



ABAC Adjudication Panel Final Determination No 50/22

Products: Flashback Vodka
Company: Flashback Vodka
Media: Packaging
Date of decision: 12 October 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 11 July 2022 and concerns the packaging by Flashback Vodka (“the Company”) of the following products (“the Products”):
 - Sour Grape (330ml can and 500ml longneck)
 - Sour Grape Double (330ml can)
 - Peaches & Cream (330ml can)
 - Pine Lime (330ml can)
 - Pink Lemonade (330ml can)
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:

(b) 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;

(c) 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 11 July 2022.
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 sought for the Products.

The Marketing Communication

10. The complaint relates to the packaging of the Products by the Company as shown below:





The Complaint

11. The complainant objects to the marketing as follows:

- The products are likely to appeal to minors through use of:
 - The brightly coloured design and artwork including bold, block colours,
 - The playful and child-like fonts,
 - Where visible, the brightly coloured nature of the liquid,

- And the flavours which draw strong associations with confectionary and soft drink eg. 'pink lemonade' and 'sour grape'.
- The packaging's strong resemblance to soft drinks risks 'normalising' alcohol for children and facilitates a 'gateway' transition from non-alcoholic to alcoholic beverages.
- The product is in breach of the ABAC Responsible Alcohol Marketing Code and encourages the ABAC Adjudication Panel to support its removal from public circulation.
- The complainant submitted the following photo:



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 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 to the complaint by email on 18 July 2022. The principal comments made by the Company were:
- Flashback Vodka wishes to advise we strongly disagree with the complaint that our product appeals to minors. The colour of each individual can is the colour of the liquid that is inside the can.
 - Every single SKU clearly has VODKA labelled twice on each can, whilst further labelled as Alcohol and its contents. This is presented clearly and prominently on the front of the can. This is equal or greater in size than other products in the marketplace
 - Regarding our flavours we wish to advise ABAC that "Pink Lemonade" and "Pine Lime" has ceased production and once sold through trade this will be removed from the Australian marketplace.
 - Sour Grape is a widely used flavour by numerous alcohol manufacturers and suppliers currently in the Australian marketplace. It does not have a strong association with confectionary and soft drink. We can't change the colour of the liquid. We disagree that it is likely to appeal to minors.
 - We also disagree with the comments regarding the design and artwork and "playful and child-like fonts" for the following reasons:
 - the colouring, images and layout do not resemble any soft drink product in the marketplace;
 - the product shape differs from the 'standard' can shape of soft drinks (our product being thinner and taller);
 - Flashback Vodka Directors are extremely mindful of what flavours we bring to market. As parents we have a responsibility and obligation to not to be

seen to target minors. An example of this is on a weekly occurrence we receive feedback from consumers and liquor retailers wanting us to make flavours such as Bubblegum, Fairy Floss and Fruit Tangle. Even though these flavours are in the Australian marketplace we believe they have a strong association with confectionary and we haven't and will not make these flavours.

15. The Company responded to the provisional determination by email on 31 August 2022. The additional comments made by the Company were:
- It seems from the comments in paragraph 27 and subsequent paragraphs that you have placed some weight on “the use of product names that are used with confectionery”.
 - With respect, the product names refer to the flavours of the products and, to the extent that they are also used in other products, we do not believe that our products, which are clearly prominently labelled twice as vodka, could possibly be confused as non-alcoholic beverages.
 - While we do not concede the point, we understand the panel’s views in relation to use of the words “pink lemonade”. As we mentioned in our initial submission, we intend to cease marketing products containing the words “pink lemonade” in their labelling.
 - However, we do not believe that using descriptive words like “pine lime”, a flavour associated with an ice cream, not drinks, and “peaches and cream”, a description more likely relating to desserts, sweets or one’s complexion are likely to lead to a smooth transition from a non-alcoholic to an alcoholic beverage.
 - We consider that it is a stretch to believe that use of those descriptors in an alcoholic drink that, as we say, is clearly prominently labelled twice as vodka, and sold only through licensed premises (we do not sell through supermarkets) should be viewed as creating “an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage”.
 - Notwithstanding that, we are considering rebranding these drinks.
 - We must, however, strongly object to you placing “sour grapes” in the same category as the other labels.
 - As you are aware there are several alcoholic drinks available in the marketplace that describe their products as “sour grape”. These include vodka cruisers, wine and gin products. We understand that ABAC has not ruled adversely on such products in the past. To uphold the complaint in

relation to our sour grape products would, in our view, be unfair, inconsistent and discriminatory.

- Furthermore, “sour grape” is, we submit, not an appellation that would have any attraction to minors. Nor, in our view, is the labelling of our sour grape products particularly bright or contrasting.
- We therefore request that, notwithstanding you may uphold the complaint in relation to our packaging relating to the product labelling “pink lemonade”, “pine lime” and “peaches and cream” (all of which it is our intention to cease production or rebrand within the next 6 months), you not uphold the complaint in relation to our sour grape products. We would appreciate that you split your determination accordingly.

The Panel’s View

Introduction

16. This final determination deals with the packaging (can design and glass bottle labelling) of 5 separate pre-mixed vodka products from Flashback Vodka. It follows from a provisional determination dated 19 August 2022 that found the packaging of each of the products in breach of Part 3 (b)(i) of the ABAC. The Company sought a re-hearing of the provisional determination as provided for under the ABAC Rules and Procedures when a decision finds a product name or packaging in breach of a Code standard.
17. The Company product range is branded under the name “Flashback Vodka” and includes 330ml cans and a 500ml clear glass longneck bottle. The specific products assessed in this determination are as follows:
 - Sour Grape (330ml can and 500ml longneck)
 - Sour Grape Double (330ml can)
 - Peaches & Cream (330ml can)
 - Pine Lime (330ml can)
 - Pink Lemonade (330ml can)

18. The cans share a standard packaging design which features:
- the brand name 'Flashback' in white font at the top of the can with the descriptor 'vodka' in smaller coloured font underneath the brand name;
 - a stylised pair of brightly coloured lips with some teeth showing;
 - the individual product name such as 'sour grape' or 'peaches & cream' in white font above and below the depiction of the lips;
 - the descriptor 'vodka' near the bottom on the can in white font;
 - the alc/vol % at the bottom of the can; and
 - product information on the side and rear of the can.
19. The 'sour grape' product is also available in a 500ml clear glass bottle which adopts a label that follows the can design with the addition of the words 'limited edition' in blue font. The grape colour beverage is visible.
20. A re-hearing of a provisional determination is a fresh consideration of the complaint. The Panel considers 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 14, while its additional submissions in response to the provisional determination are detailed at paragraph 15.

Complaint and Code Standard

21. The complainant contends that the packaging of the products resemble soft drinks and have a strong association with confectionery. It is argued that the packaging risks 'normalising' alcohol for children and facilitates a 'gateway' transition from non-alcoholic to alcoholic beverages. The features of the packaging referenced by the complainant are:
- The brightly coloured design and artwork including bold, block colours;
 - The playful and child-like fonts;
 - Where visible, the brightly coloured nature of the liquid; and
 - Flavours which draw strong associations with confectionary and soft drink eg. 'pink lemonade' and 'sour grape'.
22. The complainant's concern raises Part 3 (b) (i) of the ABAC. This standard provides that an alcohol marketing communication (including product

packaging) must not have strong or evident appeal to minors. The standard might be breached if the marketing:

- 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.

23. 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 are to be the benchmark.

24. 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.

25. 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.
26. 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.

Company's Submissions

27. The Company in its initial and additional submissions argues that the packaging does not appeal to minors for the following reasons:
- The colour of each individual can is the colour of the liquid that is inside the can and we can't change the colour of the liquid;
 - VODKA is clearly and prominently labelled twice on the front of each can, is further labelled with its alcohol content, and this is equal or greater in size than other products in the marketplace;
 - The product names refer to the flavours of the products and, to the extent that they are also used in other products, we do not believe that our products, which are clearly prominently labelled twice as vodka, could possibly be confused as non-alcoholic beverages;

- We do not believe that using descriptive words like “pine lime”, a flavour associated with an ice cream, not drinks, and “peaches and cream”, a description more likely relating to desserts, sweets or one’s complexion are likely to lead to a smooth transition from a non-alcoholic to an alcoholic beverage;
- We consider that it is a stretch to believe that use of those descriptors in an alcoholic drink that, as we say, is clearly prominently labelled twice as vodka, and sold only through licensed premises (we do not sell through supermarkets) should be viewed as creating “an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage”;
- Sour grape is a widely used flavour by numerous alcohol manufacturers and suppliers in the Australian marketplace. The product description does not have a strong association with confectionery and soft drink and is not likely to appeal to minors.
- ABAC has not ruled adversely on other ‘sour grape’ labelled/flavoured alcohol products in the market and to uphold the complaint in relation to our sour grape products would, in our view, be unfair, inconsistent and discriminatory. Furthermore, “sour grape” is not an appellation that would have any attraction to minors. Nor, in our view, is the labelling of our sour grape products particularly bright or contrasting.
- The colouring, images and layout of the product range do not resemble any soft drink product in the marketplace;
- The product shape differs from the ‘standard’ can shape of soft drinks (is thinner and taller);
- While not conceding the ‘pink lemonade’ can packaging is in breach of the ABAC standard, the Company will not be continuing with that product packaging and consideration is being given to re-branding the ‘pine lime’ and ‘peaches and cream’ products. The ‘sour grape’ packaging is however strongly contended to be fully consistent with the ABAC standard; and
- The Company is mindful not to be seen to target minors and has rejected approaches from retailers to develop product flavours such bubblegum, fairy floss and fruit tingle even though there are alcohol products with these flavours on the Australian market.

ABAC’s remit

28. Before turning to the assessment of the packaging of each individual product, it is useful to address potential misconceptions about the remit of the ABAC

Scheme raised by some comments made by both the complainant and the Company. The points are:

- the 'flavour' of alcohol products and appeal to minors; and
- the triggering of ABAC determinations on various product packaging in the market.

29. At times, both the complainant and the Company referred to the flavour of alcohol products having (or not) an appeal to minors. The ABAC Scheme and the Code is directed solely at the marketing of alcohol beverages. The Scheme does not purport to regulate the physical characteristics of an alcohol beverage i.e. its taste, its colour, its viscosity or its alcohol to volume strength.
30. In making this point, the Panel is not saying that the taste of a beverage is not important in the potential appeal of a beverage to a consumer but rather that to the extent the physical properties of food stuffs are regulated, this is done by government. ABAC is concerned with how a flavour might be described or depicted in alcohol marketing, but not the flavour/taste itself.
31. To illustrate- if it was assumed that a dark stout beer has a taste that would not appeal to a minor - the packaging of the stout beer would still offend the ABAC standard on appeal to minors if it employed bright colours, depictions of child like drawings and descriptions using terms that were highly relatable to minors. A presumed flavour profile not being appealing to minors, will not 'save' the packaging which can be fairly regarded as being appealing to minors. For instance, Determination 70/20 found a stout beer packaged in a can modeled on the design of a can of milo in breach of the strong appeal to minor standard.
32. Equally, the marketing of an alcohol product with a 'sweet' flavour presumed to be more appealing to minors will not be in breach of the ABAC simply because of the flavour. The marketing item may be consistent with the Part 3 (b) standard if it adopts mature messaging, a colour scheme and design features that leads a reasonable person to conclude the marketing does not appeal to minors.
33. It should also be noted that the colour alone of an alcohol beverage will not be a basis for a breach of an ABAC standard. The colour of a beverage however may be a factor in assessing product packaging if the colour is visible through the type of container employed and when combined with design features of the packaging as a whole.
34. On the second point, the Company submits that ABAC has not ruled adversely on other products in market that use the 'sour grape' descriptor in its packaging

and for this reason it would be unfair and discriminatory to uphold the complaint in relation to the Company's sour grape products. With respect, this contention is entirely misconceived as:

- a Determination is triggered by a public complaint about an item of alcohol marketing;
- complaints have not been received about the marketing and packaging of the other products identified by the Company; and
- as explained above the ABAC standards neither permit nor prohibit any product with a 'sour grape' flavour or using a sour grape descriptor. Rather the assessment of the consistency of the marketing/packaging of any product receiving a complaint is done on the factual circumstances of the case on its own merits. A product flavour descriptor will be one element of a product's packaging that is considered amongst all of the elements, including name, colour, design and imagery, as a whole.

Consistency with the ABAC Standard

35. Each of the can product packaging adopts a consistent branding approach with the most prominent features being:
 - the stylised lips;
 - product name;
 - company name; and
 - the background colour palate.
36. While the can design follows this format, the colour scheme for each product is individually distinctive. As a result, some of the cans have bright contrasting colours and others employ a deeper colour palette in which the contrast of the lips to the background colour is less stark.
37. Each of the cans, other than the higher alc/vol 'double' sour grape, use the descriptor 'vodka' in a reasonably prominent font as well as smaller font near the top of the can. As a result it is likely a reasonable person would appreciate the products are alcoholic. Further, as pointed out by the Company, the size of the cans are not those employed commonly with well-known soft drinks.
38. Examined collectively, this is a finely balanced case to assess. The complainant raises legitimate points and there are elements of the packaging design across the range that can be fairly argued to have appeal to minors. On

the other hand the products are identified as alcoholic and the stylised lips invoke a mildly sensual kiss rather than an overtly child-like depiction.

39. The balance of this determination assesses each product packaging in turn.

Pink Lemonade Vodka 330ml can

40. The Panel believes the Part 3 (b) standard has been breached in relation to the Pink Lemonade Vodka 330ml can packaging. In reaching this conclusion the Panel had regard to:

- the use of bright pink background colour and contrasting yellow lips will be eye catching to minors;
- the product name 'pink lemonade' is more widely associated with a soft drink that appeals to minors rather than alcohol beverages;
- while this does not mean an alcohol beverage cannot use this product name, the inherent potential for the product name to be recognisable and relatable to minors must be carefully considered in designing the marketing communication;
- the overall impression of the packaging through the name, colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

Pine Lime Vodka 330ml can

41. The Panel believes the Part 3 (b) standard has been breached in relation to the Pine Lime Vodka 330ml can packaging. In reaching this conclusion the Panel had regard to:

- the use of bright and contrasting colours on the product will be eye catching to minors;
- the product name of 'pine lime' is most closely associated with the well-known Splice Pine Lime ice block and is also a flavour commonly used for non-alcohol beverages such as cordial, flavoured syrup and soft drink;

- while this does not mean an alcohol beverage cannot use this product name, the inherent potential for the product name to be recognisable and relatable to minors must be carefully considered in designing the marketing communication;
- the overall impression of the packaging through the name, colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

Peaches & Cream Vodka 330ml can

42. The Panel does believe the Part 3 (b) standard has been breached in relation to the Peaches & Cream Vodka 330ml can packaging. In reaching this conclusion the Panel had regard to:

- the use of contrasting colours on the product will be eye catching to minors;
- the product name of 'peaches & cream' is most associated with a classic dessert enjoyed by all ages, but is also used for a wide range of products, including, yoghurt, make-up and song titles;
- while this does not mean an alcohol beverage cannot use this product name, the inherent potential for the product name to be recognisable and relatable to minors must be carefully considered in designing the marketing communication;
- the overall impression of the packaging through the name, colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

Sour Grape Vodka 330ml can

43. On balance, and taking the packaging design as a whole, the Panel does believe the Part 3 (b) standard has been breached in relation to the Sour

Grape Vodka 330ml can packaging. In reaching this conclusion the Panel had regard to:

- the expression 'sour grapes' is most commonly associated with the Aesop fable and means disparagement of something out of reach;
- in relation to food and drink, the name describes a product with a sweet and sour flavour profile and is used as a descriptor in several product ranges including confectionery and some alcohol products;
- the lollies in the sour grape range eg chews and straps, are not household staples but would likely have a degree of recognition amongst minors;
- this means there is some potential for an alcohol product employing the sour grape descriptor to be recognisable and relatable to minors based on the familiarity of confectionery also using the descriptor;
- while this does not mean the descriptor cannot be used in alcohol marketing, it does require care in the design of the marketing communication to avoid creating relatable messaging to minors;
- the overall impression of the packaging through the name, colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

Sour Grape Double Vodka 330ml can

44. On balance, and taking the packaging design as a whole, the Panel does believe the Part 3 (b) standard has been breached in relation to the Sour Grape Double Vodka 330ml can packaging. In reaching this conclusion the Panel had regard to:

- the expression 'sour grapes' is most commonly associated with the Aesop fable and means disparagement of something out of reach;
- in relation to food and drink, the name describes a product with a sweet and sour flavour profile and is used as a descriptor in several product ranges including confectionery and some alcohol products;

- the lollies in the sour grape range eg chews and straps, are not household staples but would likely have a degree of recognition amongst minors;
- this means there is some potential for an alcohol product employing the sour grape descriptor to be recognisable and relatable to minors based on the familiarity of confectionery also using the descriptor;
- while this does not mean the descriptor cannot be used in alcohol marketing, it does require care in the design of the marketing communication to avoid creating relatable messaging to minors;
- the use of hot pink, contrasting against a black background will be eye catching to minors;
- the can does not employ the larger font 'vodka' descriptor and there is some possibility it would not be readily identified as being an alcohol beverage although on balance it is unlikely to be confused with a soft drink;
- the overall impression of the packaging through the name, colour scheme and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

Sour Grape Vodka 500ml bottle

45. The Panel does believe the Part 3 (b) standard has been breached. In reaching this conclusion the Panel had regard to:
- the use of bright and contrasting colours on the label and the use of a clear bottle that highlights the bright pink colour of the liquid will be eye catching to minors;
 - the expression 'sour grapes' is most commonly associated with the Aesop fable and means disparagement of something out of reach;
 - in relation to food and drink, the name describes a product with a sweet and sour flavour profile and is used as a descriptor in several product ranges including confectionery and some alcohol products;
 - the lollies in the sour grape range eg chews and straps, are not household staples but would likely have a degree of recognition amongst minors;

- this means there is some potential for an alcohol product employing the sour grape descriptor to be recognisable and relatable to minors based on the familiarity of confectionery also using the descriptor;
- while this does not mean the descriptor cannot be used in alcohol marketing, it does require care in the design of the marketing communication to avoid creating relatable messaging to minors;
- the overall impression of the packaging through the name, colour of the label, choice of clear packaging such that the bright pink liquid is visible and graphic design creates an illusion of a smooth transition from a non-alcoholic to an alcoholic beverage; and
- taken as a whole, the combination of the colour scheme, the product name and the overall impression of the packaging means a reasonable person would most likely understand the packaging has strong or evident appeal to minors.

Conclusion

46. In finding the product packaging in breach of the Part 3 (b) (i) standard, the Panel recognises that the Company is not a signatory to the ABAC Scheme and has not bound itself to the ABAC standards. That said, the Company has fully cooperated with the complaints process and is committed to marketing its products consistently with good marketing practice. It is also accepted that the Company was conscious of the potential for its products to have appeal to minors and it sought to adopt a design protocol that limited this potential.
47. In finding the packaging in breach, the Panel is not ruling that the Company cannot have on the market products named 'sour grape' or indeed any other flavour profile. As explained, it is not the ABAC Scheme's role to permit or prohibit any particular type or style of alcohol product. The Scheme is directed at the marketing of alcohol products and this determination goes to the packaging design and not the underlying product itself.
48. The Company can avail itself of the ABAC pre-vetting service in redesigning its packaging. The advice of the pre-vetters will assist the Company land on a packaging design consistent with the ABAC standards.
49. The Panel makes a final determination that the various product packaging is in breach of Part 3 (b)(i) of the Code.