



## ABAC Adjudication Panel Determination No 270/21

**Product:** Ampersand Extra Strength  
**Company:** Ampersand Projects  
**Media:** Packaging  
**Date of decision:** 11 December 2021  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the packaging of Ampersand Extra Strength (“the Product”) by Ampersand Projects (“the Company”). It arises from a complaint received on 29 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:
  - (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 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 29 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 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 packaging.

## The Marketing

10. The complaint refers to the packaging of Ampersand Extra Strength products.



## The Complaint

11. The complainant is concerned about the packaging as follows:
  - *Vodka & Pre-Mix Drinks - Promoting 'Extra Strength' for their 6% ABV drinks (normally around 4%)*
  - *This is a direct breach of ABAC Code 3 (a)(iv).*
  - *Alcohol strength of a product may be communicated in alcohol marketing and must be communicated on alcohol packaging (Food Standards requirement) but only in a secondary, factual and non-emotive way. The strength of the product must not be a dominant part of the communication. Marketers should also avoid descriptive words or imagery which draw attention to the strength of the product.*
  - *This type of Marketing communication is used across all of their 6% Range & we feel is a blatant breach of ABAC Standards.*

## The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (a)(iv) encourage the choice of a particular Alcohol Beverage by emphasising its alcohol strength (unless emphasis is placed on the Alcohol Beverages low alcohol strength relative to the typical strength for similar beverages) or the intoxicating effect of alcohol.

## The Company's Response

13. The Company responded to the complaint by letter emailed on 30 November 2021. The principal points made by the Company were:
  - First and foremost, we confirm that Ampersand Projects is committed to marketing alcohol responsibly and acting within the ABAC guidelines.

### **Alcohol advertising pre-vetting service**

- The packaging did not receive Alcohol Advertising Pre-vetting Service Approval.

### **Responsible and moderate portrayal of Alcohol Beverages**

- For the reasons outlined below, Ampersand Projects submits that the packaging does not breach Part 3 (a)(iv) of the code.

## Factual Information

- The use of the words 'extra strength' on the packaging is factual information. It is a statement found on the front of the can and not repeated anywhere else on the packaging.
- When compared to our other Vodka Soda Original product, these words are used to distinguish the two products apart. This factual information allows consumers to make an informed purchase decision.
- Vodka Soda Original 4.2% contains 1.2 standard drinks



- Vodka Soda Original Extra Strength 6.0% contains 1.7 standard drinks



- The Vodka Soda Black product does contain extra alcohol. The word 'extra' is indicating there is more alcohol when compared to our regular strength Original variant (The Extra strength original at 6.0% and 1.7 std drinks contains approximately 42% more alcohol than the original at 4.2% and 1.2 std drinks). Therefore, this language has been used to best reflect what the product actually is.

- We have not used the word 'double' on our packaging. It is not accurate as there is only a partial increase (only 42% greater) in alcohol strength and not double.
- It is factual.

#### Reasonable persons interpretation

- The use of the word 'extra strength' would be understood by a reasonable person to be a factual term of the Product's greater alcohol content (when compared to other regular strength products in the range).
- Words such as 'strong', 'double serve', 'premium strength', 'double black' and 'black double serve' are commonplace in the ready to drink market to describe higher alcohol products.
- It is also common for brands using the words mentioned above to have a product variant in both regular and higher alcohol content formats and to use these words to distinguish between the two. Again, to allow a consumer to make an informed purchase decision.

#### Secondary focus

- The product type/variant (ie. Original Vodka Soda or Vodka Soda Passionfruit) is in a larger font as this is the primary and dominant focus of the packaging (along with the large ampersand symbol representing the brand). There is no further imagery which draws attention to the strength of the product.
- The packaging does not use special formatting for the Product's alcohol strength to distinguish it from other product information or make it stand out. The alcohol content is not in bold text or larger font that distinguishes it from other information.
- To the contrary, the words 'extra strength' and alcohol content information are in a very small font. It is white in colour and in a regular (not fancy) typeface.
- The words 'extra strength' are a secondary focus of the packaging. They are not prominent.
- The words 'extra strength' are discreet, subtle and not emphasised as a selling point, or indeed any call to action.

Incorrect render on website

- The render submitted as part of the complaint (ABAC complaint 270/21) is not an accurate depiction of the actual packaging. This is an oversight from our graphic designer whereby the 'original' and 'extra strength' callouts are in the wrong positions. The actual packaging is shown below. The render will be updated on any online platforms as soon as possible.
- Render:



- Actual Packaging:



## The Panel's View

14. This determination concerns Ampersand Project's Extra Strength products, with the complainant being concerned that the packaging encourages their choice by referencing the high alcohol content.
15. Part 3 (a)(iv) of the ABAC provides that an alcohol marketing communication (which includes packaging) must not encourage the choice of an alcohol beverage by emphasising its alcohol strength or the intoxicating effect of the alcohol. This provision does not mean that the strength of a product cannot be mentioned in marketing materials and in fact a consumer should be able to ascertain this information reasonably easily as it is important in making an informed choice about a product. What the provision seeks to do is prohibit undue emphasis to the alcohol strength so that this does not become a selling point. For instance, the standard might be breached by marketing which:
  - elevates references to the alcohol strength beyond factual statements;
  - uses graphics and other design features to give significance to the strength of the product over and above other descriptors or attributes of the product;
  - uses emotive language to highlight the alcohol content.
16. In assessing consistency of a marketing communication with an ABAC standard, it is the overall impact of the marketing which is important rather than a 'tick a box' exercise of listing if a series of indicators are present or not. And this assessment is from the standpoint of how a reasonable person would probably understand the marketing item.
17. The Panel believes that the packaging is consistent with Part 3 (a)(iv) of the Code, noting that the words 'extra strength' and the ABV of 6% are factual rather than emotive and not a prominent or eye-catching feature of the packaging design. A reasonable person would view these aspects of the packaging as providing relevant, important and helpful information, rather than as an encouragement to purchase the product because of its relatively high alcohol strength.
18. The complaint is dismissed.