



## ABAC Adjudication Panel Determination 129/25

<b>Determination Date</b>	7 October 2025
<b>Brand/Company</b>	Various / Funsters
<b>Media</b>	Social Media
<b>ABAC Code provision</b>	Part 3 (6)(i)
<b>Outcome</b>	Upheld in part.

### Part 1 - Determination Overview

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

The complainant is concerned about Funsters general approach to marketing and specifically points to two social media posts argued to have a strong or evident appeal to minors.

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

The Panel dismissed the complaint concerning Post 1 and upheld it concerning Post 2, finding on Post 1:

- The post is text heavy, not visually engaging and it is questionable that a typical minor would examine the post in detail as a result.
- The image of the product is not overly prominent within the context of the post as a whole.
- While the post references well known confectionery items, the references are not centred and are somewhat lost within longer product information and marketing puffery.
- While the confectionery references will elevate the potential appeal of the post to minors, taken as a whole the post would have no more than incidental appeal to minors as opposed to the post being strongly appealing to under 18 year olds.

On Post 2, finding:

- Cherry Ripes, Snickers and chocolate are well-known and popular confectionery items enjoyed by people of all ages, including minors.

- The alcoholic products are compared to confectionery items by the reviewers saying, 'It's a Snickers with alcohol', 'Tastes like Cherry Ripe' and 'Smells just like chocolate'.
- While of lesser influence, the confectionery references are also made in the accompanying text via expressions such as 'If your fave lolly aisle and your drinks cart had a baby—this would be it. Cherry Ripe? Snickers? Fruit Tingles? Mango Ice Cream? Yep—these vodkas taste exactly like your fave treats...'
- The inclusion of a confectionery item within an item of alcohol marketing will often elevate the potential appeal of the marketing communication to minors.
- Taken as a whole, Post 2 would probably be understood as creating an illusion of a smooth transition from a well-known non-alcoholic product to an alcohol beverage

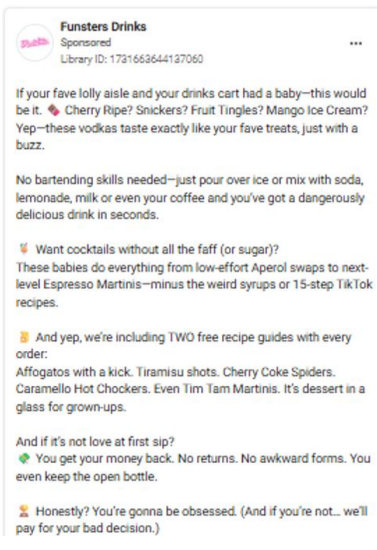




### Marketing Communications:

The complainant is concerned about the following social media posts:

Post 1 – Cherry Amore Review Version	Post 1 – Chockers Review Version	Post 1 – Mango No 5 Review Version	Post 1 – Zingle Review Version
<a href="https://www.facebook.com/ads/library/?id=1444185730211007">https://www.facebook.com/ads/library/?id=1444185730211007</a>	<a href="https://www.facebook.com/ads/library/?id=1459433098634863">https://www.facebook.com/ads/library/?id=1459433098634863</a>	<a href="https://www.facebook.com/ads/library/?id=996605272492712">https://www.facebook.com/ads/library/?id=996605272492712</a>	<a href="https://www.facebook.com/ads/library/?id=1059675782902701">https://www.facebook.com/ads/library/?id=1059675782902701</a>
<p><b>Active</b></p> <p>Library ID: 1444185730211007 Started running on 22 Aug 2025 Platforms:    </p> <p><b>Funsters Drinks</b> Sponsored Library ID: 1444185730211007</p> <p>🔥 Cherry Ripe? Snickers? Fruit Tingles? Mango Gelato? Yep—these vodkas taste exactly like your fave treats, just with a buzz. No bartending skills needed—just pour over ice or mix with soda, lemonade, milk or even your coffee and you've got a dangerously delicious drink in seconds.</p> <p>🍹 Want cocktails without all the fuff (or sugar)? These babies do everything from low-effort Aperol swaps to next-level Espresso Martinis—minus the weird syrups or 15-step TikTok recipes.</p> <p>🍷 And yep, we're including TWO free recipe guides with every order: Affogatos with a kick. Tramisu shots. Cherry Coke Spiders. Caramelito Hot Chockers. Even Tim Tam Martinis. It's dessert in a glass for grown-ups. And if it's not love at first sip?</p> <p>💰 You get your money back. No returns. No awkward forms. You even keep the open bottle.</p> <p>🤔 Honestly? You're gonna be obsessed. (And if you're not... we'll pay for your bad decision.)</p> <p>funsters.au</p>	<p><b>Active</b></p> <p>Library ID: 1459433098634863 Started running on 22 Aug 2025 Platforms:    </p> <p><b>Funsters Drinks</b> Sponsored Library ID: 1459433098634863</p> <p>🔥 Cherry Ripe? Snickers? Fruit Tingles? Mango Gelato? Yep—these vodkas taste exactly like your fave treats, just with a buzz. No bartending skills needed—just pour over ice or mix with soda, lemonade, milk or even your coffee and you've got a dangerously delicious drink in seconds.</p> <p>🍹 Want cocktails without all the fuff (or sugar)? These babies do everything from low-effort Aperol swaps to next-level Espresso Martinis—minus the weird syrups or 15-step TikTok recipes.</p> <p>🍷 And yep, we're including TWO free recipe guides with every order: Affogatos with a kick. Tramisu shots. Cherry Coke Spiders. Caramelito Hot Chockers. Even Tim Tam Martinis. It's dessert in a glass for grown-ups. And if it's not love at first sip?</p> <p>💰 You get your money back. No returns. No awkward forms. You even keep the open bottle.</p> <p>🤔 Honestly? You're gonna be obsessed. (And if you're not... we'll pay for your bad decision.)</p> <p>funsters.au</p>	<p><b>Active</b></p> <p>Library ID: 996605272492712 Started running on 22 Aug 2025 Platforms:    </p> <p><b>Funsters Drinks</b> Sponsored Library ID: 996605272492712</p> <p>🔥 Cherry Ripe? Snickers? Fruit Tingles? Mango Gelato? Yep—these vodkas taste exactly like your fave treats, just with a buzz. No bartending skills needed—just pour over ice or mix with soda, lemonade, milk or even your coffee and you've got a dangerously delicious drink in seconds.</p> <p>🍹 Want cocktails without all the fuff (or sugar)? These babies do everything from low-effort Aperol swaps to next-level Espresso Martinis—minus the weird syrups or 15-step TikTok recipes.</p> <p>🍷 And yep, we're including TWO free recipe guides with every order: Affogatos with a kick. Tramisu shots. Cherry Coke Spiders. Caramelito Hot Chockers. Even Tim Tam Martinis. It's dessert in a glass for grown-ups. And if it's not love at first sip?</p> <p>💰 You get your money back. No returns. No awkward forms. You even keep the open bottle.</p> <p>🤔 Honestly? You're gonna be obsessed. (And if you're not... we'll pay for your bad decision.)</p> <p>funsters.au</p>	<p><b>Active</b></p> <p>Library ID: 1059675782902701 Started running on 22 Aug 2025 Platforms:    </p> <p><b>Funsters Drinks</b> Sponsored Library ID: 1059675782902701</p> <p>🔥 Cherry Ripe? Snickers? Fruit Tingles? Mango Gelato? Yep—these vodkas taste exactly like your fave treats, just with a buzz. No bartending skills needed—just pour over ice or mix with soda, lemonade, milk or even your coffee and you've got a dangerously delicious drink in seconds.</p> <p>🍹 Want cocktails without all the fuff (or sugar)? These babies do everything from low-effort Aperol swaps to next-level Espresso Martinis—minus the weird syrups or 15-step TikTok recipes.</p> <p>🍷 And yep, we're including TWO free recipe guides with every order: Affogatos with a kick. Tramisu shots. Cherry Coke Spiders. Caramelito Hot Chockers. Even Tim Tam Martinis. It's dessert in a glass for grown-ups. And if it's not love at first sip?</p> <p>💰 You get your money back. No returns. No awkward forms. You even keep the open bottle.</p> <p>🤔 Honestly? You're gonna be obsessed. (And if you're not... we'll pay for your bad decision.)</p> <p>funsters.au</p>

## Post 2

Post 2 features a video of people sharing their opinions on Chockers, Cherry Amore, and Mango No. 5.

 <p><b>Funsters Drinks</b> Sponsored Library ID: 1731662644127060</p> <p>If your fave lolly aisle and your drinks cart had a baby—this would be it. 🍷 Cherry Ripe? Snickers? Fruit Tingles? Mango Ice Cream? Yep—these vodkas taste exactly like your fave treats, just with a buzz.</p> <p>No bartending skills needed—just pour over ice or mix with soda, lemonade, milk or even your coffee and you’ve got a dangerously delicious drink in seconds.</p> <p>🍹 Want cocktails without all the faff (or sugar)? These babies do everything from low-effort Aperol swaps to next-level Espresso Martinis—minus the weird syrups or 15-step TikTok recipes.</p> <p>📖 And yep, we’re including TWO free recipe guides with every order: Affogatos with a kick. Tiramisu shots. Cherry Coke Spiders. Caramello Hot Chockers. Even Tim Tam Martinis. It’s dessert in a glass for grown-ups.</p> <p>And if it’s not love at first sip? 💎 You get your money back. No returns. No awkward forms. You even keep the open bottle.</p> <p>👉 Honestly? You’re gonna be obsessed. (And if you’re not... we’ll pay for your bad decision.)</p>	 <p>IT'S A SNICKERS WITH ALCOHOL</p>	 <p>TASTES LIKE CHERRY/RIPE</p>
 <p>IT'S SWEET BUT IT'S NOT LIKE SICKLY</p>	 <p>SMELLS JUST LIKE THE CHOCOLATE</p>	

## Part 2 - The Panel's View

1. This determination assesses the social media marketing of Funsters (the Company) in promoting its products, specifically Cherry Amore, Chockers, Mango No. 5, and Zingle (the products). The complainant critiques the Company's approach to marketing at a general level, arguing it is irresponsible, with specific reference to two social media posts that are claimed to target children.
2. The Company responds to the complaint at two levels. Firstly, it questions the legitimacy of the ABAC Scheme considering the complaint and argues that in doing so, ABAC is potentially engaging in anti-competitive and unconscionable conduct.

Secondly, it contends its marketing does not breach substantive requirements for good marketing practice as embodied in the ABAC Code.

### **The ABAC Scheme and public complaints**

3. The backdrop to the Company's criticism of the ABAC Scheme is that the Company's marketing has been the subject of several complaints and subsequent Panel determination (see Determination 86/25). In the Company's view, the complaints have raised trivial issues and are possibly improperly motivated. By proceeding to accept the complaints and make determinations, the Company submits that the ABAC Scheme may be acting unfairly and potentially inconsistently with the requirements of the Federal Competition and Consumer Act 2010.
4. While the Company may be frustrated that its marketing has attracted complaints, its characterisation of the ABAC Scheme and the public complaints process is misconceived. The ABAC Scheme is the industry-led component of the overall regulatory framework governing alcohol marketing. The Scheme consists of three related but freestanding elements, namely:
  - The ABAC Code, which contains the good practice standards for alcohol marketing.
  - Proactive regulatory initiatives such as the ABAC pre-vetting service and a range of research, education and training activities to support industry compliance with Code standards.
  - Reactive regulation embodied in the public complaints process.
5. The Company is not a signatory to the ABAC Scheme and has made no prior commitment to market its products consistently in accordance with the ABAC Code. That said, it has stated its commitment to good marketing practices and has engaged in the complaint process, notwithstanding its criticisms of the process and Panel determinations. The Company's willingness to remain engaged, despite its reservations, is acknowledged.
6. The essential critique made by the Company is that its marketing is being unfairly targeted and that ABAC has not examined the product packaging and marketing of other alcohol products, which the Company contends are problematic or don't meet Code standards. This critique is misplaced.
7. Critically, a Panel determination on a marketing communication is triggered by a public complaint, rather than a choice by the ABAC Scheme. It is the receipt of a complaint that initiates the process, and, subject to relatively narrow exceptions, all complaints that raise an issue under a Code standard result in a decision by the Panel. In large measure, the only occasions when a complaint within the jurisdiction of the ABAC Scheme will not see a Panel determination are:

- When the exact item of marketing complained about has already been considered in relation to the specific Code standard raised in the complaint in a previous determination.
  - The issue raised has been considered in earlier determinations and consistently dismissed.
  - There is a more appropriate forum to handle the complaint. This is particularly relevant when the issue raised has a marketing dimension, but the underlying concern is about the Responsible Service of Alcohol (RSA) obligations of a licensed premises. As the primary concern falls within the regulatory domain of the State Liquor Licensing Authority, it would be better considered by that Authority rather than the ABAC Panel.
8. In short, the Panel has not selected the Company's marketing for examination as opposed to the marketing of other producers. Instead, the Company's marketing has drawn a complaint, and in accordance with the Rules and Procedures applicable to the Scheme, the complaint has been addressed. The ABAC Scheme commenced in 1998, and this fundamental feature of Panel determinations being triggered by public complaints has been a constant throughout the life of the Scheme.
  9. In this way, the ABAC complaints process operates in the same manner as the complaints process for advertising of all products and services, which Ad Standards operates. It is a complaint that triggers the Community Panel of Ad Standards to review an ad against the AANA Code of Ethics. Similarly, the Australian system for considering alcohol marketing complaints is consistent with those operating internationally.
  10. The Company suggests that the complaints its marketing has drawn are improperly motivated and are from competitors. All complaints about marketing, irrespective of the product or service involved, are channelled through Ad Standards, which refers complaints about alcohol to the ABAC Scheme. The identities of complainants are kept confidential.
  11. While it is evident that the vast majority of matters raised are from so-called 'mum and dad' complainants, some complaints are lodged by public health advocacy groups, and some are from government agencies such as State/Territory Liquor Licensing bodies. Complaints from industry participants are not prohibited, although they are very few in number. Notably, the Panel assesses marketing communications solely against the relevant ABAC Code standard, and the identity or motivation of the complainant is irrelevant to the Panel's consideration.
  12. The Company has been obliged to respond to several complaints in a relatively short period, and hence its perspective that it is being 'picked on' is understandable, but this perception is misplaced. Each year, the Code standard in Part 3 (b) dealing with marketing that has a strong or evident appeal to minors draws the most significant number of complaints to the ABAC Scheme. This, in turn, reflects research on

community attitudes about alcohol marketing, which identifies that the protection of children and adolescents from drinking is a primary concern about alcohol marketing.

13. The Company has positioned its products and marketing in a space where a distinctive feature of the products is their sweet confectionery-like flavour profile. It is fully entitled to do this, and the ABAC Scheme does not regulate physical alcohol beverages. If the marketing of the products then emphasises the flavour profile with imagery and references to well-known confectionery, it is not entirely surprising that the marketing might draw concern about its appeal to minors and lead to a complaint being made.
14. The Company listed five products that it claims have not drawn complaints, supporting its view that it is being subjected to 'selective enforcement' and the inconsistent application of the Code. Beyond the point already made that the ABAC Scheme does not select individual alcohol marketing communications for 'enforcement' but operates a public complaints process, the Company is incorrect that each of the products it listed has not drawn complaints or been subject to Panel decisions.
15. Determination 216 & 217/21 found the packaging of the product 'Wet Pussy' in breach of Part 3 (b)(i) and (c)(ii) of the Code. As the owner of that brand did not voluntarily withdraw the packaging, the Panel referred its decisions to the Victorian Liquor Licensing Commission to consider under the Liquor Reform Act. Direct government regulatory action has been taken to remove the product, and the matter is currently before the Victorian Civil and Administrative Tribunal.
16. Equally, the packaging and marketing from the producer Billsons, including its Fruit Tangle product, have received complaints and been subject to Panel Determinations. For instance, see Determinations 118/22, 24/23, 71/23 and 161 & 166/23.
17. Furthermore, the Scheme has received complaints, and the Panel has made decisions regarding the product packaging and marketing of numerous products that can be characterised as being in a broadly similar part of the alcohol beverages market to the Company's products. Some of the complaints/decisions have been about the marketing of larger alcohol producers, e.g. Vodka Cruiser and UDL and others like the Company from smaller producers, e.g. Newcastle Distilling and Feminaè Beverage Co. Like the Panel determinations dealing with the Company's marketing, some of the complaints have been upheld, and some have been dismissed.
18. Finally, if the marketing of the remaining products listed by the Company at a future point attract complaints, then these complaints and the marketing in question will be assessed against the applicable Code standards and a decision made on the merits. In other words, exactly as all complaints are handled.
19. Drawing this together, the Panel does not accept that by receiving a complaint about the Company's marketing and dealing with the complaint in accordance with the same process that all complaints are addressed, that the Company is being unfairly targeted, or that the ABAC Scheme acts inconsistently with competition law principles.

### **Do the posts breach the Part 3 (b) standard**

20. The first social media post comes in several versions, four of which will be considered by the Panel. Each of the four versions:

- Contain an image of the applicable product – Cherry Amore, Chockers, Mango No 5 or Zingle;
- Include a fake and tongue in cheek review from Cherry Ripe for Cherry Amore, Snickers for Chockers, Mango Weis Bar for Mango No 5 and Fruit Tingles for Zingle giving the product a zero or one star rating.
- Use common and lengthy text to accompany the product image and fake review, containing product descriptions, serving suggestions, and a money back offer if a customer is unhappy with the product.

21. The second social media post is a video showing four different women on a beach, holding white cups, and providing their thoughts about the product they have seemingly just sampled. Each woman makes a short comment on a product, specifically “It’s a Snickers with alcohol”, “Tastes like Cherry Ripe”, “It’s sweet but it’s not like sickly” and “Smells just like chocolate”. An image of the relevant product is superimposed alongside each woman.

22. The issue for assessment is whether the posts have 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.

23. 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, serving as the benchmark.

24. 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.

25. The Company argued that it takes responsible marketing seriously and categorically rejected any suggestion that its products breach the substantive provisions of the ABAC Code. It specifically pointed out that the packaging of the products includes clear alcohol cues such as 'vodka' and '20% alc/vol'.

26. On balance the Panel believes that each of the four versions of Post 1 do not breach the Part 3 (b)(i) standard. In reaching this conclusion, the Panel noted:

- The post is text heavy, not visually engaging and it is questionable that a typical minor would examine the post in detail as a result.
- The image of the product is not overly prominent within the context of the post as a whole.
- While the post references well known confectionery items, the references are not centred and are somewhat lost within longer product information and marketing puffery.
- While the confectionery references will elevate the potential appeal of the post to minors, taken as a whole the post would have no more than incidental appeal to minors as opposed to the post being strongly appealing to under 18 year olds.

27. Post 2 consists of text and a video of the short product reviews provided by four women on a beach setting. While the post is accompanied by descriptive text, the most influential component is the video. On balance, the Panel believes Post 2 breaches the Part 3 (b)(i) standard, noting



- Cherry Ripes, Snickers and chocolate are well-known and popular confectionery items enjoyed by people of all ages, including minors.
- The alcoholic products are compared to confectionery items by the reviewers saying, 'It's a Snickers with alcohol', 'Tastes like Cherry Ripe' and 'Smells just like chocolate'.
- While of lesser influence, the confectionery references are also made in the accompanying text via expressions such as 'If your fave lolly aisle and your drinks cart had a baby—this would be it. Cherry Ripe? Snickers? Fruit Tingles? Mango Ice Cream? Yep—these vodkas taste exactly like your fave treats...'
- The inclusion of a confectionery item within an item of alcohol marketing will often elevate the potential appeal of the marketing communication to minors.
- Taken as a whole, Post 2 would probably be understood as creating an illusion of a smooth transition from a well-known non-alcoholic product to an alcohol beverage.

28. The complaint is dismissed in relation to Post 1 and upheld in relation to Post 2

### 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 Panelist Professor Richard Mattick AM and Panelist Cristiano Lima.

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

*Code Part 3 (b) of the Code requires 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*

### **Company Response**

The Company was provided with an opportunity to respond to the complaint, and its principal comments were:

We take responsible marketing seriously and categorically reject any suggestion that our products breach the substantive provisions of the ABAC Responsible Alcohol Marketing Code.

The Company does not and will not:

- Suggest that alcohol improves success, confidence, attractiveness, or performance.
- Suggest that alcohol relieves stress, provides therapeutic benefit, or is necessary for social acceptance.
- Depict or target minors.
- Use cartoon characters, confectionery packaging, toy or game themes, comic book characters, youth celebrities or music or humour identifiable with minors.
- Create any risk of confusion with soft drinks.
- Encourage or condone excessive or irresponsible consumption. Our packaging always includes clear alcohol cues such as “vodka,” and “20% alc/vol.”

We follow the important rules, the actual Code provisions that matter, at all times.

Competitor products openly market with far greater risks [than Funsters].

It is argued that ABAC’s application of its Code has been inconsistent and anti-competitive. The Company notes it has been repeatedly pursued over relatively minor elements such as product names, flavours, fonts, colour palettes and abstract designs, while competitor products with more obvious risk factors remain available without sanction (examples cited include products using cartoon characters, confectionery mimicry, comic-book imagery and overtly sexualised branding).

The Company contends this pattern of enforcement raises three specific concerns:

1. Anti-competitive conduct: selective pursuit of Funsters while overlooking competitors creates an uneven playing field and restricts fair competition.
2. Unconscionable conduct: repeated and disproportionate targeting amounts to harassment and discrimination, particularly given the legitimacy of Funsters' product range and marketing approach.
3. Competitor-driven proxy complaints: the Company believes complaints are being initiated by competitors and that ABAC is being used as a proxy, thereby distorting competition.

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

The Company was asked how it demonstrates a commitment to best practices for alcohol marketing, and responded as follows:

- Funsters complies fully with liquor licensing law and has never breached the substantive provisions of the Code.
- Funsters has always followed the important rules, the Code provisions that matter, at all times, and we will continue to do so in future.

It is noted that:

- The Company is not a signatory to the ABAC Scheme.
- A Company staff member has completed the ABAC online training course.
- The Company has declined to modify or remove marketing in response to a previous determination that found a breach of the Code.