



## ABAC Adjudication Panel Determination No 154/23

**Products:** Pulp Friction West Coast IPA and Golden D’rule Hazy IPA  
**Company:** Welcome Swallow Brewery  
**Media:** Product Packaging  
**Date of decision:** 8 November 2023  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This final determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 22 September 2023. It follows a provisional determination made on 3 November 2023 in relation to the packaging of Pulp Friction West Coast IPA and Golden D’rule Hazy IPA (“the products”) by Welcome Swallow Brewery (“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**

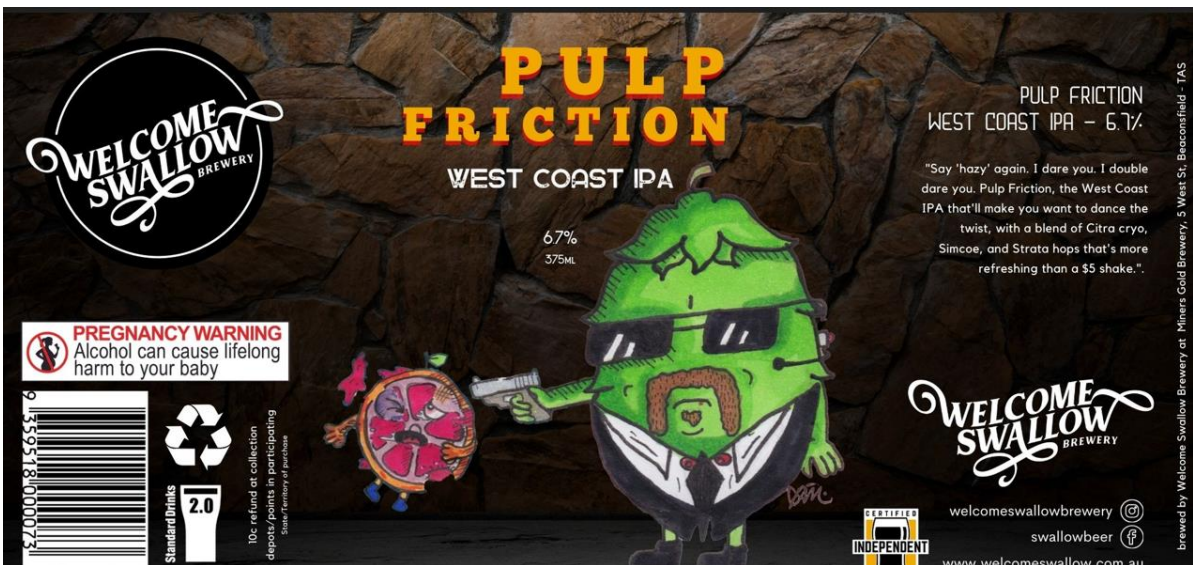
7. The complaint was received on 22 September 2023.
8. Generally, the Panel endeavours to make a decision within 30 business days of the receipt of a complaint but this timeline is not applicable due to the two-part process involved in determinations concerning product names and packaging.

## Pre-vetting Clearance

- 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 packaging.

## The Marketing

- The complaint relates to the packaging of Pulp Friction West Coast IPA and Golden D'rule Hazy IPA:



## Complaint

11. The complainant objects to the marketing as follows:
- *I recently came across the product, and I must admit that I am taken aback by the use of images depicting cartoon characters that are undeniably appealing to minors.*
  - *Upon closer inspection, I noticed that these cute and amorphous versions of hops are drawn in a style that could be easily mistaken for characters from children's media. This artistic choice, combined with the bright and vibrant colours utilised, further enhances the appeal to children.*
  - *As a responsible member of society, I find this branding strategy highly objectionable and inappropriate.*
  - *While I understand the need to create visually appealing packaging to attract customers' attention, it is crucial to strike a balance between capturing interest and inadvertently targeting underage individuals. The lack of clear information that the product is an alcoholic beverage is overshadowed by the cute nature of the drawings, potentially leading to confusion and exposure of minors to adult-oriented content.*
  - *As a concerned citizen, I believe it is our collective responsibility to ensure that the advertising and branding of alcoholic products are conducted in a responsible manner, adhering to the principles of ethical marketing. By using imagery that appeals primarily to children, the brewery is inadvertently contributing to the normalisation of alcohol consumption among minors, which is both morally indefensible and legally problematic.*

## The ABAC Code

12. A [new ABAC Responsible Alcohol Marketing Code](#) commenced on 1 August 2023. As the complaint relates to the packaging of products that were available for sale before this date, in line with the transitional arrangements for introduction of the new Code, the complaint will be considered under the [previous Code](#).
13. Part 3 of the previous ABAC Code provides that a Marketing Communication must NOT:
- (b)(i) have Strong or Evident Appeal to Minors.
14. 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 Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

## **The Company Response**

15. The Company responded to the complaint by email on 19 October 2023. The principal comments made by the Company were:

- I am writing in response to your letter dated the 28th of September 2023, in which you detailed a complaint received regarding the packaging of our Welcome Swallow Beer products, specifically the Pulp Friction West Coast IPA and Golden D’rule Hazy IPA. I appreciate the opportunity to address the concerns raised in the complaint and provide information to assist the ABAC Adjudication Panel in its deliberations.
- I would like to begin by acknowledging that the new ABAC Responsible Alcohol Marketing Code was launched on 1 August 2023. However, as our products were available for sale before this date, we understand that this complaint will be considered under the previous Code, as outlined in the transitional arrangements on your website.
- The Welcome Swallow Brewery takes its commitment to responsible alcohol marketing seriously and is dedicated to adhering to the relevant regulations and guidelines.

### **Alcohol Advertising Pre-vetting Service Approval**

- The packaging of our products did not receive Alcohol Advertising Pre-vetting Service Approval. Given the limited release and small-scale production of our brews, the cost associated with pre-vetting services was not feasible for our operation.

### **Responsibility toward Minors**

- We firmly believe that the style and design of the hops and fruit drawings on our packaging are not easily mistaken for characters from children's media. These references are intended to resonate with adults and are inspired by

pop culture jokes. For instance, "Pulp Friction" is a spoof on an Adults Only R18+ rated film from the early 1990s.

- The inclusion of a skateboard and youth clothing on the Golden D’rule Hazy IPA packaging was not intended to appeal to minors. Rather, it reflects a subculture that transcends age, including older individuals who participate in skateboarding and have their own distinctive style. The character depicted on the packaging appears weathered and worn, not in a manner that would typically appeal to minors.
- Bright and vibrant colours are not inherently attractive to minors. Our products are exclusively sold in high-end bottle shops, which require customers to provide identification proving that they are 18 years of age or older. Our marketing is deliberately directed at adults, as they are the primary consumers of our products.
- Our packaging includes clear and informative details that unmistakably identify the products as alcoholic beverages. Both Pulp Friction West Coast IPA and Golden D’rule Hazy IPA are prominently labelled as West Coast IPA and Hazy IPA, two well-established and recognized beer styles. In addition, the alcohol percentage, standard drink information, and pregnancy warnings are clearly displayed on our packaging, leaving no room for confusion.
- In providing these responses, we aim to address the concerns raised by the complaint and provide valuable insights for the ABAC Adjudication Panel's deliberations.
- Thank you for your attention to this case, and we look forward to working collaboratively with the ABAC Adjudication Panel to ensure our marketing practices comply with all relevant regulations.

16. The Company responded to the provisional determination by email on 6 November 2023, advising that it would accept the determination of the Panel.

17. As the Company has not sought a re-hearing of the provisional determination, under the rules and procedures applying to the Panel the determination now becomes final.

### **The Panel’s View**

18. Welcome Swallow Brewery is located in the Derwent Valley, New Norfolk, Tasmania and specialises in limited release small batch craft beers. It is a complaint about the packaging (can design) of products featuring ‘hop’ characters that has given rise to this determination. Given there were a large number of products using hop images listed on the Company’s website, the majority of which are no longer available for sale, the Panel has selected two examples - namely Pulp Friction West Coast and Golden D’rule Hazy, as the basis for this decision.

19. The Pulp Friction West Coast label has a very dark background, against which are shown the words "Pulp Friction" in orange, capital letters. Below, in increasingly smaller white capital letters are the words "West Coast IPA", followed by "6.7%" and "375 mls". A drawing of a moustached green hop, wearing sunglasses and a tuxedo, is shown on the front label. The hop is using a small firearm to shoot what would appear to be a round orange slice with a face, arms and legs.
20. The Golden D'rule Hazy IPA label has a predominately white background, with darker smudges giving an aged effect. The words "The Golden D'rule" are shown near the top of the front of the can, with the letters appearing as though they have been individually cut from a magazine or newspaper. Below, in increasingly smaller black font are the words "Hazy IPA", followed by "6.3%" and "375 mls". A drawing of a green hop, with arms, eyes and a mouth (with some teeth missing) and wearing an orange beanie, cargo pants and sneakers is included on the front label. The hop is holding a skateboard to its right, vertically, with the skateboard's front tip resting on the ground, and a beverage can in its left hand.
21. The complainant is concerned that the packaging has strong or evident appeal to minors due to:
  - depicting cute and amorphous cartoon characters that appeal to minors;
  - using bright and vibrant colours, as well as an artistic style associated with children's media; and
  - a lack of clear information that the product is an alcoholic beverage.
22. The complainant's concerns raise Part 3 (b) of the ABAC. This standard provides that an alcohol marketing communication must not have strong or evident appeal to minors. The standard might be breached if the marketing:
  - 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; and
  - creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors.
23. Assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of a reasonable person. This means that the life experiences, values, and opinions held by a majority of the community are to be the benchmark.

24. 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.
25. 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.
26. 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.

27. In response to the complaint, the Company advised that:

- the style and design of the hops and fruit drawings on our packaging are not easily mistaken for characters from children's media. These references are intended to resonate with adults and are inspired by pop culture jokes. For instance, "Pulp Friction" is a spoof on an Adults Only R18+ rated film from the early 1990s;
- the inclusion of a skateboard and youth clothing on the Golden D'rule Hazy IPA packaging was not intended to appeal to minors. Rather, it reflects a subculture that transcends age, including older individuals who participate in skateboarding and have their own distinctive style. The character depicted on the packaging appears weathered and worn, not in a manner that would typically appeal to minors.
- bright and vibrant colours are not inherently attractive to minors;
- our marketing is deliberately directed at adults, as they are the primary consumers of our products;
- our packaging includes clear and informative details that unmistakably identify the products as alcoholic beverages. Both Pulp Friction West Coast IPA and Golden D'rule Hazy IPA are prominently labelled as West Coast IPA and Hazy IPA, two well-established and recognized beer styles. In addition, the alcohol percentage, standard drink information, and pregnancy warnings are clearly displayed on our packaging, leaving no room for confusion.

28. 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.

29. It should also be noted that the ABAC standard does not create a freestanding requirement that the branding and packaging unambiguously identify a product as being an alcohol beverage. Rather a failure to do so and the potential for product packaging to be confused with a soft drink could contribute to the packaging having a strong appeal to minors.

30. The Panel acknowledges the point made by the complainant and there are some elements to the packaging design of both products that can be taken to potentially have evident appeal to minors whereas other elements are not likely to have a strong appeal to minors or at least no greater appeal than they would for an adult. As a result, this is an 'on balance' decision on which reasonable opinions might differ.
31. The Panel believes that the packaging of the Pulp Friction IPA does not breach the Part 3 (b) standard. In reaching this conclusion the Panel noted:
- that while the front of the can design could do more to unambiguously identify the product as alcoholic (noting terms such as IPA are not necessarily recognised beyond craft beer consumers) the can design does not resemble any well-known soft drink brand and is unlikely to be confused with a soft drink;
  - the Pulp Friction product employs a dark background and while the other colours are bright, the overall impression created is mature;
  - the principal 'hop' image does have some resemblance to characters that might be found in stories or animations directed towards minors, but the use of the character on the packaging is in an adult scene (violence);
  - the reference to the cult movie 'Pulp Fiction' would be readily recognised by many adult consumers but given the age and nature of that movie, it is unlikely the reference would be strongly appealing to minors all of whom were born at least 11 years after the release of the movie; and
  - taken as a whole, a reasonable person would probably understand that the packaging might have incidental rather than strong or evident appeal to minors.
32. The Golden D'rule Hazy IPA packaging also employs a hop character image as its principal design feature. This character is shown wearing a beanie, cargo pants and joggers. The character is positioned as a skateboarder by clearly carrying a skateboard.
33. The Panel has considered the appeal and community engagement in skateboarding in previous determinations such as Determinations 10/11, 51/18 and 185/20. It has been noted that while skateboarding is an activity enjoyed by a range of age groups, the largest cohort appears to be under 18 year olds e.g. a survey for the City of Melbourne showed 60% of skaters are minors and statistics on reported injuries from skateboarding indicate the majority of skaters are minors.
34. The Panel believes the packaging of the Golden D'rule Hazy IPA does breach the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- that while the front of the can design could do more to unambiguously identify the product as alcoholic (noting terms such as IPA are not necessarily recognised beyond craft beer consumers) the can design does not resemble any well-known soft drink brand and is unlikely to be confused with a soft drink;
- the product employs a light background with the bright green of the 'hop' character being highlighted;
- the hop character image does have some resemblance to characters that might be found in stories or animations directed towards minors; and
- the depiction of the character as a skateboarder creates an association with an activity popular with minors and increases the relatability of the product for minors; and
- taken as a whole a reasonable person would probably understand the packaging has a strong or evident appeal to minors.

35. The Panel makes a final determination that the packaging for Golden D'rule Hazy IPA is in breach of Part 3 (b)(i) of the ABAC Code. The complaint in relation to Pulp Friction West Coast IPA is dismissed.