



## ABAC Adjudication Panel Final Determination 2/25

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| <b>Determination Date</b>  | 3 April 2025  |
| <b>Brand/Company</b>       | Boozicles Alcoholic Ice Blocks/Alcoholic Iced Confectionery Pty Ltd |
| <b>Media</b>               | Packaging and Instagram   |
| <b>ABAC Code provision</b> | Part 3 (b)(i)   |
| <b>Outcome</b>             | Upheld  |

### Part 1 - Determination Overview

#### ***Complaint:***

- The complainant believes the packaging of Boozicles Alcoholic Ice Blocks contains imagery designed to entice children to switch from regular ice blocks to alcoholic ice blocks. The Company's Instagram marketing makes the product resemble Zooper Doopers, a non-alcoholic ice block.

#### ***Key findings:***

The Panel made a final determination that the product packaging has strong or evident appeal to minors, finding:

#### **QLGR Approval & ABAC Determination**

- Liquor Licensing by the QLGR:
  - Focuses on operational compliance (e.g., production, licensing).
  - Does not routinely assess packaging design for appeal to minors.
  - QLGR confirmed it reviewed the Company's application carefully. Still, it is an overstatement to say that the Company's liquor licence grant affirms that the packaging did not strongly appeal to minors.
- ABAC Scheme:
  - It is independent of liquor licensing and focuses on responsible marketing.
  - Assesses packaging/marketing against ABAC standards.
  - A liquor licence does not exempt a product from ABAC compliance.
- Alcoholic Ice Blocks & Regulatory Treatment:

- Some States (NSW, WA) ban alcoholic ice blocks as "undesirable" due to their appeal to minors.
- Queensland does not prohibit alcoholic ice blocks.
- ABAC does not regulate product form (e.g., ice blocks vs. liquids) and is confined to the marketing of alcohol products, including product packaging.

## **Assessment of *Boozicles* Packaging**

### Individual servings

- The packaging of the individual servings is similar to that used for non-alcoholic icy pole-style products, which are popular with minors and will likely appear very familiar to them;
- While the individual serving packaging references the product's alcohol content, these references are not prominent within the context of the packaging design as a whole, increasing the possible confusion about products with non-alcoholic ice blocks;
- The packaging adopts bright colours likely to be eye-catching to minors;
- These factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- While no one element alone is decisive, a reasonable person would probably understand that the packaging has a strong or evident appeal to minors.

### 12-pack mixed box packaging

- Adopting a colour scheme and design that would be eye-catching to minors;
- Using images of an anthropomorphised koala wearing clothes, a hat and sunglasses, which is relatable to minors and similar to depictions in children-focused media;
- While the Boozicle name references a colloquial term for alcohol, other alcohol cues within the context of the design of the packaging as a whole are limited, creating some potential for the product to be confused with a non-alcoholic ice block product;
- These factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- A reasonable person would probably understand that the outer box packaging has a strong or evident appeal to minors.

### **Instagram Marketing**

- Complainant raised concerns but cited no specific posts.

- Company defends the koala mascot as "whimsical/adult-focused," with no product consumption depicted.
- Panel made no formal breach ruling due to lack of specificity but urged caution with cartoon imagery.

**Marketing Communications:**



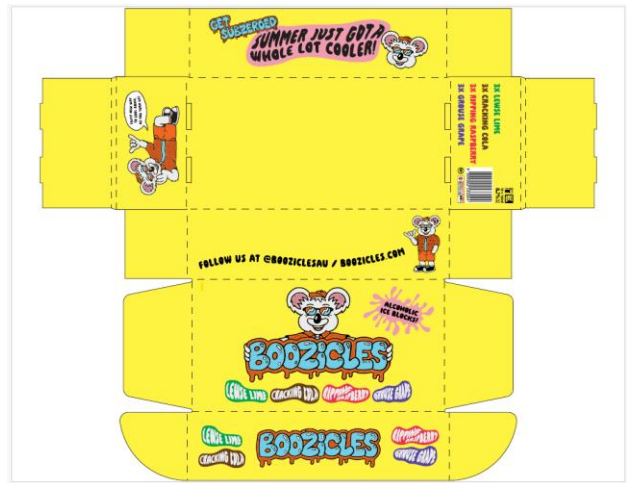
样式：背封 规格：成品45\*280mm (展开110\*280mm)

灰色区域为透明

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280 mm



## Part 2 - The Panel's View

### **Background**

1. In October 2024, a new range of alcohol products was released in South East Queensland. Created by the Brisbane-based Alcoholic Iced Confectionery Pty Ltd (the Company), the products are an alcoholic ice block branded as 'Boozicles'. Boozicles come in four flavours: Ripping Raspberry, Lewse Lime, Cracking Cola, and Grouse Grape. Each 150ml alcoholic ice block has 8.7% ABV and contains one standard serving of alcohol.
2. The release of the products followed a dialogue between the Company and the Office of Liquor and Gaming Regulation (QLGR). The QLGR is Queensland's government liquor licensing authority, regulating the production and sale of alcohol under the regime detailed in the Liquor Act 1992 (QLD).
3. The reason for the exchange between the Company and the Queensland regulator is that the Company required a licence to commence production of the Boozicle products. The Liquor Act creates a series of licence types reflecting the different activities in the alcohol industry, with the alcohol producers needing a 'Commercial other (producer/wholesaler) licence' provided by section 72 of the Act. This licence was duly granted to the Company. The status of the licence and the interplay between the Queensland liquor regulatory regime and the ABAC Scheme is the backdrop of this determination.
4. The determination arose because of a public complaint about the marketing of the products. The complaint argues that Boozicles' packaging appeals strongly to minors because it resembles the popular children's ice blocks Zooper Doopers, and associated Instagram posts use imagery targeting children. The Company refutes this concern and contends that Boozicles' marketing meets all regulatory requirements and does not target minors.
5. On 12 February 2025, the Panel made a Provisional Determination finding that the products' packaging breached Part 3 (b)(i) of the Code by having a strong or evident appeal to minors. As provided by the ABAC Rules and Procedures, the Company was supplied with the Provisional Determination and given the option of a re-hearing. The Company took up this option and made further submissions. This Final Determination weighs the complaint, the Code provisions, and the Company's initial and additional submissions.
6. There are two core issues raised by the complaint and the Company's submissions, namely:
  - Does the QLGR's grant of the Company's liquor license mean that government approval has been given for releasing the physical product, and does this approval amount to an affirmation that the product packaging does not have strong appeal to minors?

- Does the product's packaging (and Instagram marketing) strongly or evidently appeal to minors, in breach of the ABAC standard?

### **The Company's Liquor Licence and the ABAC Scheme**

7. A principal contention of the Company is that in deciding to grant it a liquor license, the QLGR approved the product and accepted that its packaging did not have a special appeal to children. Given this, it is argued that the provisional determination's finding that the packaging had a strong appeal to minors was illogical, subjective, and unreasonable.
8. Alcohol as a product and its marketing are subject to a complex and fragmented amalgam of government requirements and industry-led codes of practice. Government regulation is sourced at the national (e.g., Food Standards requirements on what information must be contained on pre-packaged alcohol product labels) and State/Territory levels. State/Territory legislation is the foundation for regulating alcohol, and a shared component of the jurisdictional regimes is that alcohol producers require approval to operate, and the grant of a liquor licence manifests this approval.
9. To produce Boozicles from its Brisbane location, the Company required a Commercial other (producer/wholesaler) licence provided by the Liquor Act 1992. The Company explained that obtaining the licence involved detailed discussion with the QLGR, including supplying information about the product and its packaging. Combined, the Company, in its initial and additional submissions, contended:
  - Multiple calls and compliance conversations were held with the QLGR.
  - The exact packaging was described in detail to the QLGR.
  - The QLGR approved the brand style and packaging of Boozicles as part of the liquor licence application.
  - The product would never have reached the market if not approved by the QLGR.
  - Based on the approval, considerable money has been invested.
10. At this point, the interplay between the Liquor Act regime in Queensland and the ABAC Scheme becomes critical. Essentially, the questions are:
  - To what extent does the grant of the producer/wholesaler licence entail confirmation that the Company's product packaging (and broader marketing) does not have a strong appeal to minors?
  - How does the ABAC Scheme sit with the liquor licensing regimes of the States/Territories, and what is the impact of the grant of a licence on whether an ABAC standard has been satisfied?
11. On the first question, the Panel sought advice from the QLGR about its engagement with the Company and the licence grant. The regulator confirmed that it carefully

assessed the Company's liquor licence application to ensure compliance with the Liquor Act. This assessment included:

- A review of the Company's proposed product.
  - Identifying that the product, as an alcoholic ice block, was not within the limited range of alcohol products that have been declared as undesirable under section 156B of the Liquor Act and section 42A of the Liquor Regulation 2002.
12. The QLGR's mandate involves ensuring the requirements of the Liquor Act and supporting regulations and policies are satisfied for the grant of a licence. It does not include the routine review or prior approval of the packaging designs (or broader marketing materials) for products that holders of a producer/wholesaler licence might release. Further, the grant of a licence is not a positive affirmation that product packaging does not have a strong or special appeal to minors.
  13. Accordingly, the Panel accepts that the grant of the Company's licence means QLGR approval was given for the Company to produce alcohol products, specifically an alcoholic ice block. Further, alcoholic ice blocks are a lawful product that can be made and sold in Queensland.
  14. However, the further contention that the exact design of the packaging, e.g., the type of font, the choice of colouring of the printing, the relative size of information contained on the packaging, etc., was confirmed by the QLGR as not having a strong or evident appeal to minors is not accepted. QLGR's grant of a liquor licence does not go to this question.
  15. So, what is the relationship between the grant of a licence and the ABAC Scheme? As mentioned, alcohol regulation and marketing are shared responsibilities between different levels of government and industry self-regulatory initiatives. ABAC is part of this overall regulatory framework, which aims for alcohol marketing to occur consistently with best practice standards and the harm minimisation objectives of the National Alcohol Strategy.
  16. While the broad policy objectives of government regulation of alcohol and the ABAC Scheme are aligned, the government liquor licensing regimes and the ABAC Scheme are entirely separate and have different focuses. At a high level, the State/Territory liquor licensing bodies' activities are primarily directed at the operation of licence holders and the upholding of statutory requirements. This does not centre on alcohol marketing to the broader community.
  17. In contrast, ABAC does not purport to regulate the activities of licensed premises, how alcohol is physically produced, or how alcohol is promoted within licensed premises. Instead, it focuses on the branding, packaging, and marketing of alcohol to the broader community.
  18. As there is inevitable overlap between elements of a shared regulatory framework, the ABAC Scheme and the Panel seek to harmonise operations with government regimes (and the marketing codes of other industry bodies, e.g. Outdoor Media Association and

Ad Standards) to promote consistency and efficiency in alcohol regulation. This is manifested through actions such as:

- Information sharing and liaison with other regulatory bodies, including having MOUs with various State liquor licensing authorities.
- Referral of complaints raising issues under both the ABAC and a State/Territory regulatory regime to the government regulator when the government body is the more appropriate forum to handle the complaint.

19. That said, the ABAC standards and the assessment of an alcohol marketing communication against the standards triggered by a complaint to the ABAC Scheme are free-standing to the liquor licensing regimes. The ABAC standards and the regulatory requirements under the various Liquor Acts are not identical, and the grant of a liquor licence does not limit the Panel in deciding on a complaint about the marketing of a licensee.

20. Drawing this together:

- The grant of the Company's liquor licence permits the Company to produce alcoholic ice block products and operate consistently with the terms of its licence.
- While the QLGR considered that the Boozicles product was not an 'undesirable liquor product' within the class of products made unlawful by section 156B of the Liquor Act, the Company's assertion that its grant of licence equates to QLGR confirmation that its product packaging does not have strong appeal to minors is an overstatement.
- The ABAC Scheme is an independent component of the alcohol regulatory framework, and marketing is required to meet the ABAC standards and any direct government requirements.
- Accordingly, a liquor licence does not excuse compliance with the ABAC standards for product packaging and broader marketing. The Panel assesses the compliance of marketing items with ABAC standards.

### **Alcoholic ice blocks- treatment under the Liquor Acts and the ABAC**

21. In most (not all) States/Territories, the Liquor Acts grant a power to the responsible Minister to declare either a particular alcohol product or a class of alcohol products as 'undesirable' and prohibit the sale of the product within that State or Territory. In Queensland, the power is contained in section 156B of the Liquor Act. It enables the Minister to declare a product as undesirable if of the opinion that the product has one or more of the following features:

- The name, design of packaging of the liquor product or class of liquor products is likely to be attractive to minors or young people; or

- The liquor product or class of liquor products is likely to be confused with soft drinks, confectionery; or
  - The liquor product or class of liquor products, for any other reason, is likely to have a special appeal to minors or young people; or
  - It is otherwise in the public interest to declare the liquor product or class of liquor products to be an undesirable liquor product.
22. The Queensland banning power was inserted into the Liquor Act in 2008 following a comprehensive review of the State's liquor laws. The rationale for the amendment was explained in the Minister's second reading speech, as 'enabling urgent action to be taken to prevent the sale of undesirable liquor products which inappropriately target young people.' The power was not intended to 'restrict innovation in the industry, but as a harm minimisation measure to stop the marketing of products specifically designed to appeal to one of the most vulnerable groups in our society'.
23. Section 42A of the Liquor Regulation 2002 contains the classes of products declared undesirable and, hence, are prohibited in Queensland. These products include:
- alcohol in flexible tubes and syringes;
  - alcoholic powders or crystals, or tablets;
  - products used to create an alcoholic jelly.
24. Alcoholic ice blocks are not an undesirable product under Queensland law. However, as a class of alcohol product, ice blocks have attracted criticism that they are likely to be attractive to minors and/or confused with confectionery. Notably, two jurisdictions, NSW and WA, have used similar legislative provisions to Queensland law to make regulations to declare alcoholic ice blocks an undesirable product in those States.
25. The provisions permitting a product to be declared undesirable are framed differently in each jurisdiction. Still, it is common ground that the declaration can be based upon the nature of the product itself and/or the design of the packaging. In other words, government regimes can declare a class of alcohol products as inherently undesirable on public policy grounds (e.g., alcoholic vapours, jellies, or alcohol designed to be served from syringes or in frozen form) or limit the declaration to an individual product because of its packaging design.
26. In contrast, the ABAC Scheme does not purport to regulate physical alcohol products, and the Code does not assess whether an alcohol product is desirable or undesirable on public policy grounds. Instead, the ABAC standards are focused solely on the marketing of alcohol products, and the Panel's remit is confined to assessing if a marketing communication (including product packaging) is consistent with the relevant Code standards.
27. This means that the ABAC Scheme does not regulate the physical characteristics of an alcohol product, such as whether the product is in liquid, powdered, or frozen form.



Further, the ABAC Scheme does not regulate the colour, taste, smell, texture, alcohol strength, etc. of a product. Equally, the ABAC remit does not extend to alcohol products as a class, with each example of a marketing communication reviewed on a case-by-case basis.

28. Physical characteristics are only relevant to the extent that they might be described or displayed within an item of marketing. For instance, a description of the flavour of a product in a marketing communication or the design of product packaging (e.g. a glass bottle) shows the colour of the product and this, with other elements of the packaging, will impact how a reasonable person understands the packaging.

29. Noting that the ABAC standards don't apply to a product's physical characteristics, the Panel is not suggesting that factors such as a product's taste or alcoholic strength are not key drivers in its appeal to a consumer. Instead, within the shared regulatory domain of alcohol, these issues and questions, such as the price and tax arrangements on products, rest directly with the government and not the ABAC Scheme.

30. Drawing this together:

- Alcohol marketing, inclusive of product packaging, is regulated by an amalgam of government laws and regulations and the ABAC standards of good marketing practice.
- The government regulation of alcohol can involve physical products, including the form of the product, e.g. liquid, frozen, powder, jelly, etc, as well as the packaging of the products.
- Governments (except SA) have the power to enable classes of alcohol products to be declared undesirable on public policy grounds and prohibited from sale.
- While the basis for the exercise of the power varies from jurisdiction to jurisdiction, it is commonly founded on alcohol products having 'special' or 'likely' appeal to minors and/or the product packaging being confused with a soft drink or confectionery.
- The power has been used in several jurisdictions, with NSW and WA declaring alcoholic ice blocks to be an undesirable product.
- Queensland has declared some products, e.g. alcoholic powders, as undesirable but has made no declaration regarding alcoholic ice blocks.
- The ABAC Scheme:
  - Does not assess the desirability or otherwise of physical alcohol products, with its role directed solely to the marketing of alcohol products.
  - Has regard to the physical characteristics of alcohol products such as colour, texture, and taste only to the extent these characteristics are depicted and described within a marketing communication.

## **The Provisional Determination and the Company's additional submissions**

31. Against the backdrop of the status of the Company's liquor licence and the treatment of alcoholic ice blocks by government regulatory regimes and the parameters of the ABAC Scheme's remit, the Panel considered the consistency of the Boozicles packaging with the standard in Part 3 (b)(i) of the Code. The Panel found that the packaging of the individual servings of the ice blocks and the 12-pack mixed box packaging had strong or evident appeal to minors.
32. The Company's additional submission rejected the Panel's finding, contending that the provisional determination is illogical, subjective and unreasonable. Beyond the argument that the QLGR had affirmed that the packaging did not have special appeal to minors by its grant of a liquor licence, the Company contended:
- The determination was based purely on opinion, without scientific or practical evidence.
  - Boozicles is an alcohol product, with the name itself establishing this point.
  - The packaging is as plain as possible.
  - The packaging's colouring, reflecting the colours of the product flavours, is not designed to appeal to children.
  - The design of the mixed box of twelve ice blocks features 'Boozer Cool', a cartoon character version of an iconic Australian animal (a koala).
  - The Boozer Cool character is similar to other brand logos for alcohol products, such as Bundy Bear and Bundaberg Rum.
  - There is no evidence of underage intoxication caused by the products.
  - The ABAC Scheme's stakeholders (including the Scheme's Board) support the product and will stock it.
  - The Company remains willing to engage with constructive suggestions, will continue actively promoting the products, and will take legal action to protect its commercial interests if necessary.
33. Before turning to substantive assessment of the consistency of the product packaging with the Part 3 (b)(i) standard, the Company's additional submissions reflect a misunderstanding of the role industry stakeholders play in the ABAC Scheme and specifically the complaints process.
34. Firstly, the public complaints process and the Panel's role as the adjudicator of complaints about the consistency of alcohol marketing communications with ABAC standards is entirely independent of the alcohol industry and individual alcohol producers, distributors and retailers. Accordingly, the attitude of 'stakeholders' to the product and the extent to which alcohol retailers sell the product is immaterial to the Panel's decision-making process.

35. Further, the governance of the Scheme is vested in a Management Committee composed of representatives of three alcohol industry peak bodies, the Communications Council of Australia and a representative of the Federal Department of Health. The Committee has an independent Chair, the former Speaker of the House of Representatives, The Hon Tony Smith. The Management Committee oversees the operation of the Scheme and is responsible for the Code. It plays no role in the complaints process or the decision-making role of the Panel.
36. The Scheme (distinct from the Panel, as the decision maker on complaints) seeks to engage with industry to enhance understanding and support for the ABAC standards as the foundation for responsible marketing practices. This engagement involves providing training and resources to improve compliance with the Code. Compared to public complaints, it is a form of proactive regulation, and the Panel is an example of reactive regulation.

### **Consistency of the Boozicles Packaging with the Part 3 (b) standard.**

37. The issue for the Panel to assess is whether the design of the packaging of the product has a strong or evident appeal to minors and, hence, is in breach of the ABAC standard in Part 3 (b)(i) of the Code. 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, so the marketing communication is likely to appeal strongly to minors.
38. The products are sold in a mixed box of twelve, containing three flavours. The bright yellow box features several images of 'Boozer Cool', the anthropomorphised koala wearing clothes, a hat, and sunglasses. The product name 'Boozicles' is shown in a blue bubble font, and the four different flavour names are also shown in smaller white font, each within a splodge of a different colour. Also, in a splodge of colour on the top of the box are the words 'alcoholic ice block!'. In a relatively small font, one side of the box contains production information, including pregnancy warnings and alcohol content.
39. An individual ice block serving is packaged in a clear plastic sleeve that displays the brand name 'Boozicles' and the words 'Get Subzeroed.' The product's colour is visible, given the clear plastic. Product information, including the pregnancy warning and an 18+ symbol, is also shown in smaller font.
40. The Panel has often considered the Part 3 (b) standard. 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.
- Create a relatable environment by using images and surroundings commonly frequented by minors.
- Depiction of activities or products typically undertaken or used by minors.
- Language and methods of expression are 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).
- Use of a music genre and artists featuring in youth culture.

41. 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 more of the characteristics does not necessarily mean that the marketing item will have a strong or evident appeal to minors. The overall impact of the marketing communication, rather than an individual element, shapes how a reasonable person will understand the item.

42. Product packaging can give rise to a strong appeal to minors if it creates confusion with confectionery or a soft drink. Confusion with confectionery might occur if:

- The packaging does not identify the product as an alcohol product by using an alcohol term like beer, ale, vodka, or a style of wine.
- The packaging's visual design resembles a soft drink or confectionery, with fruit images, bright colours, and a font style typically found on these products.
- 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 is similar to that used by soft drinks, fruit juices or other products used extensively by minors, e.g. prima-style juice boxes.

43. In assessing whether a Code standard has been breached, the Panel is to consider the probable understanding of the packaging by a reasonable person taking the contents of the packaging as a whole. The reference to a 'reasonable person' is drawn from the common law system and means that the opinions, values, and life experiences common in most of the community are to be the benchmark.

44. The Company contends in its initial and additional submissions that the packaging is consistent with ABAC standards. In addition to the claim that the QLGR licence process affirmed the product packaging did not appeal to minors, the Company argued:

- The design and branding of the blocks are specifically targeted to adults.
- The individual packaging of the ice blocks and the box establishes that the product is alcoholic via:
  - The Boozicles' name is drawn from the colloquial alcohol term 'booze'.
  - Prominent labels and warnings of alcoholic content, including the verbiage 'alcoholic ice blocks', '18+ only' and 'drink responsibly'.
  - Regulatory signage about standard drink amount, ABV, pregnancy warning and the DrinkWise.org stamp.
- The use of bubble-style font is a design choice intended to convey a light-hearted, fun, and nostalgic summer feeling.
- Many other legal alcohol brands use fun fonts and colours to market their products, such as Smirnoff Raspberry Crush Vodka, Vodka Cruiser Liqueurs, Ugly Australian Vodka, Wildah Hard Ginger Beer, and Heaps Normal Beer.
- The product names are intended to be colloquial Australian and nostalgic terms that resonate with an older demographic of Australian consumers. They incorporate iconic Australian slang, which is aligned with the brand's vibrant, energetic nature.
- Many other alcohol brands use playful product names, such as Billson's Tutti Frutti Vodka and Vodka Cruiser's Summer Peach and Zesty Lemon-Lime premixed drinks, Malibu's Watermelon Lemonade, and more.
- Other products use cartoon imagery and animal characters in their branding, e.g. Bundy Bear.

45. It is a fair observation that there are many alcohol beverages with 'playful' brand names and 'fun' packaging designs. Equally, some branding and marketing examples use stylised animal characters. It should be noted, however:

- Each marketing communication must be assessed on its own merits and based on how a reasonable person would probably understand it;
- Compliance with the ABAC standards is not based on industry practice as such but on community expectations of responsible marketing practice as embodied in the reasonable person benchmark (of course, it is the aspiration that industry practice aligns with community expectations of responsible marketing); and
- Each of the Company's examples reference an alcohol product with packaging for a beverage. The defining feature of the Company's packaging is that it is for an alcohol product intended to be consumed as an ice block, not a beverage.

46. Over time, the Panel has considered public complaints about product packaging and marketing, raising concerns that design features, colouring, brand names and animal characters mean the marketing has a strong appeal to minors. Each complaint and marketing material has been assessed by applying the 'reasonable person' test, with some marketing determined to be in breach and others consistent with the standard. For instance, some examples involving the brands mentioned by the Company:
- Billsons packaging - Determinations 118/22, 24/23, 71/23 and 161 & 166/23 collectively reviewed 30 packaging designs and found 10 in breach of Part 3 (b)(i) of the Code.
  - Bundaberg Rum - Determination 11/06 found a television ad featuring the Bundy Bear character in breach of Part 3 (b)(i) of the Code. In contrast, other executions featuring the character have been consistent with the Code standard.
  - Vodka Cruiser - Determination 13/20 found an outdoor installation in breach of Part 3 (b)(i) of the Code, whereas other executions for Vodka Cruiser have been found consistent with the Code standard.
47. The point is that there is no Code restriction on alcohol marketers using fun, playful, and colourful marketing approaches or employing animal characters. The previous decisions demonstrate that some marketing approaches, e.g., using animal characters, will have an elevated risk of having a strong appeal to minors, and care needs to be taken.
48. In 2024, the Panel considered the packaging and branding of two separate alcoholic ice block products. Determination 45/24 concerned a product called '24 Ice'. The products were branded as frozen cocktails containing 5% alc/vol and the equivalent of 0.30 standard drinks. They came in six flavours: Gin & Tonic, Mojito, Strawberry Daiquiri, Limoncello, and Vodka Energy.
49. The packaging of the individual frozen cocktails is a plastic sleeve that shows the product name in coloured printing on a white background at the top of the sleeve. The bottom of the sleeve is the same colour as the product name and shows the brand name 24 ICE. The individual servings come in a five-pack, with the pack box having a predominantly black background with an image of the product flavour serving.
50. The Panel believed the packaging of this alcoholic ice block had a strong appeal to minors, noting:
- The packaging of the individual servings is similar to that used for non-alcoholic icy pole-style products, which are popular with minors and will likely appear very familiar to them;
  - While the individual serving packaging references the product's alcohol content, these references are not prominent within the context of the packaging design as a whole, increasing the possible confusion about products with non-alcoholic ice blocks;

- The packaging adopts bright colours likely to be eye-catching to minors;
- These factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- A reasonable person would probably understand that the packaging was similar to that commonly used for icy poles popular with children.

51. In Determination 82/24, the Panel considered an alcoholic ice block range branded Spirit Fingers. The products contained 6% alc/vol and came in three flavours: Vodka and Grape, Rum and Kola, and Gin and Juice. The packaging was a 100ml transparent plastic sleeve that on the front showed the product name as well as a ghost image in coloured printing on a transparent background so that the colour of the product was visible.

52. In finding the packaging breached the Part 3 (b)(i) standard, the Panel noted:

- The packaging does not unambiguously establish the product as being alcoholic, with no reference to alcohol on the front of the sleeve and the alcohol references on the back of the sleeve not being prominent within the context of the overall packaging design.
- The packaging is similar to that used for non-alcoholic ice block products that are popular with minors and will likely appear very familiar to minors.
- Inadequate identification of the product as alcoholic, together with the similarity of the product with standard non-alcoholic ice blocks, means there is a high likelihood that the product could be confused with non-alcoholic products;
- The packaging adopts bright colours that are likely to be eye-catching to minors, and the ghost image is similar to that used in publications or cartoons familiar to minors. Together, these enhance the packaging's likely relatability to minors.
- These factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- A reasonable person would probably understand that the packaging has a strong or evident appeal to minors.

53. While these two earlier decisions can provide some guidance and suggest that similar cases should be treated similarly, it is stressed that each complaint and product packaging must always be assessed on its own merits.

54. The Panel has carefully considered the Company's submissions and its firm rejection of the Provisional Determination. It accepts that the Company does not intend its products' packaging to be strongly appealing to minors.

55. However, the test is not what the company intended with its marketing; it is how a reasonable person would understand it. On this basis, the Panel finds that the product

packaging for individual servings of the Boozicles Alcoholic Ice Blocks breaches the Part 3 (b)(i) standard. In reaching this conclusion, the Panel noted:

- The product's name, Boozicles, together with the cues on the packaging referencing the alcohol content of the ice blocks, would most likely establish for a reasonable person that the ice blocks are an alcohol product.
- That acknowledged, the individual servings packaged in transparent plastic are similar to popular and well-known non-alcoholic ice blocks and will appear very familiar to minors;
- The packaging highlights the products' bright colours, which are likely to be eye-catching to minors and may enhance the packaging's relatability to them;
- The use of bubble font for the name 'Boozicles' is likely to be engaging for minors;
- These factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- While no one element alone is decisive, a reasonable person would probably understand that the packaging has a strong or evident appeal to minors.

56. The Panel also believes that the 12-pack mixed box packaging breaches Part 3 (b) of the Code by having a strong or evident appeal to minors due to a combination of:

- Adopting a colour scheme and design that would be eye-catching to minors;
- Using images of an anthropomorphised koala wearing clothes, a hat and sunglasses, which is relatable to minors and similar to depictions in children-focused media;
- While the Boozicle name references a colloquial term for alcohol, other alcohol cues within the context of the design of the packaging as a whole are limited, creating some potential for the product to be confused with a non-alcoholic ice block product;
- These factors combine to create an illusion that the product would be a smooth transition from a familiar non-alcoholic product to an alcohol product; and
- No one factor is decisive; however, a reasonable person would probably understand that the outer box packaging has a strong or evident appeal to minors.

### **Instagram posts**

57. The Company's Instagram account has an anthropomorphised koala wearing clothes, a hat, and sunglasses, and the profile picture contains posts with images of the products and, at times, the koala image. The complainant is concerned that the Company's use of Instagram strongly appeals to minors. The complainant hasn't identified any specific Instagram posts, and given the number of posts, this makes a post-by-post review of the Instagram account impractical.



58. The Company submits that its Instagram marketing is consistent with the Code standard, arguing:

- The use of an anthropomorphised koala was intended as a playful and whimsical character that resonates with the brand's Australian and summer-oriented identity;
- The intention was never to appeal to children, and we maintain that the character is not meant to infringe upon ABAC standards of responsible marketing;
- The koala never holds the Boozicles product nor is seen consuming one;
- There is a substantial number of brands in the market that also use cartoon elements and/or characters prominently in their branding, for example, Bundaberg Rum (polar bear), Grainshaker (emu), Beachtree Organic Tiger Quoll Vodka (Tasmanian devil), Noosa Vodka (use of Australian/summer cartoon graphics), and many more;
- Additionally, clearly stated in the Instagram bio is 'Alcoholic ice blocks, drink responsibly' and '18+ only'. Any paid Instagram content is only ever directed to those 18 years and over, and no individuals featured in Instagram ads are under 25; and
- No mentions or comparisons to Zooper Doopers are made in any of Boozicles' marketing materials, owned or paid.

59. The use of anthropomorphised animals in alcohol marketing needs to be undertaken with care, given the potential for images of this type to be familiar to and resonate with minors. While this does not mean such characters cannot be used, the overall impression created by a marketing item depicting the imagery must be mature and adult-focused.

60. The Company's anthropomorphised koala is shown wearing clothes, a hat, and sunglasses. This raises the potential for marketing material featuring the Koala character to appeal strongly to minors. The Company has stated it will use the ABAC pre-vetting service to obtain guidance on future marketing activity.

61. In the absence of any specific posts identified by the complainant, and noting the principal issue raised by the complaint and considered by this determination is the Company's product packaging, the Panel makes no formal finding of breach about the Instagram marketing.

## **Conclusion**

62. The Panel makes a final determination that the packaging of the Boozicles products is in breach of Part 3 (b)(i) of the Code. As mentioned, this finding is not the equivalent of a declaration under a government regime that Boozicles are an 'undesirable alcohol product' and consistent with the remit of the ABAC Scheme, it goes solely to the product packaging design.

63. In common with many smaller alcohol producers, the Company is not an ABAC signatory and has not given a prior commitment to market consistently with the ABAC standards. While almost all alcohol marketers accept the Panel determinations on public complaints (for instance, in 2024, 97% of Panel findings of a breach of the Code were acted upon by the affected alcohol companies), this is a matter for the Company to decide.
64. In cases where a Company does not act on a Panel breach ruling by removing or modifying the marketing material, the determination and the marketing material will be referred to State/Territory liquor licensing bodies for action under government regulatory regimes.
65. The Company remains willing to engage constructively with the ABAC Scheme if 'a viable solution' can be provided. Under Rule 4.21 of the Schemes' Rules and Procedures, the Company can seek certification of modified product packaging.

### **Part 3 - Supporting Information**

#### **Panel Process**

This complaint was received from Ad Standards (the common entry point for all marketing complaints by members of the Australian community) and was referred by the Chief Adjudicator to the ABAC Adjudication Panel for consideration against the ABAC Responsible Alcohol Marketing Code. The complaint process is explained [here](#).

The Panel operates under the [ABAC Rules & Procedures](#) and has regard to the principles of procedural fairness.

The Panel comprised the Chief Adjudicator Professor the Hon Michael Lavarch AO, Health Sector Panelist Richard Mattick, and Panelist Debra Richards.

#### **Applicable ABAC Responsible Alcohol Marketing Code Standard**

*Code Part 3 (b) – 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.*

#### **Company Response:**

The Company responded to the complaint and provided an additional submission to the Provisional Determination. The following is a summarised and consolidated account of the Company's submissions.

### Background & Compliance

- The brand style and exact packaging of Boozicles were described to QLGR and approved as part of the liquor license application.
- Multiple compliance discussions with QLGR have occurred since October 2023.

### Appeal to Minors – Packaging Design

- While the design may resemble ice blocks like Zooper Doopers, the product is explicitly marketed to adults.
- The brand name references 'booze', establishing that the product is alcoholic.
- Packaging includes prominent labels: "Alcoholic ice blocks," "18+ only," "drink responsibly," along with mandatory warnings (standard drinks, ABV, pregnancy, DrinkWise.org).
- The bubble-style font conveys a fun, nostalgic tone but is not intended to target minors. Similar fonts are used by other alcohol brands (e.g., Smirnoff Raspberry Crush, Vodka Cruiser).
- Product names (e.g., Ripper Raspberry, Cracking Cola) use Australian slang to resonate with adult consumers. Comparable naming conventions exist in the market (e.g., Billson's Tutti Frutti Vodka, Malibu Lemonade).

### Instagram Advertising

- The anthropomorphised koala (Boozer Cool) aligns with the brand's Australian identity and is never depicted consuming alcohol. Other brands use similar cartoon elements (e.g., Bundaberg Rum's polar bear, Grainshaker's emu).
- All paid promotions target users 18+, and no models under 25 are featured.
- The Instagram bio clearly states: "Alcoholic ice blocks, drink responsibly, 18+ only."
- While imagery may evoke Zooper Doopers, all marketing emphasises the product's alcoholic nature. No direct comparisons to children's products are made.

### Rejection of Provisional Determination

The Company strongly disputes the Panel's provisional findings, arguing:

- The name "Boozicles" and packaging indicate alcohol content.
- The transparent packaging complies with Food Standards Australia/New Zealand.
- Colour choices (e.g., yellow, green, gold) reflect Australian branding, not child appeal.
- The koala mascot resembles other alcohol-branded animals (e.g., Bundaberg's rum-drinking polar bear).
- QLGR approved the product after detailed submissions, including packaging descriptions.
- No reported cases of underage consumption since its October 2023 launch.

### Legal & Regulatory Position

- The Company operates within QLGR guidelines and has invested significantly based on these approvals.

- If ABAC insists on its determination, the company will pursue legal action, as QLGR's prior approval would require a reversal.
- Pending resolution, Boozicles will continue promotions as deemed compliant by QLGR.

### ***Marketing Best Practice***

The Company was asked how it demonstrated a commitment to best practices for alcohol marketing. It advised:

- Boozicles is committed to adhering to the responsible alcohol marketing practices set out by ABAC. Boozicles is a new company; however, we are committed to meeting all the standards outlined in the ABAC Code. We will continue to comply with any recommendations or determinations made by the Panel. In future, we will be utilising ABAC's pre-vetting service before launching new large-scale marketing materials. This process ensures that our content complies with ABAC's standards and guidelines, and we are committed to ongoing compliance. All staff involved in marketing Boozicles will also complete the ABAC online training course to ensure a strong understanding of responsible alcohol marketing principles.
- We continually assess our marketing practices to align with community expectations for responsible alcohol marketing. This includes careful targeting of our audience to ensure that our campaigns reach only those of legal drinking age and clear messaging about the alcoholic nature of Boozicles.
- We trust the information provided demonstrates our commitment to responsible alcohol marketing and our ongoing adherence to ABAC's guidelines. Boozicles is dedicated to ensuring our marketing practices comply and align with community expectations. We are happy to continue engaging with ABAC to ensure that our promotional activities remain in line with responsible marketing standards, and we will promptly implement any feedback or recommendations from the Panel.