



ABAC Adjudication Panel Final Determination No 216 & 217/21

Product: Wet Pussy Shot
Companies: Ashmore Tavern and 80Proof Australia Pty Limited
Media: Instagram
Date of decision: 6 December 2021
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) arises from two complaints received from a single complainant on 7 September 2021. The first complaint relates to the placement of a billboard advertising Wet Pussy Shot (“the Product”) at the Ashmore Tavern. The second complaint relates to the name, packaging and website promotion of the Product by 80Proof Australia Pty Limited. (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 meet 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 7 September 2021.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features an 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 communications.

The Marketing Communications and Placement

10. The complaint relates to the placement of a billboard for the Product, its packaging and its promotion on a website.

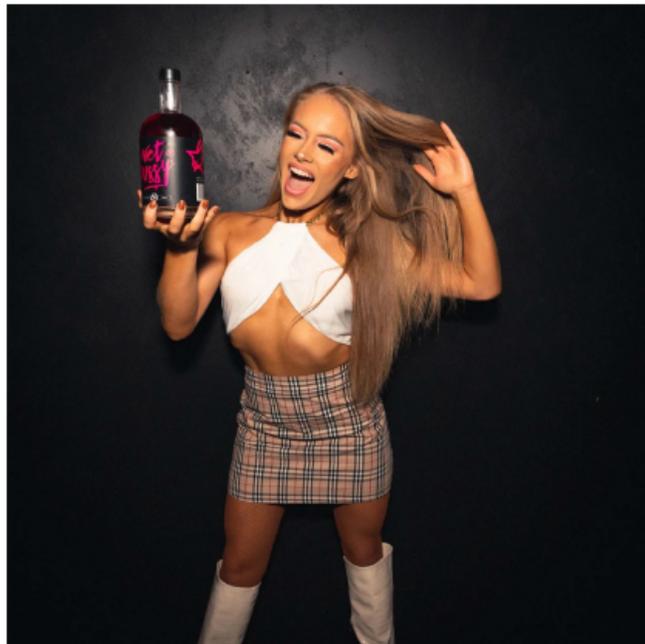
Placement of a billboard at the Ashmore Tavern – Currumburra Rd, Ashmore



Name and packaging



Website - wetpussyshot.com.au



The Complaint

11. The complainant objects to the marketing as follows:
 - *The placement of the billboard is on a major road, within 400m of Ashmore State Primary School, and on a major bus route for many local schools in the area.*
 - *Choice of the brand to promote "Wet Pussy" - not in keeping with community expectations of a family-friendly venue (Ashmore Tavern has many families dining there with a kids entertainment area)*
 - *[Are we sending messages to] young adults and teenagers that you have to get drunk in order to be sexy or to get sex?*
 - *As a member of the community, we have a right to call out unethical advertising behaviour of local businesses in the community. This just doesn't seem to be responsible or appropriate.*
 - *Sell it in the Bottle Shop if they must. But advertising it on the street has put it in the domain of the community! When schools are struggling with messages to young people - boys and girls alike - about how to have responsible relationships, this is hardly helping!*
 - *On further researching the Wet Pussy brand online, the company promotes a young girl, with fishnet stockings, knee-high white boots and a skirt that could be confused as a plaid school skirt.*
 - *The association of alcohol and sexual lubrication to a youth market.*
 - *Is Wet Pussy suggesting that you need to drink it to get a wet pussy or to have someone else drink it so that you can get a wet pussy?*
 - *The brand is attempting to be clever by advertising a small icon of a cat.*
 - *There seems to be a grey area of responsibility in the liquor retail sector - if a brand has approved packaging (is Wet Pussy approved? Shocking if it is!) there seems to be an assumption that it is therefore ok for a retailer to promote that brand. Who takes the ethical responsibility?*

The ABAC Code

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

- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage.
- (b)(i) have Strong or Evident Appeal to Minors.
- (b)(iv) be directed at Minors through a breach of any of the Placement Rules.
- (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success.

13. Part 6 of the ABAC Code provides that:

Placement Rules means:

- (i) A Marketing Communication must comply with codes regulating the placement of alcohol marketing that have been published by Australian media industry bodies (for example, Commercial Television Industry Code of Practice and Outdoor Media Association Placement Policy).

...

Strong or Evident Appeal to Minors means:

- (i) likely to appeal to strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minors 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 Companies' Responses

14. The Ashmore Tavern responded to the complaint in relation to the placement of the billboard by email on 14 September 2021. The principal points made by the Ashmore Tavern were:
- The product in question was one of three products featured on the A-Frame advertising our liquor range and promoting our Quench Liquor drive-through bottle-shop. This advertisement for liquor was targeting the young adult market. The A-frame sign was placed on the driveway entrance to our Hotel property on Currumburra Rd Ashmore. The sign location is measured as being 450 metres from the entrance to the Ashmore State School. The school is not visible from the location of the sign. The sign is not visible from the school.
 - Upon receipt of the complaint on 6th September 2021, having regard for the individual's concerns, we took immediate steps to have the signage replaced. The complainant was notified by phone on 7th September 2021.
15. Lawyers acting for 80Proof Australia Pty Limited responded on behalf of their client by letter emailed on 30 September 2021. Their principal points were:
- Our client is the producer, manufacturer and retailer of a pre-mixed peach and cranberry alcoholic cocktail throughout Australia, under the brand name of 'WET PUSSY' (the Product).
 - The alcohol marketing communications referred to in the Complaints were not produced or endorsed by our client. The marketing communications were created by the owner of the Ashmore Tavern who has no association with our client.

Name and packaging

Product first offered for sale

- The Product was first supplied for bona fide retail sale in the ordinary course of business in Australia in March 2021.

Responsible and moderate portrayal of Alcohol Beverages

- Our client's brand name and packaging of the Product is not in breach of Part 3 (a)(ii) of the Code for the following reasons:
 - The brand name and packaging of the Product does not actively show or encourage irresponsible or offensive behaviour that is related to the consumption or presence of the Product.

- The name of the Product, being the cocktail known as a 'Wet Pussy' is a common alcoholic drink served in the majority of hotels, bars and nightclubs in Australia. The cocktail is also popular in America.
- There are numerous recipes for a 'Wet Pussy' cocktail readily available following a simple Google search or in cocktail recipe books.
- We attach for your reference the first two (2) pages of the Google search undertaken which demonstrates the public's familiarity with the cocktail. The name 'Wet Pussy' is generic for this cocktail and has been in the public domain for many years, similar to others such as a 'Blue Lagoon' and 'Sex on the Beach'. There is no sexual connotation associated with the name of these alcoholic beverages, nor is there any sexual connotation with our client's Product.
- There is substantial public familiarity with the name of the Product, which does not extend to a sexual nature/connotation.
- The most probable interpretation of the brand name of the Product is the commonly known alcoholic cocktail served at licensed venues.
- There is no association to the Product with sexual activity.

Responsibility toward Minors

- The Product is only available to be purchased by adults aged 18 years and older in strict compliance with our client's liquor licensing obligations.
- Our client does not promote the Product in a manner where there is a strong or evident communication to minors.
- We repeat there is no sexual innuendo associated with the brand name and packaging of the Product and repeat the statements made above in respect of public familiarity with the name of the Product.

Responsible depiction of the effects of alcohol

- We reject that the brand name and packaging of the Product shall enhance the consumer's sex appeal and/or lead to sexual activity. We repeat and restate our commentary above in respect of the public familiarity with the Product.

Website – wetpussyshot.com.au

- At the time of this correspondence, there is no image on our client’s website as described in Complaint 217/21.
- It is inconceivable to find that an image shown on our client’s website of an image of a young, attractive, seemingly confident person holding a bottle of the Product implies that a person consuming the Product may achieve sexual success. We repeat and restate our commentary above in respect of the public familiarity with the Product.

Ad Standards finding

- We are instructed that on the 6 September 2021 ABAC Complaint 216/21 was also referred to Ad Standards. On 22 September 2021, our client was formally notified by Ad Standards that “the complaint does raise an issue under the Codes and Initiatives administered by Ad Standards, however in this instance, the Chair of the Ad Standards Community Panel (the Community Panel) has determined that this complaint does not need to proceed to the Community Panel for consideration. The Chair’s decision is made on the basis that there is no content of the advertisement, other than the name, that gives rise to any issues under the Codes. The Community Panel has consistently determined that the use of a product name, in the absence of any other material in the advertisement, is not in breach of the Codes.”
- Our client has closely worked with Ad Standards to rectify a previous complaint made against it. For example, our client previously used its marketing to leverage the globally popular song by Nicki Minaj which is the same name as Product by using the lyrics, “Bring a bucket and a mop”. Our client accepted the nature of the complaint made against it, and immediately pulled down all the marketing that related to the song and the Product.
- Our client is strongly committed to ensuring that its future marketing campaigns in the future ensure there is not a similar event. However, it is only reasonable for our client to include the name of the Product in any of its advertising.

Concluding comment

- Our client is strongly committed to ensuring that its product is marketed in a responsible manner and is committed to ensuring that its marketing complies with the Code’s spirit and intent.

16. On 20 October 2021, the Panel made a provisional determination finding the product was in breach of the ABAC. Lawyers acting for 80Proof Australia Pty Limited requested a rehearing of the provisional determination by letters emailed on 10 and 15 November 2021 and an email dated 16 November 2021, asserting:

- Our client rejects the Provisional Determination's findings that the Product packaging is in breach of Part 3(c)(ii) of the Code for the reasons set out herein.
- We reject the assertion made by the complainant that the Product name implies a link between consumption or presence of the Product and sexual success. It is subjective to determine that the Product Name "would be recognised by a reasonable person as referencing the vagina of a sexually aroused woman". The name of the Product name is not intended to imply any kind of sexual success.
- It must be also considered the context in which the interpretation of the Product name occurs. The most probable interpretation of the Product name, by a reasonable person, is reference to the alcoholic cocktail beverage available for purchase at licensed venues. It is reasonable to submit that the Product name would be interpreted to reference the commonly known alcoholic beverage for consumption in social settings but not as implying the Product causes the social situation to be more successful in any manner, whether sexual or not.
- The interpretation that the Product name is associated with female genitalia is a less likely interpretation, especially in the context of the marketing of alcoholic beverages.
- The Provisional Determination has neglected to recognise the historical public familiarity of the Product. As set out previously, the name of the Product, being the cocktail known as a 'Wet Pussy' is a common alcoholic drink served in a majority of hotels, bars and nightclubs throughout Australia. The name 'Wet Pussy' is a generic name for this cocktail and has been in the public domain for many years. Similar to others such as a 'Blue Lagoon' and 'Sex on the Beach, there is no sexual connotation associated with the name of these alcoholic beverages, nor is there any sexual connotation with our client's Product or the marketing of same.
- The Product Name alone does not imply product characteristics or suggest actions or behaviours likely to be reasonably understood as offending ABAC standards.
- The ABAC Scheme has no jurisdiction to regulate the physical appearance of the Product (including the taste and colour). ABAC's role is to regulate the marketing of the product.
- If the Complainants' views were consistent with the wider public view (or the view of a reasonable person) then it would be likely there would be an increased volume of complaints in respect of the Product name. Our client is

not aware of a large volume of complaints made against the Product name or public outcry in respect of the Product.

- Consumers' responses to the Product have been largely expressions of positive nostalgic views, as customers have enjoyed being able to purchase and consume an alcoholic beverage regularly consumed at licensed venues. This has been predominantly during periods of lockdown as a result of COVID-19 where individuals have not been able to go to nightclubs and bars.
- The product is not marketed in such a way that would be a breach of Part 3(c)(ii). This part of the Code does not include provision for consumers to be offended by the Product Name.
- As outlined in the Provisional Determination the ABAC standard in Part 3(a)(ii) does not relate to names that are offensive on the basis of taste or decency. Whilst it is submitted that the Product name is not offensive, it is not within the realm of the ABAC Scheme to determine the offensiveness of an alcohol product name.
- Without the promotion of the Product in a way which suggests sexual activity, it cannot be said that the Product name alone encourages the achievement of personal, business, social, sporting, sexual or other successes.
- As we have previously set out, our client is strongly committed to ensuring that its marketing campaigns comply with the Code's spirit and intent. Our client's intention is for consumers to enjoy its products responsibly and in moderation. We assure you that this is a matter that is not being taken lightly by our client, as in the event of an adverse finding, the loss of intellectual property could be substantial.
- Accordingly, it has taken all reasonable precautions both in the naming and marketing of this product to ensure that while it is an acknowledgement of the Product as present in social environments, it is in no way intended to be implied to have caused sexual success.
- In relation to the colouring of the Product, we say as follows:
 - We note the Provisional Determination refers to the colour of the Product, however, also outlines that the ABAC Scheme does not regulate the physical characteristics of a product such as the colour of a beverage.
 - Notwithstanding the preceding paragraph, the Product is largely made up of cranberry juice, giving the Product its distinctive colouring. There are no cherry ingredients in the Product.

- The Product is absent of any artificial ingredients to enhance the colour of the Product, thus there is no deceitful intention to alter the colour of the Product.
- Further to the above, it would be inconsistent for the Panel to determine the colour of the Product inappropriate, when there is an abundance of bright coloured alcohol products (including spirits and RTDs) available to purchase in the Australian alcohol market. Notably, the following products have distinctive bright colours similar to the Product:
 - Midori (bright green)
 - Alize (bright blue)
 - Vok Melon Liqueur (bright green)
 - Vok Parfait Amour (deep purple)
 - Marie Brizard Watermelon Liqueur (light pink).
- In relation to the alcohol description on the product, we say:
 - At paragraph 49 of the Provisional Determination, the Panel outlines that there *is a lack of clear alcohol description on the front of the bottle*. We wish to draw the following to the attention of the Panel:
 - The Product Labelling outlines the alcoholic content on the front and rear of the Product packaging;
 - The Product label outlines the standard drinks content, along with responsible service warnings; and
 - The Product labelling is consistent with liquor packaging requirements.
 - The Logo depicted on the Product is not a logo used primarily by Minors. It has no association or correlation with any common brand identification relative to Minors.
 - It is abundantly clear the Product is an alcoholic beverage, and we reject the product labelling creates an illusion that the Product may be an easy transition to alcoholic beverages.
 - Current packaging includes the word 'Liqueur'.



- Our client is authorised and licensed by the Victorian Commission for Gambling and Liquor to sell the Product from its website - <https://wetpussyshot.com.au/>.
- All requisite Liquor Legislation warnings are prominent on our client's website, and the Product is only sold to those over 18 years of age.
- The ABAC scheme does not prevent the marketing of alcoholic products to young adults (for the avoidance of doubt, those being over the age of 18 who are legally permitted to consume and purchase alcohol pursuant to the various liquor licencing legislation across Australia), however, our client ensures that the Product is not sold or marketed in such a way to encourage a strong or evident appeal to minors for the reasons described herein.

The Panel's View

Introduction

17. This determination flowed initially from the placement on an A-Frame sign outside the Ashmore Tavern on Queensland's Gold Coast of an advertisement for the alcohol product 'Wet Pussy'. The complainant then lodged a second complaint about the product's branding after searching for the brand online. The complainant believes the advertisement and product name and branding to be highly irresponsible and offensive.
18. On 20 October the Panel made a provisional determination on the complaints. The Rules and Procedures applying to the ABAC Scheme permit alcohol marketers an opportunity to seek a re-hearing of a finding that product packaging is in breach of an ABAC standard. This has occurred in this case, with the Company seeking a re-hearing of the provisional determination that the product packaging breached Part 3 (b) and (c) (ii) of the ABAC.
19. A re-hearing of a provisional determination is a fresh consideration of the complaint. The Panel is to consider the materials at hand at the time of the provisional determination as well as the additional submissions made by the Company in response to the provisional determination. The Company's original

response to the complaints is detailed at paragraph 15, while its additional submissions in response to the provisional determination are detailed at paragraph 16.

20. The complainant's underlying concern is about the name and branding of the product. It is argued that the product branding invokes sexual activity and sends a message to young adults and teenagers that alcohol is needed to be sexy or to get sex. This concern is exacerbated by the location of the outdoor advertisement in the proximity of a local school.
21. The product derives its name from a cocktail that typically consists of a combination of vodka, peach schnapps liqueur, cranberry juice and lime juice, although other variations of alcohol and juice are also used. A brief internet search did not reveal the origins of the cocktail nor when the drink first appeared in bar cocktail lists. As a pre-mixed bottled product, Wet Pussy came onto the Australian market in March 2021.
22. The complaints triggered two distinct aspects of the ABAC, namely the content standards that go to the branding of the product and the Placement Rules that go to the location of the outdoor advertising. It is convenient to deal firstly with the Placement Rules.

Placement Rule 1 and the outdoor advertisement

23. The complainant was concerned that the advertisement was placed outside of the Ashmore tavern as:
 - the tavern is located on a major road within 400m of the Ashmore State School;
 - the tavern is a family-friendly venue; and
 - if the tavern is to sell the product, it should be more aware of community expectations and confine its marketing to inside the bottle shop.
24. The ABAC Placement Rules have the policy aim that alcohol marketing, irrespective of the content of the marketing, should be directed to adult audiences and away from minors. The rules create differential obligations on marketers depending on the capacity of the medium over which the marketing is conveyed. It is not possible to restrict the audience of an outdoor advertisement, and the obligation in Placement Rule 1 in effect means that an outdoor alcohol ad cannot be placed within 150 metres line of sight to a school.
25. In responding to the complaint, the Ashmore Tavern advised that its A-Frame advertisement was intended to appeal to the young adult market. It was stated that the advertisement was 450 metres from the Ashmore primary school and was

not visible from the school. Upon receiving the complaint, the tavern decided to remove the advertisement.

26. Given that the outdoor advertisement was placed beyond a 150-metre line of sight of the school, it is clear the obligation in Placement Rule 1 has not been breached by the tavern. Accordingly, this aspect of the complaint is dismissed.

The Product Branding - background and context

27. The principal issue raised by the complaint is about the branding of the product that is argued to be irresponsible and offensive. Before turning to the substance of this concern in relation to the applicable ABAC content standards, it is useful to provide some context as the issues raised fall somewhat at the intersection of different regulatory regimes applying to alcohol marketing.

28. As outlined in paragraph 2 above, alcohol marketing falls within a shared regulatory space. To illustrate this, assume that a hotel had on its bar cocktail list a wet pussy cocktail and that the same hotel also sold in its bottle shop the Wet Pussy branded bottled product. The hotel has a sign behind its bar advertising the cocktail and also places in the local paper an ad promoting the Wet Pussy bottled product being available at its bottle shop. In this scenario the advertising of the hotel would be regulated as follows:

- the bar advertising of the cocktail would fall within the ambit of the State Liquor Licensing Authority flowing from the hotel being licensed under State legislation;
- the newspaper ad would fall within the ambit of the AANA Code of Ethics which covers advertising of a product or service irrespective of the type of product or service involved; and
- the newspaper ad would also fall within the ambit of the ABAC because it relates to the marketing of an alcohol product.

29. Then assume that the sexual connotations of the wet pussy name attracts a public complaint. This one complaint could result in three separate complaint determination processes by:

- the State government liquor authority in relation to promotional guidelines which support responsible service of alcohol within the hotel;
- the Community Panel of Ad Standards applying provisions of the Code of Ethics; and
- the ABAC Adjudication Panel applying provisions of the ABAC.

30. Each of the three regulatory regimes has a different policy focus. The State liquor licensing authority is primarily concerned about promotional activities that affect behaviours within the hotel, for instance 'happy hours'. Ad Standards are mostly concerned that advertising meets community standards in relation to respect, gender and racial equality and the portrayal of sex and sexuality. The ABAC is focused upon marketing modelling the responsible use of alcohol.
31. Which of the three regulatory regimes that might be triggered by a public complaint depends on several things with the nature of the concern expressed by the complainant being important. One complicating factor is that the three regimes are not aligned in the types of marketing material captured. This means it is possible that the concern of the complainant might raise issues under say the Code of Ethics but the actual type of marketing material involved does not fall within or is excluded by the Code of Ethics' definition of advertising.
32. The point of providing this background information is that the Wet Pussy product has previously attracted a public complaint and this complaint resulted in a decision under the Code of Ethics by Ad Standards (Case Report 0252-21). The complaint was about internet advertising and the brand name of Wet Pussy and centred on the advertising being offensive and demeaning to women. Ad Standards found:
- the name of the product draws attention to female sexual arousal and uses a slang term for a woman's genitals that a large portion of the community would find offensive and demeaning; and
 - that the particular social media posts complained about discriminated or vilified a person on account of gender and employed sexual appeal in a manner that is exploitative of women.
33. Importantly the Ad Standards decision did not make a finding on the name and packaging of the product. This is because the Code of Ethics definition of advertising expressly excludes labels or packaging for products. Equally, the complaint did not result in an ABAC Panel determination as the terms of the complaint did not raise issues covered by the ABAC.
34. The outcome of the Ad Standards decision was that the particular social media posts were removed by the Company, but the decision had no effect on the name and branding of the product as such.

Provisional Determination - Product Branding consistency with the ABAC Standards

35. The complainant raised concerns about the product packaging and branding and the portrayal of the product on the Company's website as follows:

- an entry depicting a 'young girl' wearing fishnet stockings, boots and a skirt that could be confused as a plaid school skirt;
 - the association of alcohol and sexual lubrication to a youth market;
 - whether the brand is suggesting the consumption of the product is needed 'to get a wet pussy or to have someone else drink it so that you can get wet pussy'; and
 - the red colour of the product.
36. Concerns of this nature raise the following ABAC standards which provide an alcohol marketing communication must not:
- encourage irresponsible or offensive behaviour that is related to the consumption or presence of an alcohol beverage (Part 3 (a)(ii));
 - have strong or evident appeal to minors (Part 3 (b)(i)); or
 - show the consumption or presence of an alcohol beverage as a cause of or contributing to the achievement of social or sexual success (Part 3 (c)(ii)).
37. The Panel made a provisional determination that the product packaging and branding inclusive of the product name was in breach of Part 3 (c) (ii) and Part 3 (b) (i) of the ABAC. In reaching this conclusion on Part 3 (c) (ii) the Panel noted:
- the product name clearly draws upon the well-recognised colloquial description of a sexually aroused woman;
 - the standard is widely drawn and captures marketing messaging which suggests that alcohol is 'a' cause of or contributor to sexual success;
 - because of the product name, a reasonable person would associate the presence or consumption of the product with female sexual arousal; and
 - taken together, a reasonable person would probably understand the product name was suggesting the achievement of sexual success.
38. In relation to Part 3 (b) (i) the Panel provisionally determined that the packaging was inconsistent with the standard having regard to:
- the sexual connotation of the brand name is likely to appeal to minors in their mid-teens wishing to feel older;
 - the packaging employs bright pink text and clear packaging that displays the cherry coloured liquid that are together likely to be eye-catching for minors;

- the lack of a clear alcohol description on the front of the bottle together with the prevailing colour scheme and cat imagery creates an illusion that the product may be an easy transition from non-alcoholic to an alcoholic beverage; and
- while no one factor of itself is decisive, taken as a whole, a reasonable person would probably understand the packaging has a strong and evident appeal to minors.

The Company's Arguments

39. The Company (through its legal advisers) refutes that the name, branding and packaging of the product, nor the Company website breached the ABAC standards. It was initially submitted that:
- the product name is derived from a generic and long-standing cocktail that has substantial public familiarity and has no sexual connotation;
 - the most probable interpretation of the brand name is a commonly known alcoholic cocktail served at licensed venues;
 - the product is only available to be purchased by adults and there is no strong or evident appeal to minors;
 - given the product name has no sexual innuendo, the product branding does not enhance sex appeal or imply sexual activity;
 - there was no image of a 'young girl' as identified by the complainant on the Company's website as at the time of the Company's response to the complaint; and
 - no images on the Company website imply a person consuming the product may achieve sexual success.
40. The Company also explained that it had taken immediate action to rectify its marketing found by the earlier Ad Standards decision to be in breach of provisions of the Code of Ethics. It was pointed out that Ad Standards rejected the complainant's first complaint (regarding the Ashmore tavern A-Frame) as the 'use of a product name, in the absence of any other material in the advertisement is not in breach of the Codes' (ie the Codes administered by Ad Standards).
41. The Company provided further submissions in seeking a rehearing of the provisional determination. In summary, it is submitted:
- The product name does not imply a link between consumption or presence of the product and sexual success, in particular:

- it is subjective to determine that the product name 'would be recognised by a reasonable person as referencing the vagina of a sexually aroused woman';
 - this was not the company's intention;
 - the most probable interpretation by a reasonable person is a reference to the generic name of an alcoholic cocktail beverage available for purchase at a majority of hotels, bars and nightclubs throughout Australia, similar to 'sex on the beach' or 'blue lagoon' and the provisional determination has neglected to recognise the historical public familiarity of the product;
 - there must be consideration of the context in which the interpretation of the product name occurs and the interpretation that the product name is associated with female genitalia is a less likely interpretation especially in the context of the marketing of alcoholic beverages;
 - the product name would be interpreted to reference the commonly known beverage for consumption in social settings but not as implying the product causes the social situation to be more successful in any manner; and
 - without the promotion of the product in a way which suggests sexual activity, it cannot be said that the product name alone encourages the achievement of personal, business, social, sporting, sexual or other successes;
- the product name alone does not imply product characteristics or suggest actions or behaviours likely to be reasonably understood as offending ABAC standards;
 - it is not open to ABAC to determine the offensiveness of a product name under Part 3(a)(ii) or Part 3(c)(ii);
 - the provisional determination refers to the colour of the product, however, also states that the ABAC Scheme does not regulate the physical characteristics of the product, such as its colour;
 - there is no deceitful intention to alter the product's colour, its distinctive colouring is from its primary ingredient, cranberry juice, and there are no cherry or artificial ingredients in the product to enhance the colour;
 - it would be inconsistent of the Panel to determine the product colour inappropriate with many bright coloured products in the market, i.e. Midori;

- it is abundantly clear the product is an alcoholic beverage as it outlines the alcohol content on the front and rear of the packaging, includes standard drinks content and RSA warnings and is consistent with liquor packaging requirements;
- the packaging has been modified and currently includes the word 'liqueur';
- the Company is authorised and licensed by the Victorian Commission for Gambling and Liquor to sell the product from its website and all liquor legislation warnings are prominent on its website;
- the logo is not primarily used by minors and has no correlation with any common brand identification relative to minors;
- reject that it creates an illusion that the product may be an easy transition to alcoholic beverages;
- ABAC has no jurisdiction to regulate the physical appearance of the product (including taste and colour), but is to regulate the marketing of the product;
- The ABAC Scheme does not prevent the marketing of alcohol products to young adults aged 18 or over, however, the Company ensures the product is not sold or marketed in such a way to encourage a strong or evident appeal to minors or in breach of Part 3 (c)(ii) and the Company takes care to market its products consistently with the spirit and intent of the Code; and
- the complainant's views are not consistent with the view of the wider public, or a reasonable person, as:
 - there is no large volume of complaints or public outcry in respect of the product; and
 - consumer responses to the product have been largely expressions of positive nostalgia as customers have enjoyed being able to purchase and consume a beverage regularly consumed at licensed venues, particularly when COVID lockdowns have prevented attendance at bars.

The product name, branding and packaging- achievement of sexual success

42. In Case Report 0252-21 (dealing with the earlier decision about the product's marketing under the Code of Ethics) the Ad Standards Community Panel noted the definition of advertising under the Code of Ethics excluded 'labels or

packaging for products' and further noted 'that is not the role of the (Community) Panel to regulate the names of products or businesses'.

43. In contrast the ABAC on 1 November 2009 was extended to include in the definition of 'marketing communication' 'alcohol beverage product names and packaging'. This means, unlike Ad Standards, the ABAC Adjudication Panel does have a role in regulating the name of products.
44. The Panel accepts that the product is a translation of the 'wet pussy' cocktail available in some bars and nightclubs etc. The ABAC Scheme does not regulate physical alcohol beverages i.e. the alcohol content of a beverage, or physical characteristics such as the colour of a beverage or its taste. The Panel has no role in assessing the desirability of the Company producing a pre-mixed version of the wet pussy cocktail. The ABAC provisions go only to how the product is branded and marketed.
45. The Company strongly argued both initially and in its additional submissions that the product name would not be understood by a reasonable person as having sexual connotations but rather would be associated with the generic wet pussy cocktail available from bars. It was submitted that the Panel's provisional determination on this point was both incorrect and subjective.
46. The Panel does not accept the Company's arguments. Both the product name (and the bar cocktail list versions) would be recognised by a reasonable person as referencing the vagina of a sexually aroused woman. As for this understanding being no more than a subjective opinion, it is noted that the Community Panel of Ad Standards in its earlier decision on the Company's marketing also accepted that the product name drew attention to female sexual arousal and the slang term for a woman's genitals.
47. The Company submitted that a greater volume of complaints could be expected if the product's marketing was concerning to reasonable members of the community. It should be noted the product's marketing has attracted multiple complaints, but in any event, the number of complaints is not a measure of the probable understanding of a reasonable person. Recent community research conducted by the ABAC Scheme (and available on the ABAC website) tested a range of Panel determinations against community attitudes on the marketing items in question. This research confirmed that Panel decisions were aligned with majority community expectations, even when the Panel determination had been triggered by a single complaint.
48. The Panel also rejects the implicit proposition in the Company's argument, that the most likely understanding of the product name must be a choice between either the generic bar cocktail reference or the sexual connotation reference. It is quite possible that a reasonable person would recognise both the product as a pre-

packaged translation of the bar cocktail as well as the name referencing a sexually aroused woman. One understanding does not preclude the other.

49. The product name would be considered offensive and demeaning by some in the community. This however is not an ABAC issue as such but falls within the ambit of the Code of Ethics. As explained above the Code of Ethics does not include packaging and freestanding product names in its definition of advertising, but this fact does not expand the reach of the ABAC. The ABAC standard in Part 3 (a)(ii) relates to alcohol-related offensive behaviour, such as drunken loutish behaviour and not to names that are offensive on the basis of taste or decency.
50. The Company argued in its additional submissions that the product name alone does not imply product characteristics or suggest actions or behaviours. It was contended that there would need to be some other messaging in the marketing material which implied the achievement of sexual or other success.
51. Since the ABAC Scheme was extended to product names and packaging, the majority of determinations have related to strong or evident appeal of the product branding to minors, often involving the packaging being confused with a soft drink. Examples raising other ABAC standards have been less frequent, but have arisen. A small number of the previous decisions have dealt with product names and/or packaging encouraging irresponsible or offensive behaviour (Part 3 (a)(ii)) or suggesting the product can cause or contribute to the achievement of social or sexual success (Part 3 (c)(ii)).
52. In Determination 102/19 the Panel considered the name and branding of a 'Riesling Pilsner' called 'Social Lube'. The issue was whether the name and branding suggested the product was a cause or contributor to the achievement of social success. The Panel noted that it is unusual but not impossible that a brand name alone would lead to a breach of an ABAC standard. This is because a name alone won't normally imply product characteristics or suggest actions or behaviours likely to be reasonably understood as offending an ABAC standard. More usually, it will be the combination of the product name with design features of the packaging that together lead a reasonable person to conclude the breach of a standard.
53. The 'Social Lube' determination was, however, a case where largely the name alone was the basis of a breach decision. In that case the Panel noted:
 - 'lube' would be taken to mean lubrication i.e. something which eases movement or reduces friction;
 - a social lubrication would be reasonably understood to suggest a substance or activity which assisted a social situation by reducing friction or say making conversation occur more freely; and

- lubrication suggested the product would be a contributor to the success of a social encounter.

54. In the current case, the Panel believes the product name, branding and packaging does fall within the unusual circumstances when the product name carries a strong implication of the achievement of success. The Panel noted:

- the standard is broadly framed and captures both the presence and consumption of alcohol ie it is not required for a marketing communication to depict the consumption of alcohol to breach the standard;
- the Company's stated intention not to raise sexual connotations is not the test, but rather how the product name and packaging would be probably understood by a reasonable person;
- 'wet pussy' in common Australian colloquial use refers to a sexually aroused woman and a reasonable person is sufficiently worldly to readily recognise the reference;
- even assuming a person is aware of the bar cocktail of the same name, this does not mean the sexual connotation of the product name is diminished; and
- taken together a reasonable person would probably understand the product and packaging was suggesting that that the product might contribute to the achievement of sexual success.

Product packaging - strong appeal to minors

55. The complainant's concerns about the product in relation to the youth market brings into play Part 3 (b)(i) 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:

- 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.

56. 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;
- the 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.

57. 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 that shapes how a reasonable person will understand the item.
58. The Company in its original and additional submissions argued that the product is only available to adults and the labelling makes clear the product is an alcohol beverage. Further, it is contended the product cat logo has no correlation with brand identification that would appeal to minors. It was argued that the Panel was mistaken in its provisional determination to find the packaging had strong appeal to minors.
59. The Company correctly points out that the ABAC Scheme does not regulate physical alcohol beverages and hence the colour of a beverage cannot of itself lead to a breach of an ABAC standard. The Panel has noted however that when assessing the overall impact of product packaging, that if a product's container means the colour of the beverage is visible, then the colour in combination with the design of the labelling and other packaging features may contribute to a potential appeal to minors.
60. The Panel weighed up the additional submissions from the Company but remains of the view that the packaging is inconsistent with the Part 3 (b) standard. In reaching this conclusion the Panel had regard to:

- the sexual connotation of the brand name is likely to appeal to minors in their mid-teens wishing to feel older;
- the packaging employs bright pink text and clear packaging that displays the cherry coloured liquid that are together likely to be eye-catching for minors;
- while the product labelling does contain cues that it is an alcohol beverage the most influential design features on the front of the packaging is the Wet Pussy brand name and the cat image. The alc/vol descriptor is in comparatively small print on the front of the label:
- the lack of a clear alcohol description on the front of the bottle together with the prevailing colour scheme and cat imagery creates an illusion that the product may be an easy transition from non-alcoholic to an alcoholic beverage;
- while no one factor of itself is decisive, taken as a whole, a reasonable person would probably understand the packaging has a strong and evident appeal to minors.

61. It is noted that the Company has flagged an amendment to the product labelling to include the word 'liqueur'. The Panel must assess the packaging as it was at the time of the complaint. Advice on subsequent changes to the label can be obtained from the ABAC Pre-vetting Service.

Company website entry

62. The complainant contended that a website image of a woman holding a bottle of the product was reminiscent of a girl in a school uniform. The Panel does not believe that the website image of the woman identified by the complainant has strong or evident appeal to minors. The Panel noted the woman in the website image is clearly an adult and her dress would not most probably be understood as suggesting a school uniform as submitted by the complainant.

Conclusion

63. The Panel has considered two complaints from the complainant going to outdoor advertising by the Ashmore Tavern and then more substantively to the name and branding of the Wet Pussy product. The Panel has found:

- there has been no breach of the ABAC Placement Rules;
- there has been no breach of the ABAC content standard contained in Part 3 (a)(ii); and

- there has been a breach of the ABAC content standards in Part 3 (b)(i) and (c)(ii) by the product packaging having strong or evident appeal to minors and the product name directly implying the achievement of sexual success.