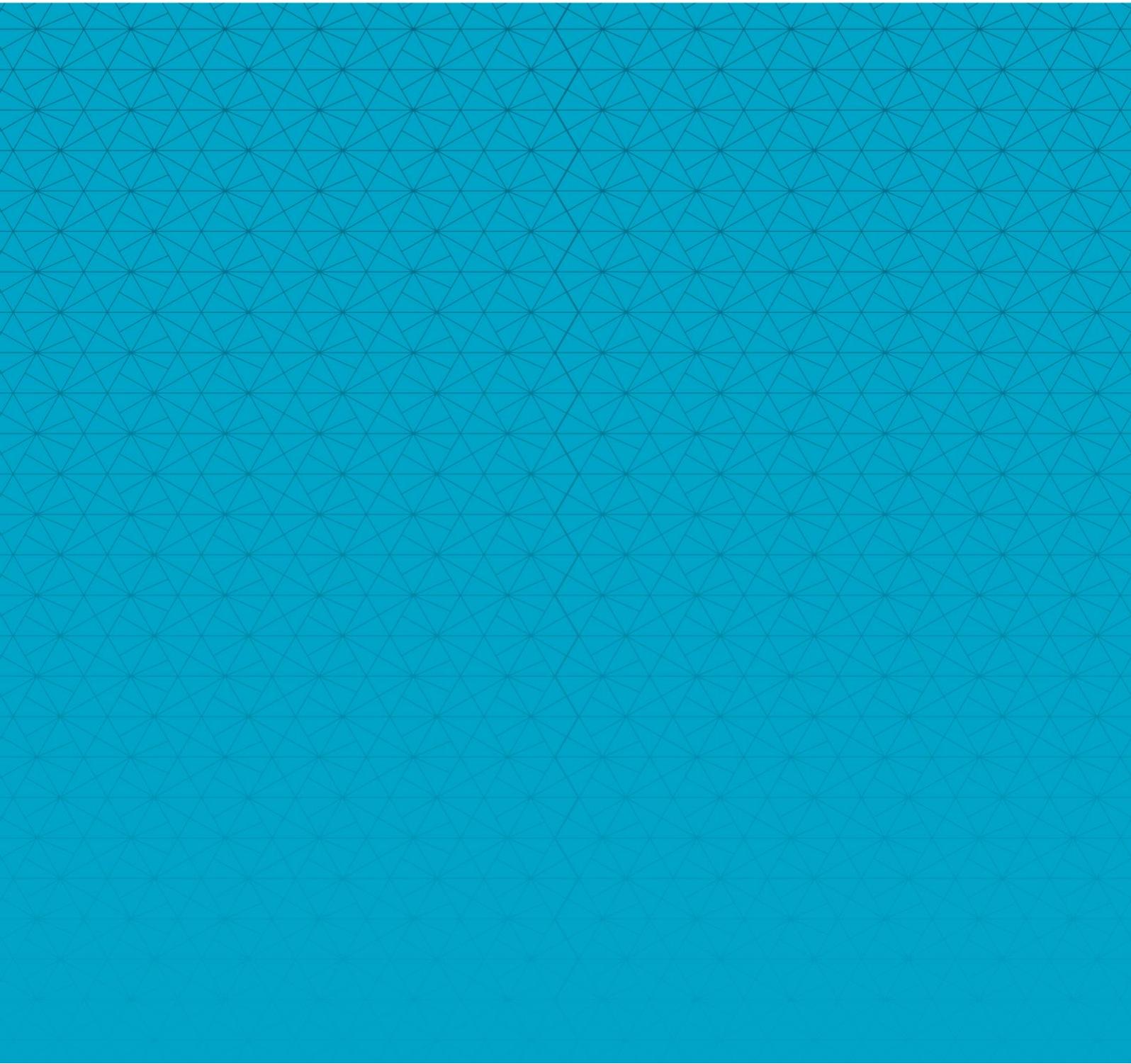


# Australia's Responsible Alcohol Marketing Scheme

2022 Third Quarter Report



## OVERVIEW

The ABAC Responsible Alcohol Marketing Code (the Code) sets standards for responsible alcohol marketing in Australia and regularly measures its determinations externally to ensure it is in line with community expectations. The Code regulates both the content and placement of alcohol marketing across all advertising mediums.

Recent ABAC Panel determinations highlight areas where care is needed when developing marketing:

- Using nostalgic imagery can breach Code standards if the appeal to adults based on memories of their youth draws on themes that continue to have popularity for the current generation of minors. Read the full decision [here](#)
- The Panel considered the use of the trending ‘wave’ filter on an Instagram post and found that the combination of the filter effects and the caption encouraged excessive consumption or treated excessive consumption as amusing, in breach of Code standards. Humour won’t save a marketing communication that fails to meet Code standards. Read the full decision [here](#).
- The use of a juice box style packaging with straw for a pre-mixed cocktail was considered to have strong or evident appeal to minors. The positive attributes of this packaging style in addressing the problem of drink spiking were raised, however the Panel highlighted that Code standards for responsible marketing cannot be ‘traded off’ against another desirable outcome. That is, the ABAC does not envisage a marketing communication that is inconsistent with a Code standard will be allowed if the marketing communication serves some other worthwhile purpose. Read the full decision [here](#).

Are your marketing team, agencies, designers and influencers you work with aware of ABAC’s free resources to assist alcohol marketers achieve responsible marketing content and placement?

- ABAC’s free online training course is the easiest and quickest way to gain insight on how the Code is applied by the Panel and Pre-vetters – just an hour of your time (available [here](#))
- ABAC’s new 1 page checklists are a must for anyone developing or placing alcohol marketing:

[ABAC Alcohol Marketing Content Checklist](#)

[ABAC Alcohol Marketing Placement Checklist 1 – Paid Marketing](#)

[ABAC Alcohol Marketing Placement Checklist 2 – Organic Marketing](#)

**Pre-vetting Tip** - With the launch of ABAC’s new pre-vetting database earlier this year, companies can now lodge revised material/concepts for an existing application direct through the database, rather than via email. This is the fastest and most efficient way to have revised material pre-vetted.

## KEY STATISTICS

<b>Complaints</b>	<b>30</b>
Raising Code issues and referred for determination	16
Not raising Code issues*	13
Raising an issue previously considered by the Panel	1
<b>Determinations</b>	<b>13</b>
Upheld	7
Upheld as a No Fault Breach	1
Dismissed	5
<b>Pre-vets</b>	<b>954</b>
Rejected	180

\* Complaints that did not raise Code issues fell outside the scope of the scheme as they raised concerns outside ABAC standards such as advertising not being clearly distinguishable, misleading claims, religious offence or objectification of women which can fall within the scope of other regulators, including Ad Standards.

## RECENT ALCOHOL MARKETING COMPLAINTS

### Breach of ABAC Standards

#### Milkrun Alcohol Delivery (complaint regarding content)

**Complaint:** Concern that the Instagram post encourages excessive consumption and uses imagery that appeals highly to minors.

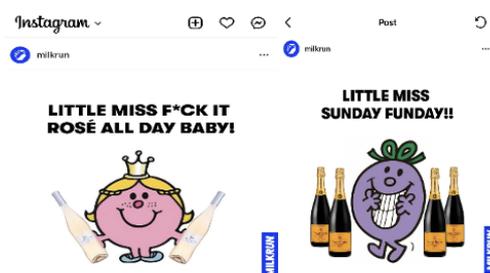
**ABAC standard:** Alcohol marketing cannot:

- show or encourage the excessive consumption of alcohol; or
- have strong or evident appeal to minors.

**Decision:** The Panel believed the post is in breach of ABAC standards as it would:

- have strong or evident appeal to minors by referencing and using images from the 'Little Miss' children's books that remain very popular with minors; and
- reasonably imply excessive consumption through the picture of a character holding two bottles of wine with the caption 'All day Rosé baby'.

The Company removed the Instagram post promptly.



#### Better Beer (complaint regarding content)

**Complaint:** Concern that the Instagram post encourages people to drink to intoxication.

**ABAC standard:** Alcohol marketing cannot show or encourage the excessive consumption of alcohol.

**Decision:** The Panel believed the post would most likely be understood as breaching Part (a)(i), noting:

- the phrase - "It's Friday arvo...let's get wobbly..." raises an implication of drinking until intoxicated;
- the effect of the filter gives rise to an implication of a person being intoxicated through either being unsteady or having vision impaired by excessive consumption; and
- the visual effect combined with the text message would be probably understood as either encouraging excessive consumption or treating the effects of excessive consumption as amusing.

The Company modified the caption of the Instagram post.



### MSC Boxtails 250ml (complaint regarding content)

**Complaint:** Concern that the packaging appeals to minors.

**ABAC standard:** Alcohol marketing cannot have strong or evident appeal to minors.

**Decision:** The Panel held the view the packaging would have strong or evident appeal to minors, noting:

- individual serve, 250ml Tetra Pak type packaging, with a straw attached to the side is associated with non-alcoholic beverages commonly consumed by children, as is the presentation in a shrink wrapped six pack;
- the colours used are muted rather than bright and contrasting however the images of fruit on the pineapple & orange Mai Tai and Pink Gin Daiquiri add to the likely appeal of those products to minors;
- the packaging gives an illusion that the product could be a smooth transition from a non-alcoholic to an alcohol beverage for a minor; and
- taken as a whole a reasonable person would probably understand the packaging has a strong or evident appeal to minors.

The Company has responded to the determination as follows:

- We commit to not producing any more packaging in its current design.
- We will not supply any more stock to distributors or wholesalers that supply to retail stores.



### MSC Boxtails 250ml (complaint regarding content)

**Complaint:** Concern the posts encourage consumption of alcohol in inappropriate locations and ways.

**ABAC standard:** Alcohol marketing cannot:

- show or encourage irresponsible or offensive behavior related to the consumption or presence of alcohol; or
- show alcohol consumption before or during swimming.

**Decision:** The Panel held the view that Post 1 breaches the Part 3 (d) standard, noting that:

- consumption of an alcohol beverage is occurring - in the first photo in the post, the 250ml Boxtail package is shown with the straw in, ready to drink, while in the second photo, the man is holding the beverage up to their mouth;
- the man is wearing board shorts and no shirt and is standing next to the ocean; and
- the scene is set at a time of day that swimming is likely to occur.

The Panel held the view that the words and emojis in Post 2, 📱 anywhere you can sneak them 🤫 breaches Part 3(a)(ii) by suggesting the consumption of alcohol in places that may be illegal or inappropriate.

The first post was deleted and the second modified.



## Mother's Milk Stout (complaint regarding content)

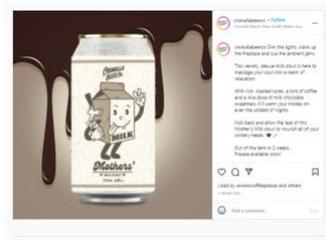
**Complaint:** Concern that packaging and Instagram post appeals to minors.

**ABAC standard:** Alcohol marketing cannot have strong or evident appeal to minors.

**Decision:** The Panel did not consider the packaging, as it hadn't been produced at the time of the complaint, and the actual packaging subsequently produced is not identical to the image referenced in the complaint. However, the Panel believed that, taken as a whole, a reasonable person would probably understand the Instagram post had strong or evident appeal to minors, noting:

- the most prominent feature of the post is the depiction of a milk carton based figure. The image is drawn and, in a style, and colour tone reminiscent of 1930's animation;
- the milk carton figure would have appeal to minors although the overall style is retro rather than contemporary;
- the word 'milk' shown on the carton could raise some potential confusion about the nature of the product although the use of the company name and the word stout on the can image and the accompanying text makes it likely that a reasonable person would understand the post is about an alcohol product;
- the use of the dripping chocolate with the can image, together with the words 'milk' and 'mothers' raises an illusion of smooth transition from a non-alcoholic to alcoholic beverage.

The Company removed the Instagram post.



## Baxter Vodka (complaint regarding content)

**Complaint:** Concern that the Instagram post implies drinking to excess to lower standards and be able to associate with others.

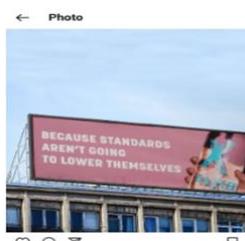
**ABAC standard:** Alcohol marketing must not:

- show or encourage the excessive consumption of alcohol;
- show or encourage irresponsible or offensive behavior related to the consumption or presence of alcohol; or
- show the consumption or presence of alcohol as a cause of or contributing to the achievement of social or sexual success.

**Decision:** The Panel upheld the complaint in relation to part (a)(i) and (c)(ii) finding:

- the post is quite clearly associating the presence of the product (and by direct implication the consumption of the product) with the 'lowering' of standards;
- a reasonable person is sufficiently worldly to understand that the post is in effect suggesting that a reason to use the product is to lower inhibitions and as a result enhance social interactions and likely achieve social/sexual success; and
- this message is directly reinforced by the accompanying text- 'Australia's #1 matchmaker since 2017 😊'.

The Company removed the Instagram post.



## Ritchies IGA + Liquor (complaint regarding placement)

**Complaint:** Concern that alcohol is promoted on a supermarket Facebook page with posts then shared to community groups.

**ABAC standard:** Placement Rule 2 provides that alcohol marketing must not be directed toward minors and therefore available age restriction controls must be applied.

**Decision:** The Panel held the view that there had not been compliance with Placement Rule 2 due to a failure to age restrict posts promoting alcohol products, noting:

- Placement Rule 2 provides that if a media platform such as Facebook has age restrictions controls available, then a marketer must use those controls to exclude minors;
- the Company advised that human error resulted in the posts being made to its supermarket Facebook page, rather than its age restricted Liquor account;
- if the Company adheres to its policy of only posting liquor advertising to its age restricted page, it should not be possible to share them to a non age-restricted environment; and
- it was acknowledged that the Company has initiated training and other measures to limit the possibility of the problem arising again.

Upon receiving the complaint, the alcohol posts were removed from the non age-restricted Facebook account.



## No Fault Breach

### The Kraken Black Spiced Rum (complaint regarding placement)

**Complaint:** Alcohol advertisement shown between episodes of the children’s television show “Blaze” between 5 and 6pm on the 10Play app.

**ABAC standard:** Placement Rules provide that alcohol marketing must not be directed toward minors and therefore

- have available age restriction controls applied (Rule 2)
- only be placed where the audience is reasonably expected to comprise at least 75% Adults (Rule 3)
- not be placed with programs or content primarily aimed at Minors (Rule 4)

**Decision:** The Panel held that the program was primarily aimed at Minors and the audience would be reasonably expected to comprise less than 75% Adults.

However, in this case the Panel made a no fault finding as:

- the Company gave proper instructions to the network that, if followed, would not have had the ad shown with that television show; and
- the network accepted that it had made an error that resulted in the ad being served with the program and taken steps to avoid a repeat of the problem.

Upon receiving the complaint, the network applied the appropriate exclusion block to prevent the ad from being shown with children’s programs.

## Marketing Consistent with ABAC Standards

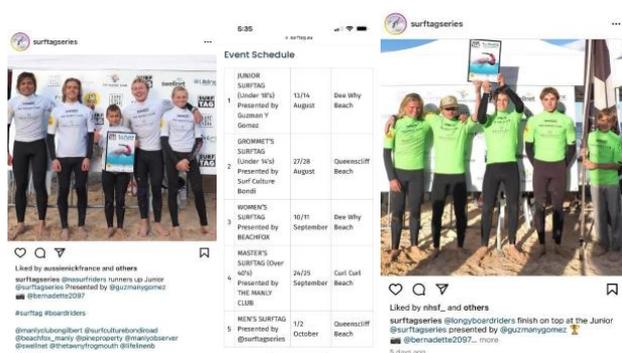
### The Manly Club on Gilbert Park (complaint regarding content and placement)

**Complaint:** Sponsorship of surf carnivals that appeal to minors through signage, clothing and digital.

**ABAC standard:** Alcohol marketing cannot have strong or evident appeal to minors, include prominent images of minors or be directed at minors through a breach of the Placement Rules.

**Decision:** The Panel concluded that the marketing identified by the complainant does not fall within the scope of the ABAC Scheme so as to enable a Panel decision on the concerns raised as:

- the Club is a 'mixed business' which includes service of alcohol as part of its wider operations;
- marketing communications from the Club that reference branded alcohol beverages or the availability of alcohol from Club venues do fall within the ABAC obligations but marketing not referencing alcohol is not within the scope of the ABAC Scheme;
- the marketing items in question mention the Club name alone and make no reference to alcohol beverages or the availability of alcohol at the Club;
- further, the placement of the Club name on signage at a Surftag event and on competition gear worn by Surftag surfers is a direct manifestation of the Club sponsorship of Surftag and falls within the exception to the Code in Part 2;
- the Part 2 exception does not cover the Instagram posts, which is a marketing communication that flows from the sponsorship but is not within the sponsorship directly;
- the posts however only show the Club's name and make no reference to alcohol beverages or the availability of alcohol at the Club.



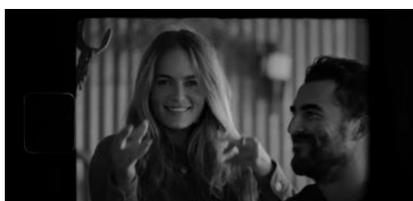
### Ned Whisky (complaint regarding content)

**Complaint:** Television advertisement shows a woman gesturing rudely.

**ABAC standard:** Alcohol marketing cannot show offensive behaviour related to the consumption or presence of alcohol.

**Decision:** The Panel did not believe the ad shows or encourages irresponsible or offensive behaviour related to alcohol use. In reaching this conclusion the Panel had regard to:

- the scene identified by the complainant is shown for less than two seconds (within a 15 second commercial);
- the woman is seen lifting her hands towards her face or hair. Even when pausing the advertisement and viewing frame by frame, it is by no means clear that the woman is gesturing rudely;
- the woman is not seen at any time during the ad holding a glass of or consuming alcohol; and
- the remainder of the 15 second ad does not show or encourage irresponsible or offensive behaviour.



### White Rabbit Chocolate Stout (complaint regarding content)

**Complaint:** Packaging would be confused with confectionery due to the ‘Pana Organic’ logo and a chocolate flavour appeals to minors.

**ABAC standard:** Alcohol marketing cannot have strong or evident appeal to minors.

**Decision:** On balance, the Panel did not believe the Part 3 (b) standard had been breached. In reaching this conclusion the Panel noted that:

- while Pana Chocolate has been a successful business and has wide distribution, a reasonable person would not regard it as a longstanding household purchase so as to be likely to be highly recognised by minors (by contrast products from – Cadburys, Nestle and Mars);
- the Pana Organic logo has a similar muted colour to the rest of the label, and does not stand out;
- the can design does not resemble any well-known soft drink brand and it seems unlikely that the product would be readily confused with a soft drink;
- the can design establishes that the product is an alcohol beverage;
- the imagery is mature, and the white rabbit shown is not engaging and does not resemble any popular children’s character; and
- the label is predominately brown and does not use bright contrasting colours more likely to be strongly appealing to minors.



### Violet Crumble Espresso Martini 2L (complaint regarding content)

**Complaint:** Packaging would be confused with confectionery due to the ‘Violet Crumble’ logo.

**ABAC standard:** Alcohol marketing cannot have strong or evident appeal to minors.

**Decision:** The Panel noted that the use of a well known confectionery brand name such as Violet Crumble in alcohol beverage marketing will always heighten the potential of the marketing material being recognised by minors. Accordingly, the design of such marketing material must be undertaken with considerable care and mindful of the overall impact the marketing may have for minors. For product packaging, employing confectionery branding on a package type used for soft drinks e.g. a can, will enhance the risk the overall impact will have strong appeal to minors.

In the current case, on balance, the Panel did not believe the Part 3 (b) standard had been breached. In reaching this conclusion the Panel noted that:

- two litre casks are commonly associated with alcohol beverages, particularly wine, and are not used for products commonly consumed by minors;
- the packaging does establish through the descriptor 'espresso martini', 'cocktail' and the cask style packaging that the product is alcoholic, and it is unlikely a reasonable person would confuse the product with a soft drink or confectionery, notwithstanding the Violet Crumble name;
- the Violet Crumble name is likely relatable to minors, however the overall packaging design employs a pattern not used on the confectionery;
- the packaging uses deep colours rather than eye catching bright and contrasting colours; and
- taken as a whole, the appeal to minors is incidental rather than strong and evident.



## MSC Boxtails Fruit Tingle Cocktail 2L (complaint regarding content)

**Complaint:** Packaging would appeal to minors due to candy flavour.

**ABAC standard:** Alcohol marketing cannot have strong or evident appeal to minors.

**Decision:** The Panel noted that while it can be accepted that an alcoholic cocktail called a 'fruit tingle' has antecedence in Australia and from that, would be recognised by some adult consumers as an alcohol beverage, the more common association of the fruit tingle name is with the longstanding and widely available lolly from which the cocktail drew its name. This means that care is needed in marketing alcohol products employing a name associated with confectionery as there will be an inherent potential for the marketing material to be relatable to minors. While there is no prohibition on the use of a name such as 'fruit tingle', the context of its use will be vital to ensure that the marketing, as a whole, does not strongly appeal to minors.

In the current case, the product name and the fruit images on the cask are elements that would be relatable to minors. On the other hand, other elements such as the type of packaging are not likely relatable to or used by minors. On balance the Panel did not believe the packaging was inconsistent with the Part 3 (b) standard, noting:

- the cask style packaging is not generally used for beverage products commonly consumed by minors and is far more closely associated with alcohol products, particularly wine;
- the packaging through a combination of the cask style packaging type and the clear descriptors 'cocktail on tap' and the reasonably prominent alc/vol information means it is unlikely the product would be confused with a soft drink;
- the potential association with a confectionery is mitigated by the fact that the colour scheme and images on the cask do not resemble the fruit tingle lollies e.g. the well-known rainbow pattern and colours used on the lolly packaging is not present; and
- taken as a whole, the appeal to minors of the packaging would be incidental as opposed to strong and evident.



The ABAC Complaints Panel is headed by Chief Adjudicator Professor The Hon Michael Lavarch AO. For more information on ABAC or to access the ABAC Adjudication Panel decisions referred to in this report, visit: <http://www.abac.org.au>.