



ABAC Adjudication Panel Determination No 64/23

Product: GT Single Malt Whisky
Company: Craft Works Distillery
Media: Packaging
Date of decision: 18 May 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel ('the Panel') arises from a complaint received on 11 April 2023. It concerns the packaging of GT Single Malt Whisky ('the product') by Craft Works Distillery ('the Company').
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 the 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 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 April 2023.
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 obtained for the marketing.

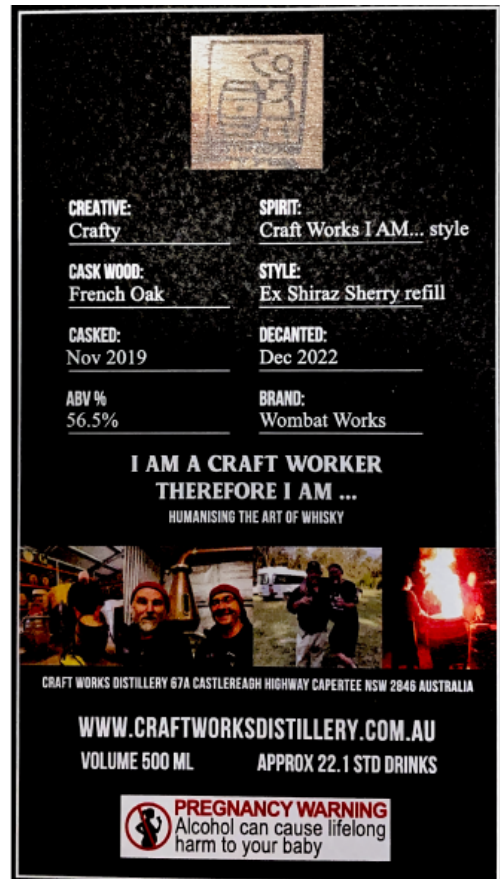
The Marketing Communications

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

Front Label



Back Label



The Complaint

11. The complainant objects to the marketing as follows:
- *The marketing depicts a GT motor vehicle on a bottle of alcohol.*
 - *It depicts drink driving and uses colours in a way similar to Hot Wheels marketing, which could entice children.*

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;
 - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.
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 13 May 2023. The principal comments made by the Company were:
- Thank you for the opportunity you have provided me to respond to the complaint specifically about my Craft Works Distillery label design GT and Instagram post GT pertaining to the design GT single malt whisky label.

- I will break down my GT defence into separate sections to explain why I do not believe that I have breached any ABAC guidelines on alcohol advertising.

Alcohol Advertising Pre-vetting Service Approval

- Craft Works Distillery did not apply for or pay for ABAC Alcohol Advertising Pre-vetting Service Approval. The business reasoning behind my decision is my understanding that IF there is a single complaint then ABAC will launch an investigation, whereas I would have thought a pre-vetting approval would provide an opportunity for ABAC to engage directly with the complainant and assure them that it met ABAC guidelines for alcohol advertising. This is clearly not the case, so I choose not to use the service.
- Pre-vetting services are charged at \$135 per half hour for signatories and \$220 per half hour for non-signatories (exclusive of GST) plus disbursements at cost, that is a significant cost to a small business, and as there are no guarantees or protection from challenges, it's a service that does not provide my business any value at this point in time.

Date first provided for sale

- The product first went on sale at the Australian Whisky Show on 25th March 2023 in Melbourne Australia.

Responsibility toward minors

- It is correct that the colours used are eye-catching and possibly to minors but I put it to you, that eye catching colours are not necessarily the sole domain of appeal just to minors, if that was the case then, is it ABAC's position that we cannot use any eye catching colours in alcohol advertising? This, in my opinion, is restrictive in nature and does not reflect modern day design demands and as such impacts my business by having to restrict my colour palette selection. My brand is a very artistic well-established brand, and I am highly influenced by artists such as Andy Warhol, Van Gogh, Picasso, Wassily Kandinsky, Jackson Pollock and many others, as well specific schools of art for example Fauvist, Abstract and Expressionism.
- I would also add to my defence that on the GT bottle design, it clearly states the product is an AUSTRALIAN CRAFT SINGLE MALT WHISKY. There must be some consideration in parental/adult supervision and a bottle of my whisky should not be in a location that a minor could access it. That is beyond my control.

- I disagree that the car art design is in any way reminiscent of hot wheels children's toys, no more than it is just a car. My concept of the abstract car was based on the vintage hot rod poster designs and t-shirts which have a cult status following and are well recognized by the general public. Admittedly they are cartoon-like format but again, I put to you, is this just the domain of minors? I would suggest not. Are not Family Guy, American Dad and South Park cartoons adult in nature and classification?
- Supporting evidence is provided with links attached below re hot rod design.

<https://www.pinterest.com.au/pin/464293042841953493/>
- The artwork itself, I designed using AI Text to Art technology and using the prompts of vintage American hot rod poster art and reference overlaid various artistic styles to generate the image.

Responsible/moderate portrayal and Safety

- To depict drink driving there would have to be an image of a person in the car driving and it is clear that in my art design label, there is no representation of a driver and even if there was a driver visible there is no indication that the car is in motion hence driving and lastly there is no depiction of alcohol present on the art image design itself. In summary no driver, no driving, no alcohol.
- How does an image of a car imply irresponsible activity of drink driving after or while drinking alcohol? On the art design label there is no person present, even in an abstract art form and no image on the art design label that suggests alcohol. IF this is a breach of ABAC code, then I put it to you that any image of a car and can I suggest further a bike, motorcycle, scooter, bus, skateboard and other transportation would be a breach.
- I think the question is, can any image of transportation and/or the use of eye-catching colours be a breach in ABAC advertising code?

Concluding comments

- In summary, you can clearly see I am passionate about my art, my design and presenting a logical and realistic position on advertising and alcohol.
- In today's competitive alcohol industry, we are all looking for a competitive edge and I choose to employ bright and bold colours and artistic imagery that is yes... eye catching.
- If we are censoring the use of colour and images because they might appeal to minors then yes we need to be absolutely responsible with our labelling and social media however we must also

respect the fact there is art in design and it may be colourful I think the question is where as an industry do we draw the line between what is responsible advertising and what is not.

- GT is responsible in my humble opinion.
- I hope I have presented a strong defence and that the single complaint (or more) will be dismissed.

The Panel's View

Introduction

15. This determination has been triggered by an Instagram post from the Company, but it is the packaging of the product rather than the post itself which is the basis of the complainant's concern.
16. The complainant argues that the packaging is not appropriate for an alcohol product for two reasons. Firstly, it is contended the product label has strong appeal to minors due to using a car depiction which is similar to Hot Wheels toys. Secondly it is argued the label depicts drink driving.
17. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.

Responsibility toward Minors

18. The first of the complainant's concerns raises the ABAC standard contained in Part 3 (b)(i) of the Code. This standard requires that an alcohol marketing communication (which includes brand names and product packaging) must not have strong or evident appeal to minors. This might occur if the product packaging:
 - 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.
19. 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.

20. 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.
21. When assessing a design of a can or bottle, it cannot be expected that a reasonable person will turn the container around the full 360 degrees and study it in fine detail. Rather it is the front of the can/bottle that will be most influential in how the person will probably understand the packaging and impressions will be most strongly shaped by larger font writing and the predominant colours and design features.
22. The front label of the product shows an illustrated car reminiscent of a 1970s Ford Falcon GT. Above the car are two flaming letters - "GT", which are yellow and orange. The Company's logo is shown at the top of the bottle, and at the bottom of the front label are the yellow Wombat Works logo (to signify that the product is a special release) and the words 'Australian Craft Single Malt Whisky'.

23. The complainant is concerned that the packaging would appeal to minors due to being reminiscent of children's toy, Hot Wheels. Hot Wheels is a brand of scale model cars introduced by toymaker Mattel in the late 1960s. Although starting out as children's toys, limited editions of the model cars are now also popular with adults due to their close resemblance to full-size cars. Hot Wheels toys are well known and the logo, featuring an orange flaming symbol containing the words 'Hot Wheels' in yellow, would be familiar to some children.
24. In response to the complaint, the Company advised that:
- the eye-catching colours used on the label are eye-catching to both adults and children alike;
 - to prohibit the use of eye-catching colours on alcohol packaging would be restrictive;
 - the car art design is based on vintage hot rod poster designs and t-shirts which have a cult status following and are well recognized by the general public. The cartoon-like format is not just the domain of minors.
25. The Panel believes that product packaging does not breach the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:
- the car illustration does not look like a picture of a children's toy, or a cartoon car from children's books or movies;
 - Hot Wheels use a flaming logo, and it may have come to mind when the complainant saw the yellow and orange flaming "GT" initials on the product label. However, the use of flames is associated with cars more widely, especially hot rods, and not just with the logo on children's toys;
 - the car pictured would most likely resonate with adults who drove, were passengers in or admired similar looking cars during the height of their popularity in the 1970s, rather than minors born after 2004;
 - the product's bottle is of a shape and size commonly associated with alcohol products, and does not look like a soft drink bottle;
 - the use of the words 'Single Malt Whisky' provides a strong alcohol cue such that the product would not be confused with a soft drink; and
 - taken as a whole the packaging would most probably be understood as having at most incidental appeal rather than strong or evident appeal to minors.

Responsible portrayal and Safety

26. The complainant's second concern is that the car illustration shows drink driving. This concern enlivens the Code standard that an alcohol marketing communication must not show the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle – Part 3 (d).
27. In response, the Company argued that:
- there is no driver visible, there is no indication that the car is in motion and there is no depiction of alcohol present on the art image design itself; and
 - an image of a car does not by itself imply the irresponsible activity of drink driving.
28. The Panel finds that product packaging does not breach the Part 3 (d) standard. The Panel noted:
- alcohol consumption is not shown;
 - the label shows a car and can be admired for its artistic value, or for evoking memories of cars from a bygone era. The label does not contain any images or text that encourages drink driving.
29. The Company is not a signatory to the ABAC Scheme and has not made a prior commitment to comply with Code standards. That said, the Company has demonstrated its commitment to responsible alcohol marketing by co-operating with the complaints process.
30. The complaint is dismissed.