



ABAC Adjudication Panel Determination No 180/21

Product: Moon Dog Fizzer
Company: Moon Dog Brewing Pty Ltd
Media: Packaging and Facebook Post
Date of decision: 25 August 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”) concerns the packaging of Moon Dog Fizzer (“the Product”), as well as a Facebook advertisement for the Product, by Moon Dog Brewing Pty Ltd (“the Company”). It arises from a complaint received on 15 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 15 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 obtained for the can design of the Coco Mango flavour of Moon Dog Fizzer (Approval Number 18566).

The Marketing

10. The complaint concerns the packaging of and a Facebook advertisement for the Product.

Facebook Post:



Fizzer Seltzer
Sponsored · ⚙

Get amongst the seltzer craze with Fizzer Seltzer Mixed Packs! These are the perfect way to give seltzer a go and try a whole heap of all natural fruity flavours. 🍌🍌🍌🍌

We've loaded these up with Raspberry Sorbet, Coco Mango, Lemon Squeezy, Tropical Crush and Piney Limey, who knows you might even find a new favourite flavour!

Fizzer Seltzer is low calorie, low carb, low gluten, vegan friendly and has stuff all sugar!

Click below to shop now! For a limited time use the code 'SHIPME' at checkout for Australia-wide FREE shipping!



WWW.FIZZERSELTZER.COM.AU

Use Code 'SHIPME' for FREE Shipping!

Get Offer

Try out five Fizzer favourites in these su...

Packaging:

Mixed Pack:



Coco Mango:



Piney Limey:

MD0916_Fizzer_Piney Limey_Can_MR_R01.pdf 1 13/11/21 4:46 pm

330mL 83 Calories 4.0% ABV



Piney Limey
Alcoholic bubbly water with bursts of pineapple & lime

Refreshingly refreshing Fruity Fizzer

All natural fruit flavours
Stuff all sugar
Vegan friendly
Low calories
Low carbs
Low gluten

NUTRITIONAL INFORMATION	
PER CAN (330mL)	PER 100mL
ENERGY	344 kJ
PROTEIN (g)	1.0
FAT TOTAL (g)	0.0
SATURATED (g)	0.0
CARBOHYDRATES (g)	1.6
SUGARS (g)	0.4
SODIUM (mg)	12.6

At least 30% less sugar, calories & carbs than in a regular RTD

fizzerseltzer.com.au

4.0% ABV
Please Recycle, Yes
Product of Australia

Brewed and canned by Moon Dog Brewing Pty Ltd
32 Chifley Dr, Preston VIC 3072

10c refund at collection depots/points in participating State/Territory of purchase

Best before: see bottom of can

Tropical Crush:

MD0919_Fizzer_Tropical Crush_Can_MR_R01.pdf 1 22/12/20 2:50 pm

330mL 84 Calories 4.0% ABV



Tropical Crush
Alcoholic bubbly water with bursts of passion fruit, mango, orange & pineapple

Refreshingly refreshing Fruity Fizzer

All natural fruit flavours
Stuff all sugar
Vegan friendly
Low calories
Low carbs
Low gluten

NUTRITIONAL INFORMATION	
PER CAN (330mL)	PER 100mL
ENERGY	346 kJ
PROTEIN (g)	1.0
FAT TOTAL (g)	0.0
SATURATED (g)	0.0
CARBOHYDRATES (g)	1.6
SUGARS (g)	0.4
SODIUM (mg)	12.6

At least 30% less sugar, calories & carbs than in a regular RTD

fizzerseltzer.com.au

4.0% ABV
Please Recycle, Yes
Product of Australia

Brewed and canned by Moon Dog Brewing Pty Ltd
32 Chifley Dr, Preston VIC 3072

10c refund at collection depots/points in participating State/Territory of purchase

Best before: see bottom of can

Lemon Squeezy:

MO1087_Fizzer_Lemon Squeezy_Can_MK.pdf 1 21/12/20 7:14 pm

330mL 85 Calories 4.0% ABV

MOON DOG
FIZZER
ALCOHOLIC SELTZER

Lemon Squeezy
Alcoholic bubbly water with bursts of zesty lemon

Refreshingly refreshing fruity fizzer

- All natural fruit flavours
- Stuff all sugar
- Vegan friendly
- Low calories
- Low carbs
- Low gluten

NUTRITIONAL INFORMATION		SERVING SIZE: 330mL
SERVINGS PER CAN: 1		AVERAGE PER 100mL
ENERGY	351kJ	118 kJ
PROTEIN (g)	10	28g
FAT TOTAL (g)	0.1	0.3
SATURATED (g)	0.0	0.0
CARBS (HYDRATES) (g)	0.9	0.3
SUGARS (g)	0.1	0.1
SODIUM (mg)	12.4	4.2

At least 30% less sugar, calories & carbs than in a regular RTD

fizzerseltzer.com.au

4.0% ABV
Please Recycle, ♻️
330mL
Product of Australia

Brewed and canned by Moon Dog Brewing Pty Ltd
32 Chiffley Dr, Preston VIC 3072

10c refund at collection depots/points in participating State/ Territory of purchase

Best before: see bottom of can

Raspberry Sorbet:

MO1089_Fizzer_Raspberry Sorbet_Can_MK.pdf 1 21/12/20 7:08 pm

330mL 87 Calories 4.0% ABV

MOON DOG
FIZZER
ALCOHOLIC SELTZER

Raspberry Sorbet
Alcoholic bubbly water with bursts of citrusy raspberry

Refreshingly refreshing fruity fizzer

- All natural fruit flavours
- Stuff all sugar
- Vegan friendly
- Low calories
- Low carbs
- Low gluten

NUTRITIONAL INFORMATION		SERVING SIZE: 330mL
SERVINGS PER CAN: 1		AVERAGE PER 100mL
ENERGY	361kJ	109 kJ
PROTEIN (g)	10	29g
FAT TOTAL (g)	0.1	0.3
SATURATED (g)	0.0	0.0
CARBS (HYDRATES) (g)	1.2	0.4
SUGARS (g)	0.1	0.1
SODIUM (mg)	12.4	4.2

At least 30% less sugar, calories & carbs than in a regular RTD

fizzerseltzer.com.au

4.0% ABV
Please Recycle, ♻️
330mL
Product of Australia

Brewed and canned by Moon Dog Brewing Pty Ltd
32 Chiffley Dr, Preston VIC 3072

10c refund at collection depots/points in participating State/ Territory of purchase

Best before: see bottom of can

The Complaint

11. The complainant objects to the marketing communications as follows:

With reference to product packaging, we submit that:

- *The product could be mistaken for a soft drink or juice product:*
 - *The product's reference to being alcoholic is small and does not stand out in the context of the entire packaging,*
 - *The product name 'Fizzer' and the text identifying flavours are the most prominent text within the context of the entire packaging,*
 - *The product flavours are commonly associated with soft drink and fruit juice for example Coco Mango, Lemon Squeezy, Tropical Crush and Piney Limey,*
 - *Phrases such as Coco Mango, Lemon Squeezy and Piney Limey use language and methods of expression used more by minors than adults.*
- *Use of the name 'Fizzer' draws association to the popular Beacon confectionery also known as Fizzer:*
 - *A google image search for the term 'Fizzer' returns images of almost only the confectionery, which demonstrates the popularity of the confectionery and the strength of the association between term and product,*
 - *The Fizzer Seltzer colour palette strongly resembles that of the Fizzer confectionery*
 - *The shared name and colour palette may cause confusion for minors and/or encourage them to want to try the alcohol product due to its relatability.*
- *The product medium being a can does not preclude it as an alcohol beverage. Soft drink and sparkling fruit juices are known to be sold in cans.*

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. Alcohol content is not mentioned anywhere within the advertisement aside from the*

small writing on the product packaging which is almost too small to be read,

- The term 'Seltzer' has only recently been associated with alcohol. A definition search for the term 'seltzer' returns 'sparkling water' or 'soda water'. The term's use within the advertisement is therefore not enough to identify the product as alcohol, especially to minors.
- As previously mentioned, the shared name and colour scheme with Beacon Fizzer confectionery may cause confusion for minors.

Image 3: A comparison of Fizzer Seltzer and Beacon Fizzer confectionery



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 contains the following definition:

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 confectionery 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 emailed on 23 July 2021. Its principal comments were:

Alcohol Advertising Pre-vetting Service Approval

- Moon Dog sought and obtained pre-vetting approval pursuant to AAPS application number 361/20 (approval number 18566) in respect of 'Final approval of revised Moon Dog Fizzer Alcoholic Seltzer packaging'. As noted above, flat images of the approved can design (Coco Mango) are enclosed with this letter.
- Pre-vetting approval was not sought in respect of the cardboard wrap for the Fizzer mixed pack or in respect of the Facebook post.
- Relevantly, Moon Dog also sought and obtained pre-vetting approval pursuant to AAPS application number 281/21 (approval number 19557) in respect of 'Final approval of Moon Dog Fizzer Alcoholic Seltzer OOH artwork with the headline "Fizzer It's refreshing alcoholic bubbly water" (3 versions, horizontal and vertical banners and portrait)'. The relevance of this approval is that, while it relates to a separate outdoor advertising campaign, the approved artwork included the product name 'Fizzer' along with images of each of the cans which are the subject of the Complaint.

Date of first retail sale

- Moon Dog Fizzer cans first began to be supplied for bona fide retail sale in the ordinary course of business in Australia in September 2020.
- The Fizzer mixed pack was first supplied for bona fide retail sale in the ordinary course of business in Australia in May 2021.

Responsibility toward Minors

Fizzer can design

- Moon Dog takes compliance with the Code seriously and a significant amount of work has gone into ensuring that the Product packaging is compliant with the Code, including specifically section 3(b)(i).

- As noted above, pre-vetting approval was sought and obtained in relation to the Fizzer can design. In order to obtain pre-vetting approval, an earlier version of the can design was revised to make references to the product being an alcoholic beverage more prominent, specifically to avoid any risk of the product being mistaken for a non-alcoholic drink such as a juice or soft drink.
- The Fizzer can design could not be mistaken for a soft drink or juice product for the consumption of minors. The phrases '4% ABV' and 'ALCOHOLIC SELTZER' are presented clearly and prominently on the front of the can, with the word 'ALCOHOLIC' having equal prominence (in terms of placement and typeface/size) to the Moon Dog brand itself. There is also a further reference on the front of the can to the product being 'Alcoholic bubbly water ...' Indeed, Moon Dog has chosen to describe Fizzer as an 'alcoholic seltzer', rather than the more commonly used term 'hard seltzer', to avoid any possible uncertainty that Fizzer is a product that contains alcohol.
- Based on the pre-vetted can design, there can be no confusion that Fizzer is an alcoholic product and not a soft drink or juice.
- It is not improper for an alcoholic seltzer to contain fruit or other flavours and to refer to those flavours on the packaging, including in the product name. The names of the different products that make up the Fizzer range, including 'Coco Mango' (coconut and mango fruit flavour), 'Raspberry Sorbet' (raspberry flavour; also a play on the well-known (to adults) Prince song, 'Raspberry Beret'), 'Lemon Squeezy' (lemon fruit flavour), 'Tropical Crush' (descriptive of a mixed tropical fruit combination of passionfruit, mango, orange and pineapple), 'Peach Iced Tea' (peach iced tea flavour), 'Pink Flamingo' (pink grapefruit fruit flavour) and 'Piney Limey' (pineapple-lime fruit flavour), reflect the light-hearted and fun nature of the Fizzer brand as well as providing clear differentiation between the different flavours of and ingredients in the products. The names given to Moon Dog's Fizzer product range would not be strongly or evidently appealing to minors, nor would they potentially cause a minor to mistake them for fruit juices or soft drinks, particularly given the clear and repeated references on the packaging to Moon Dog Fizzer being a seltzer product that contains alcohol.
- Your letter poses a question of whether the fact that Moon Dog's Fizzer shares the name 'fizzer' with a confectionery item 'provides the illusion of a smooth transition from non-alcohol to alcohol beverages'. As a preliminary point, the ABAC Guidance Notes state that a factor that may indicate a marketing communication could have strong appeal to minors is the 'illusion of a smooth transition from non-alcoholic to alcoholic beverages': an important distinction when compared to the question posed in your letter. The Guidance Notes evidently seek to address the potential for an illusion of a smooth transition from beverages that do not contain alcohol (such as fruit juices, soft

drinks) to beverages that do contain alcohol – not from ‘non-alcohol’ (presumably a product of any kind that does not contain alcohol) to ‘alcohol beverages’.

- In any case, the existence of a confectionery with the same name is not itself apt to generate confusion between the products – ‘fizzer’ is a common Australian colloquialism that would not immediately be associated with a particular South African confectionery product. The Beacon-brand ‘fizzer’ confectionaries referred to in the Complaint are, evidently, available only in strawberry, grape, cream soda and orange flavours; none of the Moon Dog Fizzer products have equivalent names or flavours, so it cannot be said that there is any risk of confusion as between a particular flavour of Beacon fizzer confectionery and a particular Moon Dog Fizzer alcoholic seltzer. It is also submitted that there is no real risk that any person (including a minor) might mistake a chewable confectionery for a can of alcoholic seltzer simply because they both share the name ‘fizzer’ and have (different) fruit-derived flavours.
- The suggestion in the Complaint that the colour palettes used for the Fizzer products ‘strongly resemble’ the fizzer confectionery is not accepted. Based on web image searches, it is apparent that the packaging of the Beacon ‘fizzer’ confectionaries have uniformly vivid, rich and in some cases neon background colours with bright yellow text, whereas Moon Dog Fizzer cans have muted, pastel background tones (peach, pale yellow) with white text across a central coloured circle. Insofar as your letter suggests that Fizzer uses ‘bright, playful and contrasting block colours’ in a manner that may be eye-catching to minors, that suggestion is also not accepted. The Fizzer products do not feature ‘contrasting colours’ (that is, colours from opposing segments of the colour wheel) – for example, the colour schemes of Lemon Squeezy (pale yellow-light orange), Coco Mango (pale yellow-darker orange), Piney Limey (pale yellow-green) and Tropical Crush (peach-reddish purple) are analogous colours that sit next to each other on the colour wheel, which are lower contrast colour combinations that tend to be perceived as more calm and mature.
- The suggestion in the Complaint that the ‘FIZZER’ logo may be appealing to minors because it uses a ‘playful font ... which may ... lead them to believe that the Product is for their consumption’ is not accepted. The supposedly playful font in question is Helvetica, the world’s most widely used typeface. Nor do we accept the suggestion that the uneven positioning and orientation of the capital letters ‘FIZZER’, which evokes the ‘fizz’ of a carbonated beverage, may make minors believe this is a product for them, rather than an alcoholic product for adults.

- Viewed as a whole, it is submitted that the Moon Dog Fizzer cans are compliant with the Code. The can design is simple and clean, featuring no characters or imagery that might be especially attractive to minors, and uses muted pastel colours behind analogously (rather than contrastingly) coloured circles, with the different colours serving to differentiate between the different products and flavours in the Fizzer range. There is no risk of confusion with fruit juices (which are not ordinarily sold in cans) or with soft drinks, particularly as the fact that Fizzer is an alcoholic product is clearly and unequivocally stated on the cans in multiple places.
- Moon Dog requests that the Panel dismiss the Complaint in relation to the Fizzer can design.

Mixed pack cardboard wrap

- While separate pre-vetting approval was not sought in relation to the mixed pack cardboard wrap design, similar design principles to those of the (pre-vetting approved) can design were adopted in preparing the mixed pack design.
- The top face and three out of the four sides of the mixed pack include the words 'ALCOHOLIC SELTZER' in a prominent position and the top of the mixed pack also describes the product as 'Alcoholic bubbly water with bursts of all natural fruit flavours'. Both the top and each long side of the pack also states '4.0% Alc/Vol' and '1 Standard Drink per can' and there is a further reference on one side to Fizzer being a 'brewed' product. The mixed pack has a muted salmon-pink background which is unlikely to be attractive to minors. The cans depicted on the sides of the mixed pack are in a form consistent with the AAPS-approved can design, which themselves include additional (albeit smaller) references to the product containing alcohol (refer further to the submissions above in relation to the Fizzer can design). The stylised fruit imagery on the top of the pack, while colourfully depicted, directly references the different fruit flavours of the alcoholic seltzers contained in the mixed pack and, when viewed holistically (including in the context of the multiple and unambiguous references to Fizzer being an alcoholic product) there can be no real risk of the Fizzer mixed pack being mistaken for a mixed pack of fruit juice or soft drink.
- In addition, a mixed 10-pack of cans is not a format that is at all common for juices or soft drinks (Moon Dog is unaware of any juices or soft drinks that are or have been available for purchase in this format). A mixed 10-pack format is, however, common in the alcoholic beverages space, including the popular UDL and Vodka Cruiser mixed 10 packs.

- Moon Dog requests that the Panel dismiss the Complaint in relation to the mixed pack cardboard wrap.

Facebook post

- The Facebook post – like all social media posts made by Moon Dog – was age-restricted to people 18 years and older. The risk of the post having been viewed by a minor is low.
- That said, Moon Dog acknowledges that it would have been preferable for the Facebook post to make it clear in the text (not simply the accompanying image) of this particular post that Fizzer is an alcoholic seltzer. The Facebook post which is the subject of the complaint has been deleted and Moon Dog can confirm that all other social media posts in relation to Fizzer clearly reference Fizzer’s alcohol content in the text.
- Moon Dog does not make any further submission to the Panel in relation to the Facebook post, noting that it has been removed.

The Panel’s View

15. Moon Dog Brewery commenced operations in 2011 and is now based in the Melbourne suburb of Abbotsford. The Company produces a wide range of craft beers and most recently has expanded into the production of alcoholic seltzers. There has been a virtual flood of alcoholic seltzers onto the Australian market in the last two or so years, with each product seeking to establish some point of differentiation to stand out in this crowded market. Often eye-catching marketing has been employed to attract consumer attention to a seltzer product, and this has seen several Panel Determinations on alcoholic seltzer marketing communications (for instance - Determination 146/20, Determination 149/20 and Determination 31/21).
16. It is the packaging and a Facebook post for the Company’s ‘Fizzer’ alcoholic seltzer which has drawn the complaint. The Fizzer range consists of a variety fruit flavours. The can of each product employs a background pastel colour with the front of the can having a circle of a contrasting colour containing the Company’s name, the Fizzer brand name, and the term ‘alcoholic seltzer’. The Fizzer brand name is in the largest font. Under the circle is a product description e.g., ‘Piney Limey – Alcoholic bubbly water with bursts of pineapple & lime.’
17. The complainant argues the can design together with the packaging of a mixed 10 pack of cans has strong appeal to minors. A supporting Facebook post about the product is also identified as having strong appeal to minors. The principal points made by the complainant are:
 - the can design does little to identify the product as an alcohol beverage;

- 'seltzer' has only recently been associated with alcohol beverages and would be more readily identified as a non-alcoholic sparkling water;
 - the product flavours are commonly associated with soft drinks;
 - the product descriptors adopt a language style used more by minors than adults; and
 - the can design, colour plate and Fizzer name strongly resemble that used for the 'fizzer' confectionery.
18. The concerns of the complainant bring into play the standard contained in Part 3 (b) of the ABAC which provides that an alcohol marketing communication (which includes product labels and packaging) must not have strong or evident appeal to minors. This standard might be breached if the branding:
- is likely to appeal strongly to minors;
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult; or
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionery or soft drink.
19. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community is to be the benchmark. A person who interprets a marketing message in a different way is not 'unreasonable' but possibly their understanding would not be shared by most people.
20. 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.
21. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and 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. It is the overall impact of the marketing communication rather than an individual element which shapes how a reasonable person will understand the item.
22. Product packaging can give rise to strong appeal to minors if it creates confusion with confectionery or a soft drink. Confusion with a soft drink might occur if:
- the packaging fails to clearly identify the product as an alcohol beverage through use of an alcohol term like beer, ale, vodka, style of wine etc or reliance is made of more subtle alcohol references or terms understood by regular adult drinkers but less likely to be understood by minors e.g., IPA, NEIPA;
 - the packaging has a visual design that resembles a soft drink, such as the display of fruit images, bright block colours and the use of a font style or iconography found typically on soft drinks or fruit juices;
 - the use of terms commonly associated with a soft drink or fruit juice e.g., orange, lemon, blueberry, pop, smash etc; and
 - the type of physical package used and whether this is like that used by soft drinks or fruit juices e.g., prima style juice box.
23. The Company argues the packaging is consistent with the ABAC standard. It is submitted:
- the can design does clearly establish the product is an alcohol beverage;

- it is not improper to use expressions of fruit flavours when this is an accurate description of the product;
 - fun and light-hearted expressions of the flavours such as 'Piney Limey' are not strongly appealing to minors in the context of their use;
 - 'fizzer' has a range of colloquial meanings and would not be immediately associated with the confectionery of that name;
 - the colour palette of the cans does not strongly resemble the colour scheme of the fizzer confectionery;
 - the packaging of the 10 can mixed pack identifies the product as an alcoholic seltzer, and would not be confused with packaging for a soft drink or juice; and
 - while not conceding the Facebook post was in breach of the ABAC standard, it is accepted it could have done better to identify the product as an alcohol beverage and the post has been deleted.
24. The basis of the complainant's contention of strong appeal to minors is that the can design could readily be confused with a soft drink or fruit juice given that it fails to clearly position the product as alcoholic, and its general design and product names uses fruit references. Further the commonality with the fizzer brand name confectionery adds to the appeal to minors.
25. It is recognised that fruit references on beverage packaging are more commonly associated with soft drinks or fruit juices than they are with alcohol products, although pre-mixed alcohol beverages have long used fruit flavours as product descriptors. If a marketing communication uses descriptors more usually associated with non-alcoholic beverages, it is important that the overall impression from the marketing does still establish the product as being alcoholic. While a failure to unambiguously identify a beverage as alcoholic is not of itself a breach of an ABAC standard, it can contribute to the marketing being confused with a soft drink and potentially giving rise to strong appeal to minors.
26. That said, the Panel believes the can packaging of the Company's products does establish that they are alcoholic given that the front of the can:
- uses the expression 'alcoholic seltzer';
 - uses 'alcoholic bubbly water' in the product description;
 - contains the alc/vol percentage; and
 - the rear of the can contains further information as to the alcoholic nature of the product.

27. As the complainant points out, the product shares a name with a children's confectionery. Fizzer is also the name of an app which enables personal photos to be used for the printing of business cards or post cards. In common conversation, the term is used to describe something that promised a lot but failed to deliver. The Company used the name to signify the sparkling water nature of the product, and along these lines there is another alcoholic seltzer using the brand name 'Hard Fizz' (see Determination 172,173,174 & 176/20).
28. The point being that the use of the term 'fizzer' needs to be understood in context. In the context of the product, the name relates to the sparkling water nature of the beverage. The question is whether a reasonable person would, as submitted by the complainant, probably associate the name as used on the product packaging as suggesting the children's confectionery and contributing to the appeal of the packaging to minors.
29. While acknowledging the complainant is raising legitimate points for consideration, the Panel does not believe the packaging breaches the ABAC standard. In reaching this conclusion the Panel has had regard to:
- the packaging does establish the product as being an alcoholic beverage;
 - the colour scheme and can label design relies on pastel colouring, which are attractive, but are not considered as particularly eye-catching to minors;
 - there are many hundreds of different types and brands of confectionery, and while 'fizzer' lollies are not obscure, they are not considered likely to be a household staple to immediately be suggested by the mere use of the same name on the packaging (by contrast – Freddo Frog, Cherry Ripe, Snake's Alive);
 - the font and colouring of the name fizzer as used on the packaging is different from that used on the confectionery of the same name, and although the packaging of the fizzer lolly does employ various flavour types and colour schemes, these do not match those used on the Company's products;
 - there is no basis to believe expressions 'coco mango, piney limey' etc are more likely to be used by minors than adults;
 - the use of the fruit images on the packaging of the mixed 10 pack of the cans does heighten the illusion of a smooth transition from a non-alcoholic to alcohol beverage, but taken as a whole the packaging is not considered strongly appealing to minors; and
 - on balance a reasonable person would most probably not understand the packaging as having strong appeal to minors with any appeal being incidental and not greater than it would be for an adult consumer.

30. The Facebook post shows a picture of multiple cans of the product with two 10 can mixed packs. The accompanying text gives product descriptions and characteristics such as being low calorie, low carb, and low gluten. The text does not identify the products as being alcoholic and due to the size of the photograph, the alcohol identifiers on the individual cans and the packaging of the 10 can mixed pack are not clear.
31. The Panel believes the language used in the text combined with the photograph does raise a reasonable implication that the product is a non-alcoholic flavoured seltzer. Again, the failure to clearly identify the product as being an alcohol beverage is not of itself a breach of the Code. However, taken as a whole and absent the positioning of the products as alcoholic, a reasonable person could understand the products are soft drinks suitable for all age groups. On balance, the Panel believes the post does breach the Part 3 (b) standard.
32. The complaint is dismissed in relation to the packaging but upheld in relation to the Facebook post.