



ABAC Adjudication Panel Determination No 59/24

Products: Brookvale Union Vodka Lemon Lime & Bitters and Alcoholic Ginger Beer
Company: Carlton & United Breweries
Media: Packaging
Date of decision: 6 May 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Louisa Jorm
Ms Jeanne Strachan

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 11 April 2024 in relation to the packaging of two products, being Brookvale Union Vodka Lemon Lime & Bitters and Alcoholic Ginger Beer (“the products”) by Carlton & United Breweries (“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 April 2024.

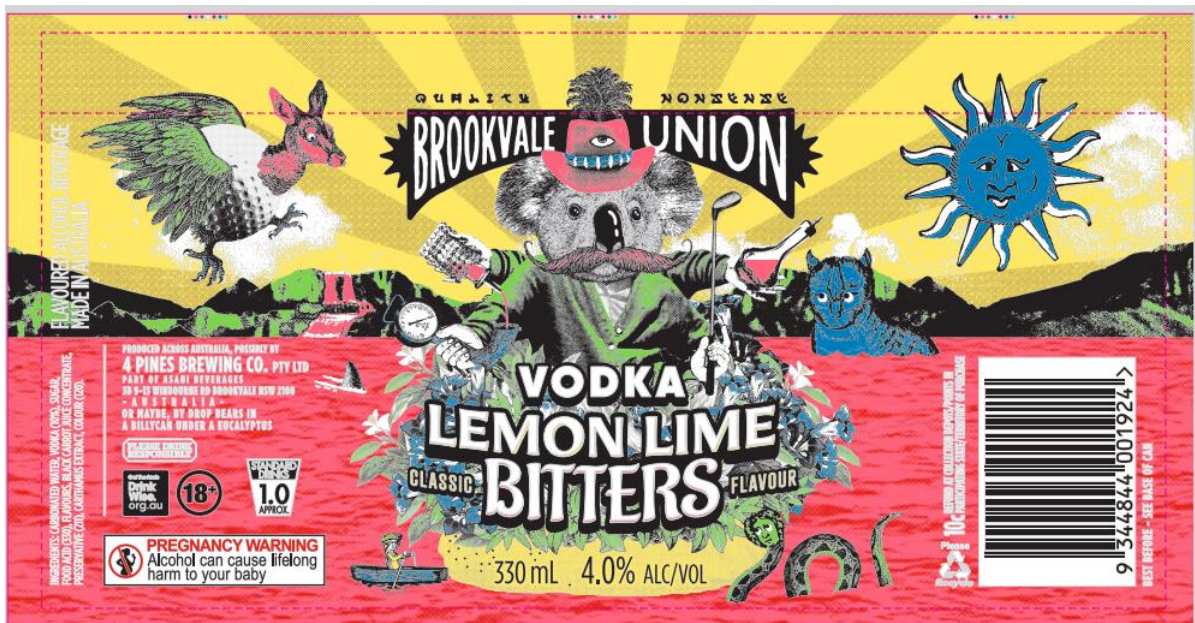
- The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

Pre-vetting Advice

- A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the packaging.

The Marketing

- The complaint relates to the packaging of two products, being Brookvale Union Vodka Lemon Lime & Bitters and Alcoholic Ginger Beer.





Complaint

11. The complainant objects to the marketing as follows:
- *The Brookvale Union cans and packaging have bright colours, cartoon like animals and some packaging even depicts a circus which children will find very appealing.*
 - *The Brookvale Union packaging is very appealing to Minors.*

The ABAC Code

12. Part 3 (b)(i) 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 Response

13. The Company responded to the complaint by letter emailed on 24 April 2024. Its primary comments were:
- Carlton & United Breweries (CUB) takes the responsible advertising of alcohol seriously. We are aware of the Code requirements and our policy and practice is in line with ensuring compliance with all relevant alcohol and marketing guidelines.
 - Assertions made by the complainant:
 - The Brookvale packaging is very appealing to Minors.
 - All the Brookvale cans and packaging have bright colors, cartoon like animals and some packaging even depicts a circus which children will find very appealing.
 - It is our strong view that Brookvale Union's packaging and creative treatment is adult in nature.
 - The intended demographic for our products is unequivocally individuals aged 18 and over. CUB does not engage in marketing towards those who are not legally permitted to consume its products.
 - We reject the assertion made by the complainant that the products possess any specific appeal to minors above that which they might have for adults.
 - Brookvale Union's illustrative designs are very unique; the brand's packaging artwork has been created by one designer since the brand's inception. These designs are collage-style illustrations, with the designer using old-fashioned imagery throughout his drawings to convey the origin and flavour profile for each product.
 - It should be noted that the product images referred to in the complaint are outdated. Please see the attached artwork for the most recent packaging. These updates have been in market since July 2023 (Alcoholic Ginger Beer) and August 2023 (Vodka Lemon Lime and Bitters) and CUB has not sold products bearing the earlier packaging since this time.



Was the marketing referred to in the complaint submitted for Alcohol Advertising Approval?

- The two products referred to were not submitted for Alcohol Advertising Pre-vetting Service Approval.

What were the dates on which the Products were first supplied for bona fide retail sale in the ordinary course of business in Australia?

- Brookvale Union (BVU) Alcoholic Ginger Beer has been in market since October 2013. The product has undergone a number of design changes throughout the past 11 years, including changing format from a bottle to a standard 330mL can. However, the key elements of the product (the BVU banner, prominent elephant character and colour scheme) have remained largely unchanged.
- Brookvale Union Vodka Lemon Lime Bitters has been in market since April 2021, and remained unchanged until August 2023, when we updated the 'Vodka' call out on-pack (increased boldness and clarity) and shifted the 4% ABV to the front of the can.

Does the packaging of Vodka Lemon Lime & Bitters and Ginger Beer breach Part 3 (b)(i) of the Code by having Strong or Evident Appeal to Minors?

General Comments

- Firstly, we note that the products in the complaint no longer exist for retail sale. In early 2023, after a proactive review of our designs, we opted to update both products to include 1) clearer alcohol callouts, and 2) each product's ABV% on the front of packaging.
- For Vodka Lemon Lime Bitters, the existing Vodka typeface on the front of the product was updated to be larger and bolder. For Alcoholic Ginger

Beer, we added the word 'alcoholic' into the Ginger Beer lockup. These dominant alcoholic cues on the front of both products instantly identify these products as alcoholic beverages to consumers.

- Secondly, Brookvale Union is a well-known alcohol brand, with products in the Australian market since 2013. With a range of over 20 unique products over 11 years, BVU is synonymous with the Alcoholic Ginger Beer and Light RTD categories, more recently entering the Dark RTD category.
- Brookvale Union is the market-leading Alcoholic Ginger Beer brand with 31.2% value share (IRI, Beer Database, AU Liquor Weighted, Dollars Share of Total Ginger, Total Brookvale Union Ginger Beer, QTR to 3rd March '24). Brookvale Union gained market leadership in the Alcoholic Ginger Beer category in September 2018 (IRI, CUB Beer Historical 10 Year Database, Dollars Share of Alcoholic Ginger Beer, 4wks to 31/21/23).
- As a result of Brookvale Union's longstanding and dominant position in the alcohol market, the black Brookvale Union logo displayed on both the Alcoholic Ginger Beer and Vodka Lemon Lime Bitters products serves as a clear and upfront notice to consumers that these are alcoholic products.
- We would also like the Panel to consider that the two aforementioned products have been in market for many years (11 years for Alcoholic Ginger Beer; 3 years for Vodka Lemon Lime Bitters), with strong distribution on- and off-premise nationally. We have never received a complaint that either product appeals to minors.
- The Panel has previously considered the use of stylised animal characters in marketing communications, including product packaging. In Determination 33/19 Cheeky Monkey, the panel noted that:
 - "...it does not automatically follow that the use of an animal character within a marketing communication will cause the item to strongly appeal to minors".
- Additionally, it was noted that there are a wide variety of animation and cartoon styles by which animals are depicted, with some clearly more childlike in appeal while others clearly adopt adult and mature styles. In this regard, we also refer to Determination 38/14 Jägermeister, in which the panel noted:
 - "Simply using a drawn or cartoon like character of itself does not necessarily mean an advertisement will have strong or evident appeal to under 18 year olds. While some forms of animation are clearly directed towards children, other forms, such as Japanese anime, are definitely adult in character. Essentially, a case by case

assessment is needed, taking the content of the advertisement as a whole”.

- We submit, taking the content of the packaging as a whole, the Brookvale Union product packaging is clearly adult in character.
- While both products feature animal characters, these are depicted in an abstract and nonsensical way, in a style that is reminiscent of “old fashioned” product labels and alludes to Brookvale Union’s long standing tagline of ‘Quality Nonsense’. The animal figures have been intentionally designed to ensure they resonated with a mature audience. The characters are clearly distinguishable from children’s characters to which minors would be drawn, and each animal holds adult tools with which minors would not be familiar or attracted to (namely bitters bottles and pipes).
- The animals are not portrayed in a child-like or ‘cutesy’ manner such that the inclusion of these characters is likely to increase the appeal of the packaging to Minors.
- We refer to the panel’s Determination 119/22 Bridge Road Brewers & Friends Craft Beer Christmas Countdown Advent Calendar, relating to a beer advent calendar that depicted animal characters on the packaging. Although the advent calendar depicted various animal characters as well as additional elements which were contended to appeal to minors (such as Christmas imagery), this packaging was found not to have strong or evident appeal to minors. The panel stated: “the animal characters are depicted and dressed as adults as opposed to more childlike anthropomorphised characters employed in children’s books”. This Determination also applies to the Brookvale Union products.
- We will address the specific packaging elements for each product below. However, as noted in Determination 38/14 above, the assessment of whether the packaging in question has strong or evident appeal to minors must ultimately be evaluated based on “the content of the advertisement as a whole” (emphasis added).

Alcoholic Ginger Beer

- The primary packaging colour is a muted ginger tone (used to convey the proposition and key ingredient of Alcoholic Ginger Beer) with soft pink and orange highlights. These orange tones are used to communicate the spicy flavour profile and ginger flowers included in the beverage. The colours on this packaging are subdued and not bright or contrasting – at a glance a consumer would only see the dominant sepia tones. The colours of this product would not be eye-catching for a minor any more than they would be for an adult – they are shaded in line with the brand’s grungy aesthetic.

- We submit that while this product depicts an animal-like figure, the character itself is adult in nature and designed not to appeal to minors.
- The central design of this product features an adult human body with the head of an elephant, whose figure is depicted in surrealist form. There is a snake extending from the elephant's trunk, symbolic of a ginger 'bite'. The head of the elephant shows no emotion and is not portrayed in an animated, cartoon or 'cutesy' way. The human body of the figure is clothed in mature and serious garments, namely a royal coronation tunic and cape, whilst the elephant head bears no clothing.
- The figure is holding an old-fashioned smoking pipe; an item that would only be used by or appeal to adults. Its head is also half-opened with a pit of fire floating up through the skull – a design that would clearly steer minors away from drawing parallels between the can and cute cartoon elephants.
- We submit there are no elements of this product that depict 'circus scenes'. Behind the central elephant-like figure, the packaging displays a tiger, depicted in an ominous and lifelike form.
- Further, the packaging displays small figures of a gorilla and bird on ornate ceremonial pillars – neither of which are animals that you would reasonably expect to find at a circus. There is a second elephant featured on the back of the can, however this is a surreal depiction in which the elephant is shown to have wings and be flying, drawn by line and without animation. There are no facial expressions or characteristics shown on this elephant. A large white moon is also included on the back of the can with a vintage-style face.
- The topography of the packaging depicts a barren mountain landscape and is not fantastical/extravagant, eliminating any association with a circus-like setting.
- As noted above, we updated the packaging artwork in July 2023 with the purpose of including a clear and prominent 'ALCOHOLIC' callout on the front of the can. The packaging artwork that is in market features this callout on the front and back of all packaging formats. The 'ALCOHOLIC' copy on the can is in white, block text in uppercase, with a black keyline in front of a muted pink background to aid visibility. The prominence and size of this 'ALCOHOLIC' callout is comparable to other leading brands in the Alcoholic Ginger Beer category including James Squire and Matsos.
- The product's ABV (4%) is also clearly communicated on the front of the can, in a white, blocked text with a contrasting background.

Vodka Lemon Lime & Bitters

- The packaging artwork features pale yellow and peach pink as the primary colours, with light green as a tertiary colour. This colour scheme was selected in order to communicate the flavour profile of the beverage. When viewing the can front-on, yellow and green are the dominant colours of the product and are not vividly contrasting.
- Heavy shading has been applied to elements of the illustration, in line with the brand's grungy aesthetic.
- The dominant character of this product is an adult human body with the head of a koala. The body is adorned with an old-fashioned forest green cardigan, a top hat and a large Imperial moustache; the combination of which creates a grandpa-core aesthetic that would not appeal to minors.
- The creature has four arms, each holding an adult item which conveys the ingredients and flavour profile of the product: two bottles of bitters, a measuring instrument and a golf club. These items would not be appealing to minors on any reasonable assessment.
- As with our Alcoholic Ginger Beer product, the head or 'face' of the central character is not showing any visible emotion and is not portrayed in an animated, cartoon or 'cutesy' way.
- We submit there are no elements of this product that depict 'circus scenes'. The setting of this montage is on a lake, with various vintage-style and abstract figures surrounding the central figure (namely a flying golf ball with an illustrated kangaroo head, a large blue cat and a large blue sun with a vintage-style face).
- A 'VODKA' callout features prominently on the front of the can artwork. The 'VODKA' copy on the can is in white, block text in uppercase, with a black keyline in front of a darker green background, to aid visibility. We submit that a consumer would not read the flavour profile 'Lemon Lime Bitters' without first reading the 'VODKA' alcohol cue.
- The product's ABV (4%) is also clearly communicated on the front of the can, in a black, capitalised text against a pale-yellow background. This ABV statement also sits directly underneath the flavour profile. We submit the close proximity of this statement to the flavour profile (which would likely form the basis of the consumer's choice of product), means the consumer would notice the ABV claim.
- Brookvale Union is known for its eccentric packaging that creatively depicts a montage of odd retro symbols and designs, evoking steam punk and grunge aesthetics. We firmly refute the claim that the packaging possesses

a particular attractiveness for a minor beyond the general attractiveness it has for an adult. In fact, the artwork is clearly and carefully designed for adult appeal and steers away from design elements that usually appeal to minors.

- CUB is committed to ensuring our promotional and marketing material, and that of our associated entities, does not promote or encourage any irresponsible or illegal consumption of alcohol. Our goal is for adults to enjoy our products responsibly and in moderation. Accordingly, we have taken precautions to ensure that the marketing material produced complies with the ABAC standard.

The Panel's View

14. This determination arises from a complaint about the packaging of two Brookvale Union products, being Vodka Lemon Lime & Bitters and Alcoholic Ginger Beer. The complainant contends that the packaging can be clearly considered as appealing to children, particularly through having bright colours, cartoon-like animals and some elements depicting a circus which children will find very appealing.
15. The complaint brings into play the ABAC standard in Part 3 (b)(i) of the Code which provides that an alcohol marketing communication (which includes product packaging) must not have strong or evident appeal to minors. This 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.
16. 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.
17. 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.
18. 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.
19. An assessment as to the appeal of packaging is based on how a reasonable person will understand the labelling. A 'reasonable person' has the attitudes,

values and life experiences shared by most people in the community. Most influential in understanding product packaging will be:

- the front of the packaging rather than the rear and sides;
- messaging in larger rather than smaller font;
- the dominant design aspects;
- the prevailing colour scheme; and
- the overall impact of these features combined.

20. The Company has provided detailed arguments as to why it contends that the packaging is consistent with the Part 3 (b) standard. It's main points include:

- both products are clearly identified as being alcohol beverages through the use of prominent alcohol descriptors 'ALCOHOLIC' on the Ginger Beer and 'Vodka' on the Lemon Lime & Bitters product and other cues;
- the designs are unique collage style illustrations using old fashion imagery not likely to appeal to minors;
- the animal figures are designed to resonate with a mature audience and are clearly distinguishable from children's characters to which minors would be drawn. The animals are not portrayed in a child-like or 'cutesy' manner;
- the products have been on the market without attracting complaint for some time - 11 years for the Ginger Beer and this suggests there is not a public concern about the packaging; and
- taking the content of the packaging as a whole, the product packaging is clearly adult in character.

21. Care always needs to be exercised when using depictions of animals in alcohol marketing due to a potential for elevated appeal to minors. That said, it is permitted to use animations and animal characters and each case must always be assessed individually. In the current case the animal depictions don't readily bring to mind children's material with the sense being closer to surrealist depictions directed towards adults.

22. Further both products have flavour profiles better known as soft drink beverages than as alcohol products. It should be noted that the ABAC Scheme does not regulate physical beverages and the Code standards do not go to physical characteristics such as taste and colour. Importantly, the products do not lead with branding elements drawn from recognised or iconic soft drink branding in contrast with the Hard Solo packaging considered by the Panel in 2023.

23. The Panel does not believe the can label breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- the packaging through its use of alcohol descriptors identifies the products as being alcoholic;
- the packaging does not resemble any well known soft drink and it is unlikely the products would be confused with a soft drink;
- the imagery employed is akin to surrealism in style and is not similar to animal depictions used in well-known children's animation;
- the overall style of the design is adult in nature; and
- taken as a whole, the packaging would at its highest have incidental and not strong or evident appeal to minors.

24. The complaint is dismissed.