the existence and/or actual content of articles is only known when they are published. This applies to the total content; the article itself and any visuals included.

Responsible and moderate portrayal of Alcohol Beverages

- Beam Suntory acknowledges that some of the content in the published Articles may be considered to breach the Code, however - for the reasons provided above – Beam Suntory and Liquid Ideas do not have control over the Article content.

The Panel's View

14. On 9 June 2021, the Company issued a media release announcing that a new alcohol beverage branded as '-196 Double Lemon' was being introduced to the Australian market. The product is the Australian version of the popular Japanese premixed drink 'Strong Zero' and is a combination of the alcohol spirits shochu and vodka with soda and lemon. The product name derives from the product's manufacture which involves freezing of the lemon ingredient at minus 196 degrees.
15. The launch of the product was 'reported' by several media outlets including Pedestrian TV, Delicious magazine and News.com. The complainant has viewed the reports in these media outlets with some scepticism. It is contended that the articles are in fact not news reports but advertising for the product. Further, it is argued that this 'advertising' contains irresponsible statements inconsistent with two ABAC standards. Accordingly, the threshold issue for this determination is whether the articles are alcohol beverage marketing communications for the purposes of the ABAC Scheme.
16. The ABAC Scheme does not purport to capture every public reference to alcohol beverages or retailers carried on Australian media outlets or found on media platforms. Rather, the Scheme is focussed upon alcohol marketing communications generated by or within the reasonable control of a producer, distributor, or retailer of alcohol beverages. The ABAC provides a non-exhaustive list of what is marketing and some specific descriptions of materials or types of marketing which are excluded from the Scheme - see Part 2 (a) and (b) of the Code.
17. News reports are not mentioned by name in the Code, but it is evident that a news item carried in the Australian media is not an ABAC marketing communication. Firstly, the creator of the news report is not an alcohol industry marketer but a journalist/reporter/editor of a media organisation. Secondly, the substance of the news report by definition should be a matter of public interest and not simply promotional spin about a product or service. However, the difference between a news report and an advertisement is not always clear cut.
18. For instance, some grey examples include:
 - native advertising - which is advertising which aims to provide consumers with the impression that they are accessing editorial content when it is in fact commercial messages;
 - product placement - where an identifiable branded product is inserted into otherwise entertainment or news content; and

- stealth advertising - where a news program appears to be about one issue, but in truth is about a particular product e.g. a business technology news item promoting a branded smart phone.
19. On occasions the practice of promotion masquerading as editorial comment has been unlawful, such as the so called 'cash for comment' scandal of the early 2000's involving certain radio shock jocks. This has led to a limited amount of direct regulation by the Australian Communications and Media Authority and the requirement placed on all advertisers contained in the AANA Code of Ethics that advertising or marketing shall be clearly distinguishable as such.
20. In the current case, the Company advises that while it did seek media coverage of the release of the product, it did not:
- have any commercial relationship with the media outlets identified by the complainant in relation to articles;
 - have control over the content of the articles; or
 - supply to the media outlets in its media release the statements or content about the product which the complainant submits is inconsistent with the ABAC standards.
21. It is common practice for marketers of all kinds - from product owners to political parties - to endeavour to secure news media coverage to buttress promotional campaigns. This is not improper and, in any event, is not within the ambit of the ABAC Scheme. Based on the available information, the articles identified in the complaint do not fall within the scope of 'marketing communication' for ABAC purposes. As a result, the Panel has no role in assessing the content of the articles.
22. The complaint is dismissed.