



## ABAC Adjudication Panel Determination No 162/24

**Product:** 1990's Vodka  
**Company:** Billson's  
**Media:** Social Media - Facebook  
**Date of decision:** 15 November 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Debra Richards

### Introduction

1. This provisional determination by the ABAC Adjudication Panel ("the Panel") arises from a complaint received on 14 October 2024 about Facebook marketing of 1990's Vodka ("the product") by Billson's ("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 places 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, and 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 marketing content 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 14 October 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, however, this time frame does not apply in the case of

complaints regarding product packaging and brand names. This is because of the two-step process involving a provisional and then a final determination.

## 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 before 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 marketing,

## The Marketing

10. The complaint relates to a social media post made by the Company, including comments attached to it:

The image displays two side-by-side screenshots of a Facebook post from Billson's. The left screenshot shows the top of the post with the question "What colour/can combo will be your fav?" and engagement metrics (637 likes, 472 comments, 45 shares). The right screenshot shows the main text of the post, which is a promotional message for "1990s-inspired Vodka Premix Range" featuring colorful cans and CD-like artwork.

13:05 facebook.com


←

What colour/can combo will be your fav? 🍷

👍 637

💬 472

🔗 45



13

📱 Get the best experience on the app

Get

13:05 facebook.com

←

**Billson's** 2d · 🌐

👍 We are super stoked to announce our totally rad 1990s-inspired Vodka Premix Range is here! 🍷

🎧 Get your Tamagotchis out and dust off those baggy jeans, because these drinks are about to blow your mind. 📀 Straight outta the decade of dial-up, these cans are nerd-level awesome. 🍷

👉 Each can is decked out in designs that scream 90s – bright colours, bold graphics, and the kind of artwork that makes you want to bust out your happy pants. One flavour, but a whole lot of 90s attitude in every can. 🍷

🍷 This full-flavour hit is straight from the corner milkbar, with each can serving up a new combo. Think of it like a CD player on shuffle – with 16 possible combos with 4 different drink colours and 4 different can design variations - a totally grouse surprise with each pour. 🍷

📍 You can get them from Billson's - online or at the Brewery in Beechworth and from retailers across the country. This flavour trip is 4 real. 🍷

🍷 What colour/can combo will be your fav? 🍷

📱 Get the best experience on the app


Get

13:08

AA facebook.com


Facebook Open in the Facebook app OPEN

← Replies 🔍

 **Deana L Hailey**  
 How is their 16 possible combos when each can is the same flavour. ???

Is their any can that's harder to get than others ?

on Mon Like Reply

 **Billson's** ✓  
 Deana L Hailey All cans have the 1 same yummy flavour 😊. With 4 different can designs + 4 different coloured liquids it's 16 possible combos 😊


on Mon Like Reply + 1

13:09


AA facebook.com

Facebook Open in the Facebook app OPEN

← Replies 🔍

 **Emily Lacey**  
 Natalie Oz NERD FLAVOUR!!!

on Mon Like Reply

 **Billson's** ✓  
 Emily Lacey 😏😏


on Mon Like Reply

13:09


AA facebook.com

Facebook Open in the Facebook app OPEN

← Replies 🔍

 **Emma Beaumont**  
 So what's the flavour? Another secret

on Mon Like Reply

 **Billson's** ✓  
 Emma Beaumont tastes like fav lollies from the 1990s 😏

on Tue Like Reply

## Complaint

11. The complainant objects to the marketing as follows:
- *I wish to make a complaint about the Billson's 1990's premixed vodka drinks and the associated digital marketing of the products.*
  - *The flavour, as made clear in Facebook posts by Billson's, is lollies "nerds" flavour which would have high appeal to children due to the popularity of confectionery amongst children.*
  - *While the name is "1990's" the confectionary Nerds remains readily available at supermarkets and large chain stores and it is a product that still appeals to children. By extension, a drink, in this case alcoholic drink, that tastes like confectionery would be appealing to children.*

## 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 email on 24 October 2024. Its primary comments were:
- Confirming that the products themselves referenced were all pre-vetted and approved 22.04.2024.

- The social posts and commentary referenced within the complaint however was not pre-vetted by ABAC.
- We understand the reasoning behind the complaint, and as such we agree to immediately:
  - Stop using Nerds product in any social posts/content related to our 1990's Vodka RTD product
  - Stop using the word 'nerd' in any copy related to our 1990's Vodka RTD product
- We trust that the above approach is in line with any recommendations that either yourself or the panel may have regarding the complaint.

## **The Panel's View**

### **Introduction**

14. This determination is about social media marketing of a 1990's named product in the Billson's RTD vodka range. The marketing is a Facebook post that shows four cans of the product with accompanying text that positions the product as being 1990's themed with references to clothing, and technology of the decade e.g. CDs.
15. The picture of the products is combined with an old TV and CDs and a sprinkling of lollies that the Company accepts are the confectionery 'Nerds'. Nerds are also referenced in two Company replies to comments made by followers of the post.
16. The complainant contends that the post and the beverage itself will have high appeal amongst minors due to the popularity of the Nerds confectionery with minors. This concern brings into focus the ABAC standard in Part 3 (b)(i) of the Code that provides alcohol marketing must not have strong or evident appeal to minors.

### **Strong and Evident Appeal to Minors**

17. The Part 3 (b)(i) 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.
18. The Panel has considered the Part 3 (b) standard on many occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material that 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.
19. 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.
20. The Company did not expressly concede that the Facebook post breached the standard, but it acknowledged the reasoning behind the complaint and agreed to immediately cease all images and references to Nerds in any posts or copy about the 1990's product range.
21. The Panel believes the social media post breached Part 3 (b)(i) of the Code. In reaching this conclusion the Panel noted:
- Nerds are a confectionery that is well known and popular with minors;

- while the intention might be surmised to be an appeal to nostalgia of middle adults of today based on memories of their youth in the 1990's, there is no reason to believe Nerds do not remain popular with the current generation of minors;
- the Nerds imagery and references in the Company's responses to comments clearly associate the product with the confectionery;
- taken as a whole, the post is likely to be understood by a reasonable person as having strong appeal to minors.

22. The complainant also suggested that the taste of the product would appeal to minors. It should be noted that the ABAC does not regulate physical beverages and is confined to the marketing of beverages. This is not to say that the taste of a product is not an important driver of the choice a consumer will make, but that in the shared regulatory environment for alcohol products, the physical characteristics of products are directly regulated by government and not the ABAC Scheme.

23. The complaint is upheld.