



ABAC Adjudication Panel Determination No 49/24

Product: Dreaded Drop Vol 4 Australian Whisky
Company: Corowa Distilling Co
Media: Packaging
Date of decision: 2 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 25 March 2024. It follows a provisional determination made on 10 April 2024 in relation to the packaging (label and box) of Dreaded Drop Vol 4 Australian Whisky (“the product”) by Corowa Distilling Co (“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 25 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.

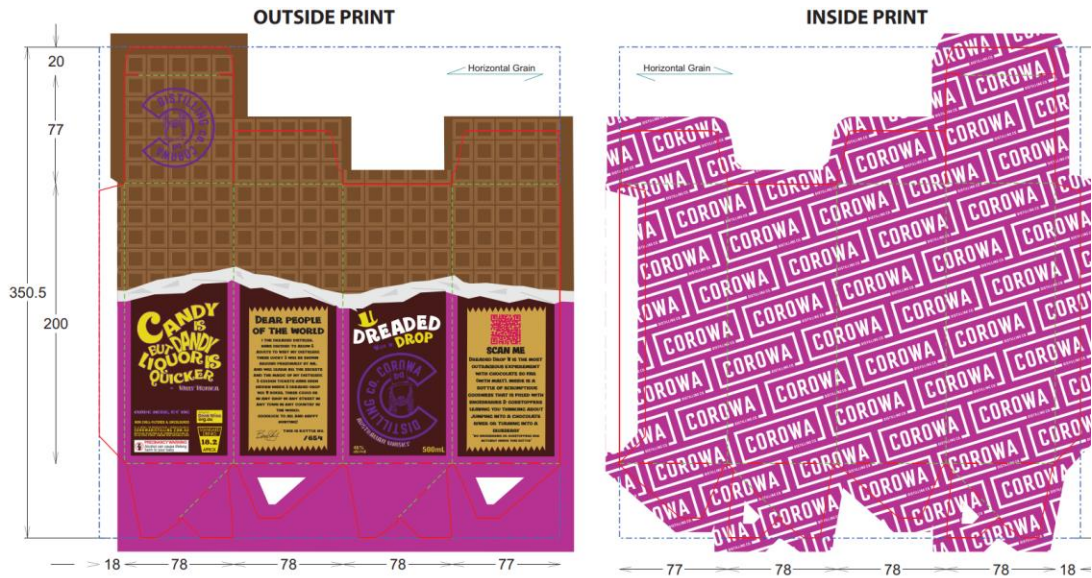
Pre-vetting Advice

- 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 marketing.

The Marketing

- The complaint relates to the packaging (label and box) of Dreaded Drop Vol 4 Australian Whiskey.





DREADED DROP - VOL V

Complaint

11. The complainant objects to the marketing as follows:
 - *The label can be clearly considered as appealing to children, with clear use of the “Wonka” brand of movies and chocolates.*

The ABAC Code

12. Part 3 (b)(i) of the Code provides that An Alcohol Marketing Communication must NOT:
- (i) have Strong or Evident Appeal to Minors, in particular;
 - (A) specifically target Minors;
 - (B) have a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to Minors;
 - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to Minors; or
 - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

The Company Response

13. The Company responded to the complaint by email on 25 March 2024. Its primary comments were:
- Firstly, I'm sorry that we have come across your desk, it was never our intention to breach the code.
 - Secondly, sorry for the slower reply as it was Easter and having chocolate factories open to the public everyday makes for a busy time.
 - For us as a distillery we started as a chocolate factory with my family starting as chocolate confectioners back in 1998 and what we were trying to do was show the connection of our history and the whisky we make.
 - This particular release of whisky has been sold online and in the distillery both of which require the customers to be at least 18 years old to purchase the whisky.
 - The suggestion that the product would be a smooth transition from non-alcoholic to alcoholic I don't believe is as easy as looking at a product and is something that we take very seriously as we are a chocolate factory from our inception.

- The site of the distillery is Corowa Whisky and Chocolate and this was our attempt to join the dots between chocolate and whisky, the connection between the two and separating of alcoholic and non alcoholic have always been a big focus of ours and a visit to the distillery would reinforce that.
 - While this whisky has bright colours and Wonka references it still holds a strong reference to it being an alcoholic beverage and not a chocolate non alcoholic drink. I believe that the strongest connection that we made between this whisky being an alcoholic beverage outside of the 46% abv, standard drinks and the clearly stated Australian Whisky, is the fact that the price point on this bottle is \$154.23 and takes away any confusion as to the thinking that this is a chocolate drink for minors.
 - I would like to again apologise for any confusion we have caused and problems with our whisky release, it was never our intention and for that I'm sorry.
14. The Company responded to the provisional determination by email on 2 May 2024, advising that it would accept the determination of the Panel.
 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

16. This determination arises from a complaint about the packaging (bottle and box) of Dreaded Drop Vol 4 Australian Whiskey. The complainant contends that the packaging can be clearly considered as appealing to children, particularly through reference to the 'Wonka' brand of movies and chocolates.
17. The background to the product relates to the ownership by the Company of two businesses, namely a distillery based in the NSW town of Corowa and the Junee Licorice and Chocolate Factory located in Wagga Wagga. Interestingly both manufacturing facilities are in converted old flour mills and both are tourism hubs for their respective towns.
18. In any event, as explained by the Company the intention behind The Dreaded Drop product is the connection between the two businesses. The issue 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.
19. 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.

20. 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.

21. 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.

22. 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 fails to clearly identify the product as an alcohol beverage through the use of an alcohol term like beer, ale, vodka, style of wine etc or reliance is made of more subtle alcohol references or terms understood by regular adult drinkers but less likely to be understood by minors e.g. IPA, NEIPA;
 - the packaging has a visual design that resembles confectionery such as the display of bright block colours and the use of a font style or iconography found typically on confectionery.
23. An assessment as to the appeal of packaging is based on how a reasonable person will understand the labelling. A 'reasonable person' has the attitudes, values and life experiences shared by most people in the community. Most influential in understanding product packaging will be:
- the front of the packaging rather than the rear and sides;
 - messaging in larger rather than smaller font;
 - the dominant design aspects;
 - the prevailing colour scheme; and
 - the overall impact of these features combined.
24. The Company argues that the packaging of its product does not appeal to minors. It is accepted that the packaging has Wonka references, but the product is clearly an alcoholic beverage and would not be confused with a confectionery or a chocolate drink. It is pointed out that the product is expensive and not available to under 18 year olds.
25. The Roald Dahl novel 'Charlie and the Chocolate Factory' has been popular with children and adults since it was published in 1964. The story features a chocolate manufacturer named Willy Wonka. The novel has been the inspiration for three major movies with Willy Wonka played by Gene Wilder in 1971, Johnny Depp in 2005 and most recently Timothee Chalamet in 2023.
26. Experiencing more mixed success has been a 'Wonka' branded chocolate bar. A brief internet search suggests a chocolate bar was released in 1971 in conjunction with the first movie, but it was not successful and later releases including by Nestle to coincide with the 2005 movies also failed to take hold.
27. There is a Wonka brand name range of confectionery currently on the market and the connection drawn by the complainant with the Company's whiskey product is understandable. The top hat depiction and the colouring of the bottle label are evidently inspired from the confectionery range. Further and more directly, the box contains a quote attributed to the Willy Wonka character and adopts the 'golden ticket' used in the book and original movies.

28. Turning first to the bottle and its labelling, the Panel does not believe the bottle label breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- the packaging, both through its use of alcohol descriptors and also the size and shape of the bottle identifies the product as being alcoholic;
- it is unlikely the chocolate image would cause a reasonable person to confuse the product as a confectionery or a drinking chocolate given the very clear cues that the product is a whiskey;
- the packaging includes some cues towards the 'Wonka' confectionery range via the top hat symbol, colour and font type, however
 - the Wonka name is not used;
 - the Wonka confectionery range can't be regarded as a household staple so as to be familiar to the great majority of minors; and
 - other elements on the packaging such as the product name, Corowa name and old bearded man image are clearly not confectionery references.
- some but not most people might draw an association between the packaging design and the recent Wonka movie; and
- taken as a whole, the packaging would at its highest have incidental and not strong or evident appeal to minors.

29. In contrast, the Panel believes on balance that the box in which the bottle is placed, does breach the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- the box is designed so that its top half resembles a block of chocolate which will make the packaging relatable and familiar to minors;
- the front of the box has some confectionery cues but would not of itself cause the product to be confused with confectionery or drinking chocolate;
- however the side panels on the box directly reference Willy Wonka and the 'golden ticket' storyline from the novel and original movies and will be recognisable to many minors;
- while less influential, the narrative in one of the side panels contains flavour descriptions which evaluate the potential of the product being understood as a smooth transition from consumption of a confectionery/chocolate beverage to an alcohol beverage; and

- taken as a whole, and while no one element of itself is decisive taken as a whole a reasonable person would probably understand the box has strong or evident appeal to minors.

30. The Panel makes a final determination that the packaging of the box for Dreaded Drop Vol 4 Australian Whisky is in breach of Part 3 (b)(i) of the ABAC Code. The complaint in relation to the bottle labelling is dismissed.