



ABAC Adjudication Final Panel Determination No 45/24

Product: 24 ICE
Company: Boozoom Pty Limited
Media: Packaging, website and digital
Date of decision: 15 May 2024
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Professor Richard Mattick
Ms Debra Richards

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 21 March 2024. It follows from a provisional determination made on 29 April 2024 in relation to the packaging, website and digital marketing of 24 ICE (“the product”) by Boozoom Pty Limited (“the Company”).
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - (a) Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;

- State liquor licensing laws – which regulate the retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;
- (b) Industry codes of practice:
- AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol-specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meet the standards contained in the ABAC.
 4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 21 March 2024.

- The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline does not apply when making a provisional determination on product packaging. This is because of the two-step process involving the opportunity for a company to make additional submissions in response to the provisional determination.

Pre-vetting Advice

- A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards prior to public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the placement of the marketing.

The Marketing

- The complaint relates to the product’s packaging, as well as website and other digital marketing.

Packaging





STRAWBERRY
DAIQUIRI
ICE

& ALCOHOL

STRAWBERRY
DAIQUIRI
ICE

& ALCOHOL



CONTAINS 24 ICE & ALC
ADULTS ONLY
Please do not drink and drive. Contains 5% alcohol by volume (10% ABV).
Contains 100% natural fruit. BEST BEFORE END: SEE BOTTOM

24 ICE
Produced by 24 ICE Pty Ltd
Melbourne, Victoria, Australia
© 2021 24 ICE Pty Ltd

Ingredients: water, malic acid, citric acid, natural strawberry flavour, natural strawberry pulp, natural lemon juice, natural lemon pulp, natural lemon oil, natural lemon zest, natural lemon peel, natural strawberry pulp, natural strawberry oil, natural strawberry zest, natural strawberry peel, natural strawberry leaves, natural strawberry stems, natural strawberry seeds, natural strawberry pulp, natural strawberry oil, natural strawberry zest, natural strawberry peel, natural strawberry leaves, natural strawberry stems, natural strawberry seeds.

Nutritional Information: 100 ml 100 ml
Energy 100 kJ (24 kcal)
Total Fat 0 g
Total Carbohydrate 10 g
Sugars 10 g
Alcohol 5 g



24 ICE
ICE & ALC

alc. 5% vol.
CONTAINS 6.5 STANDARD DRINKS



WATERMELON
Mojito
ICE

& ALCOHOL

WATERMELON
Mojito
ICE

& ALCOHOL



CONTAINS 24 ICE & ALC
ADULTS ONLY
Please do not drink and drive. Contains 5% alcohol by volume (10% ABV).
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24 ICE
Produced by 24 ICE Pty Ltd
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Ingredients: water, malic acid, citric acid, natural watermelon flavour, natural watermelon pulp, natural watermelon oil, natural watermelon zest, natural watermelon peel, natural watermelon leaves, natural watermelon stems, natural watermelon seeds.

Nutritional Information: 100 ml 100 ml
Energy 100 kJ (24 kcal)
Total Fat 0 g
Total Carbohydrate 10 g
Sugars 10 g
Alcohol 5 g



24 ICE
ICE & ALC

alc. 5% vol.
CONTAINS 6.5 STANDARD DRINKS



Digital marketing

Image 1: Digital advertising by 24 Ice (Australia) on Instagram, Facebook and the brand website



Image 2: Screenshot of an Instagram post by 24 ICE on Instagram and Facebook

<https://www.instagram.com/p/C19IOGovBa/>

<https://www.facebook.com/photo?fbid=122099793194188625&set=pb.61555658755190.-2207520000>



Image 3: Screenshot from the 24 Ice website (<https://24ice.com/en/>)



Image 4: The same image as shown in image 2 and 3, however this static post is part of a targeted marketing campaign using Meta Ads Manager.

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=AU&view_all_page_id=204264722762856&search_type=page&media_type=all



Image 5: A screenshot from a video reel on the company main Facebook page

<https://www.facebook.com/reel/598348188974854>



Image 6: the same video shown in image 5, however part of a targeted advertisement campaign through Meta Ad's Manager

https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=AU&view_all_page_id=204264722762856&search_type=page&media_type=all

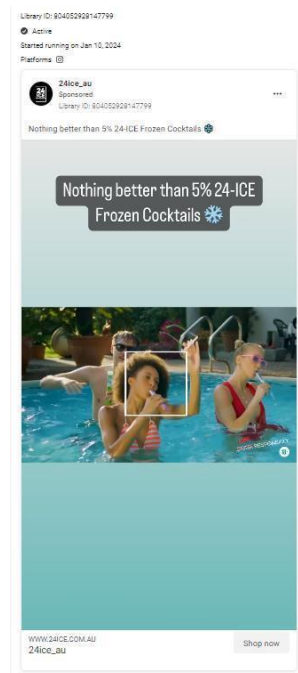
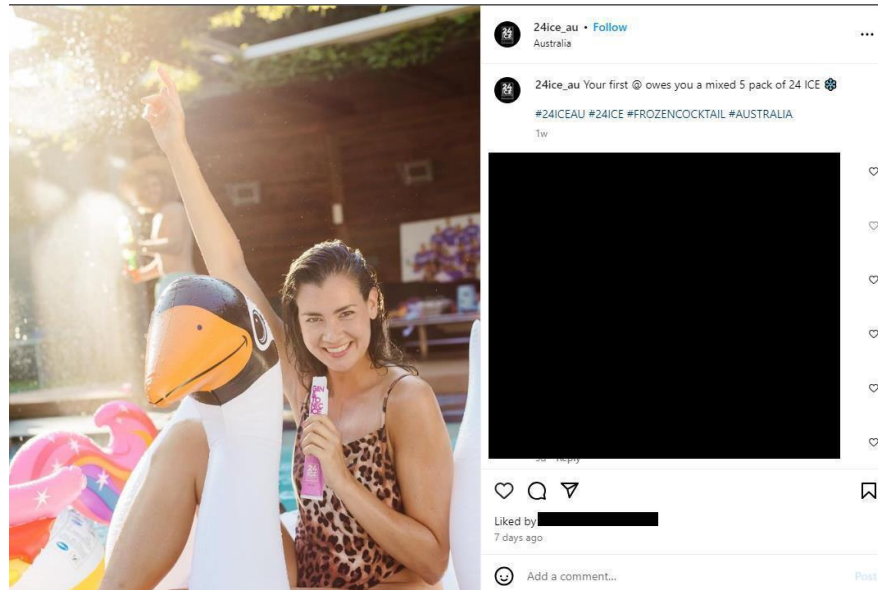


Image 7: A screenshot taken from a Youtube promotional video hosted on the brand Youtube channel

<https://www.youtube.com/watch?v=ys5h9hjZQ4o&t=4s>



Image 8: A static post from 24 Ice Australia Instagram
<https://www.instagram.com/p/C2y9rULPE88/>



The Complaint

11. The complainant objects to the packaging and digital marketing as follows:
 - *the packaging and product design has strong appeal to minors in breach of ABAC Standard 3 (b)*
 - *the product is designed to be prepared and consumed like popular ice-block treats (commonly referred to as Zooper Doopers), wherein the liquid is frozen and the packaging is used as the vessel. It is contended that this product design has strong appeal to minors, beyond general appeal as such products historically are marketed towards minors. As the similar non-alcoholic ice block products have strong appeal to minors, the 24 ICE packaging would have the same appeal.*
 - *a series of videos and photos of the alcoholic product being consumed in a swimming pool on the brand's social media channels. This is highlighted by the wet hair and swimming attire worn by the models, and the visible consumption of the frozen cocktail and showcasing of the products in the pool.*
 - *the advertisements range from static image posts, as well as promotional videos and video reels. This is seen on both organic posts on the brand's social media accounts, as well as targeted advertisements using Meta's Ad Management. The various posts are in breach of ABAC Standard 3 (d) dealing with Alcohol and Safety.*

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:

(b)(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.

(d) show (visibly, audibly or by direct implication) the consumption of Alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as the control of a motor vehicle, boat or machinery or swimming.

The Company Response

13. The Company's lawyers responded on their behalf on 17 April 2024. The primary comments were:

- Our client has instructed us to respond to the complaint as set out in this letter.
 - They are grateful for ABAC agreeing to extend the date to respond to the complaint to 17 April 2024;
 - They began importing 24 ICE frozen cocktails in mid-December 2023;
 - They are the first entity to import 24 ICE frozen cocktails in to Australia;
 - 24 ICE is a product manufactured by 24 ICE B.V, a company headquartered in the Netherlands;

- 24 ICE B.V created the Packaging and advertisements identified in images 1 – 8 of the Complaint;
- The client published the advertisements in images 1, 2, 4, 5, 6 and 8 (Relevant Advertisements) variously to their:
 - Instagram;
 - Facebook;
 - Australian Website, <https://24ice.com.au/>; and
 - Meta Ads Manager platforms
 (Together, Australian Platforms);
- The 24 ICE products shown in the Relevant Advertisements were of the 0% alcohol 'mocktail' variety;
- Our client did not seek ABAC Advertising Pre-vetting Service Approval for the Relevant Advertisements; and
- Our client agrees to abide by the decision made by ABAC.

Relevant Advertisements and 24 ICE Packaging

- Before our client began importing 24 ICE to Australia, they held discussions about doing so with 24 ICE B.V. During these discussions, 24 ICE B.V agreed to allow our client to republish the Relevant Advertisements on the Australian Platforms.
- Our Client duly republished the Relevant Advertisements on the Australian Platforms on the assumption they were compliant with local requirements. Our client now recognises this assumption was incorrect.
- Notwithstanding that the products shown in the Relevant Advertisements were of the 0% alcohol 'mocktail' variety, our client now appreciates that the Relevant Advertisements may nonetheless contravene the ABAC Responsible Alcohol Marketing Code (ABAC Code). Hence, in good faith, it removed the Relevant Advertisements from the Australian Platforms on 26 March 2024. Our client instructs us it will not republish the Relevant Advertisements on the Australian Platforms.
- Without admitting that the packaging for 24 ICE products has a strong appeal to minors or breached Parts 3(b) or 3(d) of the ABAC Code, in the interest of cooperating with ABAC, it confirms that it will

have the packaging for 24 ICE products for supply in Australia redesigned.

Foreign Advertisements

- The advertisements appearing in images 3 and 7 of the Complaints were published in the 24 ICE B.V YouTube channel, www.youtube.com/@24ice75/featured. Further, advertisements forming part of the Complaint continue to appear on the 24 ICE B.V website, <https://24ice.com/en/>.
- Our client has no control over the advertisements or other content displayed on platforms operated by 24 ICE B.V. Our client is informing 24 ICE B.V of ABAC's stance that it takes the view that these advertisements are in contravention of ABAC's Code, but can make no guarantee that 24 ICE B.V will act on this information. In light of this fact, we request you dismiss the parts of the Complaint which relate to 24 ICE B.V platforms.

Future Compliance

- Our client is a newcomer to the business of importing frozen cocktail liquor products, having started with the first shipment of 24 ICE frozen cocktail liquor products in mid-December 2023.
- Owing to their inexperience in importing frozen cocktail liquor products, our client was not fully acquainted with the regulatory framework that surrounds marketing of frozen cocktail liquor products in Victoria and Australia. Our client is keen to use this Complaint process as a learning experience to ensure that it fully complies with the ABAC Code in the future.
- Our client has already taken steps to familiarise itself with ABAC's jurisdiction. On 2 April 2024, our client's director completed the ABAC Online Training Course. On the same date, our client's contracted marketing advisor and Australian Website manager and members of their staff watched the ABAC Training Video Series. Our client is now aware that ABAC has a pre-vetting service for packaging and advertisements. Now that they are aware of it, our client expects to make use of the pre-vetting service in future, for contentious advertisements.
- Our client has now also become aware that supply of frozen cocktail liquor products is prohibited in New South Wales (NSW) pursuant to Section 100 of the *Liquor Act 2007* (NSW) and Regulation 86(1)(a) of the *Liquor Regulation 2018* (NSW).

- In light of our client's contrition and this being the first contravention alleged against them, we humbly request that ABAC consider using the Complaint resolution process as an opportunity for education rather than punishment.
14. The Company's legal advisors responded to the provisional determination on behalf of its client by letter emailed on 13 May 2024, advising that:

Relevant Advertisements

- As noted in our correspondence of 17 April 2024, our client published the advertisements identified in images 1, 2, 4, 5, 6 and 8 of the Complaint (**Relevant Advertisements**) to its Instagram, Facebook, Australian Website and Meta Ads Manager platforms (**Australian Platforms**).
- Subject to what we say below, our client accepts the findings made by the ABAC Panel in relation to the Relevant Advertisements.
- Our client confirms it removed the Relevant Advertisements from the Australian Platforms on 26 March 2024 and will not republish them.

Foreign Advertisements

- As noted in our correspondence of 17 April 2024, our client did not publish the advertisements identified in images 3 and 7 of the Complaint. These advertisements were published to platforms operated by 24 ICE B.V., the Dutch manufacturer of 24 ICE (**Foreign Advertisements**). Our client does not control platforms operated by 24 ICE B.V (**Foreign Platforms**) and is not able to remove the Foreign Advertisements.
- In paragraph 40 of the Provisional Determination, the Panel recognised that our client has no control over material published to the Foreign Platforms. Paragraph 40 states:

The Panels accepts the Company's advice that images/videos 3 and 7 in the complaint are not within its control and are materials created by and under the control of the Dutch company. Accordingly, it is beyond the Panel's jurisdiction to make a determination on these materials as they are not marketing communications to which the ABAC Scheme applies.

- We note that in Paragraph 43, the Panel states (underlining added):

The Panel finds that the digital materials in images 1 and 2 and 4 to 8 are in breach of Part 3(d) of the Code...

- It appears that the Panel has inadvertently included Image 7, being one of the Foreign Advertisements, as part of the breach referred to in paragraph

43. We submit that the Panel should amend paragraph 43 of the Provisional Determination to exclude image 7.

- Our client has informed 24 ICE B.V. of ABAC's determination. 24 ICE B.V. has told our client that it will publish a notice to Australian visitors to its website, that 24 ICE B.V. is not affiliated with our client.

24 ICE Packaging

- Our client instructs us that subject to what we have said above it accepts the ABAC Panel's decision in relation to 24 ICE packaging.
- To address the issues raised by ABAC, our client plans that with respect to all future 24 ICE products it purchases for distribution in Australia it will redesign the packaging (both individual serving and multiple serving containers). Our client has engaged a graphic designer to redesign the packaging and is aware that the new packaging should:
 - Not have a particular appeal to minors;
 - Prominently display wording to convey that the product is for adults only;
 - Prominently display wording showing that the product contains alcohol; and
 - Not cause confusion with non-alcoholic products.
- Our client instructs us that it values ABAC's expertise and it intends to submit the draft redesigned packaging to ABAC's Pre-vetting service for approval.

15. As the Company has not sought a re-hearing of the provisional determination, under the rules and procedures applying to the Panel the determination now becomes final.

The Panel's View

Introduction

16. Alcohol is a global product, produced, consumed and marketed in most parts of the world. In 2014 a Dutch company, 24 ICE B.V, introduced a range of alcoholic and non-alcoholic 'frozen cocktails' onto the market in the Netherlands. According to the Dutch company's website, since that time the products have been exported to 23 countries with Australia being the most recent nation where the alcoholic version of the products has become available.

17. The Australian distributor of the products is an alcohol retailer called Boozoom based in the Melbourne suburb of Sunshine. The Company operates a physical liquor store and offers online retail sales. To market the 24 ICE products, the Company has created a website modelled on materials used by the Dutch manufacturer of the products as well as posts on social media platforms.
18. This determination arises from a complaint about the packaging of the alcoholic frozen cocktails, as well as the messaging about the products contained on the Company website and its posts over social media. The concerns expressed are twofold. Firstly, it is argued that the packaging is akin to children's icy poles and have strong or evident appeal to minors. Secondly, it is contended that various website entries and social media posts show the alcohol product being consumed while using a swimming pool and hence depicting alcohol use with an inherently dangerous activity.

The Products and their Packaging - some threshold points

19. The Company describes the products as frozen cocktails containing 5% alc/vol and the equivalent of 0.30 standard drinks. The cocktails come in 6 flavours namely Gin & Tonic, Mojito, Strawberry Daiquiri, Limoncello and Vodka Energy. 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 with the bottom of the sleeve being in the same colour as the product name and showing the brand name 24 ICE.
20. The individual servings come in a 5 pack, with the pack box having a predominantly black background with an image of the product flavour serving. For instance, the Limoncello pack shows an opened individual sleeve image, images of sliced lemons and the descriptor 'Frozen Cocktails' and the 24 ICE brand name. The products are retailed as a 5 pack of a single flavour or in packs of mixed flavours.
21. The complainant contends that the packaging of the individual servings can be clearly considered as appealing to minors given their similarity to popular ice blocks such as Zooper Doopers. It is argued that these non-alcoholic products are marketed towards children and the Company's products will have evident appeal to minors beyond their general appeal to adults because of their resemblance to ice blocks.
22. Some threshold points should be noted:
 - while the ABAC name references 'beverages' the Scheme captures the marketing of alcohol products beyond beverages and includes related consumable products such as ice blocks or vapours etc;
 - the Scheme does not regulate physical products but is confined to the marketing of the products. This means the taste, texture, colour etc of an

alcohol product is not within the ambit of the Code standards as such, but how these characteristics are described or highlighted in marketing communications including product packaging is captured; and

- physical alcohol products are regulated by various government agencies such as Food Standards - Australia New Zealand and to some extent by State government Liquor Licensing Authorities.
23. This last point is important in the current case. In part, the underlying argument of the complainant is based not simply on the nature of the packaging of the Company's products but on a concern about the products themselves. In other words, it is inherently undesirable that alcohol should be available in an ice block form given the similarity and popularity of ice blocks with minors.
24. The desirability or otherwise of alcohol products on public policy grounds is not a matter for the ABAC Scheme but properly rests with government. And as the Company noted in its response to the complaint, at least one jurisdiction (NSW) has taken direct regulatory action to prohibit the sale of alcoholic ice blocks on the basis of the product being 'undesirable'.
25. The NSW Liquor Act (section 100) permits the making of a regulation to declare a specified liquor product to be an 'undesirable liquor product' if amongst other things:
- the name of the liquor product, or its design or packaging is likely to be attractive to minors;
 - or the liquor product is likely, for any reason, to be confused with soft drinks or confectionery; or
 - the liquor product is, for any reason, likely to have special appeal to minors.
26. A regulation has been made to declare as 'undesirable' alcoholic ice blocks. This is stated to be a product that is sold in an individual package or individual packages for consumption in frozen form and that, at 20° Celsius, contains more than 1.15% ethanol by volume.
27. While this is clearly an issue for NSW Liquor and Gaming to determine, on its face it would appear that the Company's product will fall within the class of alcoholic ice block that cannot be lawfully sold in NSW.

Product Packaging - strong appeal to minors

28. The issue for the Panel to assess is whether the design of the packaging of the product has strong or evident appeal to minors and hence is in breach of the ABAC standard in Part 3 (b)(i) of the Code.
29. This standard might be breached if the marketing:

- specifically targets minors;
- has a particular attractiveness for a minor beyond the general attractiveness it has for an Adult;
- uses imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors; and
- creates confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors.

30. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:

- the use of bright, playful, and contrasting colours;
- aspirational themes that appeal to minors wishing to feel older or fit into an older group;
- the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
- creation of a relatable environment by use of images and surroundings commonly frequented by minors;
- depiction of activities or products typically undertaken or used by minors;
- language and methods of expression used more by minors than adults;
- inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
- style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
- use of a music genre and artists featuring in youth culture.

31. It should be noted that only some of these characteristics are likely to be present in a specific marketing communication and the presence of one or even more of the characteristics does not necessarily mean that the marketing item will have strong or evident appeal to minors. It is the overall impact of the marketing communication rather than an individual element that shapes how a reasonable person will understand the item.

32. Product packaging can give rise to strong appeal to minors if it creates confusion with confectionery or a soft drink. Confusion with confectionery might occur if:
- the packaging does not clearly identify the product as an alcohol product through use of an alcohol term like beer, ale, vodka, style of wine etc;
 - the packaging has a visual design that resembles a soft drink such as the display of fruit images, bright colours and the use of a font style found typically on soft drinks or fruit juices;
 - the use of terms commonly associated with a soft drink or fruit juice e.g. orange, lemon, blueberry, pop, smash etc; and
 - the type of physical package used is similar to that used by soft drinks, fruit juices or other products used extensively by minors e.g. prima style juice box.
33. In assessing if a Code standard has been breached the Panel is to have regard to 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 a majority of the community is to be the benchmark.
34. The Company has explained the background to the product and its assumption that the product packaging and marketing materials able to be used in the Netherlands (and presumably some other countries) would meet Australian marketing standards. While not conceding that the packaging has strong appeal to minors, the Company indicated it would have the packaging redesigned for the Australian market.
35. This is the third occasion that the Panel has considered the packaging and branding of alcoholic ice block products. In Determination 52/19, the Panel found the packaging of a product called 'Skinny Freezers' breached the Part 3 (b)(i) standard. The Panel noted:
- the use of clear plastic gives prominence to the bright colours of the product and this combined with fruit depictions are highly likely to attract the attention of children;
 - the packaging is similar to that commonly used for icy poles and a reasonable person would likely draw a ready comparison of the packaging with that used on icy poles popular with children;
 - some of the range uses terms like lemonade and lemon which is commonly employed on non-alcoholic children's soft drinks; and

- each of these elements in combination would lead a reasonable person to probably understand that the packaging has an evident appeal to minors.
36. A second case, Determination 116/19 concerned a product 'Poptails'. The Panel believed the packaging of this alcoholic ice block had strong appeal to minors, noting:
- the packaging was similar to that commonly used for icy poles popular with children;
 - the failure of the packaging to identify the products are alcoholic; and
 - the name, Poptail, which combined with the packaging features would add to the potential confusion with a product appealing to minors.
37. While some guidance can be taken from the earlier decisions, each case must always be assessed on its own merits. The Company's product does not adopt clear plastic packaging akin to Zooper Doopers and used by the Skinny Freezers product. Further the products have names that are associated with alcohol cocktails such as Mojito, Strawberry Daiquiri and Limoncello as opposed to names such as lemonade.
38. That said, the Panel does believe the product packaging breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:
- the packaging of the individual servings is similar to that used for non-alcoholic icy pole style products that are popular with minors and will likely appear very familiar to minors;
 - while the individual serving packaging has references to the product being alcohol, these references are not prominent within the context of the packaging design as a whole increasing the possible confusion of the products with non-alcoholic ice blocks;
 - equally the packaging of the 5 pack box does not significantly highlight the alcoholic nature of the products within the context of the design of the box as a whole and this increases the potential for confusion 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;
 - taken as a whole, a reasonable person would probably understand that the packaging has strong or evident appeal to minors.

Part 3 (d) - Alcohol and Safety

39. Beyond the product packaging, the complainant submitted a series of digital posts and website entries showing the consumption of the products with the dangerous activity of swimming. This concern raises Part 3 (d) of the Code which requires that an alcohol marketing communication must not show the consumption of an alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical coordination, such as swimming.
40. The Company essentially accepted that the digital material taken from 24 ICE BV and the Netherlands does not meet the ABAC standard. The Company has removed the material it has control over as a result. It did however point out that several images/videos identified by the complainant were not within its control but rather was material created and posted by the Dutch company.
41. The ABAC Scheme applies to marketing communications generated by or within the reasonable control of an alcohol producer, distributor or retailer that has a discernible and direct link to Australia. In other words, the Scheme does not have extraterritorial application and marketing within the domain of another country is subject to the regulatory regime of that nation.
42. The Panels accepts the Company's advice that images/videos 3 and 7 in the complaint are not within its control and are materials created by and under the control of the Dutch company. Accordingly, it is beyond the Panel's jurisdiction to make a determination on these materials as they are not marketing communications to which the ABAC Scheme applies.
43. The balance of the images/videos within the ambit of the ABAC Scheme are found to breach the Part 3 (d) standard. Each of these items clearly show or directly imply the consumption of the products during or before the use of a swimming pool. It is noted that while the products shown might physically be the non-alcoholic versions of the products, a reasonable person would understand the images/videos as meaning the consumption of the alcohol products available in Australia and being marketed by the Company.

Conclusion

44. It should be acknowledged that the Company is not a signatory to the ABAC Scheme and hence has not given a prior commitment to market consistently with ABAC standards. That said, the Company has cooperated fully with the complaints process, withdrawn materials it accepts as being inconsistent with the Part 3 (d) standard and undertaken to accept the Panel's determination. It also has now engaged with ABAC training and education resources. All of these actions speak well of the Company's sense of corporate responsibility.

45. The Panel finds that the digital materials in images 1 and 2, 4 to 6 and 8 are in breach of Part 3 (d) of the Code.
46. The Panel makes a final determination that the packaging of 24 ICE is in breach of Part 3 (b)(i) of the ABAC Code.