



ABAC Adjudication Panel Determination No 42/24

Product: Boozy Boocho
Company: Cheeky Goat Co
Media: Digital (Website)
Date of decision: 1 April 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 11 March 2024 in relation to the website by Cheeky Goat Co (“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 complaint was received on 11 March 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint. The complaint has been determined within that time frame.

Pre-vetting Clearance

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

The Marketing

- The complaint relates to the following parts of the Cheeky Goat Co website.

The image shows two screenshots of the Cheeky Goat Co website. The top screenshot is the 'ABOUT' page, featuring a navigation bar with links for Home, ABOUT, SHOP, MERCH, CONTACT, FAQ's, STOCKISTS, SHIPPING, and TERMS. The main content area has a large 'ABOUT' heading, followed by a list of product attributes: ORGANIC - GLUTEN FREE - VEGAN - SUGAR FREE - PRESERVATIVE FREE - NATURAL FLAVOURS - GUT LOVING KOMBUCHA - LOW CALORIE. Below this, there are four paragraphs of text describing the company's mission, ingredients, and product details. The bottom screenshot shows the 'FAQ's' page, with a navigation bar where 'FAQ's' is highlighted. It contains four FAQ items, each with a question and an answer, and an upward arrow icon to the right of each question.

cheekygoatco.com Home ABOUT SHOP MERCH CONTACT FAQ's STOCKISTS SHIPPING TERMS

ABOUT

ORGANIC - GLUTEN FREE - VEGAN - SUGAR FREE - PRESERVATIVE FREE -
NATURAL FLAVOURS - GUT LOVING KOMBUCHA - LOW CALORIE

Cheeky Goat Co is an Australian owned and made kombucha with a "Cheeky" little splash of alcohol. We have over 25 years experience in the beverage industry and over 15 years of Nutrition experience.

Our mission is to craft a delicious beverage that can be enjoyed by all! We are proud to bring such a sophisticated drink to the market that is both nourishing and mouth-wateringly delicious.

At Cheeky Goat Co, we believe in making a kombucha that uses the finest quality of ingredients including organic green tea, natural flavours and no added sugar, congeners or preservatives.

Cheeky Goat Co alcoholic kombucha pays homage to the classic cocktails we all know and love. With a low 66 Calories you can enjoy this refreshing and tasty kombucha with friends and family, or just reward yourself at the end of a busy day. Whether you choose to enjoy it in a tall glass over ice or chilled straight out of the bottle, your tastebuds will be enraptured with every mouthful!

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Do I have to Store Cheeky Goat Co Kombucha in the Fridge? ^

No You do not, Cheeky Goat Co is a Shelf Stable Kombucha Based Cocktail and can be stored in your cupboard, put it in refrigerator to chill before drinking.

Is Cheeky Goat Healthy? ^

Cheeky Goat is an Alcoholic Cocktail and needs to be consumed responsibly. It has only 4% ABV per serve with the finest Natural Flavours and ingredients used. It contains good gut loving kombucha Bacteria in every bottle.

How Should I Drink Cheeky Goat Kombucha? ^

Cheeky Goat Co Kombucha is best served Chilled straight out of the Glass bottle or OVER ICE in a Glass.

Can Kombucha Cultures live in an Alcoholic Beverage? ^

Heck Yeah! When you drink Cheeky Goat Co Boozy Booch Kombucha - you're getting beneficial live cultures along with just the right alcohol content of 4.0%. We like to think of it as a Cheeky chill out with benefits!

INTRODUCING OUR PRODUCTS

Cheeky Goat Co Boozy Booch Kombucha Cocktails, the perfect blend of taste and refreshment. With a subtle **4% alcohol** content in a stunning 300ml glass bottle, these cocktails are available in two flavours:

Pina Colada and Raspberry Ginger Fizz. Made with **organic, gluten-free, and preservative-free ingredients**, these cocktails are perfect for those who love to indulge without any guilt. Not only do these cocktails taste great, but they also come packed with **gut-loving kombucha cultures**. Each bottle contains only **66 calories**, making them the perfect choice for health-conscious individuals looking to enjoy a delicious drink. So, whether you're sipping on a Pina Colada or Raspberry Ginger Fizz, you can rest assured that you're getting a wholesome and healthy drink.

WHAT THE GOAT?
No Butts just the Booch!



Boozy Booch

INTRODUCING OUR PRODUCTS

BUT.... what about those who prefer **non-alcoholic beverages**? Cheeky Goat Co Kombucha Non-Alcoholic Cocktails are here to save the day! Made with the same **organic, gluten-free, and preservative-free ingredients**, these cocktails contain only **3.6 calories** and still pack the same great taste. And just like their boozy counterparts, they contain **gut-loving kombucha cultures** that are great for your digestive system. So whether you're in the mood for a boozy drink or a non-alcoholic one, **Cheeky Goat Co has got you covered**. Enjoy the great taste of Pina Colada or Raspberry Ginger Fizz in a beautiful glass bottle, all while nourishing your body with wholesome ingredients and kombucha cultures. Cheers to great taste and a healthier you!

WHAT THE GOAT?
No Butts just the Booch!



Kombucha

Key Attributes

- Ambient Shelf Stable
- Low Calories
- Gluten Free
- Preservative Free
- Organic Certified
- Sugar Free
- Natural Flavours
- Gut Loving Kombucha Cultures



Complaint

11. The complainant objects to the promotion of the product on its website:
 - *'Nourishing', with 'beneficial live cultures' and 'good gut loving kombucha Bacteria'. In the slide show accessible from the website, it says "you can rest assured that you're getting a wholesome and healthy drink'. However, no alcoholic product can be promoted as being healthy.*
 - *There is no added sugar. However, kombucha is a fermented product and a fermented product requires sugar, and as there's no fruit fermented in kombucha, this requires the addition of sugar. This is false and/or misleading.*
 - *There are no details about where this company is based.*
 - *There is no age screening when entering the website.*

The ABAC Code

12. Part 3 (c) of the Code provides that a marketing communication must Not:
 - (iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.
13. Part 4 of the Code provides that the following placement standards must be applied:
 - (b) Available Age Restriction Controls must be applied to exclude Minors from viewing an Alcohol Marketing Communication and an Alcohol Alternative Marketing Communication.

The Company Response

14. The Company responded to the complaint by email on 12 March 2024. The principal comments made by the Company were:
 - The website wording has been modified according to what has been brought up in the complaint.
 - Some of the slideshow was information about a non-Alcoholic kombucha which we were going to make, however we are in the process of designing and marketing it completely separate from the alcoholic kombucha. The

slideshow has been removed. Please note that in the complaint the information was referring specifically to the non-alcoholic kombucha.

- The product is an alcoholic Kombucha which is produced in a commercial factory on the south coast of NSW. It contains kombucha, kombucha does use sugar as its food to be fermented, the end product that is used in Cheeky Goat Co Alcoholic Kombucha does not have any sugar remaining as it has been consumed by the bacteria. If sugar is left and not consumed in the fermentation process then it will keep fermenting. Please find the nutritional panel and ingredients of the products and note that there is no added sugar in this mixture. There is no fruit added, only natural flavours and ginger. The alcohol does not come from the kombucha but is added as an organic neutral spirit.

Nutritional Information			Nutritional Information				
Servings per package: 1			Servings per package: 1				
Serving size: 300ml			Serving size: 300ml				
Average Quantity		Per Serving	Per 100ml	Average Quantity		Per Serving	Per 100ml
Energy		276kJ	92kJ	Energy		276kJ	92kJ
Calories		66Cal	22Cal	Calories		66Cal	22Cal
Protein		0g	0g	Protein		0g	0g
Fat	Gluten	Not Detected	Not Detected	Fat	Gluten	Not Detected	Not Detected
	Total	0g	0g		Total	0g	0g
Carbohydrate	Saturated	0g	0g	Carbohydrate	Saturated	0g	0g
	Sugars	<0.5g	<0.5g		Sugars	<0.5g	<0.5g
Erythritol		12g	4g	Erythritol		12g	4g
Sodium		<5mg	<5mg	Sodium		<5mg	<5mg
INGREDIENTS: Organic kombucha (black and green), organic erythritol, organic neutral Spirit, natural flavours, monk fruit extract.				INGREDIENTS: Organic kombucha (black and green), organic erythritol, organic neutral Spirit, ginger extract natural flavours, monk fruit extract.			

- Is it a requirement by the LAW to advertise where the company is based?
- The Age screening –is at the checkout and needs to be checked off before purchasing with giving details and signature on delivery of the products. We are currently adding a pop-up on the front page of the website and this will take 48 hrs to become effective. We also state on every page: It is against the law to sell or supply alcohol to/or to obtain alcohol on behalf of, a person under the age of 18 years. Liquor License No. LIQW880015645.

The Panel's View

15. Cheeky Goat Co is a relatively new entrant to the alcohol beverage market, producing Raspberry Ginger Fizz and Pina Colada flavoured alcoholic kombucha products. This determination arises from concerns expressed about the Company's website, specifically statements (or a lack of information) on:
 - the health benefits of the products;
 - the age gating of the website;
 - the level of sugar in the product; and
 - the location of the Company.

16. The last two concerns are not matters that fall within the ambit of the ABAC Scheme. General claims about products are regulated under Consumer law such as Fair Trading legislation. Equally there is no requirement within the ABAC provisions for alcohol marketers to include their location on websites or other marketing channels.
17. The first two concerns do raise standards within the ABAC Code. In response to the complaint the Company explained more of the background regarding its intention to separately produce a non-alcoholic kombucha product as well as attending to changing its website material to address the concerns raised. This includes a simple age gate upon entry of the website to supplement the age gate in place when orders are placed online.
18. While the willingness of the Company to address the concerns reflects well on the Company's commitment to good marketing practice, under the rules applying to the ABAC Scheme the Panel is obliged to assess the marketing material as at the time of the complaint.
19. The complainant's concerns raise two Code provisions:
 - Part 3 (c)(iv) which requires that an alcohol marketing communication must not suggest that the consumption of an alcohol beverage offers a health benefit or is needed to relax; and
 - Part 4 (b) which requires the application of available age restriction controls.
20. Alcohol marketers are entitled to choose their brand posture and highlight that alcohol beverages are produced or distilled in a particular fashion and contain (or exclude) various elements. What a marketer cannot do under the Part 3 (c)(iv) standard is suggest that either the way the product is made or its constituent parts, results in the consumption of the product giving a consumer positive health or relaxation benefits.
21. The Panel believes several statements in the website materials are in breach of the Part 3 (c)(iv) standard:
 - About page and slideshow accessible from the Home page – describing the product as '*nourishing*';
 - FAQ page:
 - 'It contains good gut loving kombucha Bacteria in every bottle.'
 - 'We like to think of it as a Cheeky chill out with benefits.'
 - The slideshow accessible from the Home page:
 - 'these cocktails are perfect for those who love to indulge without any guilt' ;
 - 'not only do these cocktails taste great, but they also come packed with gut loving kombucha cultures', plus other references to 'gut loving kombucha cultures'

- 'you can rest assured that you're getting a wholesome and healthy drink'
 - on a page referencing a non-alcoholic product :
 - 'just like their boozy counterparts, they contain gut-loving kombucha cultures that are great for your digestive system'
 - 'Enjoy the great taste of Pina Colada or Raspberry Ginger Fizz in a beautiful glass bottle, all while nourishing your body with wholesome ingredients and kombucha cultures. Cheers to great taste and a healthier you!'
22. The Panel believes that references to the product being 'nourishing', 'chill out', 'gut loving', 'great for your digestive system', 'without any guilt', 'healthy', and 'healthier' suggest a health benefit or that the product is needed to relax in breach of Part 3 (c)(iv) of the Code. It is appreciated that the Company intended some of these statements to be made only in relation to the non-alcoholic product, however the mingling of the descriptions of the two product variants makes it unclear which statements are referring to which product type.
23. The advertiser accepted that the website does not age screen at point of entry, although does age screen at point of sale, and has taken steps to add an age restriction. The Panel believes that this is a reasonably available age restriction control to apply to a website that primarily relates to alcohol. Accordingly there is a breach of Part 4(b) of the Code.
24. The complaint is upheld.