



## ABAC Adjudication Panel Determination No 107/24

**Product:** Pre's  
**Company:** SA Distilling Co  
**Media:** Packaging and Facebook  
**Date of decision:** 10 September 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Richard Mattick  
Ms Jeanne Strachan

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) arises from a complaint received on 15 July 2024 about the packaging of and Facebook marketing by SA Distilling Co (“the Company”) of Pre’s in the following flavours (“the products”):
  - Green Apple Vodka;
  - Bubblegum Grape Vodka; and
  - Tropical Vodka.
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 places 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, and 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 marketing content 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 15 July 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, however, this time frame does not apply in the case of complaints regarding product packaging and brand names. This is because of the two-step process involving a provisional and then a final determination.

## Pre-vetting Advice

9. 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 before 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

10. The complaint relates to the packaging of, and Facebook marketing for, three products, namely Pre's in the following flavours:
  - Green Apple Vodka;
  - Bubblegum Grape Vodka; and
  - Tropical Vodka.



Front




**Pre's**  
By Heaps Good Spirits



**Green Apple  
Vodka**  
Liqueur

500mL 20%ALC/VOL  Green Apple Liqueur

Back

-  **Shot it** Get ready for a sweet and crisp palate party!
-  **Sip it** Couldn't be easier to drink if it tried. Shot it, sip it, mix it with soda or lemonade and let the good times roll.
-  **Mix it**

Enjoy Pre's?  
We'd appreciate a review!



SCAN ME

STANDARD  
DRINKS  
7.9  
APPROX.

DrinkWise  
org.au

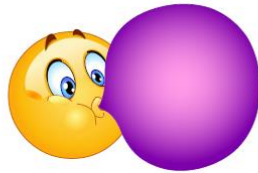


**PREGNANCY WARNING**  
Alcohol can cause lifelong harm to your baby

Heaps Good Spirits  
PO Box 1032 Pasadena SA 5042  
heapsgoodgin.com.au  
Please enjoy responsibly

Front




**Pre's**  
By Heaps Good Spirits



**Bubblegum  
Grape  
Vodka**  
Liqueur

500mL 20%ALC/VOL  Grape Flavoured Liqueur

Back

-  **Shot it** Throwback to when you were blowing bubblegum bubbles growing up, except now you're an adult and it's alcohol.
-  **Sip it** Shot it, sip it, mix it with soda or lemonade and let the good times roll.
-  **Mix it**

Enjoy Pre's?  
We'd appreciate a review!



SCAN ME

STANDARD  
DRINKS  
7.9  
APPROX.

DrinkWise  
org.au



**PREGNANCY WARNING**  
Alcohol can cause lifelong harm to your baby

Heaps Good Spirits  
PO Box 1032 Pasadena SA 5042  
heapsgoodgin.com.au  
Please enjoy responsibly

Front	Back
	<p>  It's like a tropical getaway, for your mouth. Think sunshine and good vibes, Pineapple, orange, passionfruit and more.         </p> <p>  Shot it, sip it, mix with soda or lemonade and let the good times roll.         </p> <p> </p> <p> <b>Enjoy Pre's? We'd appreciate a review!</b> </p> <p> </p> <div style="background-color: #e91e63; color: white; padding: 10px;"> <p> </p> <p> </p> <p> </p> <p> </p> <p>             Heaps Good Spirits              PO Box 1032 Pasadena SA 5042              heapsgoodgin.com.au              Please enjoy responsibly           </p> </div>

Pre's  
 10 June - 🌟

24H TO GO

This time tomorrow, we go LIVE with our opening night specials  
 6PM AEST / Tues 11th June  
 See you there! 📺

24H TO GO

3 for \$99

RRP: \$147  
LIMITED TIME

\$150 Back

IN GIFT CARDS  
ON ANY 3-PACK ORDER

## Complaint

11. The complainant objects to the marketing as follows:
- *Use of emojis on the labels, bright colourful backgrounds and an introductory offer for basically free alcohol, buy \$99 worth and get \$150 in their gift cards.*
  - *Using characters and emojis on the labels and bright and colourful social media ads.*
  - *Very attractive to minors.*

## 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

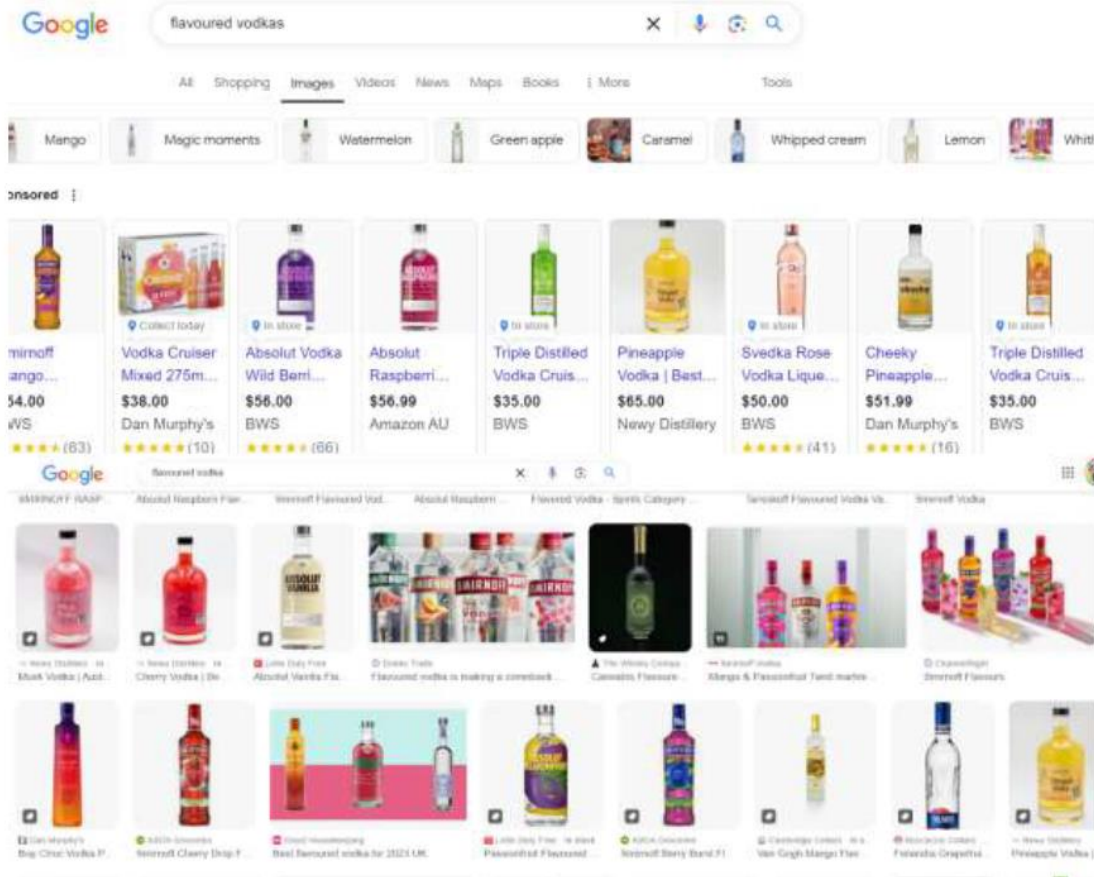
13. The Company responded to the complaint by letter emailed on 25 July 2024. Its primary comments were:

### **ABAC Pre-vetting service**

- We did not use the pre-vetting service, however, we make a commitment to avail ourselves of the service moving forward for new labels and bottle design.

### **Packaging**

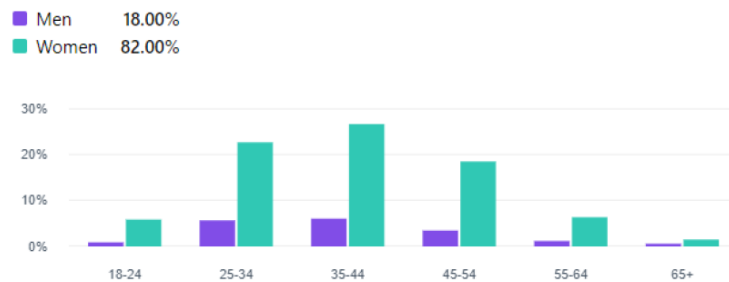
- The colour of the contents, and being able to see the contents through a clear bottle is an important part of the buying process, as it allows customers a visual clue as to the flavour of the product.
- Clear bottles, bright colours of the contents, and eye-catching labels are the industry norm for the Flavoured Vodka product category, which can be seen with a Google image search for “Flavoured Vodka”. We attach a screenshot below.



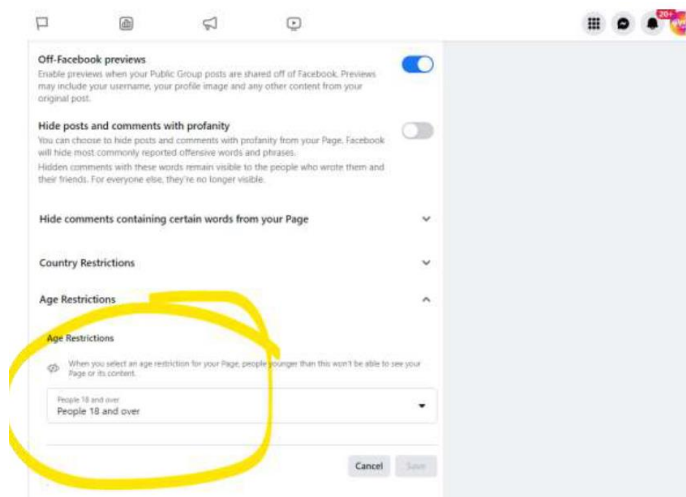
- Mandating that Pre’s must use a non-clear bottle would potentially put the Pre’s brand at a significant disadvantage to the many competitors with similar products, as reflected above.
- The cartoon-style illustrations are in place to act as a visual clue as to the taste of the products:
  - Bubblegum emoji representing grape “Hubba Bubba” bubblegum. The product is a beverage, not bubblegum and so we are outlining what flavour the consumer is going to taste.
  - Apple emoji representing the taste of an apple-flavoured “Warhead” after the initial sourness has abated.

- Mix fruit/colourful pineapple representing fruit punch beverages.
- The design of all three labels, in our view, assists potential customers, primarily of Gen Y and Gen X age demographics, to better consider the flavour of the product when considering a purchase by providing a “throwback” to familiar childhood flavours. In other words, the design campaign was considered “nostalgic” which would appeal to our target demographic, who are not minors. We attach below, a screenshot of the Pre’s Facebook page followers which demonstrates our targeting of an audience primarily female, in the 25-54 age bracket:

### Age and Gender



- Further to this, the word “Vodka” is clearly written on the front of each bottle (and clearly seen in the Facebook post of the Complaint). The word Vodka is written in the same font type and font weight as the wording of the flavour on the label so that there can be no confusion that this is an alcoholic beverage for people of legal drinking age.
- Furthermore, the Pre’s Facebook page has age restrictions in place. There are also age warnings prominently featured on Facebook and the Pre’s website to not have the products being viewed or purchased by minors. We attach below, a copy of our age restriction in place:





- We agree that “Pre’s” is commonly used to describe having drinks at home prior to going out. It’s a term used by Adults, more so than Minors, who are not permitted to “go out” by virtue of their age. It is our view that a reasonable person would not view the name Pre’s as having attractiveness for a Minor beyond the general attractiveness it has for an Adult.
- With relation to drinking at home, other than “pres” being a known descriptor of at-home drinking, we have deliberately not mentioned pre-drinks and drinking Pre’s at home on any social media posts or advertisements, nor on the website to this point, given the end goal is a broader range of pre-made, ready-to-go products, not merely 3 flavoured vodkas as the range currently encompasses.
- To that end, we chose the name Pre’s with the intention of expanding the product range over time beyond the initial three bottled Flavoured Vodkas, to also potentially include; RTD (Ready To Drink) canned beverages, Pre-mixed and Pre-made bottled cocktails (bottled espresso martini as an example), and flavoured liqueurs. Pre’s will ultimately become an overarching brand that conveys “ready to drink and/or pre-made beverages” - pre-done, pre-made for you.
- More specifically relating to the brand name of Pre’s, and to assist the Panel with the intended direction of the brand, the product line is still in its infancy having been launched online in June 2024.

### **Facebook post**

- We have provided comments as to the brightness/colourful nature of the products and product labels above. Currently, our research from our Facebook marketing indicates that the majority of those viewing our advertisements are females between 35-44, which is our target market.
- Further, regarding the offer and pricing referenced in the Facebook post, this was an introductory offer as part of the launch of Pre’s via the Pres.au website.
- The landscape in the alcohol industry, when it comes to online advertising, is competitive and discounting is commonplace.
- We opted to launch the range with a promotional discount on 3 bottle purchases of 3 bottles for \$99, which is a 33% discount from the RRP of \$147.
- In addition, customers would then also receive a single \$15 gift voucher each month for 10 months (\$150 in total) to be used by the buyer or to forward to a friend. The offer is outlined here: <https://pres.au/150-back/> There is no ‘free alcohol’.


- The strategy behind the offer was to provide customers of legal drinking age with an attractive initial 3-bottle offer that is comparable to other deals available from competitors. The \$15 gift cards then aim to build brand loyalty and repeat purchases over time.
- We do not believe the offer is overtly appealing to minors specifically and below are examples sourced from Facebook on the evening of Monday 16th July demonstrating the prevalence of similar discounts from competitors via Facebook advertisements:

7:48 📶 🔋 8%

Like Comment Send Share

**After Hours Distillers** Sponsored

After Hours Premium Spirits. Locall... See more




afterhoursdistillers.com.au  
**3 for \$119! Free Shipping**  
 Pure. Clean. Smooth. Triple Distill...

Learn more

7:53 📶 🔋 6%

**Lord Howe Island Distilling Co.** Sponsored

Looking for a gin to take you to para... See more



lordhowedistilling.com.au  
**30% OFF with code HOWEGOOD30**

Shop now

31 4 comments

**YOUR WINES.com.au** Sponsored

Classic Aussie Mixed Dozen - less t... See more



yourwines.com.au  
**Good wine only**  
 Everything you want in a mixed whi...

Shop now

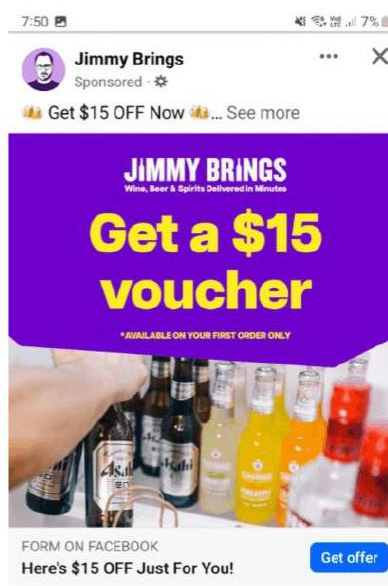
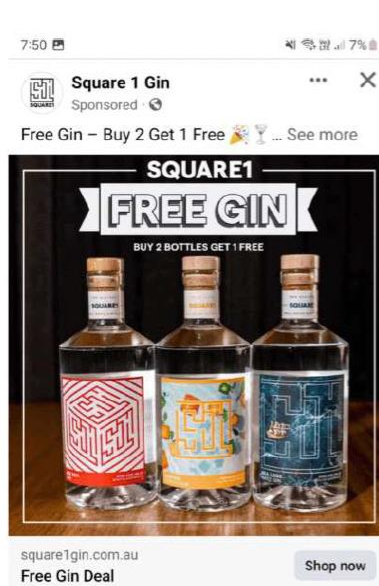
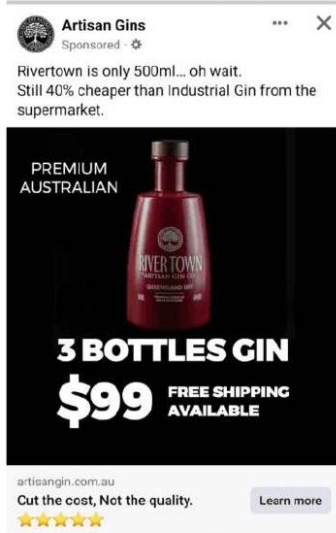
**Nil Desperandum** Sponsored

Your passport to a world of Liquid Gold; Introducing the Nil Desperandum Bundle. ... See more



www.nildesperandum.com.au  
**All Of This + FREE SHIPPING!**  
 Limited Time Only

Shop now



- We thank the Panel for considering our position, we have taken this complaint seriously and will accept the Panel's decision on all aspects of the complaint.

14. The Company responded to the provisional determination by email on 20 September 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

### Introduction

16. In June 2024 SA Distilling Co released a new product range of three pre-mixed flavoured vodkas liqueurs branded as 'Pre's'. The products can be consumed directly or combined with soda water or lemonade and come in three flavours, namely:
  - Green Apple Vodka;
  - Bubblegum Grape Vodka; and
  - Tropical Vodka.
17. The marketing of the three Pre's products is before the Panel because of a complaint about the products' packaging (bottle and label design) and also an accompanying Facebook post. The complainant contends that the packaging is appealing to children, particularly through the use of bright colours and emojis. It is argued that an introductory pricing offer on the products contained in the Facebook post amounts to free alcohol and both marketing elements will be attractive to minors.
18. The Company submits both the product branding and packaging are directed towards a target demographic of adults aged 25 to 54 and cannot be regarded as strongly appealing to minors. It believes its packaging approach and pricing offer are consistent with other alcohol market participants. The complaint requires a review of the packaging and the Facebook post, and accordingly, the determination is structured as follows:
  - Strong and evident appeal to minors - general considerations
  - Product packaging - general considerations
  - The Specific Packaging and the Company's submissions
  - The Pre's Brand Name
  - Consistency of the Packaging with the ABAC Standard
  - The Facebook Post
  - Conclusion and Final Determination.

## **Strong and Evident Appeal - General Considerations**

19. Part 3 (b)(i) of the Code provides that an alcohol marketing communication (which includes product packaging and Facebook posts) must not have strong or evident appeal to minors. 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 occasions. 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;
  - 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.

### **Product Packaging – General Considerations**

22. It is important to note that the ABAC Scheme and the Code are directed at the marketing of alcohol beverages. ABAC does not regulate physical beverages, namely the taste, colour, viscosity or alcohol-to-volume strength. These physical characteristics of alcohol products are regulated to some extent directly by government.
23. The flavour profile of a product however will be relevant in as much as the flavour is referenced and described in the marketing communication. The Part 3 (b) standard assumes, by reference to confusion with soft drinks and confectionery as an example of when a breach of the standard might occur, that soft drinks and confectionery have appeal to minors.
24. There will be potential for product packaging to create confusion with confectionery or a soft drink 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 a soft drink such as the display of fruit images, bright block colours and the use of a font style or iconography 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 and whether this is similar to that used by soft drinks or fruit juices e.g. prima style juice box.
25. 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.

### **The Specific Packaging and the Company's submissions**

26. The products are packaged in a 500ml clear glass bottle, which allows the brightly coloured flavoured beverage to be seen. Each product has a front label that depicts the "Pre's" brand name at the top and beneath are shown three styles of drink glasses. This is followed by the descriptor "by Heaps Good Spirits" in small font.
27. Near the bottom of each label is the name of the product in a coloured cursive font, and a smaller font the word "Liqueur". At the very bottom, in a smaller font, information about the product is provided together with a larger 'P' in the same font and colour as the Pre's brand name.
28. While the front label of each product package has the same or similar elements as described above, each beverage is a different colour and has a different illustration in the centre of the label, as follows:
  - Green Apple Vodka – green in colour with an illustration of an anthropomorphised green apple character with arms, legs and a face, which is smiling and winking and giving a 'thumbs up' gesture;
  - Bubble Gum Grape Vodka – purple in colour with an illustration of a yellow emoji face, blowing a large purple bubble from bubble gum; and
  - Tropical Vodka – yellow in colour, with an illustration of multi-coloured slices of orange, kiwi fruit and watermelon configured into the shape of a pineapple. Below this are three circles with the words 'shot', 'slip' and 'mix' respectively.
29. The rear label for each product adopts a similar format, although the messaging varies between the three products. For the Green Apple Vodka, there is a small text font that reads - 'Get ready for a sweet and crisp palate party! Couldn't be easier to drink if it tried. Shot it, sip it, mix it with soda or lemonade and let the good times roll'.
30. The Bubblegum Grape Vodka product has text that reads - 'Throwback to when you were blowing bubblegum bubbles growing up, except now you're an adult and its alcohol. Shot it, sip it, mix it with soda or lemonade and let the good times roll'.
31. The Tropical Vodka product has text that reads - 'It's like a tropical gateway for your mouth. Think sunshine and good vibes. Pineapple, orange, passionfruit

and more. Shot it, sip it, mix it with soda or lemonade and let the good times roll'.

32. The rear label on each product contains a QR Code and an invitation to make a review if the product is enjoyed. Further mandatory information including the pregnancy warning and standard drink size is provided together with the 'Drinkwise' logo.
33. The Company has provided detailed arguments as to why it contends that the packaging is consistent with the Part 3 (b) standard. Its main points include:
  - the colour of the contents and being able to see the contents through a clear bottle allows customers a visual clue as to the flavour of the product;
  - clear bottles and bright colours of the contents, plus eye-catching labels are an industry norm;
  - the cartoon-style illustrations are in place to act as a visual clue as to the taste of the products which are a 'throwback' to familiar childhood flavours such as 'Hubba Bubba' gum and 'Warhead' lollies;
  - the design campaign is considered 'nostalgic' appealing to the target demographic of 25 to 54 and not minors and this is supported by Facebook data on the followers of the Company's Page;
  - the word 'Vodka' is written on the front of each bottle and is written in the same font type and font-weight as the wording of the flavour on the label, so that there can be no confusion that this is an alcoholic beverage for people of legal drinking age; and
  - 'Pre's' is commonly used to describe having drinks at home before going out. It's a term used by adults, more so than minors, who are not permitted to 'go out' by their age. It is our view that a reasonable person would not view the name Pre's as having attractiveness for a minor beyond the general attractiveness it has for an adult.
34. Several observations should be made about the Company's thoughtful submissions. Firstly, it is a fair point that alcohol spirit products commonly are packaged in clear glass bottles and hence the colour of the beverage is visible. There is nothing inherently problematic about this, but it must be acknowledged that the colour of the beverage will be one factor amongst others in how a reasonable person will understand the appeal of the packaging as a whole.
35. Secondly, while it might be common industry practice to use clear glass bottles and for various products to be brightly coloured, this does not mean every product will be consistent with the ABAC standards. Each product's packaging must always be assessed individually and on its own merits applying the



reasonable person's probable understanding of the packaging as the benchmark.

36. It should also be noted that industry practice is not the benchmark to which the ABAC Scheme applies. Rather the Code standards are based on community expectations of good alcohol marketing practices. While it is the aspiration that industry practice will align with community expectations, given the sheer number of products on the market it is almost inevitable that at a given point in time, there will be some examples of product packaging that don't meet the ABAC standards. It is no answer to a complaint about a specific product's marketing to point to other examples in the marketplace as the basis for compliance, any more than it would be a defence to a speeding ticket to say other cars are speeding on the roads.
37. Finally, the Company advises that its marketing intention is for the products to be appealing to adults, particularly women in the 25 to 54 age demographic. This intention can be accepted, but it is not the benchmark against which ABAC standards are assessed. It is how a reasonable consumer would probably understand the marketing material, rather than what the marketer intended.
38. This is particularly important when reliance is had on the nostalgic appeal of a flavour name and/or packaging design for an adult today of a common experience when the adult was a child or adolescent. Social norms and popular culture change over time, but some things have enduring popularity. So what was popular when a person aged say 30 today was a teenager can still be relevant and appealing to a teenager today.
39. Not much weight can be given to the Company's Facebook data showing followers are aged predominately over 25. The Facebook account is age-restricted and hence by rights there should be no minors in the data. But more importantly, having an older target audience for marketing does not mean the marketing by its content cannot be strongly appealing to minors.

#### **The Pre's brand name**

40. The Company explained that the brand name of Pre's was chosen with the intention to develop a range of Ready To Drink (RTD) products to potentially include canned beverages, pre-mixed bottled cocktails and flavoured liqueurs. The concept is that 'Pre's' captures an overarching brand of ready to drink and/or pre-made beverages - pre-done, pre-made for you'.
41. It was acknowledged by the Company that the term 'pre's' is commonly used to describe drinks at home before going out, but this usage was by adults rather than minors who are not permitted to go out because of their age. Hence in the Company's view, this means the Pre's name would have no more attractiveness to a minor than it would for an adult.

42. The Panel believes that the reasonable person's probable understanding of the usage and meaning of 'Pre's' is likely more expansive than contended by the Company. It is quite common for 'pre's' to be associated with school formals that involve not only the actual event but 'pre and post' gatherings and/or parties. And it is far from unknown for the pre and post-formal parties to involve minors consuming alcohol.
43. Pre's or preloading has been the subject of several Australian and international research studies, and while the Panel is not a research body, the motivation for people to drink before going out would be commonly understood to include:
- it's cheaper to buy and drink alcohol at home than to purchase drinks at a nightclub or other licensed venue;
  - getting a 'buzz' before going out; and
  - social interaction with friends in a private setting.
44. What this all means is that adopting 'Pre's' as a brand name for an alcohol product comes with a nuanced set of community meanings. This doesn't mean the name cannot be used for an alcohol product but it would be artificial to ignore this background when assessing how a reasonable person would probably understand an alcohol marketing communication using the name pre's.

### **Consistency of the Packaging with the ABAC Standard**

45. Turning to the packaging of each product in turn, the Panel believes the Bubblegum Grape Vodka packaging breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:
- the Pre's brand name for alcohol products would be associated by a reasonable person with 'preloading';
  - the product name of Bubblegum Grape would be readily associated with confectionery and would be familiar and relatable to minors;
  - the emoji image blowing a bubblegum bubble is relatable to minors;
  - the intended nostalgic appeal of the packaging to adults is founded on the likely familiarity of grape bubblegum to adults gained from childhood/adolescence and there is no particular basis to believe there is not a continuing popularity of grape bubblegum with minors;
  - a reasonable person would probably understand that the use of the term 'vodka' and other alcohol descriptors establishes the product as an alcohol beverage and the packaging would not be confused with a soft drink;

- the primary aim of the Part 3 (b) standard however is not to avoid minors mistaking an alcohol beverage for a soft drink but to avoid minors being drawn to an alcohol beverage due to the beverage marketing being strongly or evidently appealing to minors;
- while no one element of itself is decisive, the packaging would be probably considered by a reasonable person as strongly or evidently appealing to minors through a combination:
  - of the bright eye-catching colour; and
  - the use of the grape bubblegum confectionery name; and
  - quite possibly bringing to mind a school formal pre-party; and
  - using imagery familiar and relatable to minors; and
  - create an illusion of a smooth transition from a non-alcoholic product to an alcoholic product; and
  - possibly create aspirational appeal for minors wishing to feel older.

46. The Panel believes on balance the Green Apple Vodka packaging also breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- the Pre's brand name for alcohol products would be associated by a reasonable person with 'preloading';
- product name of Green Apple would be more usually associated with non-alcoholic products;
- the cartoon style, anthropomorphic, winking green apple would be familiar and relatable to minors;
- a reasonable person would probably understand that the use of the term 'vodka' and other alcohol descriptors establishes the product as an alcohol beverage and the packaging would not be confused with a soft drink;
- the primary aim of the Part 3 (b) standard however is not to avoid minors mistaking an alcohol beverage for a soft drink but to avoid minors being drawn to an alcohol beverage due to the beverage marketing being strongly or evidently appealing to minors;
- while no one element of itself is decisive, the packaging would be probably considered by a reasonable person as strongly or evidently appealing to minors through a combination:

- of the bright eye-catching colour; and
- the use of the green apple name; and
- quite possibly bringing to mind a school formal pre-party; and
- using imagery familiar and relatable to minors; and which together;
- create an illusion of a smooth transition from a non-alcoholic product to an alcoholic product; and
- possibly create aspirational appeal for minors wishing to feel older.

47. On balance, the Panel does not believe that the Tropical Vodka packaging breaches the Part 3 (b)(i) standard. In reaching this conclusion the Panel noted:

- the Pre's brand name for alcohol products would be associated by a reasonable person with 'preloading';
- the product name 'Tropical' would not be readily associated with non-alcoholic products as such;
- the imagery of the pineapple shape made up of different fruits would have no greater appeal to minors than it would to adults;
- a reasonable person would probably understand that the use of the term 'vodka' and other alcohol descriptors establishes the product as an alcohol beverage and the packaging would not be confused with a soft drink; and
- while the bright colour and pre-party school formal allusion to the Pre's name elevates the appeal to minors, taken as a whole a reasonable person would probably understand that the packaging has incidental rather than strong or evident appeal to minors.

### **The Facebook Post**

48. The complainant also raised a concern about a Facebook post being very attractive to minors due to the imagery of the products combined with the price offered for the products.
49. The post shows the three products on a blue background and advises that pricing is 3 for \$99, and \$150 in gift cards will be provided on any three-pack order. The accompanying text explains the products are being launched and the pricing is an opening night special.

50. The Company advised that:
- data from Facebook marketing indicates that the majority of those viewing our advertisements are females between 35-44, which is our target market;
  - the pricing referenced in the Facebook post was an introductory offer as part of the launch of Pre's; and
  - the offer and pricing of this type are commonplace in online alcohol marketing.
51. The ABAC standards do not cover the pricing of alcohol products. This is not because the price of a product is not important in driving consumer behaviour, but because issues of pricing and extreme discounting and activities like happy hours etc are regulated directly by State/Territory Liquor Licensing Authorities. Further, excise and taxation arrangements on alcohol are within the domain of the Commonwealth government.
52. The Panel does not believe the Facebook post can be fairly regarded as having a strong appeal to minors. While the post does show the three products, the dimensions of the images on the post do not highlight the individual labelling on the bottles.

### **Conclusion and Final Determination**

53. The complaint has raised the consistency of three Pre's Vodka Liqueurs with the standard in Part 3 (b)(i) of the Code. This has required an assessment of the brand and product names of the three liqueurs together with the use of the names on the labelling of the products. An accompanying Facebook post has also been reviewed.
54. It is unusual but possible for a brand name alone to be inconsistent with an ABAC standard. This is because a name alone won't normally imply product characteristics or suggest actions or behaviours likely to be reasonably understood as breaching an ABAC standard. More usually it will be a combination of the brand name with design features and messaging on product packaging that together cause a breach of a standard.
55. In this case, the brand name of the product carries its own connotations even before the brand name is combined with the design aspects of the product packaging. 'Pre's' when used in the context of alcohol use is commonly understood as meaning pre-loading. Having a drink before going out does not mean that alcohol is going to be used irresponsibly but marketing communications will need to be developed carefully.
56. The Company acknowledged its product brand name could be associated with drinking at home. It stated it had 'deliberately not mentioned pre-drinks and

drinking Pre's at home on any social media posts or advertisements'. This was qualified by saying 'to this point'.

57. Both the ABAC standards and the Liquor Promotional Guidelines of government regulatory bodies have strict requirements on marketing not showing or encouraging excessive and rapid alcohol use or consumption beyond that identified by the Australian Guidelines to Reduce Health Risks from Drinking Alcohol. It can easily be envisaged that marketing communications for products branded as 'Pre's' might be scrutinised for compliance with these regulatory requirements.
58. This determination has gone to the complainant's concern about the marketing being very attractive to minors. It is here that the individual product names and the imagery used in the packaging to draw out the product flavour have come to the fore. For the reasons explained, the Panel believes the packaging of two of the products has a strong appeal to minors.
59. Going forward, best practice and prudent risk management would see the Company engage with the ABAC Pre-vetting advice service on its core branding, packaging designs and principal marketing messaging.
60. The Panel makes a final determination that the packaging of the Bubblegum Grape Vodka and the Green Apple Vodka breaches Part 3 (b)(i) of the Code. The complaint is dismissed about the packaging of the Tropical Vodka packaging and the Facebook post.