



ABAC Adjudication Panel Determination No 146/24

Product: Sunset Sips
Companies: Sunset Sips and Endeavour Group
Media: Digital – Instagram and Internet
Date of decision: 1 November 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 26 September 2024. It relates to internet and Instagram marketing of Sunset Sips (“the product”) by Sunset Sips, as well as internet marketing of the product by Endeavour Group on the Dan Murphy’s website.
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 26 September 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

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 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

10. The complaint relates to a number of Instagram posts and internet marketing, images of which are included below.

Image 1 - Website

CRAFTING THE PERFECT SIP

We've made it as easy as possible for you to craft the perfect drink.

1. Pour 60ml of Sunset Sips Mix into a shaker, add 30ml of Tequila.
2. Shake it up on ice (Or stir if you're sans shaker)
3. Salt the edge of your glass and pour your margarita.
4. Repeat steps 1-3 'cause why settle for one?

Image 2 – Instagram

[Sunset Sips premium cocktail mix \(@sunsetlips \) • Instagram photos and videos](#)



Image 3 – Instagram

[Sunset Sips premium cocktail mix \(@sunsetlips \) • Instagram photos and videos](#)



Image 4 – Website

OUR VISION

Frustrated by the limited and uninspiring variety of margarita mixers available, we set out to develop a margarita mix that combines convenience with exceptional taste as well as a beneficial component of added electrolytes.

Our mission is to elevate the at-home margarita experience, allowing both ourselves and our customers to enjoy the perfect margarita effortlessly.

Image 5 – Website

TELL ME ABOUT ELECTROLYTES

It's not just about great taste...

We've infused our cocktail mixes with electrolytes, so while you're enjoying that delicious, sunset inspired sip, you're also giving your body a hydrating boost.

We've got your back—refreshing, recharging, and always ready to keep you feeling as good as you sip.

Image 6 – Website

SUNSET IN EVERY SIP

Sunset Sips brings you the ultimate refreshment with our uniquely crafted cocktail mixes, infused with electrolytes to keep you hydrated while you enjoy every sip.

Simply add your favorite alcohol to create the perfect cocktail, whether you're relaxing by the beach, hosting friends, or winding down after a long day. Our blends strike the ideal balance between bold, vibrant flavors and the hydration boost you need to keep the good times rolling.

Elevate your cocktail experience with Sunset Sips 🍹

Image 7 – Website



● In stock, ready to ship

Introducing the Sunset Sips™ Lemon Lime Margarita mix – where classic cocktail elegance meets modern refreshment.

This premium margarita mix is crafted to deliver the authentic, zesty flavours of a traditional margarita, enhanced with aromas of lemon and lime for a perfectly balanced tang. Infused with electrolytes, it not only offers a taste of sunshine but also helps keep you refreshed and hydrated. Elevate your cocktail experience with The Sunset Sips™ and enjoy your own margarita that's both delicious and revitalising.

Image 8 – Instagram

[Sunset Sips premium cocktail mix \(@sunsettips_\) • Instagram photos and videos](#)



Image 9 - Website



Image 10 – Instagram

[Sunset Sips premium cocktail mix \(@sunsetlips_\) • Instagram photos and videos](#)



Image 11 – Instagram

[Sunset Sips premium cocktail mix \(@sunsetlips_\) • Instagram photos and videos](#)

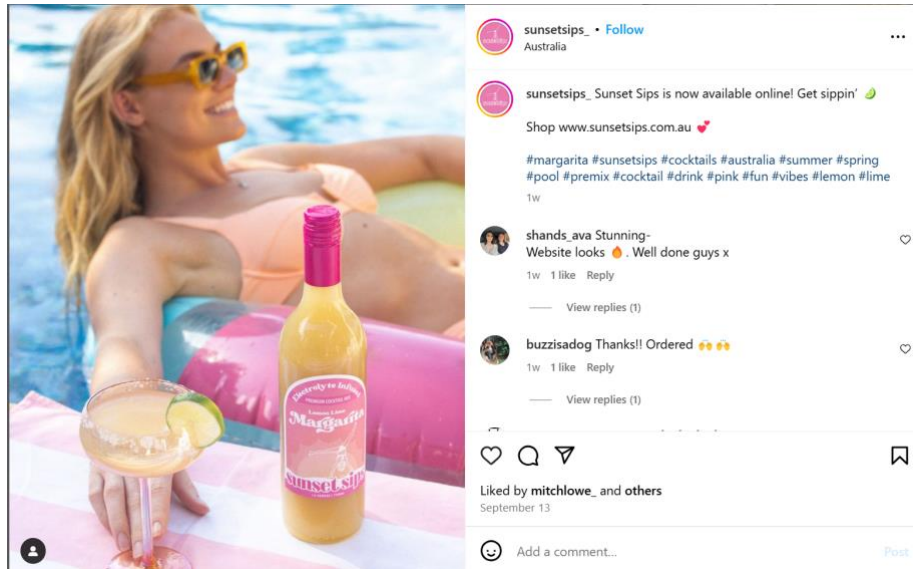


Image 12 – Instagram

[Sunset Sips premium cocktail mix \(@sunsettips \) • Instagram photos and videos](#)



Image 13 – Website (Endeavour Group, Dan Murphy's)

Dan Murphy's

Search products, brands or phrases

Pick up: Thornleigh
Open till 9pm

Log in or join free to unlock member prices

Pick up UNAVAILABLE Delivery AVAILABLE

DAN'S MARKETPLACE This is a Dan's Marketplace item. Get it delivered straight from the source, or to your nearest store for Pick up. Learn more

Each \$30

Case (6) \$170

This product is available for delivery

SHOW DELIVERY OPTIONS

FIND SOMETHING SIMILAR

FIND NEARBY

Pick up from:
Dan Murphy's Thornleigh [Change](#)

Buy online pick up ready within 10 business days Unavailable

About this product

Introducing the Sunset Sips™ Lemon Lime Margarita mix – where classic cocktail elegance meets modern refreshment. This premium margarita mix is crafted to deliver the authentic, zesty flavours of a traditional margarita, enhanced with aromas of lemon and lime for a perfectly balanced tang. Infused with electrolytes, it not only offers a taste of sunshine but also helps keep you refreshed and hydrated. Elevate your cocktail experience with The Sunset Sips™ and enjoy your own margarita that's both delicious and revitalising. 12 serves per bottle! Cheers to the perfect sip.

We recommend this in a bundle
A curated selection of products that go great together.

Complaint

11. The complainant objects to the marketing as follows:
- *Sunset Sips promotes alcohol around water (swimming pool).*
 - *Sunset Sips states their products have electrolytes so you won't get a hangover - this is so dangerous.*
 - *Sunset sips promotes excessive drinking (one is not enough).*
 - *Website words: Infused with electrolytes, it not only offers a taste of sunshine but also helps keep you refreshed and hydrated. Elevate your cocktail experience with The Sunset Sips™ and enjoy your own margarita that's both delicious and revitalising.*
 - *This was noted on their Instagram page, www.sunsetsips.com.au and it is selling on Dan Murphy's.*

The ABAC Code

12. Part 3 of the Code provides that An Alcohol Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication), encourage, or treat as amusing, consumption inconsistent with the Australian Guidelines to Reduce Health Risks from Drinking Alcohol, such as:
- (A) excessive Alcohol consumption (more than 10 standard drinks per week or more than 4 standard drinks on any one day); or

(B) Alcohol consumption while pregnant or breastfeeding;

(c)(iv) suggest that the consumption of Alcohol offers any therapeutic or health (including mental health) benefit, is needed to relax, or helps overcome problems or adversity.

(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.

13. Part 5 of the Code provides the Alcohol Alternative standards to be applied:

(a) An Alcohol Alternative Marketing Communication must comply with Parts 3 (b) and 4 of the Code.

(b) An Alcohol Alternative Marketing Communication must also comply with Parts 3 (a), (c) and (d) of the Code if it:

(i) fails to clearly and prominently identify the product as an Alcohol Alternative; or

(ii) also promotes an Alcohol product (beyond a common brand name) or Alcohol use.

14. Part 8 of the Code provides the following definitions:

Alcohol Alternative means a beverage that is at or less than 0.5% alcohol by volume that:

- has an appearance and style commonly associated with Alcohol; and
- uses a brand or descriptors commonly associated with Alcohol, such as, beer, wine, spirit or other; and
- is not a beverage commonly understood as non-alcoholic, such as fruit juice, soft drink, flavoured milk or other which fall outside the Code remit.

Alcohol Alternative Marketing Communication means a marketing communication for an Alcohol Alternative, in any media, generated by, for, or within the reasonable control of an Alcohol Alternative producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).

The Company Response

15. Sunset Sips responded to the complaint by email on 9 October 2024. Its primary comments were:

- Firstly, let me say that your communication has been taken by us as an educational opportunity and we look forward to continuing to learn and improve as we evolve. Despite our (external, independent) marketing team assuring us that we have not breached any laws, we chose to make instant changes to our marketing – we did this out of respect for the role the ABAC plays. We have downloaded your guidance notes (the ABAC Responsible Alcohol Marketing Code) for consideration and application (where necessary).
- Secondly, whilst our legal counsel were confused why a non-alcoholic beverage such as ours has drawn the attention of an alcohol beverage advertising code ... please be assured that the team here at Sunset Sips are committed to acting reasonably and responsibly in regards to upholding not just the law, but any genuinely relevant codes and standards. Sunset Sips is not aware of any attempt or intention (implied or otherwise) to:
 - encourage swimming while intoxicated
 - suggest that consuming our product means that consumers are immune from hangovers
 - promote excessive drinking
- Whilst we are naturally sceptical about a private organization funded by large players making decisions about smaller new-entrants to the lucrative beverage market, we do look forward to a continuing constructive and fair dialogue and collaboration with you guys.

16. Endeavour Group (Dan Murphy's) responded to the complaint by letter emailed on 9 October 2024. Its primary comments are:

- Dan Murphy's thanks the ABAC Adjudication Panel (the Panel) for the opportunity to respond to the Complaint. Dan Murphy's understands that the Panel is considering whether the Content is a marketing communication in relation to an Alcohol Alternative as defined by the ABAC Responsible Alcohol Marketing Code (the **Code**) and if so, whether the Marketing Communication breaches Part 3(c)(iv) of the Code.
- Dan Murphy's as part of Endeavour Group, is committed to maintaining its position as an industry leader in the responsible service of alcohol. As a signatory to ABAC, Endeavour Group commits to the objectives of the Code to ensure that alcohol advertising does not encourage irresponsible or unsafe consumption, or consumption by persons under 18 years of age, and does not target young people.
- The importance of ensuring all necessary marketing communications (involving the Dan Murphy's brand name or logo) are reviewed from a Code

compliance perspective (and pre-vetted where appropriate), has been reinforced with the marketing team, even in circumstances where that material is controlled by a third party.

- Furthermore, Dan Murphy's maintains strict internal and external processes in addition to those required by the Code. As part of our community charter 'Our Community, Our Commitment', Endeavour Group has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage the responsible consumption of alcohol.

Background

- Endeavour Group has recently entered into a Merchant Services Agreement in place with the Product supplier, Sunset Sips (ABN 52 522 697 751) (the **Agreement**). The Product has only been listed for approximately 2 weeks. The Agreement governs Sunset Sips' supply, promotion and offering for sale of the Product through Dan's Marketplace. The Dan's Marketplace is a dropshipping business model that sits as an adjunct to our core retail model for (generally smaller) suppliers with products that are not currently part of our core range. Under the marketplace model, customers order products from the Dan's Marketplace website, Dan Murphy's sends the order to the supplier and the supplier fulfills the order by directly shipping the products to the customer in accordance with applicable laws including responsible service of alcohol requirements.
- Pursuant to the Agreement:
 - Sunset Sips is required to develop and upload content (including the image and product description) relating to relevant products they wish to list on Dan's Marketplace. The supplier is to ensure all product descriptions are correct and accurate;
 - As is typical for dropship arrangement, the supplier (Sunset Sips) is responsible for the accuracy, legal and regulatory compliance of the content it provides.
- Notwithstanding the contractual obligation on the supplier to provide compliant content, we value customer feedback and have taken the Complaint seriously. As such, we promptly removed the Content from the Dan's Marketplace website and will be reviewing our internal processes relating to the marketing of products on the website.
- As noted above, the Content was provided by Sunset Sips pursuant to the Agreement and we understand that Sunset Sips did not obtain Pre-Vetting Approval.

- Dan Murphy's submits that the Content is not a Marketing Communication within the scope of the Code as the Product the Content relates to does not fall within the scope of an "Alcohol Alternative", as defined by the Code. However, we appreciate that the position in relation to novel products including certain Alcohol Alternatives is evolving and welcome any feedback from ABAC.
- Our conclusion is based on our view that the Product is a beverage that is commonly understood to be non-alcoholic. There is a relevant distinction between a "cocktail mix (or mixer)" and a "pre-mix (or pre-mixed) cocktail". The former being one that is commonly understood to be akin to a cordial and requiring alcohol to be added in order to constitute a cocktail (similar to the way non-alcoholic beverages such as fruit juices and soft drinks are used as "mixers"); and the latter being commonly understood to include alcohol within the product at the time of sale, ie "ready to serve".
- Support for this view can be found by reviewing various other cocktail mix products in market, including but not limited to:
 - [Mr Consistent Cocktail Mixers](#) - these are alcohol free and include [FAQs](#) on how to either add alcohol or instead make a mocktail.
 - [Monin Mojito Cocktail Mix](#) - this product does not include alcohol and is marketed as being able "to be used beyond the bar in countless No and Lo Drink applications"
 - [Just Drinks Co Mixa Cosmo](#) - which features on a leading supermarket website under the category of "cordial".
- In contrast, a search for "pre-mix(ed)" cocktails yields results for many products that are clearly alcoholic beverages, including but not limited to various ready-to-drink espresso martini, rum & cola, gin & tonic and margarita products.
- As such, Dan Murphy's submits that it is reasonable to conclude that the Product does not fall within the scope of an "Alcohol Alternative", as defined by the Code, and that the Code therefore does not apply to the Content.

Conclusion

- We would like to reiterate that we take our responsibility as an industry leader in the responsible service and marketing of alcohol, incredibly seriously. To that end, we confirm that we are reviewing our processes in relation to Marketplace product listings, including our approval processes prior to publishing supplier content and further education for our suppliers in relation to ABAC compliance as well as Endeavour Group's responsible marketing guidelines and standards generally.

The Panel's View

Introduction

17. Sunset Sips is a new cocktail mix that came onto the Australian market in September 2024. According to its website, the Company is a Gold Coast based enterprise' founded by a dedicated mother and son duo, united by their passion for margaritas'. Critically for this determination, the Company's product is not an alcohol beverage but rather is a beverage that can be used in conjunction with alcohol to make an alcoholic cocktail. Equally, the product could be used to make a non-alcoholic drink.
18. The complaint goes to the social media and internet marketing of the product. While it is not entirely clear as to whether the complainant mistakenly believed the product was an alcohol beverage, it is argued that the marketing is irresponsible on several grounds, namely:
 - it promotes alcohol use around a swimming pool;
 - the product contains electrolytes and implies a health benefit; and
 - it promotes excessive alcohol use.
19. The ABAC Scheme is at its core directed towards the responsible marketing of alcohol products. This means the threshold issue for assessment is whether the Company's marketing falls within the remit of the Code standards. A second issue is an entry about the Sunset Sip product on the website of the alcohol retailer Dan Murphy's and whether this entry is within the scope of the ABAC Scheme.

The Sunset Sips Marketing

20. An alcohol beverage contains more than 0.5% alcohol by volume and the Company's product clearly is not alcoholic as it contains no alcohol. In August 2023 the Code was extended to capture the marketing of an 'alcohol alternative' namely a beverage that has less than 0.5% ABV but:
 - has an appearance and style commonly associated with alcohol; and
 - uses a brand or descriptors commonly associated with alcohol such as beer, wine, or spirit; and
 - is not a beverage company understood as non-alcoholic, such as fruit juice, soft drink, or flavoured milk.

21. The decision to extend the ABAC standards to alcohol alternatives was driven by the growth in the zero alcohol product market and the need to establish baseline standards for the marketing of these products. The approach adopted is to apply the ABAC standards going to responsibility towards minors (including the Placement Standards) to the marketing of alcohol alternative products. Secondly, the balance of the ABAC standards will apply depending if the marketing material fails to clearly and prominently identify the product being marketed as an alcohol alternative.
22. Simply because a product is used with an alcohol beverage does not make it an alcohol alternative. For instance, tonic water used in a 'gin and tonic' is not an alcohol alternative. This is because tonic water as a free standing product does not have the appearance or style of alcohol and it is commonly understood to be a soft drink. This can be contrasted with a product like Carlton Zero that has 0.0% ABV but has the appearance and style of an alcoholic beer.
23. The Company's product is a mixer to make a lemon/lime flavoured margarita. While margaritas can be made in a variety of ways, the standard alcoholic spirit in a margarita is tequila with the other alcoholic ingredient being the liqueur Triple sec. Triple sec is a type of curacao made from dried orange peels and typically is in the range of 20 to 40% ABV.
24. The ingredients of the Company's product state that it includes 'Triple sec natural flavour M 13468' and not the alcoholic liqueur. While this may not be as clear cut as the tonic water example given above, the Panel believes that the product cannot be regarded as an alcohol alternative within the intended meaning of the Code noting:
 - the product is not consumed by itself but as a mixer; and
 - it does not have an appearance commonly associated with alcohol.
25. It is possible that marketing for the product could in a given set of circumstances fall within the ambit of the ABAC standards. For instance, in Determination 63/11 the Panel considered marketing for Schweppes soda water that was being promoted as a mixer with Johnnie Walker Whiskey. While the soda water product was not within the scope of the ABAC obligations, the secondary promotion of the branded alcohol product meant the marketing material did need to meet ABAC standards. This was because the marketing was regarded as surrogate marketing for Johnnie Walker.
26. The social media posts raised by the complainant depict, reference or imply the presence of alcoholic cocktails made with the Company's product but do not identify any branded alcohol product. Accordingly the posts cannot be regarded as surrogate marketing for an alcohol brand.

27. Drawing this together, the Panel finds that the Company's marketing does not fall within the scope of the ABAC obligations and hence the Panel has no jurisdiction to make a ruling on the posts or the Company's website. That said, it is clear that the Company's product will be used with alcohol beverages and its marketing will often reference alcohol use as a result. It follows that generic references to alcohol in the Company's marketing should portray alcohol use in a responsible and moderate manner.
28. That is why the Company's response to the complaint should be acknowledged. Not only has the Company fully cooperated with the complaint process, it has taken on board the concerns expressed by the complainant and removed or made amendments to the marketing communications. It has accessed ABAC resources and expressed its willingness to voluntarily market consistently with the expectations placed on alcohol companies. This speaks highly of the Company's social and corporate responsibility.

The Dan Murphy's Website entry

29. A second issue raised by the complaint is the entry about Sunset Sips on the Dan Murphy's website. The entry provides product information and images of a bottle of the product. There is a section entitled 'About this product' that in part states the product is infused with electrolytes and that it helps keep you refreshed and hydrated. The description concludes that Sunset Sips will elevate your cocktail experience and you will enjoy a margarita that's both delicious and revitalising.
30. Endeavour Group, the owner of the Dan Murphy's provided background as to how the entry came to be on the website advising:
 - a merchant agreement with Sunset Sips resulted in the product being listed on the 'Dan's Marketplace' which is a 'dropshipping business model that sits as an adjunct to the core retail model'; and
 - under the agreement, Sunset Sips develops and uploads content listed on Dan's Marketplace and is responsible for the 'accuracy, legal and regulatory compliance of the content it provides'.
31. The threshold issues arising from the website entry is whether the finding that the Sunset Sips product is neither an alcohol beverage nor an alcohol alternative means the ABAC standards have no application to the entry.
32. Dan Murphy's is an alcohol retailer. Its website primarily provides information and descriptions about alcohol products but the retailer also offers a range of non-alcoholic products. These include various soft drinks, energy drinks, cordials and syrups and under the heading 'cocktail mix', products akin to Sunset Sips. Also available are snack foods like chips and nuts and drink

related items like glassware and bar accessories e.g. corkscrews, and cocktail shakers.

33. The ABAC in Part 2 (a) adopts an expansive approach to a 'marketing communication' to which Code standards are to apply and clearly a website is capable of being a marketing communication. In most part the Dan Murphy's website is a sales platform to enable the online purchase of products and it is not heavy with advertising puffery. That said, the 'About this product' section of the product pages does go to product attributes and this section needs to message products and the use of alcohol consistently with Code standards.
34. So do the ABAC standards have any application to those entries on the website that are not about alcohol or alcohol alternative products? In short, the Panel believes the answer is yes for the following reasons:
 - the primary business of Dan Murphy's is alcohol retailing, it is well known for this business, and its marketing is to be consistent with ABAC standards including marketing carried on its website;
 - while the prime purpose of the website is to provide information about, and enable the purchase of products stocked by Dan Murphy's, descriptions of products referencing alcohol and the use of alcohol are marketing communications;
 - consistent with Part 7 of the Code, a marketing communication is to be understood by taking its content as a whole ie the website as a whole;
 - Accordingly, descriptions about the use of alcohol and alcohol alternatives on the website need to be consistent with Code standards even if contained in an entry for a non alcohol or alcohol alternative product.
35. By way of a fanciful illustration to make the point. It would not be acceptable for the 'About this product' description of a cocktail shaker to state that the product is the ideal accessory for an evening to get your date drunk. Or for the entry for beer nuts to say that the nuts are the perfect accompaniment to drinking 15 beers.
36. It is noted that Endeavour did not create the copy used for the entry for the Sunset Sips product as this was the responsibility of Sunset Sips under the merchant agreement between the two parties. This however does not relieve Endeavour of its responsibility under the Code for the marketing communications on its website. As with user generated comments on an alcohol company's social media accounts, once the content is on an account or website under the control of an alcohol company, the company becomes responsible for the content irrespective of who created it.

37. Drawing this together, the Dan Murphy's website is obliged to describe and portray alcohol products and the use of alcohol consistently with Code standards. This includes alcohol references within entries for non-alcohol products. Responsibility for the content of the marketing on the website rests with Endeavour irrespective of who initially created the content.

Does the Sunset Sips product description breach Code standards

38. The Sunset Sips entry on the website states the product is infused with electrolytes and that it helps keep you refreshed and hydrated. The description concludes that Sunset Sips will elevate your cocktail experience and you will enjoy a margarita that's both delicious and revitalising.
39. The Panel believes this content breaches the Part 3 (c) (iv) Code standard. A reasonable person would probably understand that the description is relating to an alcoholic margarita cocktail made with the Sunset Sips product. It is being claimed that the cocktail is offering a health benefit namely that its consumption will be hydrating and revitalising. It is not permitted to suggest that the consumption of alcohol offers any health benefit under the standard.
40. It is noted upon receiving the complaint, Endeavour reviewed the Sunset Sips entry and removed the 'About this product' description from the website.

Conclusion

41. This has been a somewhat technical decision requiring interpretation of relatively new provisions in the Code, the application of which have not been previously examined in a similar factual situation.
42. The Panel has found that the Sunset Sips product is not an alcohol beverage nor is the product an alcohol alternative within the intended scope of the Code. This is because the product is not styled as alcohol. Rather the product is a mixer used to make drinks, typically a tequila based margarita but potentially with other spirits or an non-alcoholic mocktail.
43. This means the marketing communications for the product will not generally fall within the scope of the ABAC Scheme. That said, as the product is used to make alcohol drinks its marketing should portray alcohol and alcohol use consistent with the standards of good practice contained in the ABAC. Sunset Sips accepts these social and corporate responsibilities and has acted to modify the marketing communications raised by the complainant.
44. The alcohol retailer Dan Murphy's has a commercial agreement with Sunset Sips which saw an entry about the product being placed on the Dan Murphy's website. This entry is a marketing communication for ABAC purposes and must depict alcohol and the effects of alcohol consumption consistently with the ABAC standards. In reaching this conclusion the Panel found;

- the website contains marketing communications for ABAC purposes;
 - the website entries for non alcohol products such as cocktail mixers, soft drinks or other items must depict alcohol and the effects of alcohol consumption consistently with ABAC standards; and
 - content created by a third party and placed on the website is the responsibility of Endeavour for ABAC requirements.
45. The Panel has found that the Sunset Sips entry on the Dan Murphy's website has breached Part 3(c)(iv) of the Code as it suggests the consumption of an alcoholic margarita made with Sunset Sips offers a health benefit. The entry was removed on receipt of the complaint.
46. Given this is the first occasion a scenario of this type has arisen and that the respective obligations of the parties had not previously been explained, the Panel believes the Dan Murphy's breach of the Code should be regarded as a no fault breach. A no fault finding does not diminish that the Code standard has been breached and the complainant's concern upheld but it recognises that the alcohol marketer acted reasonably and the breach was not reasonably foreseeable.
47. Accordingly the Panel formally finds the complaint;
- regarding the social media posts and website of Sunset Sips is dismissed as these marketing communications are not within the scope of the ABAC Scheme; and
 - regarding the Dan Murphy's website entry on Sunset Sips is upheld.