



ABAC Adjudication Panel Determination Nos 67, 68, 69 & 70/23

Product: Gravity Seltzer
Company: Gravity Seltzer
Media: Instagram/Facebook/TikTok
Date of decision: 1 June 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel ('the Panel') arises from four complaints received on 19 April 2023 in relation to 10 different social media posts marketing Gravity Seltzer products ('the products') by Gravity Seltzer ('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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

The Complaint Timeline

7. The complaints were received on 19 April 2023.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of

materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

Pre-vetting Clearance

- 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.

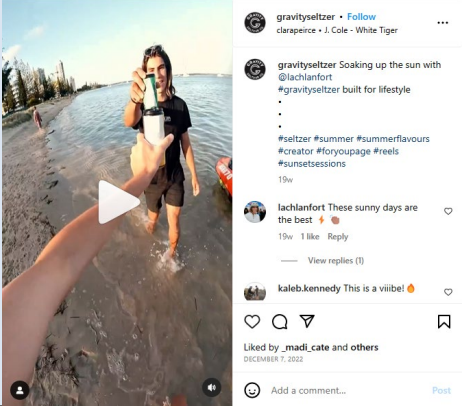

The Marketing Communications and Complaints



- The following is a summary of the marketing communications and the complainant's concerns.

Complaint Reference	Media	Complainant's Concern
67/23 Social Media Post 1	Instagram https://www.instagram.com/p/CnWJ_tZh0M5/ 	<i>The advertisements create a scene that reasonably implies the models/influencers/brand ambassadors are consuming alcohol and then swimming in either a pool or the sea/ocean.</i> <i>This is supported by: their swimwear attire; having wet hair or swimming clothes; their proximity to the water; the open nature of the alcohol in question; the visible consumption of the alcohol product in question; and the setting at a time of day suited to swimming.</i> <i>We hold concerns that these advertisements encourage the consumption of alcohol before swimming, and promote this as socially acceptable behaviour.</i>
67/23 Social Media Post 2	Instagram https://www.instagram.com/p/CI79Z4FBcCu/ Facebook https://www.facebook.com/photo/?fbid=445810217755824&set=pcb.445810254422487	As per Social Media Post 1.

Complaint Reference	Media	Complainant's Concern
		
<p>67/23</p> <p>Social Media Post 3</p>	<p>Instagram</p> <p>Facebook</p> <p>https://www.instagram.com/p/CpKHFDkBsQH/</p> <p>https://m.facebook.com/story.php?story_fbid=pfbid0dX3kedrs4kE4Pi7WZfC4xws674meG5wbiH2EMgp83zPdXMcCsKNx8rQoY87EGVi4I&id=100069805489560&mibextid=uc01c0</p> 	<p><i>The Gravity Seltzer Co has posted multiple photographs and video reels of various models and brand ambassadors skolling drinks in a rapid and excessive manner. There are multiple portrayals of the company using these photos and video reels to promote their product</i></p>
<p>68/23</p>	<p>Website</p> <p>https://www.gravityseltzer.com/pages/about</p>	<p><i>The website for the Gravity Seltzer Co, in the 'About Us' section provides information about the company on the products. The communication uses the following language:</i></p> <ul style="list-style-type: none"> • <i>Gravity Seltzer is a 'drink that's all about you – your health, your lifestyle and the memories you create'.</i> • <i>"Imagine a beverage that's brewed like a beer but was lighter, bouncier, much more refreshing and had none of its downsides. That's Gravity Seltzer".</i> • <i>Gravity Seltzer was "created out of a thirst for healthy, tasty, refreshing beverages that you can bring with you on a hike or a family gathering".</i> • <i>'Gravity is the drink that will energise you on your hikes, rides, and adventures, but will also help you relax</i>

Complaint Reference	Media	Complainant's Concern
		<p><i>when it's time to wind down, relax, and have fun with your friends and family'.</i></p> <p><i>Whilst the company also produces zero-alcohol drink options, this communication does not distinguish this for the reader.</i></p>
<p>69/23</p> <p>Social Media Post 4a (Photo)</p> <p>Social Media Post 4b (Reel)</p>	<p>Instagram</p> <p>Facebook</p> <p>GRAVITY SELTZER on Instagram: "How @matburkee loves to finish off a day riding @goldcoastwakepark #gravityseltzer #wakepark #arvoseltzer"</p> <p>https://www.instagram.com/reel/CIAzN7IB5dE/?igshid=YmMyMTA2M2Y=</p> <p>https://www.facebook.com/photo?fbid=436635658673280&set=a.346690781001102</p> 	<p><i>The Gravity Seltzer Co has posted multiple photographs and video reels of various models and brand ambassadors skolling drinks in a rapid and excessive manner.</i></p>
<p>69/23</p> <p>Social Media Post 5 (Reel)</p>	<p>Instagram</p> <p>GRAVITY SELTZER on Instagram: "HAPPY AUSTRALIA DAY! @keeley.saunders and @kaleb.kennedy soaking up the sun enjoying the freshest seltzer around #gravityseltzer..."</p> 	<p><i>As per Social Media Post 4a.</i></p> <p><i>It can also be reasonably assumed that the woman featured will be swimming after skolling her drink given that she is standing in the water wearing a swimsuit.</i></p>
<p>70/23</p>	<p>Instagram</p>	<p><i>The brand continues to post photos and video reels whereby their alcoholic product is consumed before a variety of influencers</i></p>

Complaint Reference	Media	Complainant's Concern
Social Media Post 6	<p>GRAVITY SELTZER on Instagram: "Soaking up the sun with @lachlanfort #gravityseltzer built for lifestyle ••• #seltzer #summer #summerflavours #creator #foryoupage..."</p> 	<p><i>and brand ambassadors engage in activities that require a high degree of alertness/physical coordination. This includes riding jet skis, diving, snowboarding and wakeboarding.</i></p>
<p>70/23</p> <p>Social Media Post 7</p>	<p>Instagram</p> <p>https://www.instagram.com/p/CmBN5GGBlgw/</p> <p>https://www.facebook.com/photo?fbid=447434124260100&set=pb.100069805489560.-2207520000</p> 	<p>As per Social Media Post 6.</p>
<p>70/23</p> <p>Social Media Post 8</p>	<p>GRAVITY SELTZER on Instagram: "@matt_poole1 absolutely killed it at his first time wake surfing with @harleyclifford a little spooked about the sharks though 🤩 • Nothing ..."</p>	<p>As per Social Media Post 6.</p>
<p>70/23</p> <p>Social Media Post 9</p>	<p>Instagram</p> <p>TikTok</p> <p>GRAVITY SELTZER on Instagram: "The #gravitylifestyle in 15seconds with @harleyclifford @cooperchapman @matt_poole1 ••• #gravity #seltzer #alcfree #lifestyle"</p> <p>https://www.tiktok.com/@gravityseltzer/video/7190676393917713665</p>	<p>As per Social Media Post 6.</p> <p>While the video does show some of the Gravity Seltzer alcohol-free seltzer options, and uses the hashtag #alcfree, it also clearly depicts the Company's alcohol-based products.</p> <p>It is contended that this is deceptive and misleading as the video features various activities that should not be conducted under the influence of alcohol.</p>

Complaint Reference	Media	Complainant's Concern
	 <p>gravityseltzer • Follow koozebane • Kooze x HerculesDJControl Mix</p> <p>gravityseltzer The #gravitylifestyle in 15seconds with @harleyclifford @cooperchapman @matt_poole1</p> <p>#gravity #seltzer #alcfree #lifestyle</p> <p>12w</p> <p>harrybink 12w 1 like Reply View replies (1)</p> <p>feedyourfuturedietetics Epic multitasking</p> <p>Liked by rob87bunny and others</p> <p>JANUARY 19</p> <p>Add a comment... Post</p>	
<p>67/23</p> <p>Social Media Post 10</p>	<p>Instagram</p> <p>https://www.instagram.com/p/CbMhf1Vposg/</p>  <p>jennalouise_jl • Follow Gold Coast, Queensland</p> <p>jennalouise_jl More Days Like This #weekdaysibes</p> <p>@gravityseltzer</p> <p>If you're after an epic option for those who are health conscious like myself looking for a lighter option, grab yourself a Gravity Seltzer.</p> <ul style="list-style-type: none"> ✓ Gluten Free ✓ Vegan ✓ 99% Sugar Free ✓ 2g Carbs ✓ 85 Calories ✓ 4% Alcohol ✓ 0% Alcohol Options ✓ Real Natural Flavours ✓ Aussie Made 	<p>As per Social Media Post 1.</p>

The ABAC Code

11. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment;
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;
 - (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.

12. Part 6 of the ABAC Code provides that:

Marketing Communications means marketing communications in Australia generated by or within the reasonable control of a Marketer (apart from the exceptions listed in Section 2(b)), including but not limited to brand advertising (including trade advertising), competitions, digital communications (including in mobile and social media), product names and packaging, advertorials, alcohol brand extensions to non-alcohol beverage products, point of sale materials, retailer advertising and Marketing Collateral.

The Company's Response

13. The Company responded to the complaints by letters emailed on 23 May 2023. The primary comments made by the Company were:

- Thank you for your email and for the notice of the recent complaints. We do take this matter quite seriously hence our delay in communications as we have internally been discussing the best course of action. Similar to the previous email, we have used this as a learning opportunity for the business and its team.
- Since we received your correspondence, in conjunction with the other letter we have already submitted, we have:
 - Contacted yourself, and spoke about options to educate ourselves as a company better for the future
 - Created a new process for new posts, and marketing externally with our 3rd party agency and team, which will include a two person sign off for posts
 - Planning to attend the ABAC online training to better our marketing teams understanding of the guidelines
- The posts that have been taken down / initiated request to take down from our social media by our 3rd party:

Social Media Post 2	https://www.instagram.com/p/CI79Z4FBcCu/
Social Media Post 4	https://www.instagram.com/p/ClakAf2h4cg/

Social Media Post 3	https://www.instagram.com/p/CpKHFDkBsQH/
Social Media Post 5	https://www.instagram.com/p/Cn3meADBXRm/

- We wish to contest the complaints in relation to these posts:

Social Media Post 1	https://www.instagram.com/p/CnWJ_tZh0M5/
Social Media Post 6	https://www.instagram.com/p/Ci21HHP hLTd/?hl=en
Social Media Post 8	https://www.instagram.com/p/CoEn2ohBP7b/?hl=en
Social Media Post 9	https://www.instagram.com/p/Cnlo6QDMCfQ/?hl=en

- It is our understanding that the posts we wish to contest have the same set of themes. We believe that our ZERO % alcohol was the driver in the video/posts that show any “action” or “movement” near water. The 0% In the can was clear and the #alcfree was referred to. All other product shots clearly show the Gravity Seltzer can being consumed and communicated well after the “movement” was completed.

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communications referred to in the complaint did not receive Alcohol Advertising Pre-vetting Service Approval for their content and/or placement. The company was not aware of any such service until this came through. We are certainly looking into this moving into the future from today.

Responsible and moderate portrayal of Alcohol Beverages

- In relation to Social Media Posts 4a and 4b – we do not believe that it depicts a person holding a can of alcohol above their heads and pouring the contents into their mouths, which could be interpreted as skolling. We position both our Alcoholic and Non Alcoholic beverages in our advertising with all healthier or lighter choice messaging and marketing - that is what Gravity is about. We

understand the view of this could be seen that way, and our marketing teams and athletes have been notified, however in this instance wearing a helmet was why he was tilting his head back.

- In relation to Social Media Post 3 - Similarly to prior posts, we encourage people to explore more and adventure. We also have a zero-alcohol range in which we try and refer no hangover references to. Feeling fresh and light refers to the natural beverage we produce and the low calories. We encourage people through our marketing to adventure all day and night. Not party or drink a lot. We do however understand that these words cannot be referred to in alcoholic product marketing.

Responsible depiction of the effects of alcohol

Change in mood or environment

- We have amended the website text as follows:

Original text	Amended text
<p><i>“Gravity is the drink that will energise you on your hikes, rides, and adventures, but will also help you relax when it’s time to wind down, relax, and have fun with your friends and family.”</i></p>	<p>This is aiming to reference to our non-alcoholic ranges - so we have amended text to:</p> <p><i>“Gravity is the drink that will help you enjoy good times with friends and family after your hikes, rides, and adventures, when it’s all about good stories and winding down.”</i></p>
<p><i>“A drink that can energize you while you’re active during the day...”</i></p>	<p><i>“A drink that will help you have energetic stories to tell after you’ve experienced them.”</i></p>

Therapeutic benefit or necessary aid to relaxation

- In relation to the following text, we believe that Health = Natural beverage with low calories and mindful drinking. Lifestyle = encouraging consumers to have a healthy lifestyle. Memories = encouraging adventure and outdoor exploration.

“A drink that’s all about you – your health, your lifestyle, and the memories you create.”

- The following text is referring to our non-alcoholic and alcoholic range:

“Gravity was created out of a thirst for healthy, tasty, refreshing beverages that you can bring with you regardless of whether you’re on a hike or a family gathering.”

- We have amended the website text as follows:

Original text	Amended text
<i>“Imagine a beverage that’s brewed like a beer but was lighter, bouncier, much more refreshing, and had none of its downsides.”</i>	<i>“Imagine a beverage that’s brewed like a beer but was lighter, bouncier, much more refreshing, and less calories.”</i>
<i>“Gravity is the drink that will energise you on your hikes, rides, and adventures, but will also help you relax when it’s time to wind down, relax, and have fun with your friends and family.”</i>	<i>“Gravity is the drink that you share stories with, after your hikes, rides, and adventures, but will also help you relax when it’s time to wind down, relax, and have fun with your friends and family.”</i>

Safety

- We do not believe that the posts breach Part 3 (d) of the Code because, as in prior responses, we primarily use 0% range of products when marketing near water, and when the alcoholic can is in use, we are focused to ensure the product is in position after the movement or activity is completed.

Concluding comment

- We thank you for the opportunity to learn from this experience, and please do not hesitate to contact us at any point if we need to provide additional information on the topics above. We believe that this has helped us tighten up our marketing efforts, for an outdoor inspired company we understand the need for carefulness.

The Panel's View

Introduction

14. This determination arises from four complaints from a single complainant concerning the on-line marketing of Gravity Seltzer products. Collectively the complaints identify a large number of individual marketing communications, 11 of which were older social media posts and the balance relating to posts made in the six months prior to the complaint as well as the Company's website.
15. In relation to the older posts, the ABAC Rules and Procedures applying to complaints allows for an older social media post to be dealt with by informal resolution. This involves the removal of the post without a formal Panel decision when:
 - it is accepted by the marketer that the post is in breach of a Code standard;
 - there are no novel issues or matters of Code interpretation raised by the post; and
 - there is no recent promotion of the post and hence the prospect of the post influencing community attitudes to alcohol use is limited.
16. The option for informal resolution reflects the dynamic nature of social media and that it is very easy to post marketing communications on a continuous basis. Further the pattern of engagement with social media means if a post is not seen within a short time after being made, it is unlikely many social media users will engage with the material. Finally, in cost/benefit terms, informal resolution ensures that the time and resources of the ABAC Scheme are directed to current and more influential marketing.
17. The Company has accepted informal resolution in relation to the older posts and accordingly the determination deals with the complainant's concerns regarding more recent social media posts and the Company's website. Even so, the complaints often refer to several individual social media posts and taken as a whole the Panel has been called upon to make a large number of specific decisions regarding the consistency of the marketing communications against multiple ABAC standards.
18. At an overview level the complainant contends that the Company's marketing has been highly irresponsible by showing and/or encouraging the rapid consumption of alcohol, alcohol use in inappropriate or unsafe circumstances, making inappropriate health claims about the product and portraying the product as changing the consumer's mood or environment. In response the Company has:

- deleted a number of posts or changed text on its website, without conceding a breach of the Code; and
 - advised that, in some instances, the marketing is for its non-alcoholic range of beverages, or it has been careful to position the depiction of alcoholic beverages following the completion of various activities.
19. To make the decision making process manageable and this determination comprehensible, the Panel's View is structured as follows:
- relevant ABAC standards
 - responsible and moderate portrayal of alcohol beverages
 - responsible depiction of the effects of alcohol
 - alcohol and safety
 - assessing if a standard has been breached
 - obligations regarding the marketing of non-alcoholic beverages that are a brand extension of an alcohol beverage brand
 - assessment of complaints and marketing communications against the ABAC provisions
 - website
 - social media posts
 - conclusion.

Relevant ABAC Standards

20. There are four key content standards within the ABAC, supported by specific Code provisions that collectively aim at alcohol marketing communications occurring consistent with good practice. The complainant's concerns potentially raise Code provisions under three of the four standards, as described below.

Responsible and moderate portrayal of alcohol beverages

21. Alcohol marketing should model the moderate and responsible use of alcohol and accordingly an alcohol marketing communication must not show or encourage excessive or rapid consumption of alcohol, misuse or abuse of an alcohol beverage – Part 3 (a)(i).

Responsible depiction of the effects of alcohol

22. In some instances, the concerns expressed by the complainant raise the Code provisions requiring that an alcohol marketing communication must not:
- suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment (Part 3 (c)(i));
 - suggest that the consumption of an alcohol beverage offers any therapeutic benefit (Part 3 (c)(iv)).
23. In general, a marketing communication must not suggest that consuming the product is beneficial for a person's health or wellbeing. It may, however, factually communicate the ingredients used and make claims about nutritional content such as calories, sugar or carbohydrate levels and compare this information with other alcohol products.

Alcohol and safety

24. Part 3 (d) of the Code requires that an alcohol marketing communication must not 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 coordination, such as the control of a motor vehicle, boat or machinery or swimming.

Assessing if a standard has been breached

25. 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.
26. Sometimes it is possible to interpret a marketing communication in several ways. A consequence of the reasonable person test is that the most likely interpretation is to be preferred over a possible but less likely interpretation. This doesn't mean that a person taking a different interpretation of the marketing item is 'unreasonable' but possibly their understanding of the marketing would not be shared by most people in the community.

Obligations regarding the marketing of non-alcoholic beverages that are a brand extension of an alcohol beverage brand

27. The Company's range of beverages includes both alcoholic seltzers and non-alcoholic seltzers. The ABAC Scheme applies to the marketing of alcohol beverages (beverages with 0.5% ABV or greater). Marketing of a beverage with an ABV of less than 0.5% can however be captured by the ABAC obligations if it can be regarded as a brand extension of an alcohol beverage.

28. Put simply, if a zero alcohol product shares the same branding as an alcohol product, ABAC Standards will apply to the marketing of the zero alcohol product depending if the marketing communication does not clearly and prominently identify the product as non-alcoholic.
29. For instance, if an ad is for a non-alcoholic beverage that is styled as an alcohol product eg a zero alcohol beer, then the ABAC standards will apply to that ad if a reasonable person would likely not appreciate the ad is for a zero alcohol beer as opposed to a 'normal' alcoholic beer.

Assessment of complaints and marketing communications against the ABAC provisions

30. The balance of the determination provides a summary of the Panel's findings on the marketing communications in light of the various complaints. Given the sheer number of marketing communications, only a limited discussion is provided on each decision.

Website

31. The complainant is concerned that the following statements included on the Company's website allude to its products being 'healthy', including by advising that its products hold 'none of the downsides' of other alcoholic drinks:
 - "Gravity is the drink that will energise you on your hikes, rides, and adventures, but will also help you relax when it's time to wind down, relax, and have fun with your friends and family."
 - "A drink that can energize you while you're active during the day..."
 - "A drink that's all about you – your health, your lifestyle, and the memories you create."
 - "Imagine a beverage that's brewed like a beer but was lighter, bouncier, much more refreshing, and had none of its downsides."
 - "Gravity was created out of a thirst for healthy, tasty, refreshing beverages that you can bring with you regardless of whether you're on a hike or a family gathering."
 - "Gravity is the drink that will energise you on your hikes, rides, and adventures, but will also help you relax when it's time to wind down, relax, and have fun with your friends and family."
32. In response, the Company has changed some of the text, or advised that it was referring to its non-alcoholic beverages.

33. The Company has a range of alcoholic and non-alcoholic products that adopt similar packaging. This is permitted, but it does heighten the risk that an item of marketing for the non-alcoholic product can be confused with its alcoholic version. If this occurs, then a reasonable person might understand a marketing communication is making a claim about a product which is inconsistent with a Code standard when made about an alcohol beverage.
34. The Panel does not believe that the references to alcoholic and non-alcoholic beverages on the Company's website are sufficiently differentiated such that the consumer is able to attribute each statement to a particular product type, and concludes that the text identified in paragraph 31 breaches the Code by suggesting that the:
- consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment (Part 3 (c)(i)); and/or
 - consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation (Part (c)(iv)).

Social Media Posts 1 and 2

35. Social Media Post 1 depicts a man in swimwear drinking from a can of Gravity Seltzer while sitting on the back of a floating boat. Water can be seen in the background. The accompanying text reads:

gravityseltzer Where good company meets good times.
Celebrate with a @gravityseltzer x @harleyclifford

36. Social Media Post 2 depicts a woman in swimwear, holding a can of alcohol product in her outstretched hand, while sitting on the front of a boat in water. The accompanying text reads:

gravityseltzer Friday vibes! What's your weekend plans?
@tayjae124 x @lachlanfort 🍷

37. The Company has advised that it will remove Social Media Post 2 (without conceding a breach) and has advised that they contest the complaint in relation to Social Media Post 1, as it shows the Gravity Seltzer can being consumed well after the conclusion of water activities.
38. The Panel concludes that both Social Media Post 1 and 2 breach Part 3 (d) of the Code by showing the consumption of alcohol during or before swimming. Post 2 positions the woman in swimwear, on the edge of a boat in water and the reasonable implication is that she will be swimming.

39. While the photographs in Post 1 might have been taken when swimming had finished for the day, this is not the test of the marketing communication. The test is how a reasonable person would probably understand the post. Typically, a viewer of a social media post won't study the post in fine detail but will be guided by the most prominent features. In this case, a man is seen on the edge of a boat, in swimwear, with damp hair, drinking the product. The most probable understanding is that the man is drinking while swimming.

Social Media Post 3

40. Social Media Post 3 shows eight people wearing swimwear and standing in the water, some of whom are holding what appear to be alcoholic drinks. It is a still shot taken from the video included in Social Media Post 5.
41. The text accompanying the post reads:

gravityseltzer For the ones that go all day and night - but need to wake up feeling fresh and light the next day.
Make the most of it with @gravityseltzer
#lighterchoice #nohangover #exploremore #dailyadventures

42. In response to the complaint, the Company has advised that:
- it encourages people through its marketing to adventure all day and night - not party or drink a lot;
 - it also has a zero-alcohol range in, to which the no hangover comments refer; and
 - feeling fresh and light refers to the natural beverage produced and the low calories.
43. The Panel concludes that Social Media Post 3 breaches Part 3 (d) by showing alcohol consumption occurring during swimming. The Panel does not believe the post would be most likely understood as encouraging excessive consumption or as offering a positive health benefit.
44. The accompanying text to the image could be interpreted as submitted by the complainant as implying that alcohol consumption will occur 'all day and night', but equally the text could be interpreted as referring to people engaging in activities 'all day and night'. The most influential aspect of the post is the photograph of the group standing in the water in swimwear, with some consuming the product. Taken as a whole, the post would not be likely taken as a call to excessive alcohol consumption.
45. Equally, it takes several extrapolations to conclude the post is making a claim that the product offers health benefits. It is unlikely a reasonable person giving

the post a cursory view will take away that meaning from the combination of the photograph and the text.

Social Media Post 4a – Static Photo

46. Social Media Post 4a is a static photo, showing two men standing near the water, purportedly at the Gold Coast Wake Park. Both are wearing swimwear and helmets. One of the men is holding a can to his mouth, apparently drinking from it, while the other is holding a can aloft and pouring the contents of a can into his mouth.

47. The text accompanying the post reads:

gravityseltzer How @matburkee loves
to finish off a day riding
@goldcoastwakepark
#gravityseltzer #wakepark
#arvoseltzer

48. The Panel concludes that the post breaches Part 3 (a)(i) of the Code. The pouring of alcohol from a height into a person's mouth portrays that the consumption is rapid, rather than controlled and measured.

49. The Panel does not believe that the post breaches Part 3 (d), as the text accompanying the post clearly establishes that water activities have concluded for the day.

Social Media Post 4 b - Reel

50. Social Media Post 4 b is an Instagram Reel which includes video footage of a person speaking at the beginning followed by a number of static shots, one of which is the same as used in Social Media Post 4 a.

gravityseltzer The
@goldcoastwakepark X
@gravityseltzer summer party went
off!! Was such a sick day!
We can't wait for next time!
#gravityseltzer #gcwakepark
#summerparty #bloodorange

51. For the reasons explained above, Social Media Post 4 b also breaches Part 3 (a)(i) by showing the rapid consumption of alcohol.

52. In this instance, the Panel believes that the post also breaches the Part 3 (d) standard, due to the image showing two people in swimming shorts, wearing helmets and the post including the accompanying text not clearly establishing that water activities have concluded for the day.

Social Media Post 5 – Reel

53. Social Media Post 5 is a video comprising various shots of people in and around the water. The text accompanying the post reads:

gravityseltzer HAPPY AUSTRALIA DAY!
@keeley.saunders and
@kaleb.kennedy soaking up the sun
enjoying the freshest seltzer around
#gravityseltzer #australiaday #seltzer

54. One of the shots in the reel is the photograph from Social Media Post 3 (above) and given this together with other images of alcohol being consumed in the water, the Panel believes the post breaches Part 3 (d).
55. At one point, the video also shows a woman standing in the water, pouring what appears to be an alcohol beverage into her mouth. The Panel believes that this scene leads to the post also breaching Part 3 (a)(i) of the Code by showing the rapid, rather than controlled and measured, consumption of alcohol.

Social Media Post 6

56. Social Media Post 6 is a video comprising various shots of people in and around the water. The text accompanying the post reads:

gravityseltzer Soaking up the sun with
@lachlanfort
#gravityseltzer built for lifestyle
•
•
•
#seltzer #summer #summerflavours
#creator #foryoupage #reels
#sunsetsessions

57. The Company has advised that it contests the complaint in relation to Social Media Post 6, as it shows the product being consumed well after the conclusion of water activities.
58. The Panel believes that Social Media Post 6 also breaches Part 3 (d). The opening scene of the video has a can of the product being opened and then immediately after a man diving into the water. A reasonable implication is that consumption occurred followed by diving and swimming. The final scene is set in the late afternoon and this aspect might support the Company's contention that consumption is occurring after the conclusion of water activities involving

the jet ski. However, the opening of the video is in breach of the Part 3 (d) standard.

Social Media Post 7

59. Social Media Post 7 comprises three photos of a person in shallow water, leaning against a jet ski and holding a can of Gravity Seltzer. The text accompanying the post reads:

gravityseltzer @lachlanfort frothing a
grav on the beach after a good day on
the ski #gravityseltzer

60. The believes the Part 3 (d) has not been breached as the reasonable implication from the photographs and the accompanying text is any consumption will occur after water activities have concluded for the day. The Panel noted that the man is wearing clothes and not swimwear or safety gear often worn when using a jet ski e.g. a life jacket. Further the photographs show the time of day as late afternoon further reinforcing the likelihood that the jet ski will not be further used for the day.

Social Media Post 8

61. Social Media Post 8 is a video of Matt Poole's first-time wake surfing, and is accompanied by the following text:

gravityseltzer @matt_poole1
absolutely killed it at his first time
wake surfing with @harleyclifford
a little spooked about the sharks
though 🤨
•
Nothing better than finishing a sunset
session off with a #gravityseltzer • Hit
the link in bio to grab a slab!

62. The Company has advised that it contests the complaint in relation to Social Media Post 8, as it shows the Gravity Seltzer can being consumed well after the conclusion of water activities.
63. While the accompanying text does promote the consumption of alcohol at the conclusion of a sunset session, the video shows a can of alcohol being passed from one person to another before wake surfing is shown, and also the consumption of alcohol while still on a boat. This suggestion that alcohol is being consumed during water-based activities leads to the post breaching the Part 3 (d) standard.

Social Media Post 9

64. Social Media Post 9 is a video showing various people undertaking water based activities. It includes some of the footage also shown in Social Media Post 8, in particular, the footage where Matt Poole is on the back of a moving boat drinking from a can of alcoholic Gravity Seltzer. In one scene, a can of non-alcoholic Gravity Seltzer is passed to a person wakeboarding, and that person is then shown pouring the contents of the can into their mouth as they continue with their activity. The text accompanying the post reads:

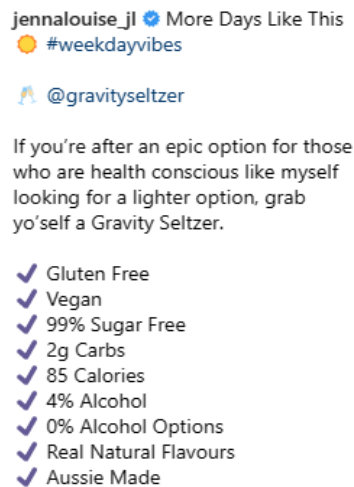
gravityseltzer The #gravitylifestyle in
15seconds with @harleyclifford
@cooperchapman @matt_poole1
.
.
.
.
#gravity #seltzer #alcfree #lifestyle

65. As explained in paragraphs 27 to 29 above, if a marketing communication is for a non-alcoholic version of an alcohol beverage, then the ABAC standards will apply if the marketing fails to clearly and prominently identify the product being marketed as being non-alcoholic. The Company's branding of its alcoholic and non-alcoholic beverages are similar with the products sharing:
- the same brand name;
 - packaging of the same style and colouring;
 - differentiation relying on a somewhat different colour scheme on the cans and references to '0.0%' on the label of the non-alcoholic seltzers.
66. The Company is entitled to design its product branding and packaging as it sees fit, but if very similar packaging designs are used between its alcoholic and non-alcoholic seltzers, it will need to be mindful that its marketing communications for the non-alcoholic products will need to establish clearly that it is the non-alcoholic versions being featured otherwise the ABAC standards will apply to the marketing.
67. Social media Post 9 does not clearly establish that the non-alcoholic version of the product is being featured. In part the video seems to show a can of the alcoholic seltzer being consumed at one point, and the accompanying text to the video only references the non-alcoholic product via a hashtag. The Panel believes a reasonable person could likely understand that the activities depicted in the video were occurring in conjunction with the consumption of the alcoholic seltzers.

68. The video shows the consumption of the product with wakeboarding which is self-evidently an activity that requires alertness and physical coordination to be performed safely. Alcohol should not be consumed while wakeboarding, and a reasonable person could very well understand that the post was showing alcohol use. Hence the Part 3 (d) standard has been breached.

Social Media Post 10

69. Social Media Post 10 shows a woman standing on the beach holding a can of alcoholic Gravity Seltzer. She is wearing swimwear, a hat, and sunglasses. The text accompanying the post reads as follows:



70. The Company disputes the complainant's contention that the marketing breaches Part 3 (d) of the Code. It has advised that:
- the post shows one of their owners and ambassadors, who was holding an unopened can of Gravity Seltzer, on a beach, while in a relaxing environment; and
 - she was promoting a description of the product that is true and valid, and the photo does not show swimming while drinking.
71. The Panel believes the decision on this post is finely balanced, but it does not find a breach of the Part 3 (d) standard. The woman is positioned on the beach and in swimwear which raises the potential for swimming to occur however:
- the can of the product is unopened;
 - the woman is wearing a hat and sunglasses which indicates she may be spending time on the beach and is not swimming (at least immediately); and

- she is positioned some distance from the water (in contrast to the other posts considered which had people in the water or at the water's edge)

Conclusion

72. This has been a lengthy determination due to the number of complaints, media and ABAC issues raised. In summary, the Panel has concluded that the following marketing material breaches various Code requirements, as specified below:

- The website breaches Part 3 (c)(i) and (c)(iv)
- Social Media Posts 1 and 2 breach Part 3 (d)
- Social Media Post 3 breaches Part 3 (d)
- Social Media Post 4a breaches Part 3 (a)(i)
- Social Media Post 4b breaches Part 3 (a)(i) and (d)
- Social Media Post 5 breaches Part 3 (a)(i) and (d)
- Social Media Posts 6, 8 and 9 breach Part 3 (d)
- Social Media Post 7 does not breach the ABAC standard
- Social Media Post 10 does not breach the ABAC standard.

73. More generally, the Panel notes the co-operation of the Company and its constructive approach to view the complaints and ABAC process as a learning opportunity. Also noted is the Company's intention to use the ABAC pre-vetting service in the future. This reflects well on the Company's willingness to accept the corporate and social responsibility that comes with alcohol marketing.