



ABAC Adjudication Panel Determination No 135/23

Products: Various
Company: Billson's Beechworth
Media: Packaging
Date of decision: 29 September 2023
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel ('the Panel') arises from a complaint received on 18 August 2023 and concerns the packaging by Billson's Beechworth ('the Company') of the following products ('the products'):
 - Bright Raspberry Beer
 - Tropical Punch Beer
 - The Portello Beer.
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:
 - (b) 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;

(c) 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 18 August 2023.
8. This determination has been made within the target timeframe of 30 business days of the receipt of a complaint.

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 obtained for Bright Raspberry Beer (Approval Number 6094) and Tropical Punch Beer (Approval Number 6095). Pre-vetting approval was not obtained for The Portello Beer.

The Marketing Communications

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

BILLSON'S
ESTD ★ 1865
BEECHWORTH

BACK IN 1865, BILLSON'S BREWERY IN *Beechworth* BEGAN PROUDLY CRAFTING BOTH FLAVOURSOME CORDIALS & AWARD WINNING BEERS. OVER 150 YEARS LATER, WE WONDERED IF YOU COULD MIX THE TWO TOGETHER. TO OUR SURPRISE, YOU CAN!

NOW YOU CAN ENJOY OUR SMOOTH, EASY DRINKING BEERS UNIQUELY FLAVOURED AND INSPIRED BY OUR TRADITIONAL CORDIALS.

"MAKE IT *amazing* OR DON'T MAKE IT AT ALL".

BRIGHT RASPBERRY BEER
Original Recipe

EASY | 3.5% ALC/VOL | 355ml

www.billsons.com.au
@Billsons1865

CONTAINS OATS, WHEAT AND BARLEY

10C REFUND AT COLLECTION REPOSPOINTS IN PARTICIPATING STATE/TERRITORY OF PURCHASE.
BEST BEFORE - SEE BASE OF THE CAN. STORE IN A COOL, DRY PLACE.
BILLSON'S BEVERAGES PTY LTD, 291 LAST STREET, BEECHWORTH, VICTORIA, 3747.
BILLSON'S IS A REGISTERED TRADEMARK OF BILLSON'S BEVERAGES PTY LTD.
CONSUMER INFORMATION: 03 5728 1304

Drink the Good. Drink the Wise. www.independent.gov.au

PREGNANCY WARNING
Alcohol can cause lifelong harm to your baby

BARCODE
9322033015709

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BILLSON'S

ESTD • 1865

BEECHWORTH



TROPICAL PUNCH BEER

Original Recipe

EASY | 3.5% ALC/VOL | 355ml

BACK IN 1865, BILLSON'S BREWERY IN *Beechworth* BEGAN PROUDLY CRAFTING BOTH FLAVOURSOME CORDIALS & AWARD WINNING BEERS. OVER 150 YEARS LATER, WE WONDERED IF YOU COULD MIX THE TWO TOGETHER. TO OUR SURPRISE, YOU CAN!

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www.billsons.com.au

@Billsons1865

CONTAINS OATS, WHEAT AND BARLEY

10C REFUND AT COLLECTION DEPOSITS IN PARTICIPATING STATE/TERRITORY OF PURCHASE.

BEST BEFORE: SEE BASE OF THE CAN. STORE IN A COOL, DRY PLACE. BILLSON'S BEVERAGES PTY LTD, 29 LAST STREET, BEECHWORTH, VICTORIA 3747. BILLSON'S IS A REGISTERED TRADEMARK OF BILLSON'S BEVERAGES PTY LTD. CONSUMER INFORMATION: 03 5728 1304



BILLSON'S

ESTD • 1865

BEECHWORTH



THE PORTELLO BEER

Original Recipe

EASY | 3.5% ALC/VOL | 355ml

BACK IN 1865, BILLSON'S BREWERY IN *Beechworth* BEGAN PROUDLY CRAFTING BOTH FLAVOURSOME CORDIALS & AWARD WINNING BEERS. OVER 150 YEARS LATER, WE WONDERED IF YOU COULD MIX THE TWO TOGETHER. TO OUR SURPRISE, YOU CAN!

NOW YOU CAN ENJOY OUR SMOOTH, EASY DRINKING BEERS UNIQUELY FLAVOURED AND INSPIRED BY OUR TRADITIONAL CORDIALS. "MAKE IT *amazing* OR DON'T MAKE IT AT ALL".



www.billsons.com.au

@Billsons1865

CONTAINS OATS, WHEAT AND BARLEY

10C REFUND AT COLLECTION DEPOSITS IN PARTICIPATING STATE/TERRITORY OF PURCHASE.

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The Complaint

11. The complainant objects to the marketing as follows:
- *Billson's and their brand and marketing strategy clearly carefully tries to balance its non-alcoholic and alcoholic products with compliant labelling, however I feel this clear marketing to cross over beer and its cordial product combined with the look and feel of the product clearly targets children.*
 - *Billson's appear to have a very strong marketing and brand, which I believe pushes the boundaries between their cordial products and alcohol products. They advertise their cordials and clearly market to children which includes a Billson's soda bar.*
 - *This is not the first time I have felt the marketing and products crossover and I feel the company clearly needs to separate its products and experiences. The targeted marketing, both social media and product in stores and its venues should be reviewed. There is no doubt they are successful and a growing business which is great for the business and region, however their products and separating non-alcoholic and alcoholic products needs to be enhanced.*

The ABAC Code

12. A [new ABAC Responsible Alcohol Marketing Code](#) commenced on 1 August 2023. As the Company has advised that the complaint relates to the packaging of products first available for sale on 17 August 2023, the complaint will be considered under the post 1 August Code.
13. Part 3 (b) of the Code provides that an Alcohol Marketing Communication must NOT:
- (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

The Company's Response

14. The Company responded to the complaint by email on 7 September 2023. The principal comments made by the Company were:
 - We don't believe these appeal to minors due to the prominence of the word 'beer' / alcohol %, the illustration style and the flavours in general. We also had them pre-vetted.

The Panel's View

15. Billsons are a Victorian based craft beverage producer of both alcohol and non-alcoholic products. This determination considers three packaging (can design) products from the Company's alcohol range. It is contended that the packaging targets children, due to the similarity of the products in the Company's non-alcoholic range.
16. The complainant's concern raises the ABAC standard contained in Part 3 (b)(i) of the Code. This standard requires that an alcohol marketing communication (which includes brand names and product packaging) must not have strong or evident appeal to minors. This might occur if the product packaging:
 - specifically targets minors;
 - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - uses imagery, designs, motifs, language, activities, interactive games, animations, or cartoon characters that are likely to appeal strongly to minors; or
 - create confusion with confectionery or soft drinks or other similar products, such that are likely to appeal strongly to minors.
17. The benchmark applied when assessing if an ABAC standard has been satisfied is the 'reasonable person' test. This means the Panel puts itself in the shoes of a person who has the life experiences, opinions and values commonly held by most Australians, and assesses how this reasonable person would probably understand the marketing communication.
18. The Panel has considered the factors that may contribute to strong or evident appeal to minors in previous determinations made under the pre 1 August 2023 Code. While there are changes between the new and old Code standard, the following characteristics remain relevant:

- 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.
19. 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.
20. 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 e.g. 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.
21. When assessing a design of a can or bottle, it cannot be expected that a reasonable person will turn the container around the full 360 degrees and study it in fine detail. Rather it is the front of the can/bottle that will be most influential in how the person will probably understand the packaging and impressions will be most strongly shaped by larger font writing and the predominant colours and design features.
22. A point made by the complainant and a factor to be considered is that the Company produces non-alcoholic products that carry the same or broadly similar names to the three beers. The questions which arise are whether there is a potential for the alcohol products to be confused with the non-alcoholic products and whether more generally than specific product confusion, the marketing of the non-alcoholic products might influence how the packaging of the alcohol product would be probably understood by a reasonable person.
23. On the 'confusion with a soft drink' concern, several points should be noted:
- the ABAC standard does not go to the requirement that an alcohol beverage be unambiguously identified as alcoholic as such. Rather the stipulations on how alcohol products are to be labelled in terms of alc/vol content and other product information are contained in direct government regulation and not the ABAC Code;
 - the ABAC standard is about the product branding and packaging (as well as other marketing communications) not having a strong appeal to minors. This may be contributed by an alcohol product branding not clearly identifying the product as alcoholic, but it is quite possible for a clearly identified alcohol beverage branding to be strongly appealing to minors;
 - hence, 'confusion with a soft drink' is relevant to the extent that the confusion contributes to the appeal of the product marketing to minors.
24. The presence in the market of non-alcoholic products of the same or similar name is relevant and needs to be considered. If for example a non-alcohol product has branding that is well established and can be reasonably regarded as likely to be known by an average consumer, then this will influence how an alcohol product carrying key branding elements of the non-alcoholic product will be understood.
25. Of course, a case by case assessment is always required. While Billsons non-alcoholic products are to be found, their products aren't in supermarkets or petrol station fridges around Australia and with all due respect to the Company, their products are not household brands akin to Coca-Cola. In short, it is not

likely that a reasonable person will come across a Billisons' flavoured beer and immediately associate it with one of the Company's soft drinks.

26. Turning to the three products in question, a common label format is adopted by each of the three products whereby:

- each can has its own colour scheme and packaging design features;
- the background of the cans is predominately in two different blocks of colour, with a diagonal line separating the two colours;
- the Company's name is shown at the top of the can, in black block letters, below which in smaller font are the words 'ESTD 1865 BEECHWORTH';
- in the centre of the front of the can is a copper-coloured illustration of an item related to the name of the product, in a wood cut illustration style;
- beneath the illustration in one of the background colours is the unique name of the product, followed in smaller font by the word 'BEER' in block letters. The words 'Original Recipe' in orange cursive font follow;
- the bottom of the front of the can in light bluish grey font are the words EASY, the alc/vol percentage and the can capacity (355 ml);
- the side of the can provides an explanation that the beer has been 'uniquely flavoured by our traditional cordials'; and
- the rear of the can contains product information.

Bright Raspberry Beer

27. In addition to the standard format, the table below summarises the particular features of the Bright Raspberry Beer can:

Product descriptor	Unique packaging features
Bright Raspberry Beer	<p>The background of Bright Raspberry Beer is predominately turquoise and a purplish/plum/burgundy colour.</p> <p>The copper-coloured illustration is of a large raspberry, with a smaller man standing next to it, reaching up to touch it. Two birds are shown flying above the giant raspberry.</p>

28. The Panel believes that the Bright Raspberry Beer packaging does not breach the Code standard, noting that:

- the overall design of the product can is mature in nature;

- the background colours used are not overly bright and contrasting;
- the use of the word 'Beer' provides a strong alcohol cue such that the product would not likely be confused with a soft drink;
- raspberry is not a flavour description traditionally associated with a beer and is a description used on some products consumed by minors, and this may contribute to the appeal of the packaging to minors;
- the Billsons non-alcoholic beverage range has raspberry references, however the packaging design of these products share little in common with the beer packaging beyond the Billsons name; and
- taken as a whole the packaging would at most have incidental appeal rather than strong or evident appeal to minors;

Tropical Punch Beer

29. In addition to the standard format the table below summarises the particular features of Tropical Punch Beer:

Product descriptor	Unique packaging features
Tropical Punch Beer	<p>The background of Tropical Punch Beer is predominately aqua and a subdued yellow colour.</p> <p>The copper-coloured illustration is of the top third of a pineapple, including the leaves. Two birds are shown flying above the pineapple.</p>

30. The Panel believes the Tropical Punch Beer does not breach the Code standard, noting:

- the overall design of the product can is mature in nature;
- the background colours used are not overly bright and contrasting;
- the use of the word 'Beer' provides a strong alcohol cue such that the product would not be confused with a soft drink;
- tropic punch is not a flavour description traditionally associated with a beer and is a description used on some products consumed by minors, and this may contribute to the appeal of the packaging to minors;
- the Company has a non-alcoholic Tropical Punch Cordial, however, it is sold in a 700ml glass bottle with labelling not sharing the branding of the beer beyond the Billsons name; and

- taken as a whole the packaging would at most have incidental appeal rather than strong or evident appeal to minors.

The Portello Beer

31. In addition to the standard format the table below summarises the features of the The Portello Beer can:

Product descriptor	Unique packaging features
The Portello Beer	<p>The background of The Portello Beer is predominately light and dark purple.</p> <p>The copper-coloured illustration is of a giant grape. A ladder is shown leaning up against the grape, and a basket is next to the ladder. Two birds are shown flying alongside the grape.</p>

32. The Panel does not believe the Portello Beer packaging breaches the Code standard, noting that:

- the overall design of the product can is mature in nature;
- the background colours used are not overly bright and contrasting;
- the use of the word 'Beer' provides a strong alcohol cue such that the product would not be confused with a soft drink;
- the Company has a non-alcoholic Portello Cordial and Portello Classic Soda however both these products do not share branding elements with the beer beyond the Billsons name;
- portello is not a flavour profile typically found on products with evident appeal to minors; and
- taken as a whole the packaging would at most have incidental appeal rather than strong or evident appeal to minors.

33. Accordingly the complaint is dismissed.