



ABAC Adjudication Panel Determination No 100/24

Products: BOX Alcoholic Juice
Company: Moon Dog Brewing Pty Ltd
Media: Packaging
Date of decision: 21 July 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 3 July 2024 in relation to the packaging of BOX Alcoholic Juice in Tropical Bang and Apple Guava flavours (“the products”) by Moon Dog Brewing Pty Ltd (“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 3 July 2024.
8. 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

9. 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 obtained for the packaging (Approval Number 8775).

The Marketing

10. The complaint relates to the packaging of two products, being BOX Alcoholic Juice in Tropical Bang and Apple Guava flavours.





Complaint

11. The complainant objects to the marketing as follows:
- *Packaging appealing to minors.*
 - *Alcoholic Juice in cans with cartoon-like emojis, the words Juice and Box on the packaging heavily related to minors, the face of the brand a young musician very impressionable on minors.*
 - *Alcoholic juice, with the words juice box on pack, cartoon like emojis, no thought to put an R18 symbol on the front, the words topical bang relates to an energy drink brand.*

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 10 July 2024. Its primary comments were:
- Thank you for the opportunity to respond to the Complaint. I confirm that I provide this response on behalf of Moon Dog Brewing Pty Ltd (Moon Dog).
 - By way of background, Moon Dog produces, under licence from Flipo Booze Pty Ltd, a company associated with Georgia Claire Flipo, better known as 'G Flip'. G Flip is a well-known Melbourne-based singer, songwriter, multi-instrumentalist and producer, and is the face of the BOX brand. The BOX Alcoholic Juice products are the product of G Flip's creative vision, with alcoholic juice being G Flip's own drink of choice before a performance.
 - The packaging for the Products was submitted for pre-vetting approval (AAPS application number 07486-2024) and final approval was granted on 26 March 2024 (approval number 8775).
 - As a preliminary point, the Complaint as framed in your letter relates solely to the Product packaging (ie as the Products are presented for retail sale) and this response is provided on this basis.
 - Moon Dog submits that the Product packaging does not contravene the Code and, specifically, does not have strong or evident appeal to minors
 - The cans are colourful, although I would not necessarily describe them as 'brightly' coloured (particularly the Apple Guava can). The colours on the cans are intended to signify the flavours of each Product – a yellow through orange gradient representing the orange, pineapple and passionfruit fruit flavours of Tropical Bang, and a red through green gradient representing guava and apple. The cans could reasonably be described as eye-catching, though no more so than many other alcoholic products. The colours on the can are not intended to be, and it is not, strongly or evidently appealing to minors.
 - The cans include, around their top and bottom, thin white outline pictograms (NB not 'emojis' as has been suggested) that recreate and depict G Flip's tattoos. The use of pictograms in this way is not intended to

be strongly appealing to minors, nor does the inclusion of pictograms of this kind (which are in any case rendered with some subtlety around the margins of the cans so as to create a textural effect, and are not especially prominent) have that effect.

- The 'BOX' Products are alcoholic juices. Referring to the Products as 'ALCOHOLIC JUICE' on the cans is, it is submitted, entirely appropriate and prudently descriptive of the alcoholic beverage it contains. It is plain from this description that the Products contain alcohol, and the word 'ALCOHOLIC' has identical prominence to 'JUICE'. The words 'ALCOHOLIC JUICE' would be read by the reasonable person (or a minor) together as a compound phrase, descriptive of its contents. A reasonable person would not read 'juice' in isolation. Importantly, the Products are exclusively sold in 330mL cans, which is not a format commonly – or at all – associated with (non-alcoholic) fruit juice. Moon Dog considers that there is no genuine risk of any confusion between non-alcoholic fruit juice (which is sold in cartons or plastic bottles) and the 'BOX' Products. As to the suggestion that the word 'BOX' is one commonly or especially used by minors (because it forms part of 'Xbox' or otherwise), it only needs to be stated to be dismissed.
- Moon Dog is unaware of any energy drink in the market called 'Tropical Bang'. There is, it seems, a brand of energy drink called 'Bang'. That energy drink product is evidently directed at adults, not minors (noting that it contains the sports performance supplement creatine), and we are not aware of anything that would suggest this particular energy drink brand is a household staple that would be familiar and appealing to minors (especially or indeed at all). In contrast to the 'Bang Energy Drink' products, the words 'TROPICAL BANG' on the Product cans are descriptive of the flavour of the product and are presented as subsidiary to the much larger 'BOX' branding: it is plainly a 'BOX' product, not a 'Bang' or 'Bang Energy Drink' product. For completeness, the packaging design of the Products bears no resemblance to the 'Bang Energy Drink' cans or other marketing materials. There is no genuine risk of confusion with energy drinks and a minor would not be especially attracted to the 'BOX' Products (and the Tropical Bang flavour in particular) simply because one of the words in the description of the product is also the name of a wholly unrelated energy drink brand.
- The words 'ALCOHOLIC JUICE' are presented prominently on the front of the cans and the cans otherwise variously state '4.5% ABV', '4.5% ALC/VOL' and '1.2 Standard Drinks' and include the standard alcohol pregnancy warning label. It is submitted that these cues are sufficient to make it clear that the product is an alcoholic drink.
- The 'BOX Alcoholic Juice' Products do not create an illusion of a smooth transition from a non-alcoholic beverage to an alcoholic beverage for the

reasons outlined above and, in particular, because the physical packaging of the Products (cans) bears no resemblance to the ordinary packaging formats for non-alcoholic juice.

- In summary, a reasonable person viewing the Products would not consider them to have strong or evident appeal to minors, or any appeal to minors beyond that which is incidental. The Products are in no way specifically targeted at minors and the packaging design (including the text style, colour schemes and pictograms) has no particular attractiveness for a minor beyond the general attractiveness it may have for an adult. There is no genuine risk of confusion between a non-alcoholic product – be that a fruit juice or an energy drink – and the Products, and it is plain on the face of the Products’ packaging that each is an alcoholic product. In clear contrast to the Products, fruit juice is not ordinarily sold in cans. That the description of one of the Products has a word in common with the name of an energy drink does not, in itself or in all the circumstances, give rise to a genuine risk of confusion or an illusion of smooth transition to alcohol. Finally, while it is acknowledged that obtaining pre-vetting approval does not prevent the Panel from (on occasions) forming a different view with respect to compliance with the Code, it is submitted that the pre-vetting process in this case correctly determined that the Products were consistent with the requirements of the Code.
- For completeness, while the Complaint relates to the Products’ packaging alone, insofar as the ‘Advertisement Description’ in your letter states that ‘the face of the brand [is] a young musician very impressionable on minors’ (which is not a matter that can be said to arise on the face of the Products’ packaging), it is relevant to note that G Flip is 30 years old and the vast majority of their audience is over the age of 18.

The Panel’s View

14. In July 2024 Moon Dog Brewing released a new Ready to Drink (RTD) alcohol product onto the Australian market branded under the name BOX Alcoholic Juice. The products have a ‘neutral alcohol base’ combined with fruit juice and come in two flavours of Tropical Bang and Apple Guava.
15. As mentioned by the Company, it is producing the product under license from another entity, Flipo Booze Pty Ltd. Media articles announcing the product explain that its inspiration comes from Australian musician Georgia Flipo known professionally as G Flip or G. G is a multi-instrumentalist and has the distinction of having 7 songs in the 2023 Triple J Hottest 100 Countdown, the highest number ever achieved by a single artist.
16. Beyond music and performance, G has proven to be a successful brand cross promoter with a popular collaboration with the shoe manufacturer Crocs prior to

the recent relationship with Moon Dog Brewing. G has a strong social media following.

17. The marketing of BOX Alcoholic Juice is before the Panel because of a complaint about the product's packaging (can design). The complainant contends that the packaging is appealing to children, particularly through including emojis and using the word 'juice' and might be confused with an energy drink with a similar name. While the complainant doesn't mention G Flip by name, reference is also made that the face of the brand is a 'young musician'.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. The Company has provided detailed arguments as to why it contends that the packaging is consistent with the Part 3 (b) standard. Its main points include:
- the products are not targeted at minors and the packaging design (including the text style, colour schemes and pictograms) has no particular attractiveness for a minor beyond the general attractiveness it may have for an adult;
 - the products' packaging establishes it is an alcoholic beverage and as fruit juice is not sold in cans, the products would not be confused with a fruit juice;
 - the colours on the cans signify the flavours of each product and are no more eye catching than most alcohol can designs;
 - the cans don't have emojis (as suggested in the complaint) but thin white outline pictograms that recreate and depict G Flip's tattoos. The pictograms are not intended to be strongly appealing to minors, but create a textural effect; and
 - the packaging design bears no resemblance to the 'Bang Energy Drink' cans or other marketing materials.
24. One issue that needs to be considered is the extent the probable understanding of the product's packaging would be shaped by the sponsorship and association of the product with G Flip. As a general proposition an item of marketing needs to be assessed on its own content and design aspects. This is because while all products and design will have their own backstory, this won't often be widely understood by the mass of consumers or be influential in how a reasonable person will view the marketing.
25. That said, there are a number of examples where the Panel has recognised that the reasonable person's understanding of product packaging will be shaped by a community wide general knowledge of the branding or core design elements. For instance:
- Determination 37A/14 which recognised that a product packaged and branded as 'Duff Beer' would be understood by its reference to the Simpsons TV series;
 - Determination 34/19 dealing with product packaging for 'Jedi Juice' which depicted an image drawn from the Princess Leia character from the Star Wars franchise; and

- Determination 119 and others/23 concerning the product packaging for Hard Solo which could only be fairly understood in light of a reasonable person's exposure to the branding and market position of Solo soft drink.
26. In contrast, in Determination 93/19 the Panel considered the packaging of a series of products that were inspired by the late US rapper Christopher Wallace aka 'Notorious B.I.G'. who died in 1997. While the Panel accepted that the packaging did draw on rap and hip hop references from Notorious B.I.G, it thought it unlikely many people outside of hardened fans of Mr Wallace would make the connection with the packaging.
 27. Unlike the Notorious B.I.G, G Flip is very much a current performer who operates in and skilfully uses social media as a core communications medium. And there is a reference to G on the product packaging, specifically the pictograms based on their tattoos. Also, the side of the can has a 'flip me drink me' symbol which is about shaking the product before consumption but could conceivably be taken as a reference to G Flip.
 28. There have been several recent examples of alcohol products being the projects of or collaborations with actors and performers. Travla Beer was founded by actor Travis Fimmel and the brand Better Beer is a collaboration involving social media personalities and comedians the Inspired Unemployed. The marketing of these products uses their celebrity founders, but the packaging design of the two beers themselves has not been considered shaped by perceptions of the product's founders.
 29. Drawing this together, the Panel does not think that the packaging of BOX Alcoholic Juice as a stand alone marketing communication would be generally understood through the lens of G the performer. Firstly, references to G on the packaging are oblique at best. Secondly, while G is successful and has a following, their impact on the wider community is not at the level of Star Wars or the Simpsons and they don't have a brand recognition built over decades like Solo had when understanding the branding of Hard Solo.
 30. Hence any appeal G the artist has with minors could well be relevant in a specific marketing communication for the product that features G, but the Panel does not believe the can design of the product has strong appeal to minors simply because G is involved in the product. Other marketing communications for the product will need to be assessed individually for consistency with ABAC standards on their own merits.
 31. Turning to the packaging design, the Panel does not believe the Part 3 (b)(i) standard has been breached. In reaching this conclusion the Panel noted:
 - the most distinctive feature is the bold 'BOX' name in black font and this is not considered strongly appealing to minors;

- while the product flavours would be more associated with non-alcoholic beverages, the packaging through its use of alcohol descriptors identifies the product as being alcoholic;
- the packaging does not resemble any well known soft drink and it is unlikely the product would be confused with a soft drink;
- the packaging does not resemble an established type of energy drink;
- 'alcoholic juice' would be understood as a descriptive term and not taken as suggesting the product is fruit juice;
- the pictograms may increase the appeal to minors, but this single element is not considered decisive to the overall impact of the packaging; and
- taken as a whole, the packaging would at its highest have incidental and not strong or evident appeal to minors.

32. The complaint is dismissed.