



ABAC Adjudication Panel Determination No 253/21

Product: Good Tides Hard Seltzer
Company: CUB Premium Beverages
Media: Packaging
Date of decision: 4 December 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 Good Tides Hard Seltzer (“the Product”) by CUB Premium Beverages (“the Company”). It arises from a complaint received on 1 November 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 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 1 November 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 an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the packaging (Approval Number 17941).

The Marketing

10. The complaint concerns the packaging of Good Tides Hard Seltzer:



The Complaint

11. The complainant objects to the packaging as follows:

Good Tide Hard Seltzer have created packaging that is evidently appealing to Minors by the use of a cartoon character 'The Whale'. The Whale is drawn in a way that appeals to minors by way of basic design including bright colours surrounding the whale.

On our kitchen bench, our 13-year-old asked if she could have a sip. She has never asked to have a drink of any alcoholic product of ours in the past. This has led our family down the rabbit hole of ABAC to make a complaint as we have not had a response from the Company that owns Good Tide.

Further conversations in our friendship group, who have kids 'almost of age' say that they are drinking the 'one with the whale'

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 provides that:

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 Company's Response

14. The Company responded by letter emailed on 11 November 2021. Its principal comments were:

Alcohol Advertising Pre-vetting Service Approval

- The packaging received Alcohol Advertising Pre-vetting Service approval. Approval was granted under application 684/19 with approval number 17941.

Date first supplied for bona fide retail sale

- Good Tides has been in the market since March 2020.

Responsibility toward Minors

- The Good Tides Hard Seltzer packaging displays a clean, stripped-back aesthetic that is characteristic of the category. It has a limited colour palette featuring a white background; dark blue text and logo; lighter blue graphical elements most visible as stylised waves in the logo and in the calorie statement on the pack; a round silver graphical element in the logo; and a changeable coloured logo element and matching text that represents the flavour of the product. Lemon Lime flavour is represented by a muted lime shade, Tropical Passionfruit by a muted mauve, and Raspberry by a muted puce shade.
- The colours, fonts and overall product design are mature, not bright or eye-catching, and are intended to reflect the product's low calorie and zero sugar proposition through the use of a minimalist aesthetic. The Panel's prior Determinations 84/19 Pirate Life Acai & Passionfruit, 97/20 Pirate Life Apple & Guava, 146/20 Brookvale Union Juicy Juicy Grapefruit, and 31/21 Actual Vodka Seltzer clearly establish the acceptability of muted colours and accurate fruit flavour descriptors, provided the overall tone of the product is mature.
- The whale logo device is a clear reference to the product name, Good Tides, which is itself intended to evoke associations with summer and a relaxed Australian beach lifestyle. The whale is depicted in a similarly minimalist yet realistic line-drawn style that does not resemble any cartoon or other character that would appeal to minors. The whale is similar to the Cheeky Monkey logo referenced in Determination 33/19 Cheeky Monkey, where the panel noted that "there is a heightened risk, but it does not automatically follow that the use of an animal character within a marketing communication will cause the item to strongly appeal to minors" and concluded that the line-drawn monkey was "adult in nature".

- Referring again to Determination 33/19, we note that the packaging complaints that were upheld by the panel featured a combination of vivid colours, eye-catching devices resembling stars and explosions, use of colours that could create confusion with soft drinks, and unclear alcohol cues on the packaging.
- I have already addressed the sedateness of the packaging, and we further note that the product very clearly states that it is a *hard* seltzer, with *hard* being a commonly understood term for beverages containing alcohol. The can also features an even more explicit reference to the alcoholic nature of the product with the words Sparkling Water + Vodka. The specific *vodka* callout occupies a whole line of text and visually dominates the fruit flavour descriptors on the can and packaging, which are shown in the muted colours referred to above.
- CUB Premium Beverages is committed to ensuring our promotional and marketing material does not appeal to minors. Our goal is for consumers to enjoy our products responsibly and in moderation, and to uphold community standards when it comes to the placement and content of our advertising.

The Panel's View

15. This complaint relates to the packaging of a vodka based alcoholic seltzer product. The complaint raises a concern that the packaging appeals to minors due to showing a cartoon picture of a whale that is surrounded by bright colours. The complainant cites the example of their own 12-year-old child being drawn to the product due to the design of its packaging.
16. This concern 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.
17. 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.

18. 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.
19. 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.
20. 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 the 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 eg 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 similar to that used by soft drinks or fruit juices e.g. prima style juice box.
21. The Company argues that the product packaging does not breach the ABAC standard. It is submitted that the packaging adopts a mature design and that the whale logo is a minimalist drawn depiction that does not resemble cartoons or other characters likely to appeal strongly to minors.
22. The Panel does not believe the packaging breaches the Part 3 (b) (i) standard. In reaching this conclusion the Panel noted:
- the product packaging clearly establishes the beverage as alcoholic through the use of the descriptor 'sparkling water + vodka' and there is no reasonable prospect the product would be confused with a soft drink;
 - while an image of animals or sea creatures, such as a whale, can increase the appeal of packaging to a minor, the whale image used in this case is of a simple line design, is not coloured and is integrated into the design elements of the logo;
 - the predominant colour of the packaging is white, with muted colours that are not considered to be contrasting or eye-catching;
 - the design elements and the overall tone of the product packaging are simple and stylised, rather than juvenile and do not bring to mind any particular children's cartoons or products;
 - taken as a whole, the appeal of the packaging to minors would likely be incidental rather than strong or evident.
23. Accordingly, the complaint is dismissed.