



ABAC Adjudication Panel Determination No 29, 40 & 50/23

Product: Gee Up Vodka
Company: 80Proof Australia Pty Ltd
Media: Packaging
Date of decision: 20 May 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This final determination by the ABAC Adjudication Panel ("the Panel") arises from three complaints received in relation to the packaging of Cotton Candy, Raspberry and Grape Gee Up Vodka products ("the products") by 80Proof Australia Pty Ltd ("the Company"). The complaints were received on 15 February, 3 March and 14 March 2023.
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 complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaints were received on 15 February, 3 March and 14 March 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.

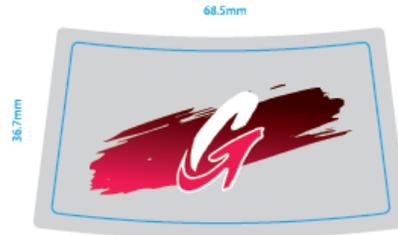
The Marketing Communications

10. The complaint relates to the packaging of Cotton Candy, Raspberry and Grape Gee Up Vodka products:

Gee Up Cotton Candy



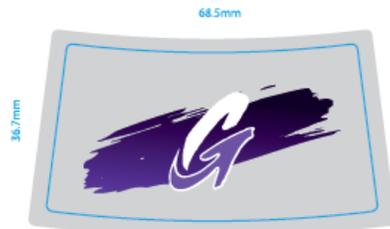
Gee Up Raspberry



GLOSS LAMINATE
ALL OVER



Gee Up Grape



GLOSS LAMINATE
ALL OVER



The Complaint

11. The complainants object to the packaging as follows:

Complaint No	Complainant's Concerns
29/23	<ul style="list-style-type: none">• <i>The products have a strong appeal to minors with their bright colours and names such as Cotton Candy.</i>• <i>Very hard to identify they are alcoholic.</i>• <i>The emphasis of the word Electrolytes makes it appear these alcoholic products have a health benefit.</i>
40/23	<ul style="list-style-type: none">• <i>Alcohol Packaging is making health claims such as 0 grams of sugar without an ingredient list or nutrition chart.</i>• <i>Back of the packaging could be mistaken for a Sports Drink with no clear labelling that is an alcoholic product.</i>• <i>The packaging has a strong appeal to kids with banding such as Cotton Candy. Saying it is the 'new kid on the block' saying to call the product 'daddy'.</i>
50/23	<ul style="list-style-type: none">• <i>Direct references to minors & offensive language</i>• <i>My names Cotton Candy but you can CALL ME DADDY, The NEW KID on the block but don't let that fool you with 0 sugar, I'm not F*CKING Leaving..</i>

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;
- (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation.

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 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 confectionary 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's legal advisors responded to Complaint 29/23 on behalf of their client by letter emailed on 14 March 2023. The principal comments made were:

80Proof 'Gee Up' launch and general comments

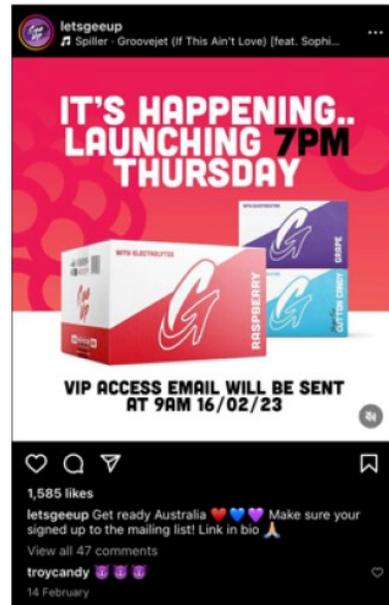
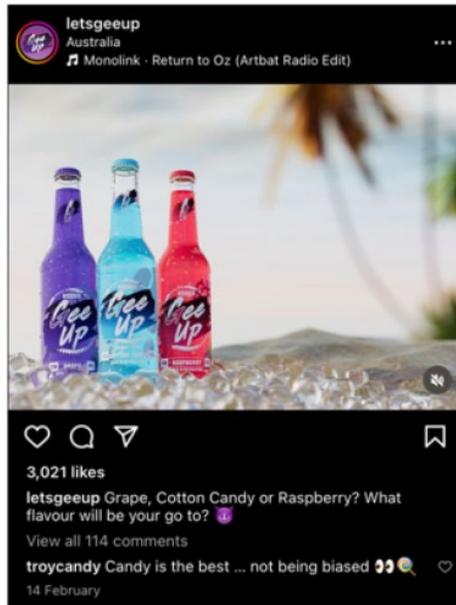
General comments

- 80Proof is an Australian based producer of alcohol products. It produces the 'Gee Up' product.
- As a corporate group that produces alcoholic beverages, 80Proof promote its efforts to fulfill its responsibility to:
 - promote responsible drinking; and
 - eradicate the harmful consumption of alcohol.
- 80Proof is aware of the requirements under ABAC and the Code and recognises their importance in setting standards for responsible alcohol marketing in Australia.
- Please see Schedule 1 for flat images of the products' packaging.
- The products were first supplied for retail sale in Australia on 16 February 2023.

Complaint number 29-23

Advertisement description

- It is unclear in this complaint which advertisement posted on the 'Lets Gee Up' Instagram account (Gee Up Account) the complainant is referring to.
- In this regard, we have provided screenshots below of the 2 posts that were posted to the Gee Up Account on 14 February 2023.



- The first advertisement is a still image that depicts the products sitting on top of ice cubes, on what appears to be a sandy beach with a palm tree. The Instagram post caption reads 'Grape, Cotton Candy or Raspberry? What flavour will be your go to?' followed by a purple devil emoji.
- The second advertisement is a still image that features the products in their respective flavouring casings in front of a red and white background. The words 'it's happening..launching 7pm Thursday...VIP access email will be sent at 9am 16/02/23' are superimposed over the top of the image. The Instagram post caption reads 'Get ready Australia, make sure you are signed up to the mailing list! Link in bio', accompanied by a red, blue and purple love heart emoji and a high five emoji.
- These 2 advertisements did not receive Alcohol Advertising Pre-vetting Service Approval for its content and/or placement.

Responses to issues raised in complaint

- A marketing communication must not have strong or evident appeal to minors (section 3(b)(i) of the Code).
- 80Proof submit that the advertisements subject of this complaint do not breach section 3(b)(i) of the Code, on the following basis:
- The products marketed in the advertisements are not specifically targeted to minors. As outlined, the products are a collaboration between 80Proof and influencer and business visionary Troy Candy. Troy Candy was carefully selected as an influencer by 80Proof on the basis that their following and reach was aligned with their target market of people aged 18-40. The decision to engage Troy Candy is part of the marketing strategy to further the 80Proof goal of expanding the products globally, and to be sold in licenced venues and stores, both which require identification that customers are aged 18 years and above.
- The products featured in the advertisements do not have a particular attractiveness for a minor beyond the general attractiveness for an adult, for the reasons outlined below:
 - The product's bottle shape is that of a standard alcoholic beverage in the market, including beer and ciders. It does not have any playful or interesting shape that may result in it being more attractive to minors nor draw more attention to minors, as opposed to other alcoholic beverages on the market and in advertising;
 - Whilst the products do include 1 colour, the colour is not used in a playful manner nor contrasted with other colours. The respective colours used on the products are to assist consumers in identifying flavours in a logical manner, eg red background for the raspberry flavoured product. The text colour used on the products is a traditional white and implemented as a contrast against the coloured background so that it can be easily read and identified by consumers.
- One of the advertisements' backgrounds is a blurred beach setting that features ice cubes and palm trees and the other a basic block red and white background. Neither of these are keyed toward locations or colour combinations used primarily by minors. The secluded beach with palm trees is a common location used throughout marketing in all genres and is reminiscent of a honeymoon style setting. The red and white background is used

logically as part of branding, as that advertisement features predominantly the raspberry (red) flavoured product.

- The advertisements do not use imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or create confusion with confectionary or soft drinks as outlined below:
 - Whilst the products in the first advertisement depict images of raspberries, grapes and cotton candy (depending on the flavour), these are not stylised in a format targeted to, or strongly attractive to, children. They are a basic image of the fruit/item/ingredients that accompanies the flavour of the product e.g. an image of a raspberry is shown on the raspberry flavoured product. They have not been created into a character nor used in a humorous or cartoon-like way. They are also not positioned on the product as the primary feature, but rather used in a small size in the bottom corner of the product bottle as a secondary flavour indicator. Those images are not used on the product's exterior casing and not visible in the second advertisement. The names on the products in the post are their common name and have not been sensationalised to be attractive to minors by including descriptive words before their common name. For example, the red products flavour is raspberry and therefore, its name is plainly 'raspberry';
 - The products are not likely to create confusion with confectionary or soft drinks. 80Proof is an alcohol brand and does not manufacture or sell confectionery or soft drink. The products are part of a new brand that sit amongst 80Proof's other alcohol products and they are not visible in supermarkets or other environments where minors would frequent. The shape of the bottles in the first advertisement is also not similar to a soft drink, which is predominantly sold in cans. The branding and the products therefore, should not be recognisable to minors, nor suggest a smooth transition from non-alcoholic to alcoholic beverages.
- The advertisements do not use brand identification on merchandise for use primarily by minors. Both advertisements merely feature the products in their bottle format and exterior cardboard casing format respectively.
- The products featured in the advertisements are also clearly labelled and easily identifiable as alcoholic products. The front label

on the bottle clearly states 'VODKA' as the first word (in upper case) on the bottle. It is also accompanied by the alcohol percentage of 4.6%. The Gee Up Account, on which these advertisements were posted on, also clearly states in its biography that the account is for 'Gee Up Vodka' and that the products are 'triple distilled pre-mix vodka'.

- 80Proof also respectfully notes the ABAC Adjudication Panel (Panel) previous decision in determination No 23/22 where it was held that the term 'cider' and the alc/vol information on the front of the product, establishes sufficiently that the product is an alcohol beverage. This is similar to the markings on the products in this case that identify it as alcoholic.
- A marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is a necessary aid to relaxation (section 3(c)(iv) of the Code).
- 80Proof submit that the advertisements subject of this complaint do not breach section 3(c)(iv) of the Code, on the following basis:
 - They feature the products in their bottle form and in their exterior casing. Both the bottle and exterior casing depict the words 'with electrolytes'. This statement that the products contain electrolytes is a mere fact regarding the product's formula and ingredients. This statement is supported by third party lab testing and reports. 80Proof also does not suggest in the advertisements at any time, in any wording or form, that there is any therapeutic, health or wellbeing benefit that will result from consuming the products.
 - Further, 80Proof rejects the complainant's allegations that there is 'emphasis' on the words 'with electrolytes'. This wording is positioned at the base of the bottled products in the smallest font size as compared to its surrounding wording (noting the words 'Gee Up' are approximately 400% larger than the words 'with electrolytes'). The wording is placed in small font on the exterior casing of the products with the 'G' logo being the predominant call out in the second advertisement (noting the 'G' logo is approximately 600% larger than the words 'with electrolytes'). 80Proof has not made any direct or implied therapeutic claims, nor any regarding any health benefits of electrolytes of the products in the advertisements subject of this complaint.

- Schedule 1: Flat images

Cotton Candy

GREY INDICATES CLEAR SUBSTRATE

48mm

28mm

18mm

GLOSS LAMINATE ALL OVER

18mm

PRINT BACK LABEL IN 3 COLOURS: RED IN PMS 485C + BLACK + WHITE

PRINT WHITE PLATE 01: 50% SCREEN WHITE + 100% SCREEN WHITE AREAS INDICATED IN SPOT COLOUR RED

PRINT WHITE PLATE 02: 100% SCREEN WHITE AREAS INDICATED IN SPOT COLOUR RED

	<p>PRODUCT: VODKA</p> <p>ALCOHOL: 43% VOL (86 PROOF)</p> <p>NET VOLUME: 500ml (16.9 FL OZ)</p> <p>NET WEIGHT: 500g (17.6 OZ)</p>	<p>PLEASE CHECK AND CONFIRM YOUR artwork and email approval to info@hampage.com.au</p> <p>ALL artwork must be submitted in CMYK or RGB (not CMYK+RGB) and must be saved as a PDF file. All artwork must be submitted in a high resolution (300 DPI) format. All artwork must be submitted in a high resolution (300 DPI) format. All artwork must be submitted in a high resolution (300 DPI) format.</p> <p>PLEASE CHECK AND CONFIRM YOUR artwork and email approval to info@hampage.com.au</p>
	<p>PRINTING: 48mm x 28mm</p> <p>COLOURS: PMS 485C, BLACK, WHITE</p> <p>FINISH: GLOSS LAMINATE</p>	

Raspberry

GREY INDICATES CLEAR SUBSTRATE

48mm

28mm

18mm

GLOSS LAMINATE ALL OVER

18mm

PRINT BACK LABEL IN 3 COLOURS: RED IN PMS 485C + BLACK + WHITE

PRINT WHITE PLATE 01: 50% SCREEN WHITE + 100% SCREEN WHITE AREAS INDICATED IN SPOT COLOUR RED

PRINT WHITE PLATE 02: 100% SCREEN WHITE AREAS INDICATED IN SPOT COLOUR RED

	<p>PRODUCT: VODKA</p> <p>ALCOHOL: 43% VOL (86 PROOF)</p> <p>NET VOLUME: 500ml (16.9 FL OZ)</p> <p>NET WEIGHT: 500g (17.6 OZ)</p>	<p>PLEASE CHECK AND CONFIRM YOUR artwork and email approval to info@hampage.com.au</p> <p>ALL artwork must be submitted in CMYK or RGB (not CMYK+RGB) and must be saved as a PDF file. All artwork must be submitted in a high resolution (300 DPI) format. All artwork must be submitted in a high resolution (300 DPI) format. All artwork must be submitted in a high resolution (300 DPI) format.</p> <p>PLEASE CHECK AND CONFIRM YOUR artwork and email approval to info@hampage.com.au</p>
	<p>PRINTING: 48mm x 28mm</p> <p>COLOURS: PMS 485C, BLACK, WHITE</p> <p>FINISH: GLOSS LAMINATE</p>	

people aged 18-40 (95% of the Troy Candy Instagram account followers are aged 18 years and above);

- The wording used on the back label includes phrases such as ‘call me daddy’ and ‘new kid on the block’. Both are common sayings that are not primarily associated with minors. Despite the saying ‘the new kid on the block’ referencing children, it is not often used by children and when spoken does not literally mean a new child. Instead, it is used in reference to someone who is new in a place or organisation (and the Cambridge Dictionary defines it as such). 80Proof has used it in their labelling to reference the cotton candy product being a product new to the market;
- Furthermore, whilst ‘daddy’ is a term often used by children in reference to their fathers, the saying ‘call me daddy’ is primarily a saying used by adults to indicate when someone is the boss. It can also in some circumstances have underlying sexual connotations to it. Neither of the 2 sayings would primarily resonate with or be understood by minors, nor be likely to appeal to minors.

The Panel’s View

16. The Gee Up Vodka products by 80Proof Australia Pty Ltd are new to market, having been launched on 16 February 2023. Three flavours are currently included in the range – Cotton Candy, Raspberry and Grape. The marketing of the products has attracted multiple complaints with Determination 32, 33, 37, 39, 41, 42, 45, 47, 48 & 49/23 dealing with a range of social media posts. This determination deals with the packaging (bottle labelling) of the three products.
17. The complainants argue that the packaging is not appropriate for an alcohol product for two reasons. Firstly, that it would appeal to children, and secondly that use of the word ‘electrolytes’ makes it appear that these products have a health benefit. These concerns enliven the Code standards that an alcohol marketing communication (which includes product names and packaging) must not:
 - have Strong or Evident Appeal to Minors (Part 3(b)(i));
 - suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation (Part 3(c)(iv)).

Responsibility toward Minors

18. Part 3 (b)(i) of the Code requires that an alcohol marketing communication 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 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.

20. 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.
21. 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.
22. 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.
23. 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.
24. While the complainants referenced product names adopting flavours of soft drinks and confectionery, it is important to note that the ABAC Scheme and the Code is directed at the marketing of alcohol beverages. ABAC does not regulate physical beverages, namely the taste, colour, viscosity or alcohol to volume strength.
25. In making this point, the Panel is not saying that the taste of a product is not an important consideration in the appeal of a product to a consumer. But it will be

no defence to a concern about the appeal of product packaging to minors to contend that minors won't like the taste of the product. Equally if a product's packaging can be fairly concluded as not strongly appealing to minors, the product packaging won't be in breach of the Code because the product is contended to have a taste that minors would be drawn to.

26. Accordingly, the question of the flavour profile of a product is relevant in how that flavour is portrayed in the marketing of the product. If the marketing portrayal would be understood by a reasonable person as increasing the product's appeal to minors, then this will be an important factor (but not the only factor) in assessing if the Code standard has been breached.
27. Further if a product adopts a name commonly associated with a non-alcoholic product such as confectionery, or a well-known soft drink, then this is clearly a factor in how a reasonable person will understand the product. This does not mean it is impermissible to adopt names or descriptions well recognised with drinks or foodstuffs familiar to minors, but it will increase the risk that the marketing item will have strong appeal to minors.
28. In its response to the complainant's concerns that the packaging has strong or evident appeal to minors, the Company advised that:
 - the products do not have a particular attractiveness for a minor beyond the general attractiveness for an adult;
 - the products' bottle shape is that of a standard alcoholic beverage in the market, including beer and ciders;
 - the shape of the bottles is not similar to a soft drink, which is predominantly sold in cans. The branding and the products therefore, should not be recognisable to minors, nor suggest a smooth transition from non-alcoholic to alcoholic beverages;
 - the packaging includes one colour. The colour is not used in a playful manner nor contrasted with other colours. The respective colours used on the products are to assist consumers in identifying flavours in a logical manner, eg red background for the raspberry flavoured product. The text colour used on the products is a traditional white and implemented as a contrast against the coloured background so that it can be easily read and identified by consumers;
 - whilst the products in the first advertisement depict images of raspberries, grapes and cotton candy (depending on the flavour), these are not stylised in a format targeted to, or strongly attractive to, children and have not been created into a character nor used in a humorous or cartoon-like way. They are also not positioned on

the product as the primary feature, but rather used in a small size in the bottom corner of the product bottle as a secondary flavour indicator;

- the names on the products in the post are their common name and have not been sensationalised to be attractive to minors by including descriptive words before their common name. For example, the red products flavour is raspberry and therefore, its name is plainly ‘raspberry’;
- the products featured in the advertisements are also clearly labelled and easily identifiable as alcoholic products. The front label on the bottle clearly states ‘VODKA’ as the first word (in upper case) on the bottle. It is also accompanied by the alcohol percentage of 4.6%.

29. Each of the three product flavours and whether they have strong or evident appeal to minors will be considered by the Panel below.

Cotton Candy

30. The packaging of Cotton Candy is described below:

Cotton Candy	
Front Label	<p>The words “Gee Up” are shown in the centre of the front label in a relatively large, white and partially blue font, against a background of different hues of blue. All in smaller font, are the word “Vodka” at the top of the label, and the following at the bottom of the label:</p> <ul style="list-style-type: none"> • Sugar Free • 275ml • Cotton Candy • 4.6% • With Electrolytes <p>A picture of blue cotton candy on a stick is also shown in the bottom right of the label.</p>
Back Label	<p>The following text is included on the back label:</p> <p>“My name is Cotton Candy, but you can call me daddy. The new kid on the block, but don’t let that fool you – with 0 sugar and an epic cotton candy taste, I’m not f*cking leaving! Sugar free, but you wouldn’t have guessed it.”</p> <p>The back label also includes the following information:</p> <ul style="list-style-type: none"> • 28 calories per 100ml • 0 grams of sugar per 100ml • 0 grams of fat • With added electrolytes • Pregnancy warning • Driving warning • Please recycle • Drinkwise.org.au

	Cotton Candy	
	<ul style="list-style-type: none"> The number of standard drinks 	<ul style="list-style-type: none"> Address of the Company Website for the Products
Other Packaging Features	<ul style="list-style-type: none"> Transparent packaging, allowing the blue coloured product to be seen 275 ml capacity Packaging shape is also used for other alcohol products, and not commonly for soft drinks. 	

31. There are elements of the packaging that support a strong appeal to minors and others that go some way to alleviating the concern. On balance the Panel believes that the Cotton Candy Vodka product breaches the Part 3 (b)(i) standard, due to a combination of the following factors:
- Cotton Candy is an American name for a confectionery item usually referred to in Australia as Fairy Floss;
 - the name would, however, be recognised by most people including minors as referring to a confectionery if not directly by the name 'cotton candy' then by the term 'candy';
 - the image of fairy floss on a stick strengthens the overall impact of the label being associated with confectionery;
 - cotton candy/fairy floss as a confectionery item would likely resonate strongly to minors;
 - the packaging contains cues that it is an alcoholic beverage through the term "Vodka" and the 4.6% on the front of the bottle, noting the percentage is not directly described as the ABV.
 - the bottle shape is used in alcohol pre-mixed beverages and is not immediately associated with the bottle style used for soft drinks as such;
 - the confectionery references and imagery mean that the packaging is relatable to minors and creates an illusion of a smooth transition from a non-alcoholic beverage to an alcohol beverage; and
 - taken as a whole a reasonable person would probably understand that the packaging has strong or evident appeal to minors.
32. The wording on the back label was also considered by the Panel, especially the use of the words "...you can call me daddy. The new kid on the block, but don't let that fool you". The Panel concluded that the casual language and

expressions would not be taken as referring to children nor would the text likely resonate strongly with minors.

Raspberry and Grape

33. The packaging of Raspberry and Grape Gee Up Vodka is described below:

	Raspberry	Grape
Front Label	<p>For both products, the words “Gee Up” are shown in the centre of the front label in relatively large, white and partially red (for Raspberry) or purple (for Grape) font, against a background of different hues of the relevant product colour. All in smaller font, are the word “Vodka” at the top of the label, and the following at the bottom of the label:</p> <ul style="list-style-type: none"> • 275ml • Raspberry • 4.6% • With Electrolytes 	
	An illustration of a berry is also shown in the bottom right of the label.	An illustration of a bunch of grapes is also shown in the bottom right of the label.
Back Label	<p>The following blurb is included on the back label:</p> <p>“I’m the OG - like the raspberry drink you know and love, only better! A guaranteed party starter, rip me open and enjoy the ride. I am the captain now! More sugar, less taste.”</p>	<p>The following blurb is included on the back label:</p> <p>“Wheels up, it’s time to party! I’m sweeter than Stifler’s mum and packed with a delicious grape punch. With f*ck all sugar and no strange aftertaste, I’m guaranteed to be your new favourite. Rip my lid off, let’s go!”</p>
	<p>For both products, the back label also includes the following information:</p> <ul style="list-style-type: none"> • 46 calories per 100ml • 4.3 grams of sugar per 100ml • 0 grams of fat • With added electrolytes • The number of standard drinks • Pregnancy warning • Driving warning • Please recycle • Drinkwise.org.au • Address of the Company • Website for the Products 	
Other Packaging Features	<ul style="list-style-type: none"> • Transparent packaging, allowing the product colour to be seen • 275 ml capacity • Packaging shape also used for other alcohol products, and not commonly for soft drinks 	

34. Raspberry and grape are flavours used for some soft drinks - either carbonated sodas or cordials - and hence would have some familiarity to minors. Further the labels include an image of either a berry or a bunch of grapes.

35. While again there are elements raising a potential appeal to minors, on balance the Panel believes that neither product packaging breaches the Code standard, noting that:
- the style and shape of the bottle is not predominately used for soft drinks;
 - there are cues on the labelling indicating the products are alcoholic;
 - raspberries and grapes are consumed by children and adults alike, as are products which use their flavour. The name “raspberry” and “grape” by themselves would not have stronger or more evident appeal to minors than to adults; and
 - taken as a whole a reasonable person would probably understand the packaging has incidental appeal rather than strong or evident appeal to minors.
36. The Panel considered the text on the back of each product (keeping in mind that it is the front of the bottle that will be most influential in how the person will probably understand the packaging). It concluded that the casual nature of the text would not probably strongly appeal to minors. Further, the reference to Stifler’s mum is from the American Pie movies which were first screened over 20 years ago. This cultural reference is more likely to resonate with adults rather than minors.

Responsible depiction of the effects of alcohol

37. The complainant’s second concern was that the words “with electrolytes” implied the product offered a health benefit. This raises Part 3 (c)(iv) of the Code which provides that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit or is an aid to relaxation.
38. In response to this concern, the Company argued that:
- the statement that the products contain electrolytes is a mere fact regarding the product’s formula and ingredients;
 - it has not made any direct or implied therapeutic claims, nor any regarding any health benefits of electrolytes of the products; and
 - the wording “with electrolytes” is positioned at the base of the product’s bottle in small font.
39. Alcohol marketers are entitled to choose their brand posture and highlight that alcohol beverages are produced or distilled in a particular fashion and contain various elements. What a marketer cannot do is then suggest that either the

manner in which the product is made or its constituent parts, results in the consumption of the product giving a consumer positive health or relaxation benefits.

40. The Panel does not believe that the packaging breaches the Part 3 (c)(iv) standard. The packaging conveys that electrolytes have been used as an ingredient in the products, however, no claims of health or therapeutic benefits are made on the packaging.

Conclusion

41. On 5 May 2023 the Panel issued a provisional determination on the consistency of the packaging of the three Gee Up Vodka products from with the ABAC standard in Part 3 (b)(i) of the Code. The provisional determination found the packaging of two of the products consistent with the standard and one of the vodka products, Cotton Candy, in breach of the ABAC standard.
42. On 19 May the Company advised it would accept the provisional determination. Accordingly, the Panel makes a final determination that the 'Cotton Candy' product breaches Part 3 (b)(i) of the Code by having strong or evident appeal to minors.