



ABAC Adjudication Panel Determination No 128/23

Product: Peachy Ass Seltzer
Company: Peachy Drinks
Media: Digital – Instagram
Date of decision: 3 September 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 7 August 2023 in relation to Instagram marketing for Peachy Ass Seltzer (“the product”) by Peachy Drinks (“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:
 - 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;

- 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 7 August 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

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 content of the marketing.

The Marketing

10. The complaint relates to four Instagram posts, as described below:

Post 1 – 5 August 2023



Post 2 – 14 July 2023

Post 2 is a video of a dialogue between two people sitting in front of microphones like they are recording a podcast. The video commences part way through the conversation and proceeds as follows:

Person 1 (P1): *So that makes it so easy. They could build a hut.*

Person 2 (P2): *Wait on. What's on the raft that they come over on? Is there a handle?*

P1: *It's Jane's door. Just Jane's door raft.*

P2: *Who's Jane?*

P1: *Jane. From Titanic.*

P2: *Her name's Rose.*

P1: *Really?*

P2: *That's why I said Rose before. I wasn't talking about your sister.*

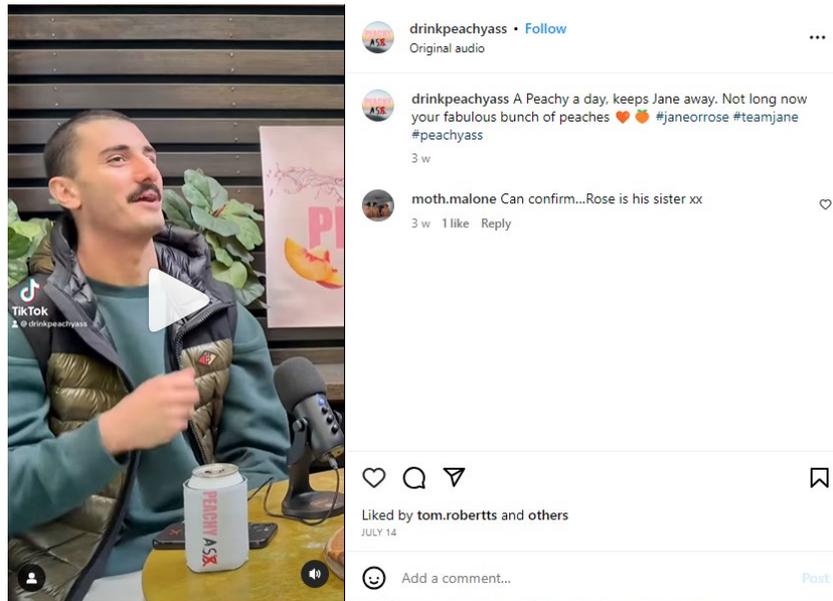
P1 & P2: [Giggle]

P2: *Jack and Rose isn't it?*

P1: *It is.*

P2: *Yeah.*

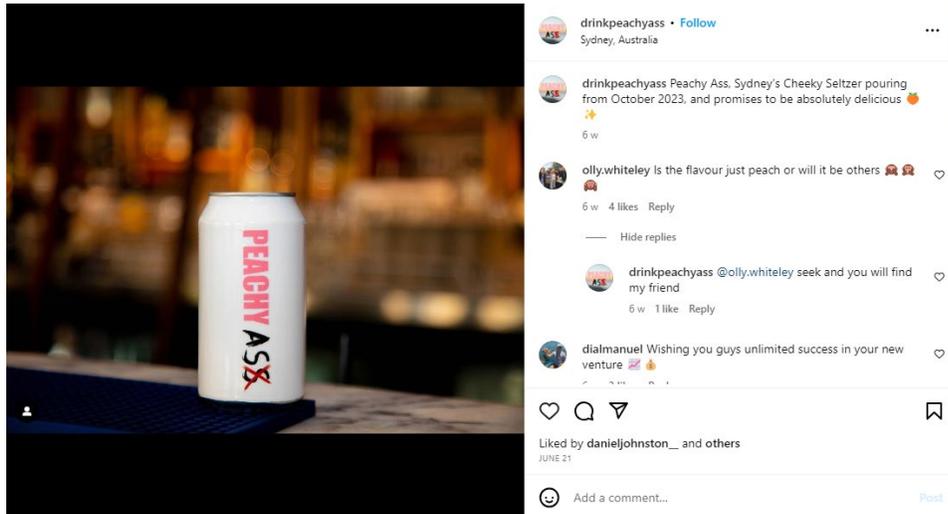
P1: *Anyway, Jane.*



Post 3 – 7 July 2023



Post 4 – 21 June 2023



Complaint

11. The complainant objects to the marketing as follows:
 - *Posts include captions such as "sipping on this delightful Peachy Ass", "Who's rocking the perfect peach today?", "Sydney's Cheeky Seltzer", "Peachy Ass Seltzer".*
 - *I am offended and object to the advertising and marketing communication because I believe it;*
 - *Objectifies human beings, particularly females and suggests their bodies are sexual objects to be consumed.*
 - *Combines sexual connotations and acts "consuming a peachy ass" with alcohol and intoxication, where consent cannot be given.*
 - *Portrays the objectification, sexualisation and consumption of human bodies as fun, ok and social.*
 - *Encourages disrespect towards females, particularly in scenarios where the bartender may be female.*
 - *Immature and sexual connotation marketing techniques may encourage consumption by teenagers, especially young males.*

The ABAC Code

12. The marketing communications cross the transition period between the commencement of a revised Code on 1 August 2023 and the previous Code. As a result:
- Post 1 will be considered against the revised Code as it entered the market after 31 July 2023; and
 - Posts 2, 3 and 4 will be considered against the previous Code as they were in the market before 31 July 2023.
13. Part 3 of the revised ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication), encourage, or treat as amusing, rapid Alcohol consumption, misuse or abuse of Alcohol or other irresponsible or offensive behaviour that is related to the consumption or presence of Alcohol;
 - (b)(i) have Strong or Evident Appeal to Minors, in particular;
 - (A) specifically target Minors;
 - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
 - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
 - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.
14. Part 3 of the previous ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
 - (b)(i) have Strong or Evident Appeal to Minors.

15. Part 6 of the previous 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 Response

16. The Company responded to the complaint by letter emailed on 9 August 2023. The principal comments made by the Company were:

- We, on behalf of Peachy Drinks, extend our sincere apologies for the necessity of this communication, as it relates to potential breaches in the ABAC Code. Having thoroughly reviewed the complaint and the code, we have crafted a response in an effort to address any concerns and confusion related to our company branding. Our ultimate aim is to foster a positive and collaborative relationship between Peachy Drinks, the ABAC, and associated parties.
- Peachy Drinks is a Sydney business led by George Dovellos and Rory Kennedy. We regret our branding may have inadvertently violated marketing guidelines associated with proper industry standards. In light of this complaint, we are taking immediate action to address the concerns raised and rectify any marketing materials deemed unacceptable to the community.
- To begin, we would like to provide an overview of our company philosophy:

***Peachy Drinks Company Philosophy & Mission Statement
Created Sunday 16th July, 2023***

Welcome to Peachy Drinks, where we craft, design and contract-produce exceptional alcoholic beverages. Our mission is to foster a safe, enjoyable and responsible environment for all, celebrating the spirit of inclusivity and fun. At Peachy Drinks, we believe in embracing the lighter side of life and spreading happiness and laughter among consumers aged 18 and above.

We take pride in creating some of the finest alcoholic beverages in the market, meticulously balancing nutrition and alcohol content (ABV) to ensure a safe, supportive and responsible drinking experience for all. Our drinks are crafted to be enjoyed responsibly by individuals ages 18 years and above, with the exception of pregnant individuals who are advised to consult a medical professional before consuming any of our alcoholic products.

Join us on our journey to discover the joy in every sip as we continue to bring you top-notch drinks that embody the essence of Peachy Drinks' philosophy.

Cheers to good times and memorable moments!

Disclaimer: Peachy Drinks does not condone under age (under the age of 18) drinking, and does not promote or tolerate excessive or rapid drinking resulting in irresponsible consumption of alcohol. Peachy Drinks fosters a safe environment for all consumers and recommends that patrons suffering from an alcohol related addiction or illness consult a medical professional or their local governing body to seek professional help.

Immediate action taken on behalf of Peachy Drinks in relation to ABAC Complaint 128/23

- In response to the ABAC complaint 128/23, Peachy Drinks has demonstrated its commitment to addressing the issue by undertaking the following actions and implementing the subsequent measures:
 - Peachy Drinks has promptly removed all posts from its Instagram account that were outlined in the Letter to Advertiser document dated 07/08/2023.
 - Following careful consideration, Peachy Drinks has opted to keep these posts offline on our Instagram and other social media platforms until the collaboration and review process with ABAC has been concluded. Subsequent to this review, Peachy Drinks will proceed to restructure and adjust these posts in accordance with the guidelines set forth by the ABAC Code, ensuring alignment with the code's stipulations.
 - Peachy Drinks has responded to Section 3 of ABAC Complaint 128/23 by modifying the online marketing of its seltzer product, previously referred to as 'Peachy Ass Seltzer.' The product will now be exclusively marketed online as 'Peachy As' Seltzer. This alteration reflects Peachy Drinks'

dedication to abstaining from advertising to underage individuals and inciting any unrest related to its name. To this end, the company will incorporate the following practice moving forward:

- All social media posts managed by Peachy Drinks will include a disclaimer at the conclusion of each caption, featuring the following message: i. "(Beverage Name Here i.e., 'Peachy As Seltzer') is an alcoholic seltzer intended for consumption exclusively by individuals aged 18 and above. Peachy Drinks promotes the safe and responsible consumption of alcohol."
- George Dovellos and Rory Kennedy, the proprietors of Peachy Drinks, are dedicated to conducting a comprehensive internal review of their marketing projections and strategies. This commitment is aimed at ensuring that the highest standards are meticulously upheld in alignment with the ABAC code. This internal assessment will be promptly initiated and, as a collective effort by the company, the initial step involves crafting a public message addressed to the Peachy Drinks' followers. The purpose of this message is to communicate the brand's philosophy and code of conduct. By taking this action, the intention is to establish complete openness with both our followers and the broader audience, allowing for an exploration of the authentic essence of our brand, characterised by:
 - Inclusivity
 - Dynamism
 - Vibrancy
 - Excitement
 - Modernity
 - Embracing diverse body types, ethnicities, genders, and sexual orientations.

Responses on behalf of Peachy Drinks to the questions posed in the Letter to Advertiser regarding ABAC Complaint 128/23

- Peachy Drinks is committed to a collaborative partnership with ABAC for the marketing and promotion of their beverages, notably the Peachy As Seltzer (formerly known as Peachy Ass Seltzer). As part of this collaboration,

Peachy Drinks aims to address inquiries raised in ABAC Complaint 128/23 to the best of their ability.

Alcohol Advertising Pre-Vetting Service Approval

- Given the early-staged nature of Peachy Drinks' brand and the fact that this marks the owners' initial foray into this industry, the company was initially unaware of the existence of this service. However, a fortnight before the filing of this complaint, Peachy Drinks became acquainted with the ABAC code through internal research. Consequently, discussions were already in progress to eliminate specific marketing approaches that Peachy Drinks believed could potentially run afoul of the ABAC code.
- This initiative had already been introduced prior to receiving the complaint on 07/08/2023 at 17:46. In alignment with the concerns highlighted in the complaint, this endeavour has now been elevated, with all pertinent stakeholders within Peachy Drinks having evaluated and addressed the issues raised.
- Peachy Drinks wishes to emphasise its earnest commitment to addressing these matters with utmost seriousness. As part of this dedication, the company will persist in refining its internal processes to eliminate any marketing practices that are deemed non-compliant with the ABAC code.

Responsible and moderate portrayal of Alcohol

- Peachy Drinks does NOT condone any form of harassment or anti-social behaviour and discrimination in all forms but not limited to, racism, sexual harassment, age, gender, sexual orientation etc.
- Peachy Drinks upholds inclusivity as a foundational principle, aiming to radiate this ethos with a vibrant and enjoyable spirit. Our messages, captions, images, and videos are deliberately crafted to steer clear of any endorsement or propagation of objectification, sexualisation, or disrespect towards individuals, with a particular focus on women.
- Peachy Drinks' Peachy As Seltzer (formerly referred to as Peachy Ass within the context of this complaint) is a DRINK designed to be relished by individuals of all genders, races, sexual orientations, and ages (provided they have reached the legal drinking age of 18). This seltzer embodies an expression and festivity of human existence, infused with a cheerful and energetic essence, fostering the gathering of people within a secure setting and evoking shared laughter.
- The utilisation of the term "Peachy Ass" (within the context of this complaint) is simply a descriptor for the seltzer's name, devoid of any connection to actual human physique. Peachy As, a peach-flavoured alcoholic seltzer as

its name implies, captures the essence of natural peach flavour through an incorporation that stems from the proprietor's affection for the taste of the peach fruit.

- While the name doesn't directly allude to human anatomy, it is acknowledged that contemporary culture has humorously interpreted it as such. Our beverage endeavours to subtly highlight this satirical contemporary trend, albeit in a light-hearted manner, a facet that has not yet been evident due to the early stages of our brand's presence.
- Peachy Drinks additionally wishes to emphasise that the gluteal region, often colloquially referred to as a "peach" (among other terms such as buttocks, backside, seat, tail, and booty), is a characteristic shared by all individuals. This terminology, while prevalent in popular culture, is never employed by Peachy Drinks to sexualise or objectify anyone, "particularly women".
- Peachy Drinks firmly opposes all forms of harassment and anti-social behaviour. Its core values prioritise safety and consent, and it does not endorse sexual activity in unsafe environments or without mutual willingness as governed by consent laws.
- Addressing the concern raised about a segment taken from an Instagram caption - "sipping on this delightful Peachy Ass" - Peachy Drinks would like to provide context for the image from which this caption snippet was taken. The image depicts an individual on a balcony enjoying a beverage from a Peachy As (formerly referred to as Peachy Ass within the context of this complaint) schooner glass containing Peachy As seltzer.
- Peachy Drinks wants to underscore its unwavering stance of zero tolerance for harassment and the promotion of sexual activity. Thus, they wish to emphasise to the ABAC that when crafting this caption for the image, their explicit reference is to the consumption of the Peachy As drink/seltzer (formerly referred to as Peachy Ass within the context of this complaint). The intention behind the caption is to describe the delightful taste of the drink, rather than imbuing it with overt sexual connotations. The use of language aims to resonate with prevailing cultural trends, all the while highlighting the pleasant flavour of the upcoming drink that the company is excited to introduce to the community.
- Peachy Drinks reiterates its dedication to subtly addressing contemporary satirical trends, as previously discussed. The company remains committed to avoiding any extreme and hurtful sexual undertones that might make anyone feel threatened or uncomfortable. In its pursuit of inclusivity, Peachy Drinks strives to foster an all-encompassing community that stands against discrimination based on sexual orientation, gender identity, race, or any other discriminatory actions. Peachy Drinks as their marketing begins to roll out further, will showcase this support for inclusivity.

- Peachy Drinks aims to clarify that Peachy As, our seltzer variant, will exclusively be accessible to the public through authorised establishments following the brand's official launch. We strongly urge these licensed venues to uphold stringent Responsible Service of Alcohol (RSA) regulations. This commitment is essential to ensure the safety of individuals consuming Peachy As, preventing any potential risks. By aligning with the security and RSA protocols mandated by licensed venues, we anticipate that any harm will be avoided and that individuals can enjoy our drinks in a safe and respectful manner where there is no blatant encouragement for any sexual activity.

Responsibility toward Minors

- In-line with our brand philosophy, Peachy Drinks does not condone underage drinking or irresponsible drinking practices. Peachy Drinks, like its peers in the industry, believes that alcohol has high potential to harm individuals, and even more so minors, and as such holds a responsibility to the community to ensure minors are deterred from drinking alcoholic products.
- Peachy Drinks as per the above is committed to ensuring that their marketing is consistent with the ABAC code and branding guidelines set out by the ABAC.
- Peachy Drinks wants to clarify that the term "Peachy Ass" is directly associated with their alcoholic seltzer, Peachy As (previously referred to as Peachy Ass in the context of this complaint). The company also emphasizes that their branding incorporates contemporary satire, with no intention of targeting minors in any aspect of their brand or operations. The human anatomy, being a universal and inclusive concept devoid of factors like race, gender, age, or sexual orientation, is celebrated by Peachy Drinks.
- As such, they view this celebration, infused with a dynamic, fun, and light-hearted essence, as the fundamental basis for human socialization and the formation of friendly relationships, as Peachy Drinks strives to break down social barriers and walls to gather together a great community of well-natured people.
- Peachy Drinks additionally draws attention to other brands like Better Beer, which also employ contemporary satire to promote their beverages. They highlight the distinction in the scale of marketing efforts between these brands. While Better Beer caters to a younger audience through well-known characters like Matt Ford and Jack Steele, Peachy Drinks' playful and non-offensive references are directed at mature adults. This approach is chosen to counter marketing towards minors. Peachy Drinks believes that individuals in their mid-teens are still too young to fully grasp the nuances of the satire,

making it unlikely for them to comprehend or resonate with the humour intended, and as a result be deterred from the drink and brand altogether.

- Peachy Drinks maintain a strict policy of zero tolerance for any form of harassment and are committed to never promoting their products with any kind of overt sexual connotations, particularly when it comes to minors.
- Peachy Drinks takes the stance that while the name doesn't directly allude to human anatomy, it is acknowledged that contemporary culture has humorously interpreted it as such. Our beverage endeavours to subtly highlight this satirical contemporary trend, albeit in a light-hearted manner, a facet that has not yet been evident due to the early stages of our brand's presence.
- Peachy Drinks is in alignment with ABAC in its discovery of the absence of alcohol cues. While Peachy Drinks has implemented measures on their online landing pages to indicate "(18+)", it wishes to affirm that, in accordance with the immediate actions outlined on page 2 of this document, all social media posts related to Peachy Drinks' alcoholic beverage offerings will consistently include a disclaimer at their conclusion.
- Furthermore, it should be noted that the consumption of Peachy As (formerly referred to as Peachy Ass in the context of this complaint) is restricted to licensed venues, where stringent RSA (Responsible Service of Alcohol) regulations are enforced to prevent minors from accessing alcoholic products. Peachy Drinks currently has no plans to engage in online trading or provide a delivery service that might lead to confusion regarding the nature of its products. These beverages from Peachy Drinks are exclusively available at licensed establishments, provided at a wholesale rate directly to these licensed premises.

Concluding comments

- Peachy Drinks and all parties involved extend their sincere apologies once again to the ABAC for the possible breach of the ABAC code and wish to express their commitment to transparency through their responses to the queries raised in ABAC complaint 128/23.
- Peachy Drinks remains dedicated to fostering a cooperative relationship with ABAC throughout the brand's intended long-term presence. The hope is that any future challenges can be met with clear and collaborative communication, as demonstrated by the nature of this complaint (ABAC Complaint 128/23).
- Peachy Drinks expresses gratitude for the panel's time and consideration in reviewing these responses and eagerly anticipates further developments on the matter.

The Panel's View

Introduction

17. Peachy Drinks is a start-up alcohol beverage producer established by George Dovellos and Rory Kennedy. The Company is planning to release its first product onto the Australian market on 1 October 2023 - an alcoholic seltzer - initially branded as 'Peachy Ass' and now apparently to be called 'Peachy As'.
18. In advance of the product launch, the Company has undertaken some social media marketing and it is four posts to Company's @drinkpeachyass Instagram account that have drawn the complaint. The concerns raised by the complaint went largely to the proposed product name of Peachy Ass and some descriptions in the posts and included:
 - objectification, particularly of women;
 - a belief that some expressions such as 'consuming a peachy ass' links alcohol and sexual activity;
 - fostering disrespect towards females, particularly in scenarios where a bartender serving the product might be a woman; and
 - use of an immature marketing technique that may encourage consumption by teenagers, especially young males.
19. The Company provided a very detailed response to the complaint which outlined the Company's philosophy and aspirations for their product as well as a careful reflection on the points raised in the complaint. Amongst other points the Company advised:
 - the posts had been withdrawn and the Company intended to engage constructively with the ABAC Scheme including the pre-vetting service;
 - there was no intention to market irresponsibly and changes would be made to take into account the concerns in the complaint;
 - the product would be sold only online with and all social media posts will make it very clear the product is an alcohol beverage for consumption by adults;
 - the product name of Peachy Ass is light-hearted and not intended to objectify women; and
 - the marketing items would not strongly appeal to minors.

20. The willingness of the Company as a new alcohol market entrant to take on board the complainant's points and commit itself to a high standard of marketing practice is noted and welcomed. That said, the Panel is required under its rules and procedures to make a determination on the marketing material as at the time it was viewed by the complainant. It should also be noted that a revised ABAC Code came into operation 1 August 2023. The posts were made by the Company both before and after this date however the practical differences between the Code provisions are not significant given the facts in this case.
21. As noted in paragraph 2, alcohol marketing rests in a shared regulatory space and part of the complaint going to the objectification of women and questions of taste and the treatment of sex and sexuality raise issues under the AANA Code of Ethics rather than the ABAC. The ABAC standards raised by the complaint provide that an alcohol marketing communication must not:
- encourage or show irresponsible or offensive behaviour that is related to the consumption or presence of alcohol (refer to Part 3 (a)(ii) of the previous and revised Code); and
 - have strong or evident appeal to minors (refer to Part 3 (b)(i) of the previous and revised Code).
22. In assessing if a Code standard has been breached, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. This means the attitudes, values and life experiences shared by most members of the community is the benchmark. If a marketing communication can be interpreted in several ways, the most probable understanding is to be preferred over a possible but less likely interpretation.

Irresponsible or offensive behaviour

23. The complainant contended the 'Peachy Ass' brand name and some expressions in the posts such as 'sipping on this delightful peachy ass' are irresponsible and offensive as they combine alcohol use and intoxication with sexual activity. The intent of the Part 3 (a)(ii) standard is to prohibit the portrayal and encouragement of alcohol influenced anti-social behaviours.
24. The product name may be considered offensive by some in the community however as noted, this is not an ABAC issue as such but falls within the ambit of the Code of Ethics. The ABAC issue is whether the posts would be probably understood by a reasonable person as encouraging alcohol-related offensive behaviour.
25. The term 'ass' is colloquially used in a large number of contexts, some of which are sexual and others which are not. For instance - 'working your ass off', 'covering your ass', 'getting your ass into gear', 'kick ass' or 'a pain in the ass' do not have a sexual context. The term is also used in sexual and more offensive

contexts such as 'getting some ass' or 'a piece of ass'. The context of the use of the term is key as to how the term would be understood.

26. Post 1 shows two people sitting on a balcony drinking from glasses with the words 'Peachy Ass', (with the second 's' crossed out), on them. One of the men is wearing a t-shirt with the outline of a peach on the front. The text accompanying the picture reads 'Another week in the books, bringing us closer to sipping on this delightful Peachy Ass 🍑. October 1st 2023 ❤️.'
27. Post 2 shows two people sitting in front of microphones as if recording a podcast. They are talking about the Titanic movie, and the female character, Rose, who one has mistakenly called Jane. Each has a stubby holder in front of them containing a can, with the words 'Peachy Ass', (with the second 's' crossed out), shown on it. The post is accompanied by the words 'A Peachy day keeps Jane away. Not long now your fabulous bunch of peaches ❤️🍑. #janeorose #teamjane #peachyass.'
28. Post 3 shows two people standing in front of a bar, each with a can of the product in their mouth. The accompanying text reads:

drinkpeachyass Who's rocking the perfect peach today? George or Rory? 🍑

⚠️ Warning ⚠️: Objects in mouth are cheekier than they appear... 🤪

October 2023 ➡️ SOON

#peachyassseltzer #peachyass #peachy #seltzer
#sydneyscheekyseltzer

29. Post 4 shows a picture of a single can of product sitting on a bar. The accompanying text reads:

drinkpeachyass Peachy Ass, Sydney's Cheeky Seltzer pouring from October 2023, and promises to be absolutely delicious 🍑 ✨

30. The Panel does not believe the posts breach the Part 3 (a)(ii) standard. In reaching this conclusion the Panel noted:
- the most influential component of the posts is the photograph/video and the images do not invoke sexual activity nor are the images offensive;
 - alcohol use depicted is moderate and no person appears affected by alcohol;
 - within the context of the posts the term 'ass' is not used in strongly sexual manner; and

- taken as a whole a reasonable person would not understand the posts are encouraging alcohol related offensive behaviour.

Strong appeal to minors

31. A further concern raised in the complaint is that the posts are immature and use sexual connotations and this may encourage consumption by teenagers, especially young males. This brings into play Part 3 (b)(i) of the ABAC which provides that an alcohol marketing communication must not have strong or evident appeal to minors. This standard might be breached if the branding:
 - 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.
32. 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.

33. 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.
34. In response the Company contended that individuals in their mid-teens are too young to fully grasp the nuances of the satire, making it unlikely for them to comprehend or resonate with the humour intended. It has noted that future posts would do more to make the alcoholic nature of the product clear.
35. The Panel does not believe the posts have strong or evident appeal to minors. The posts feature depictions of older males in the photographs/video in adult settings. While 'peachy ass' could be regarded as unsophisticated humour, there is nothing in the posts as a whole likely to appeal to minors more strongly than to adults.
36. The complaint is dismissed.