



ABAC Adjudication Panel Determination 164/25

Determination Date	22 December 2025
Brands/Company	Birthday NEIPA and Pava Luva Pavlova Sour/Sea Legs Brewing
Media	Digital – Facebook, Instagram & Website
ABAC Code provisions	Part 3 (b)(i)
Outcome	Upheld in part

Part 1 - Determination Overview

Complaint:

The complainant contends that social media posts and website entries for two Sea Legs Brewing products, Birthday NEIPA and Pava Luva Pavlova Sour, have a strong or evident appeal to minors.

Key findings:

The Panel upheld the complaint on a social media video for Birthday NEIPA, finding that:

- While the Company has no intention that the video strongly appeals to minors, the test is how a reasonable person would understand the marketing, not the Company's intention.
- The video features items that would be familiar to minors and often used at birthday parties for minors.
- The product is placed next to the cake and covered in brightly coloured streamers and would be eye-catching to minors. The balloon motif wrapping paper and larger streamers are brightly coloured and of a kind used at parties for minors.
- The cake is decorated with sprinkles and is similar to a type typically used for a child's birthday party.
- Taken as a whole, the video would likely be understood as strongly appealing to minors.

The Panel dismissed the complaint regarding other marketing communications, concluding that, on balance, the appeal to minors would be incidental and not strong or evident.

Marketing Communication:

Screenshots of the marketing communications are shown below:

<p>Image 1 – Social Media</p> 	<p>Image 2 - Social Media</p> 
<p>Image 3 - Website</p> 	<p>Image 4 – Social Media</p> 

Image 5 – Website

LIMITED RELEASE: SEA LEGS X MY BEER DEALER PAVA LUVA SOUR

Brewed with our great mates at My Beer Dealer to celebrate their Alfred St Bar & Bottlo's first birthday, the Pava Luva Pavlova Sour is a dessert-inspired sour that's all about good times and fresh fruit. Layered with strawberry, kiwifruit, and passionfruit, this beer brings a burst of vibrant tropical tang, smoothed out with a touch of vanilla for that cream, meringue-like finish. It's tart, juicy, and just sweet enough to keep you coming back for another sip. Bright, zesty and full of flavour – a pavlova in beer form, no fork required. Cheers to good mates and good beer!

Available 9 November 2023 at Sea Legs Taproom and My Beer Dealer Alfred St Bar & Bottlo.

ABV: 5.2% ABV
Categories: Limited Release



Part 2 - The Panel's View

1. This determination considers the appeal to minors of the marketing of two products - Birthday NEIPA and Pava Luva Pavlova Sour - from Sea Legs Brewing (the Company). The contention advanced by the complainant is based on the marketing adopting a birthday party theme (Birthday NEIPA) and dessert imagery (Pava Luva Pavlova Sour). The Company denies that its marketing has a strong appeal to minors.
2. The first group of Images, 1, 2, and 3, relates to Birthday NEIPA and features images of items commonly found at birthday parties, namely balloons, streamers, and a birthday cake with candles. In addition, the packaging of the Birthday NEIPA product uses an illustration of a man emerging from a birthday cake. The complainant contends that birthday cakes are a well-known confectionery item with a strong appeal to minors, and that although this confectionery can attract all ages, it has a particular appeal to minors.
3. Images 4 and 5 relate to Pava Luva Pavlova Sour and depict a pavlova, as well as kiwi fruit, passion fruit, strawberries, and other berries. The complainant contends that while a pavlova is a well-known confectionery item that is attractive to all ages, it has a strong appeal to minors.
4. The issue for assessment is whether the marketing has a strong or evident appeal to minors in breach of the ABAC standard in Part 3 (b)(i) of the Code. The 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.

5. 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.
- Creating a relatable environment using 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 by 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 featured in youth culture.

6. Only some of these characteristics will likely be present in a specific marketing communication. The presence of one or more 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.

7. In response to the complaint about the Birthday NEIPA, the Company submitted that:

- Whilst all ages have birthday parties, the marketing is very clearly for a beer, served exclusively at a brewery, a pub and a bottle shop – all areas with added layers of RSA.
- The drawing depicted a man, not a cartoon character, holding beers at the centre of the artwork.
- The marketing has strong cues to alcohol, including a man clearly holding two beers, various references to beer and the product being brewed, various references to our brewery, and a beer café.

- The imagery does not have a particular appeal to minors, and it clearly portrays alcohol: the presence of beer, references to each beer establishment, and references to brewing indicate this. Additionally, it has no tie or any similarity whatsoever to any existing soft drink, juice, or usual item consumed by a minor in a drink form.

8. In response to the complaint about the Pava Luva Pavlova Sour, the Company submitted that:

- An image with fruit does not further appeal to minors.
- The marketing is clearly for a beer, served exclusively at a brewery, a pub and a bottle shop – all areas with added layers of RSA.
- The images have no affiliation or similarity whatsoever to any existing soft drink, juice, or common item consumed by a minor in a beverage form.

9. The Company notes that the product is served exclusively at a brewery, pub, and bottleshop, all of which impose additional Responsible Service of Alcohol (RSA) obligations. RSA is a core regulatory requirement for all alcohol industry participants, and there is no suggestion that the Company does not meet its obligations, including ensuring persons under the legal drinking age are not served alcohol.

10. That said, a liquor licensee's obligations extend beyond RSA and include its promotional materials, including social media and website posts, that do not have a strong appeal to minors. The ABAC standards are directed towards how alcohol use is depicted and modelled to the broader community, and meeting RSA obligations within licensed premises is not an answer to the requirement to market responsibly via social media and Company websites.

11. The consistency of a marketing communication with an ABAC standard is assessed from a reasonable person's probable understanding of the marketing. A 'reasonable person' refers to the life experiences, values, and opinions held by most members of the community and serves as the benchmark. A person who interprets the marketing material differently is not 'unreasonable', but most people may not share their interpretation.

12. It is not uncommon to market alcohol associated with the marking of an occasion, such as a birthday. There is nothing inherently problematic with this, although care must be taken when including imagery of birthday parties and items such as balloons, streamers, and presents. This is because such imagery can readily evoke a child's birthday party and thereby increase the relatability and appeal of the marketing material to minors.

13. As in all cases, context is the key consideration in how a reasonable person will interpret the marketing. In one context, some birthday party imagery will be acceptable, for instance:

- The party is held in an adult venue, such as a function centre, restaurant, or pub.
- The attendees of the party are all adults.
- There are cues, such as an age on a birthday card, that establish that the celebration is for an adult.
- The food being served is not that typically associated with a children's party, e.g. lollies.
- The decorations aren't childlike, e.g. balloon animals
- Adult and not children's music is playing, etc.

14. In another context, the imagery of the birthday party may be suggestive of an event intended for minors. For instance:

- The party is held in a private home or backyard, with cues that are relatable to minors, e.g., play equipment is shown.
- The attendees are minors or a mix of adults and children.
- The food shown, party decorations, music, etc., are suggestive that minors are the principal target of the birthday celebration.
- The birthday cake is of the type typically associated with minors, e.g., an ice cream cake or lollies used to decorate the cake.

15. In pointing to these indicators, it must be understood that the overall impact of the imagery is decisive, rather than the presence or absence of any one or more of the indicators.

16. Image 1 is a video posted on Instagram. It shows streamers, birthday wrapping paper with colourful balloon images, and a birthday cake with three candles. The cake is decorated with sprinkles. Four cans of the product are shown in the final scene of the video, covered in mini streamers of the kind found in party poppers. Non-descript music accompanies the video. Reasonable minds might differ as to whether the video has a strong appeal to minors, with the Panel, on balance, believing the ABAC standard has been breached. In reaching this conclusion, the Panel noted:

- While the Company has no intention that the video strongly appeal to minors, the test is how a reasonable person would understand the marketing, not the Company's intention.
- The video features items that would be familiar to minors and often used at birthday parties for minors.

- The product is placed next to the cake and covered in brightly coloured streamers and would be eye-catching to minors. The balloon motif wrapping paper and larger streamers are brightly coloured and of a kind used at parties for minors.
- The cake is decorated with sprinkles and is similar to a type typically used for a child's birthday party.
- Taken as a whole, the video would likely be understood as strongly appealing to minors.

17. Images 2 and 3 depict a can of the product superimposed over an illustration of a birthday cake, with four balloons, streamers, and confetti shown on either side of the cake. Two illustrated arms holding glasses of beer and a mop of hair are visible behind the can, suggesting that the male figure depicted on the can is standing in the background. The image is accompanied by text describing the product.

18. It is a marginal question whether the social media post and the corresponding website entry would strongly appeal to minors. The Panel believes the marketing would appeal to minors through the depiction of the cake and balloons, but the detailed text, together with the nature of the adult male character, would appeal less to minors. On balance, the Panel believes the appeal to minors would be incidental rather than strong.

19. Images 4 and 5 are about the Pava Luva Pavlova Sour. The Panel does not believe that the Images breach the Part 3 (b)(i) standard. In reaching this conclusion, the Panel noted:

- The images depict and reference 'pavlova', a dessert popular across age groups. There is no particular basis to conclude that pavlova has an attractiveness to minors beyond its appeal to adults.
- There are 'beer' cues in the image and the caption, and it is unlikely that the product would be mistaken for confectionery. The product packaging does not resemble that of any well-known soft drink.
- A reasonable person would view the social media and website posts as having an incidental, rather than a strong or evident, appeal to minors.

20. The complaint is upheld with respect to image 1 and dismissed with respect to images 2 to 5.

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). The Chief Adjudicator referred it to the ABAC Adjudication Panel for consideration against the ABAC Responsible Alcohol Marketing Code. The complaint process is explained [here](#).

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

The Panel comprised Chief Adjudicator Professor the Hon Michael Lavarch AO, Health Sector Panellist Professor Richard Mattick AM, and Panellist Cristiano Lima.

Applicable ABAC Responsible Marketing Code Standard

Part 3 of the Code requires that an Alcohol Marketing Communication must NOT:

<i>(b)(i)</i>	<i>have Strong or Evident Appeal to Minors, in particular;</i> <i>(A) specifically target Minors;</i> <i>(B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;</i> <i>(C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;</i> <i>(D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or</i> <i>(E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors</i>
---------------	---

Company Response:

The Company was provided with an opportunity to respond to the complaint. Its principal comments were:

- In relation to Images 1, 2 and 3 for Birthday NEIPA:
 - Whilst all ages have birthday parties, it was our subjective opinion that this was very clearly a beer, served exclusively at a brewery, a pub and a bottle shop – all areas with added layers of RSA.
 - In our view, [the picture] depicted a man, not a cartoon character, holding beers at the centre of the artwork.
 - It was clear to us that this contained strong cues to alcohol, including a man holding two beers, various references to beer and the product being brewed, multiple references to our brewery, and a reference to a beer café.
 - We don't see how this could have particular appeal to minors, and it is clearly alcohol, as the character, the presence of beer, the references to each beer establishment, and the reference to brewing indicate. Additionally, it has no tie

or any similarity whatsoever to any existing soft drink, juice, or usual item consumed by a minor in a drink form.

- In relation to Images 4 and 5, four Pava Luva Pavlova Sour:
 - We don't see how an image of fruit would add further appeal to minors.
 - Similar to the previous item, it was our subjective opinion that this was very clearly a beer, served exclusively at a brewery, a pub and a bottle shop – all areas with added layers of RSA.
 - Additionally, it has no tie or any similarity whatsoever to any existing soft drink, juice, or usual item consumed by a minor in a drink form.

Marketing Best Practice.

The Company was asked how it demonstrates a commitment to alcohol marketing best practices and advised that:

- We are not an ABAC signatory.
- We are committed to meeting ABAC standards and will seek to improve where possible in this instance.
- We did not seek advice from the ABAC Pre-vetting Service about the marketing referred to in the complaint. These were both very small batches of beer that do not yield revenue or profit to justify \$240 plus GST. Our business model relies on small-batch work, and submitting every small design for approval is unsustainable.
- Our designers and marketers have undertaken the ABAC training course. We will further commence this course internally to avoid future issues.
- This has been flagged internally within the team. We will ensure that all relevant parties have undertaken ABAC training, and that it has been revisited and discussed in detail with our designers and marketers (3rd parties).
- Further to this, we will handle all design work with due care moving forward and recognise that we live in a sensitive world, where the scope for grey areas has expanded significantly and where subjectivity may be a primary driver of decision-making. I would also not be opposed to being proactive and using our advertising channels to understand the general public's opinion – I imagine it might inform our decision.