



ABAC Adjudication Panel Determination No 262/21

Product: Children’s T-shirts
Company: Methanol Moonshine
Media: Website / Marketing Collateral
Date of decision: 9 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 use of a logo on children’s t-shirts marketed by Methanol Moonshine (“the Company”) on its website, and using children as models. It arises from a complaint received on 12 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 the 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

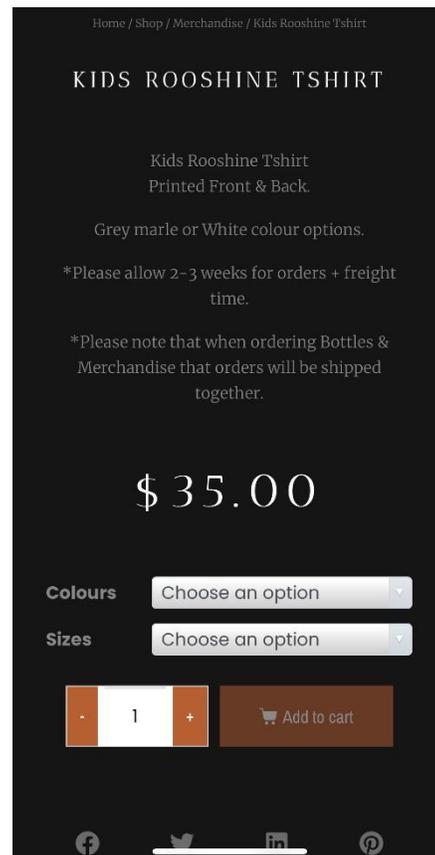
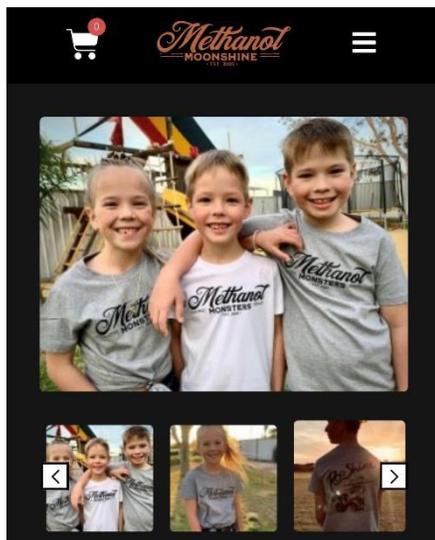
7. The complaint was received on 12 November 2021.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint 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 not obtained for the marketing.

The Marketing

10. The complaint concerns the use of the Company's logo on children's t-shirts and children wearing the merchandise on the Company's website. Screenshots of the marketing are included below:



Close up of Methanol Moonshine logo for comparative purposes:



The Complaint

11. The complainant objects to the t-shirts and website entry as follows:
 - *The liquor brand Methanol Moonshine advertises and sells childrenswear with the branding of their alcohol brand.*
 - *Marketing alcohol to minors; children around the age of 12.*

The ABAC Code

12. Part 2 (a) of the ABAC Code provides that:

The Code APPLIES to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

- brand advertising (including trade advertising)
- competitions
- digital communications (including in mobile and social media and user-generated content)
- Alcohol Beverage product names and packaging
- advertorials
- alcohol brand extensions to non-alcohol beverage products
- point of sale materials
- retailer advertising
- Marketing Collateral

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors.
 - (b)(ii) depict a person who is or appears to be a Minor unless they are shown in an incidental role in a natural situation (for example, a family socialising responsibly) and where there is no implication they will consume or service alcohol.

14. Part 6 of the ABAC Code includes the following definitions:

Marketing Collateral means material used by a Marketer to promote a brand and support the sales and marketing of Alcohol Beverages, including gifts with purchase, competition prizes and branded merchandise.

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

15. The Company responded to the complaint by email on 15 November 2021. Its principal comments were:

- With regards to the "Roo Shine" range of clothing...
 - We deliberately changed our shirt design to say "Methanol MONSTERS" to make sure there was no lineation with our Methanol MOONSHINE brand.
 - We have a cool kids cartoon on the back of a kangaroo and a Sprintcar with no reference to alcohol.
 - As a father of four sons, I am very sensitive to the marketing we do with our kids' range of merch.

- We had parental permission to use images of the children in the advertising.
- I certainly want to be sensitive to and compliant with all regulations in this field.

The Panel's View

16. Methanol Moonshine is a recent addition to Australia's alcohol market with the brand being launched in June 2020 with a co-founder being well-known speedway racing commentator Wade Auger. The alcohol product was born as a response to the effective close down of speedway racing due to the Covid pandemic and in a short time the Company has established a following in Australia and sales into the United States. In addition to its range of alcohol beverages, the Company sells an array of branded merchandise, including stubby holders, caps, leggings, shorts, hoodies, jackets, sports bras and t-shirts.
17. The complaint relates not to the direct marketing of an alcohol beverage but to t-shirts sold in children's sizes and modelled by children on the Company's website. The t-shirts feature a variation of the Company's logo and 'roo-shine' image used on its adult t-shirts. The complainant argues that the promotional technique is 'marketing alcohol to minors'.

ABAC Scheme and Marketing Collateral

18. The ABAC Scheme applies to the marketing of alcohol beverages by Australian alcohol producers, distributors, and retailers. The focus of the Scheme is on individual marketing communications meeting standards of good practice in how alcohol use is portrayed. A marketing communication is defined widely and includes marketing collateral. The Code describes marketing collateral as material used by a marketer to promote a brand to support the sales and marketing of alcohol beverages including branded merchandise. This means that the placement of Company branding on t-shirts is captured by the ABAC standards.
19. The concern expressed in the complaint brings into play Part 3 (b) of the Code. This standard provides that a marketing communication (including marketing collateral) must not have a strong or evident appeal to minors. This standard might be breached if the marketing:
 - is specifically targeted at minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, animations, or cartoon characters that are likely to appeal strongly to minors;

- uses brand identification, including logos on clothing, toys, or other merchandise for use primarily by minors.
20. In assessing if an alcohol marketing communication is consistent with a Code standard the Panel is to adopt the probable understanding of the marketing material by a reasonable person taking its content as a whole. This means that the life experience, values, and opinions common in a majority of the community is to be the benchmark. If the message to be derived from the marketing item can be understood in several ways, then it is the most probable interpretation which is to be preferred over a possible but less likely interpretation.
21. In response to the complaint, the Company explains that:
- it deliberately changed its shirt design to say “Methanol MONSTERS”, so there was no lineation with the Methanol MOONSHINE brand;
 - there is a cartoon on the back of the t-shirt, showing a kangaroo and a Sprintcar, with no reference to alcohol; and
 - it had parental permission to use images of the children in the advertising.
22. The essential question to be assessed is whether the children’s t-shirts would be understood by a reasonable person as promoting the Company’s alcohol brand. There are variations between the adult t-shirts and the children’s design as follows:
- the adult shirt uses the product’s name and logo ‘Methanol Moonshine’ est 2020 on the front of the shirt;
 - the children’s shirt replaces ‘Moonshine’ with the word ‘Monsters’;
 - the rear of the adult shirt depicts an image, under the heading ‘Roo Shine’, of a kangaroo driving a sprint car holding a bottle of the Company’s product; and
 - the rear of the children’s shirt has the same heading and image, except the kangaroo character is not holding a bottle of the Company’s product.
23. The Panel believes that the marketing collateral (children’s t-shirt) is in breach of the Part 3 (b) standard. In reaching this conclusion the Panel noted:
- the t-shirts are self-evidently for use by minors;
 - the t-shirt employs the alcohol branding style of cursive writing and would be recognised by persons familiar with the Company’s alcohol branding;

- replacing the word 'Moonshine' with 'Monsters' does not sufficiently differentiate the children's design from the core alcohol product branding;
 - the image on the rear of the children's t-shirt clearly relates to sprint car racing and readily brings to mind the Company's association and sponsorship of the sport and its co-branding with the sport; and
 - taken as a whole the children's t-shirts would be understood as an item of marketing collateral promoting the Company's alcohol brand.
24. The Company's website shows images of children modelling the t-shirts. These images are found in the Merchandise section of the site. Part 3 (b)(ii) of the ABAC provides that minors should not appear in alcohol marketing unless only in an incidental role and where there is no implication they will consume or serve alcohol.
25. While there is no implication that the children displayed will either consume or serve alcohol, the page on which the children appear shows pictures of the Company's products and the images of the children are not incidental. The website to the extent that it is featuring photographs of children is in breach of the ABAC standard.
26. Drawing all this together, the Panel has concluded:
- the children's t-shirts are marketing collateral for ABAC purposes and hence are a marketing communication for the Company's alcohol brand required to meet ABAC standards;
 - the children's t-shirts promote the Company's alcohol brand and are in breach of Part 3 (b)(i); and
 - the images of children shown on the website are a breach of Part 3 (b)(ii).
27. As noted, the Company is a new entrant to the alcohol market and is not a signatory to the ABAC Scheme. That said, the Company has fully cooperated with the complaints process and supports responsible practices in alcohol marketing. It was evident the Company was aware of the potential issue of placing alcohol branding on children's clothing and endeavoured to arrive at a design that met the concern. It is recommended that the Company take advice from the ABAC pre-vetting service on future major branding and marketing items.
28. The complaint is upheld.