



ABAC Adjudication Panel Determination No 178/21

Product: Hang Loose Juice NEIPA
Company: Capital Brewing Co
Media: Packaging/ Facebook
Date of decision: 19 August 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 the packaging of and a Facebook advertisement for Hang Loose Juice NEIPA (“the Product”), by Capital Brewing Co (“the Company”). It arises from a complaint received on 9 July 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:
 - 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;
 - 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 9 July 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 advertising.

The Marketing

10. The complaint concerns the packaging of and a Facebook advertisement for Hang Loose Juice NEIPA, as shown below:



The Complaint

11. The complainant is concerned about the advertising as:

With reference to product packaging, we submit that:

- *The product's prominent reference to being "juice" may cause confusion for minors. While it could be argued that the reference to juice is not as prominent as the company logo and the reference to the beverage being an NEIPA, we submit that:*
- *As per ABAC's previous adjudication for Cream Soda Sour Ale (June 2021) - "confusion with a soft drink might occur if reliance is made on terms understood by regular adult drinkers but less likely to be understood by minors e.g., IPA, NEIPA."*
- *The company's logo and name "Capital Brewing Co." cannot be relied upon to ensure minors are aware of the product contains alcohol. The Bundaberg Brewing Company refer to their very common and popular soft drink range as their "brews" <https://www.bundaberg.com/our-brews/>. This soft drink range is well known among minors.*
- *The reference to being juice is prominent and clear enough for minors to make an accidental assumption that the product is juice.*
- *The product medium being a can does not preclude it as an alcohol beverage, sparkling fruit juices are known to be sold in cans, for example Golden Circle's sparkling juice range and the San Pellegrino's sparkling fruit juice range.*
- *Overall we submit that if a child or minor were to open a fridge and find the product in question, the use of the word "juice" in combination with the ambiguity of the other phrases on the packaging may lead to an avoidable level of confusion.*

With reference to the Facebook advertisement, we submit that:

- *The advertisement does not provide enough information to show that the product advertised is an Alcohol Beverage. As mentioned above, the term NEIPA is*

unlikely to be understood by minors, a can does not automatically imply alcohol and the image contains visible pieces of fruit which supports the product as fruit juice.

- *The phrase “Hang loose with the juice” implies the product is juice.*
- *The phrase “Hang loose with the juice” implies that consumption of the product will afford the consumer a level of relaxation and comfort..*

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.
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

13. Part 6 of the ABAC Code contains the following definition:

Strong or Evident Appeal to Minors means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (i) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (i) 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
- (i) 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 emailed on 19 July 2021. Its principal comments were:

Alcohol Advertising Pre-vetting Service Approval

- Hang Loose Juice NEIPA was not pre-vetted before going to market, however on the 24th May 2019, pre-vetting was submitted for another product 'Trop Pop Sour Beer'. Suggestions were made by ABAC in relation to the name and graphic. These suggested changes were adopted prior to launch. During this process, a phone call took place with an ABAC representative to discuss the findings and our other products we're also discussing. CBC received verbal confirmation that they were all acceptable, including Hang Loose Juice NEIPA. Due to these discussions, we did not proceed with pre-vetting on this product.

Date first supplied for retail sale

- Hang Loose Juice NEIPA was first released by CBC on the 15th October 2018 in keg and was available in pubs in the ACT and NSW. On the 12th March 2019 Hang Loose Juice was released for retail sale in cans and distributed in the ACT, NSW, QLD and VIC.

Responsibility toward Minors

Packaging

- The use of the word 'Juice' describes the typical flavour and aroma common in the beer style 'NEIPA (New England Indian Pale Ale). The NEIPA style of beer is commonly referred to as a 'Juicy' IPA.
- Importantly, a key ingredient in Hang Loose Juice NEIPA is Blood Orange Juice, making the use of the word juice a key product identifier. The use of the word juice is common among many NEIPA style beers in the market today.
- While CBC have taken steps to communicate that Hang Loose Juice is an alcoholic product, including stating the beer style 'NEIPA' in large letters, displaying the alcohol content (6.0% ALC) and including all legal logos in bold black, we agree that further steps could be taken to communicate that this is an alcoholic product. (see below image).
- CBC would like to propose a revised design of the Hang Loose Juice NEIPA as outlined below.

- CBC believes that by adding the word ‘BEER’ and displaying the word BEER larger and more prominently than the words ‘juice’ and ‘NEIPA’ (which have also been reduced in size), provides a significant increase in alcohol cues which sufficiently to reduces the risk that the product could be mistaken for a non-alcoholic product.

Existing Design:

Proposed Design:



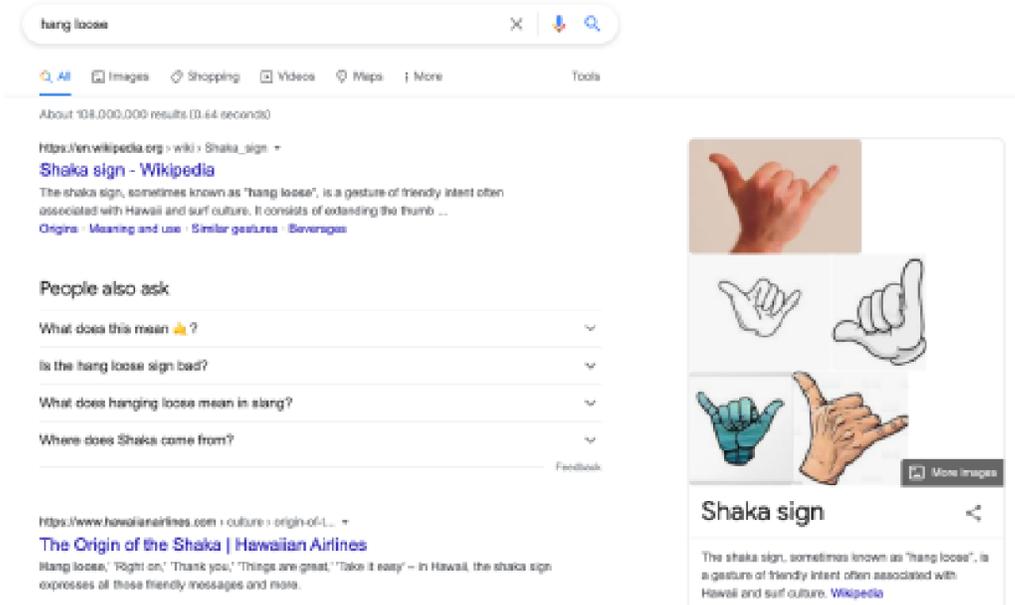
- We believe that with the above proposed changes incorporated into the can design a minor would not be a risk of a minor confusing this product for a non alcoholic product.

Facebook Post

- Upon review, we accept that our Facebook promotion is not consistent with Part 3 (b)(i) of the Code. CBC have subsequently changed the description so there is no reference to “tasting like a glass of freshly squeezed juice”. In addition to this we have also retrained our social media team of the specific requirements of Part 3 (b)(i) to ensure that all future promotions are consistent with the code.

Responsible depiction of the effects of alcohol

- The use of the name ‘Hang Loose’ is in reference to the well-known Hawaiian surf culture, this is why we have also used the Shaka hand as the graphic (see below image when Googling the word). By adding the word ‘Juice’ this also describes what the main ingredient in the beer is. The use of the word hang loose does not mean to relax or stay calm. It does not imply that by drinking the product the consumer will become relaxed and calm.



- Capital Brewing Co estimates that it holds approximately six months of printed cans on hand with the existing design carrying a stock value at \$34,214. The write off of this amount of stock on hand would have a significant impact on a small producer such as CBC. CBC would like to request that the proposed design replace the existing design when CBC has the opportunity to reorder new cans and that the change over date to the revised Hang Loose Juice therefore be as soon as possible but no later than **1 January 2022**.

The Panel's View

15. Capital Brewing has been operating since 2016 and is based in the Canberra suburb of Fyshwick. The Company has a range of regular and special edition products including a New England Indian Pale Ale (NEIPA). It is the packaging (can design) and a supporting Facebook post about the 'Hang Loose Juice NEIPA' which has drawn the complaint.
16. The complainant believes the product packaging would have a strong appeal to minors given the prominence given to the descriptor 'Juice'. It is contended that the product could be confused with a soft drink and that the cues on the can that the beverage is alcoholic are not sufficient to overcome this problem. Further, it is argued that the Facebook post also fails to adequately position the product as alcoholic and that the phrase 'Hang loose with the juice' raises the implication that the product will afford a level of relaxation.

17. Part 3 (b) of the ABAC provides that an alcohol marketing communication (which includes branding and packaging as well social media posts) must not have strong or evident appeal to minors. This standard might be breached if the branding:
- specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; and
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
18. The Company explains how the packaging was developed and that the term 'juice' is a common descriptor used for the craft beer style of NEIPA. It is argued that the can design does employ cues as to the alcoholic nature of the product. While not conceding the can design would have strong appeal to minors, the Company does propose a redesign of the packaging which adds the descriptor 'beer' and reduces the size of the term juice on the can. It is submitted that the redesign would remove the risk that a minor might confuse the beer for a non-alcohol product.
19. It should be noted that the ABAC does not contain a standard about alcohol beverage packaging identifying products as alcoholic. There is direct government regulation contained in the Food Standards Code which mandates that alcohol beverages must include on a product's label information as to the alcohol content as a percentage of volume. This is complied with in the Company's packaging on the front of the can and there are further cues on the rear of the can that the product is alcoholic.
20. For the purposes of the ABAC, the issue of a product's packaging identifying the product as alcoholic arises because a failure to do so might contribute to the packaging having a strong appeal to minors because of potential confusion with a soft drink. But the assessment required by the ABAC standard is whether the packaging, as a whole, is strongly appealing to minors, and not whether the packaging could be clearer in positioning the product as an alcohol beverage.
21. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- 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 current appeal to minors);
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
- use of a music genre and artists featuring in youth culture.

22. The complainant's concern about the packaging does rest on the potential confusion of the product with a soft drink arising from:

- the use of the term juice being obviously far more associated with a non-alcohol drink than with an alcohol product; and
- that the descriptor NEIPA would not be readily recognised by minors as positioning the product as alcoholic.

23. The Panel agrees with both these points, and the packaging could do more to unambiguously establish the product as alcoholic. But as noted above, this of itself is not a breach of an ABAC standard. On balance, the Panel does not believe the packaging would have strong or evident appeal to minors. The Panel noted:

- the term juice would be associated by a reasonable person as referring to a non-alcohol product as would the descriptor 'blood orange';
- while some non-alcoholic products containing fruit juice are available in cans, most usually 'juice' or 'fruit juice' is not packaged in cans and a reasonable person would commonly associate juice products being available in styles of plastic or glass bottles or prima box containers;
- the 'hang loose' phrase would have resonance across age groups but cannot be said to be targeted towards or have an attractiveness to minors beyond its general attractiveness to adults;

- the packaging does not employ bright colours or other design elements considered likely to engage or attract the attention of minors;
 - taken as a whole, a reasonable person would not understand the packaging has strong appeal to minors.
24. While not finding the packaging in breach of the Part 3 (b) standard, the Panel does support the Company's stated intention to withdraw the current labelling design and replace it with a design which clearly identifies the product as 'beer'. The willingness of the Company to act responsively to the legitimate concerns of the complainant displays a strong sense of corporate responsibility.
25. The Facebook post was accepted by the Company as being inconsistent with the Part 3 (b) standard. The Panel believes the post does breach the standard by describing the product as tasting like a glass of freshly squeezed orange juice. This does raise a very clear implication of the product affording a smooth transition from non-alcoholic to alcoholic beverages.
26. The complainant also believed the Facebook post breached Part 3 (c)(iv) of the Code. This provision provides that a marketing communication must not suggest that the consumption of alcohol offers any therapeutic benefit or is a necessary aid to relaxation. The complainant's contention flows from the post using the phrase 'hang loose with the juice'.
27. The post does not actually use the phrase attributed to it by the complainant. In fact, the post mentions the name of the product - Hang Loose Juice NEIPA. The Panel does not believe the post would be understood as making claims as to the product being a necessary aid to relaxation. The 'hang loose' expression is associated with surfer culture and seems to be a greeting or an expression of good wishes and well-being.
28. Accordingly, the Panel decides that the Facebook post is in breach of Part 3 (b)(i), but not Part 3 (c)(iv), of the Code and dismisses the complaint in relation to the product packaging.