



## ABAC Adjudication Panel Determination No 184/23

**Product:** Tradie Beer  
**Company:** Tradie Brands  
**Media:** Children's merchandise  
**Date of decision:** 9 January 2024  
**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 23 November 2023 in relation to children's merchandise showing "Tradie" branding, which is also used for Tradie Beer ("the product") by Tradie Brands ("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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 23 November 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

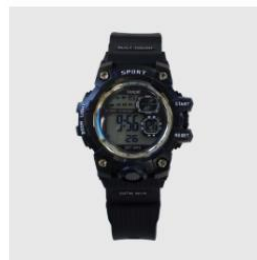
9. The quasi-regulatory system for alcohol beverage marketing features an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the content of the marketing.

## The Marketing

10. The complaint relates to the Tradie brand being used on children's merchandise, as it is also used on Tradie Beer.



Boys 3pk Cotton Singlet AU\$14.00



Farris Kid's Digital Watch AU\$25.00



Leo Kid's Classic Digital Watch AU\$29.00



Girls 2pk Cross Back Crop AU\$13.00



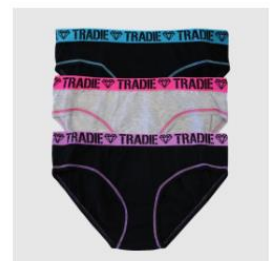
Boys 4pk Brief AU\$14.00



Girls 3pk Cotton Cami AU\$14.00



Boys 3pk Fitted Trunk AU\$15.00



Girls 3pk Bikini AU\$14.00

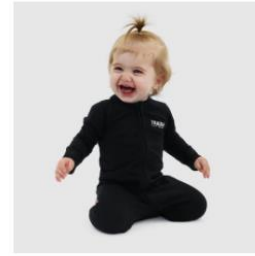




Baby 2pk Sleeveless Bodysuit AU\$20.00



Baby 2pk Short Sleeve Bodysuit AU\$20.00



Baby Footless Zipster AU\$16.00



Melbourne Storm Footless Zipster AU\$16.00



Baby Short Sleeve Zipster AU\$15.00



Baby Zipster AU\$16.00



Baby Zipster AU\$16.00



Baby Short Sleeve Zipster

## Complaint

11. The complainant objects to the marketing as follows:

- *Tradie is a brand that has recently entered the beer market. It leverages its already established brand of clothes and accessories. The Tradie brand has items directly marketed towards kids and babies.*
- *The crossover of a beer product and clothing for children and babies is inappropriate, the kids merchandise directly appeals to minors. This will allow them to become familiarised with the beer part of the brand.*

## The ABAC Code

12. Part 3 (b) of the Code provides that a 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.

13. Parts 2 and 8 of the Code provides that:

**Alcohol Marketing Communication** means a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

Examples of marketing communications and media the Code applies to include, but are not limited to:

(vi) cross brand promotion

## The Company Response

14. The Company responded to the complaint by email on 8 December 2023. The principal comments made by the Company were:

- We did not receive advertising pre approval as we did not make a range of kids products to market Tradie Beer to children or babies. We do not make an extensive range of children's clothing as stated in the complaint. We make Tradie branded undergarments for children and babies (as well as men and women) which are to be worn under clothing and not be seen by the public. There is no mention of beer on any kids product. Below are screen shots of the Tradie branded kids product available on Tradie.com. Colourways of this range have been available for more than 8 years and have not been adjusted or influenced since the launch of Tradie Beer. We do not make Tradie kids outerwear at this time.

## Kids undergarments

### Underwear

SORT BY Most Relevant

#### SIZE

2-3	3-4	4-6	6-8
9-10	10-12	12-14	14-16

#### COLOUR



Boys 3pk Cotton Singlet AU\$14.00



Boys 4pk Brief AU\$14.00



Girls 3pk Cotton Cami AU\$14.00



Boys 3pk Fitted Trunk AU\$15.00



Girls 3pk Elani AU\$14.00



Boys 4pk Brief AU\$15.00

## Baby undergarments

### Baby

SORT BY Price (Low To High)

#### CATEGORY

- Bottoms (1)
- Tops (3)
- Zipsters (8)
- Sale (1)

#### SIZE

0	00	000	0000
00000	1	2	

#### BAMBOO PRODUCT

Yes (3)

#### COLOUR



Baby Short Sleeve Zipster



Baby Leggings AU\$8.00



Baby Short Sleeve Bodysuit AU\$10.00



Baby Short Sleeve Zipster AU\$15.00



Baby Short Sleeve Zipster AU\$15.00



Baby Zipster AU\$16.00



Baby Zipster AU\$16.00



Melbourne Storm Footless Zipster AU\$16.00

## Kids watches

← Watches



### Farris Kid's Digital Watch

AU\$25.00

COLOUR

[Size Guide](#)



- 1 +

ADD TO CART

or 4 interest-free payments of \$6.25 with [afterpay](#) or from \$10/week with [zip](#)

[afterpay](#)

#### Description

Teach them to tell the time with Trader's Black Digital Watch. The case size is 43mm across and comes with an adjustable strap for growing wrists. This watch features a stopwatch, light and alarm functions to keep them covered through their adventures! Suitable to ages 8+.

- Cold light function
- Stopwatch, light and alarm functions
- Adjustable strap
- 43mm case size

Composition & Care

Reviews

Shipping & Returns

← Watches



### Leo Kid's Classic Digital Watch

AU\$29.00

COLOUR

[Size Guide](#)



- 1 +

ADD TO CART

or 4 interest-free payments of \$7.25 with [afterpay](#) or from \$10/week with [zip](#)

[afterpay](#)

#### Description

Trader's Kids Classic Digital Watch is the perfect aid in helping kids tell time. With an adjustable strap for growing wrists, waterproof up to 50m and featuring a light and alarm function this watch will keep them covered through all their adventures!

- Digital Display
- Light and Alarm Functions
- Waterproof up to 50m
- Adjustable Strap

Composition & Care

Reviews

Shipping & Returns

- We do not currently make Tradie brand children's clothing / outerwear, we make children and baby undergarments which have no mention of beer. The undergarments are not to be seen by the public given they're underwear. Tradie kids branded undergarments have been sold since roughly 2015 and watches under license since November 2019.
- Tradie Beer was first available in 2019 and has been re-released in October 2023
- Tradie underwear for children should not be considered as promotional marketing communications as children's underwear is not advertised by Tradie as it's inappropriate to advertise kids underwear. The Tradie kids watches have very minimal Tradie branding as can be seen from the photos above and no mention of beer.
- Tradie kids underwear has been available since roughly 2015 and has nothing to do with Tradie beer. There is no overlap with retailers who sell kids underwear/ babywear/watches and Tradie beer. Tradie underwear should not be considered a promotional item.
- Tradie kids underwear and kids watches are not promotional or marketing items. Kids underwear in particular is not to be seen by anyone but the wearer. The colours and branding of TRADIE Beer products are not similar in any way to the colours, styles and branding of Tradie Kids products. No marketing correlation can be drawn between the 2 product groups
- We firmly dispute the accusations made in this complaint. To suggest that Tradie is attempting to market its Tradie Beer to children through its long standing range of children and baby undergarments and watches is untrue.
- Tradie underwear is a well established underwear & babywear brand for men, women and kids. Sold in Australia, New Zealand, USA and UK since 2010
- Tradie does not make promotional clothing for children
- Tradie does not currently make outerwear clothing for children or babies
- Tradie makes undergarments for children and babies, the children's undergarments are not to be seen by the public and we do not use



children's undergarments in marketing or promotions as it's not appropriate.

- Tradie adults and kids watches are made under license by an unrelated company that specialises in watches.
- Tradie kids underwear/watches & babywear are not sold in the same retailers as Tradie Beer.
- Tradie does not directly market to children as we don't feature kids in our advertising as it's inappropriate to advertise children in underwear.
- Tradie kids underwear, watches are babywear are purchased by parents not the children.
- Seems unlikely that a baby which cannot read or write would be influenced by wearing a Tradie undergarment.

### **The Panel's View**

15. The 'Tradie' brand is the creation of Ben Goodfellow and commenced operations supplying men's underwear in 2010. Since then, other clothing items have been added including women's underwear, workwear, boots, tools and personal care products. In October 2023 the Company released a 'Tradie' branded beer range, namely a Lager, a Zero Carb Lager, and a Pale Ale.
16. This determination arises from an interesting argument. Essentially the complainant posits that as the Tradie brand name is now shared between the earlier non-alcoholic product lines and the more recent beer brand, then the use of the brand name on the non-alcoholic products will fall within the ambit of an 'alcohol marketing communication' for ABAC purposes. Specifically, it is contended that a range of children's merchandise showing 'Tradie' branding should be regarded as breaching the ABAC standard that requires alcohol marketing must not have strong appeal to minors.
17. With its venture into beer production, it is clear that marketing for the Company can and does intersect with ABAC obligations. In fact, the Panel very recently made two Determinations (173/23 and 189/23) that considered social media posts from the Company involving its beer range. But do the Company's alcohol products now mean each and every Tradie branded product and marketing item produced by the Company is an 'alcohol marketing communication' for ABAC purposes?
18. The starting point is the scope of the ABAC Scheme. For current purposes, the Scheme applies to 'alcohol marketing communications' generated by or within the reasonable control of an alcohol producer, distributor or retailer. The Code deliberately takes a non-exhaustive view of what can be regarded as an

alcohol marketing communication so as to enable the ABAC Scheme to respond to changes in the way alcohol is promoted and the emergence of new media and market trends.

19. The Code expressly references that one type of marketing communication is a 'cross category brand promotion'. While this term is not defined by the Code, it captures the placement of well recognised alcohol branding onto non-alcohol products.
20. For instance, in Determination 185/20 the Panel considered a cross brand promotion between CUB, the producers of VB Beer, and volley sandshoes that saw the VB logo placed on sandshoes and white socks. Determination 124/20 dealt with another VB cross brand promotion, this time concerning a VB fragrance that was packaged in a bottle modelled on a VB stubbie. In both cases the non-alcohol products (the VB branded clothing and fragrance) were held to be marketing items for the long-established VB alcohol brand.
21. Not surprisingly, the concept of a cross brand promotion assumed that the alcohol brand was well known and the placement of the alcohol branding on the non-alcohol product would be readily recognised as marketing for the alcohol product. The current case comes from the opposite perspective in that amongst the wide variety of Tradie branded products, the Tradie beer is the newcomer, and the brand is far more recognised for its clothing items than for being an alcohol product.
22. In this regard, the Company can be described as a mixed business with the large part of its business operations not involving alcohol beverages but now some of its business involving the production, distribution and promotion of its beer range. This contrasts with the two CUB examples given above as clearly CUB is a beverage producer best known for its beer and alcohol products.
23. The Panel has dealt with marketing from mixed businesses in a number of decisions. In Determination 65/22 the Panel considered the position of the Manly Club on Gilbert Park. Somewhat like the Company, the Club in part was in the alcohol business as it was licensed to sell alcohol at its restaurant and bar, however most of its activities were not related to alcohol beverages. The Panel noted:
  - the Club is a mixed business which included the service of alcohol as part of its wider operations;
  - marketing communications from the Club that reference branded alcohol beverages or the availability of alcohol from Club venues do fall within the ABAC obligations but marketing not referencing alcohol is not within the scope of the ABAC Scheme; and

- marketing that simply mentioned the Club name on signage and made no reference to alcohol beverages or the availability of alcohol is not within the ambit of the ABAC.
24. A similar issue was canvassed by the Panel in a series of determinations regarding marketing and promotional activities for the 'Bloke in a Bar' brand. In these cases, a former NRL player Denan Kemp began a podcast and later a webcast featuring discussion on sports, particularly rugby league. Like Mr Goodfellow (on a somewhat smaller scale) Mr Kemp leveraged his sports media success into clothing items and then a beer range. All of the various activities are undertaken under the 'Bloke in a Bar' name.
  25. Again, the Panel recognised that the marketing items produced under the Bloke in a Bar banner had a potential to fall within the ABAC obligations given that the wider business activities include in part alcohol beverages. Whether a particular marketing communication fell within the ABAC Scheme is a factual assessment based on whether alcohol is referenced in a discernible way.
  26. The Panel in these previous decisions involving mixed businesses did not accept the argument advanced by the complainant that a common name between the alcohol and non-alcohol components of a mixed business means that the use of the name alone brings a marketing item into the remit of the ABAC Scheme.
  27. The Panel has not been able to reach a consensus on the complaint. One Panel member believes that the fact that Tradie branding is shared between the alcohol products and the clothing items means that the clothing items must be considered a cross brand promotion for the alcohol products. This brings the children's clothing within the ambit of an 'alcohol marketing communication' and it is unacceptable for alcohol product branding to be placed on children's clothing.
  28. A majority of the Panel does not believe the Code should be understood as capturing the entirety of the clothing and non-alcohol product range of 'Tradie' as an alcohol marketing communication. For the majority, the benchmark for applying the Code is the reasonable person test and the threshold question is whether a reasonable person would probably understand the children's clothing as a promotional item for Tradie beer.
  29. Of course, an individual item of Tradie clothing could be regarded as cross brand promotion for the beer range if for instance, it showed an image of a can of Tradie beer on the clothing. But there will need to be a link to alcohol that a reasonable person would probably understand makes the clothing item or other merchandise a promotion of an alcohol beverage.
  30. In the current case, the clothing items and watches do not allude to or reference alcohol products in a discernible way. Accordingly, a majority of the

Panel finds that the clothing cannot be regarded as an alcohol marketing communication for ABAC purposes.

31. It is recognised that there is a temporal element to the Panel's decision. As it stands, Tradie unlike say CUB is not primarily recognised in the community as an alcohol business. This could change in the future if the Tradie alcohol products expand in range and wider community understanding emerges of the Tradie brand being known for its alcohol products.
32. The Panel strongly recommends to the Company that it engage with the ABAC pre-vetting service in relation to its alcohol marketing. It would represent both good practice for a new alcohol industry participant to fully appraise itself of its responsible marketing obligations and prudent risk management.
33. The complaint is dismissed.