



## ABAC Adjudication Panel Determination No 150/24

**Product:** Riser Drink  
**Company:** Riser Drink  
**Media:** Digital – Instagram and Internet  
**Date of decision:** 13 November 2024  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Professor Louisa Jorm  
Ms Debra Richards

### Introduction

1. This determination by the ABAC Adjudication Panel ('the Panel') arises from a complaint received on 1 October 2024 in relation to internet and Instagram marketing of Riser Drink ('the product') by Riser Drink ('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**

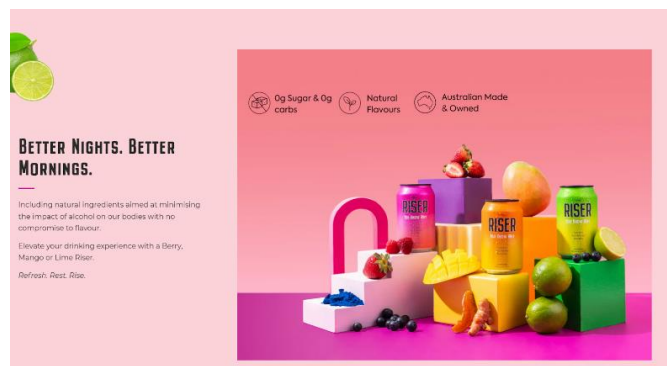
7. The complaint was received on 1 October 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

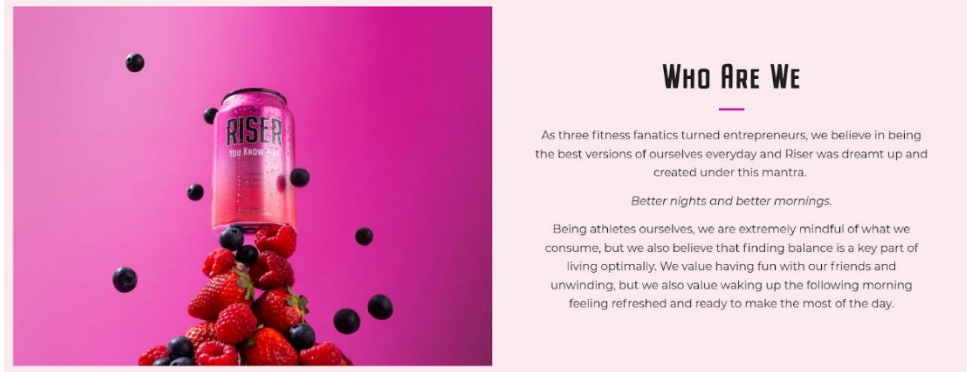
## Pre-vetting Advice

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 some are included below.





## Complaint

11. The complainant objects to the marketing as follows:

- Please see Instagram page - <https://www.instagram.com/riserdrink/> and website - <https://riserdrink.com>
- The brand's slogan is 'Better Nights. Better Mornings' - better mornings implies that the drink will aid negative effects of alcohol.
- They claim that their product is 'infused with superfoods' - which implies that it is good for you.
- Additionally, they have uploaded an Instagram reel where they show people participating in a range of sports activities with the slogan 'a new era of alcohol' that combined with their other marketing implies that it is 'good for you'.
- 'Including natural ingredients aimed at minimising the impact of alcohol on our bodies...' - quote from website.
- 'Research suggests that turmeric extract, being high in curcumin, could be a natural and healthy option to mitigate the adverse effects of drinking alcohol.' - quote from website.
- 'The ultimate hard seltzer, enhanced with superfoods, that is the better choice for active, healthy lifestyles' - quote from website.
- 'Finally, a drink that lets you live in the moment, without dreading the morning after' - quote from website.

## The ABAC Code

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

(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.
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## The Company Response

13. Riser Drink responded to the complaint by letter emailed on 9 October 2024. Its primary comments were:

- Riser Drink is aware of the requirements under ABAC and the Code and recognises their importance in setting standards for responsible alcohol marketing in Australia.
- Riser Drink do not suggest that the Products have any sort of therapeutic or health benefit and without admission of any liability, all statements that suggest that Riser has no negative impact such as 'so you can enjoy the moment without compromising your well-being' and 'without dreading the morning after' have been removed. Furthermore, any phrases that could be construed as indicating our product completely protects consumers from damage caused by alcohol have also been eliminated.
- Our interpretation of the term 'health benefit' is that it denotes a positive effect on health that may be associated with a product. Accordingly, we have thoughtfully selected the term 'better' to ensure it does not imply that our beverage provides any health benefits. Instead, we assert that it is comparatively better to other alcoholic beverages available on the market for several reasons, which are supported by evidence from peer-reviewed medical journal articles.
- The characterisation of a product as 'better' due being low calorie, no sugar and no carbohydrates and to its capacity to cause 'less damage' emphasises the mitigation of negative effects rather than the provision of a positive health benefit. A health benefit suggests an enhancement of well-being, while the assertion of reduced harm merely indicates a diminished level of risk without implying any affirmative positive outcome. This distinction is critical, as it does not support the notion that the product actively promotes health. Although consumers may view a reduction in harm as a reason to select a particular product, such perception does not equate to a claim of health benefits.
- The statements presented on our website and within our marketing materials have been carefully reviewed to prevent any misrepresentation that could lead consumers to believe our product offers health benefits. We clearly assert that, while no alcoholic beverage can be deemed healthy, our product serves as a comparatively 'less detrimental' option.
- For instance, the statement, 'Riser's infusion of superfoods makes it the 'less bad' choice compared to all other options,' explicitly conveys that our product is not marketed as a health-enhancing beverage, but rather

as a more advantageous alternative among alcoholic options. This language reinforces the understanding that our beverage is the 'less unhealthy choice' without implying any health-promoting attributes.

- Additionally, we provide educational content regarding hangovers, stating that 'there's no way to completely prevent a hangover except by abstaining from alcohol.' This message underscores the realities associated with alcohol consumption and its physiological effects, such as dehydration and electrolyte imbalance. By recognising these adverse impacts, we aim to foster a responsible understanding of alcohol rather than suggesting any positive health implications.
- The language utilised in our communications is intentionally designed to educate consumers about the inherent risks of alcohol while clearly positioning Riser as a less harmful option, thereby upholding our commitment to transparency and responsible marketing practices.
- We wish to clarify that we exercise diligent care to ensure that our marketing does not imply that our beverage offers any health or nutritional benefits. We recognise the potential harms associated with alcohol consumption and are committed to promoting thoughtful and responsible drinking practices, rather than misleading consumers into believing that no harm will occur.
- Our goal is to create a positive impact and to reshape how consumers engage with alcohol by fostering mindfulness in consumption habits. Our messaging underscores the importance of awareness and moderation for those who choose to consume alcohol.
- We actively discourage overconsumption through our marketing initiatives, reinforcing the notion that alcohol should be integrated into a balanced lifestyle. We explicitly state that consumption should not interfere with daily activities or impede individuals from fully engaging in their lives the following day.
- Furthermore, in an advertising/marketing context, these requirements have been interpreted so as to prevent businesses from making representations about a product which are *not accurate or which cannot be substantiated*.
- Firstly, the absence of sugar and carbohydrates makes our product a less damaging choice compared to alcoholic beverages that contain these ingredients, particularly in relation to weight gain.
- Secondly, the inclusion of specific ingredients serves to illustrate that our beverage is a less damaging option compared to other alcoholic alternatives. It is important to clarify that we do not claim these ingredients confer nutritional benefits or eliminate the adverse effects of

alcohol consumption. Rather, phrases such as 'potentially mitigate some of the damage caused' and 'less impactful' exemplify how these ingredients contribute to making our product a less damaging option overall. Below are links to the relevant journal articles that support this:

**Turmeric** - Dehzad, M.J., Ghalandari, H., Amini, M.R. & Askarpour, M. (2023). Effects of curcumin/turmeric supplementation on liver function in adults: A GRADE-assessed systematic review and dose–response meta-analysis of randomized controlled trials. *Complementary Therapies in Medicine*, 74, 102952. doi: 10.1016/j.ctim.2023.102952. Available at:

<https://www.sciencedirect.com/science/article/pii/S0965229923000390>

**Spirulina** - Xia, D., Liu, B., Luan, X., Sun, J., Liu, N. & Du, Z. (2016). Protective effects of C-phycocyanin on alcohol-induced acute liver injury in mice. *Chinese Journal of Oceanology and Limnology*, 34, pp. 399–404. Published online 01 August 2015. Available at:

<https://link.springer.com/article/10.1007/s00343-015-4312-6>

**Acai Berries** - Chen, G. & Luo, J. (2010). Anthocyanins: Are they beneficial in treating ethanol neurotoxicity? *Neurotoxicology Research*, 17(1), pp. 91–101. doi: 10.1007/s12640-009-9083-4. Available at:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4992359/>

Complaint	Our Response
Brand's slogan is 'Better Nights'. Better Mornings' - better mornings implies that the drink will aid negative effects of alcohol.	Refer to general comments above.
They claim that their product is 'infused with superfoods' - which implies that it is good for you.	<p>The Australian and New Zealand Food Standards Code (Code):</p> <p>Where a beverage contains more than 1.15% ABV (which you have advised is the case with the Product) you cannot make either of the following claims on labels/in advertising:</p> <p>(i) health claims; and/or</p> <p>(ii) nutrient content claims (unless they are nutrition content claims about the product's energy content, carbohydrate content or gluten content).</p>

	<p>Nutrition content claims are about the content of certain nutrients or substances in a food, such as 'low in fat' or 'good source of calcium'.</p> <p>Health claims are about the relationship between a food and health effects.</p> <p>By using the terms 'infused with' and 'superfoods' we are simply stating the presence of natural ingredients.</p> <p>Given the definitions provided and the absence of a specific definition for 'superfoods' within the Code, we maintain that our practices do not constitute a breach of the regulations.</p>
<p>Additionally, they have uploaded an Instagram reel where they show people participating in a range of sports activities with the slogan 'a new era of alcohol' that combined with their other marketing implies that it is 'good for you'.</p>	<p>It is important to clarify that there is no crossover in our marketing materials that shows consumers drinking our beverage immediately before or after exercising. This absence of direct association indicates that we do not suggest any enhancement in health or mood resulting from alcohol consumption.</p> <p>Our intent is not to promote health benefits but rather to foster a sense of community among our target audience, who enjoy both active lifestyles and socialising with a beverage. We actively discourage overconsumption through our marketing initiatives, reinforcing the notion that alcohol should be integrated into a balanced lifestyle and not consumed excessively.</p> <p>The phrase 'a new era of alcohol' does not imply that our product provides any health advantages or is related to exercise in any meaningful way. Instead, it signifies a redefined landscape within the alcohol industry, driven by evolving consumer values and preferences that emphasise</p>



	thoughtful, responsible, and innovative approaches to alcohol consumption.
'Including natural ingredients aimed at minimising the impact of alcohol on our bodies...' - quote from website.	Refer to general comments above.
'Research suggests that turmeric extract, being high in curcumin, could be a natural and healthy option to mitigate the adverse effects of drinking alcohol.' - quote from website.	Refer to general comments above.
'The ultimate hard seltzer, enhanced with superfoods, that is the better choice for active, healthy lifestyles' - quote from website.	<p>Upon review, we understand how the word 'enhanced' would be in breach of the code and have amended this.</p> <p>We assert that our characterisation of our alcoholic beverage as the 'better choice for active, healthy lifestyles' does not imply the provision of health benefits, but rather suggests that our product is a preferred option for individuals engaged in such lifestyles, particularly due to its lack of sugar and carbohydrates.</p> <p>However, we acknowledge that this statement could be perceived as potentially misleading to consumers.</p> <p>Consequently, we have taken the step to remove this assertion from our website.</p>
'Finally, a drink that lets you live in the moment, without dreading the morning after' - quote from website.	This has now been removed from our website.

## **The Panel's View**

### **Introduction**

14. Riser Drink is a new addition to the alcoholic seltzer market having been released in August 2024. The Company's product joins a crowded marketplace and the Company is seeking to differentiate its brand by focusing on the product's ingredients and why this makes the product a better choice. As described in one of the Company's social media posts, its product is 'designed to minimise the impact of alcohol on our bodies'.
15. By adopting this market positioning it is not entirely surprising that the marketing of the product has drawn a complaint concerned that various claims contained on either the Company's Instagram account or its website would be understood as claiming the product offers health benefits.
16. This concern enlivens the standard in Part 3 (c)(iv) of the Code. This standard provides that an alcohol marketing communication must not 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.
17. The Company has responded to the complaint with a detailed submission. In short it contends that its marketing (subject to a couple 'without admission of any liability' concessions) does not make any positive health claims. Rather it believes its marketing positions the product as being comparatively better to other products.
18. Compliance with the Part 3 (c)(iv) standard invariably involves a case by case assessment of the marketing in question when a product is operating in the 'better' or 'less bad' for you than other products' space. Sometimes the judgements can be 'on balance' as to how a reasonable person would understand the marketing material.
19. The balance of this determination sets out some general propositions as to how the ABAC standard is to be understood and how the Company's marketing is to be assessed against this guidance.

### **Understanding the Code Standard**

20. The starting point is that the ABAC Scheme does not regulate physical beverages nor does it have a role in determining if a physical beverage is a desirable or undesirable product. This means there is no ABAC constraint as to a physical beverage being on the market. To some extent there is direct government regulation of physical beverages by Food Standards Australia and the Liquor Acts in some States permit the designation of specific alcohol products as being undesirable.

21. The remit of the ABAC Scheme is the marketing of alcohol products. Here the starting point is that alcohol marketers are entitled to choose their brand posture and decide the messaging in marketing communications. This means that marketing material can highlight that alcohol beverages are produced or distilled in a particular fashion and contain various elements. Accordingly it is acceptable to factually state:
- the ingredients of a product; or
  - that the product has a particular calorie count or contains no calories; or
  - that the product is produced using a specific method.
22. The ABAC Scheme does not have a role in assessing if claims about the physical contents or the production method of a product are in fact accurate. It is the Australian Competition and Consumer Commission as well as State Fair Trading bodies that oversee and enforce consumer protections about advertising being accurate and not containing false or misleading claims.
23. While alcohol marketers have creative control of the marketing of alcohol products, this freedom is not unfettered. Given alcohol is not simply another product and its misuse is the source of community and individual harm, the marketing of alcohol is constrained by regulatory standards including the ABAC.
24. The constraint on marketing claims contained in the Part 3 (c)(iv) standard arise when a marketing communication goes beyond factual statements and begins to assign attributes or impacts to the consumption of the product flowing from the presence (or absence) of ingredients or the beverage's production method. It cannot be suggested alcohol consumption offers any health benefit.
25. To understand what compliance with this standard requires, it is useful to consider marketing claims in three broad categories, namely that the product offers:
- a positive health benefit;
  - the avoidance or minimisation of negative consequences; or
  - a comparatively better outcome to other products.
26. In assessing the consistency of a marketing communication with an ABAC standard the Panel is to adopt the probable understanding of the marketing item by a reasonable person. This means that the life experiences, values and beliefs common in a majority of the community is to be the benchmark. If an item of marketing could be understood in several ways, it is the most probable understanding to be preferred over a possible but less likely interpretation.

27. It is clearly not permitted to claim that the use of a product provides a positive health benefit. While each marketing communication must always be assessed on its own merits and be understood in context, expressions found in previous Panel determinations to have offended the standard have included claims that the use of a product:
- is healthy
  - will be hydrating
  - provides energy
  - is revitalising.
28. The second category are claims that use of a product will avoid or lessen the negative consequences of alcohol consumption. Often marketing making such claims will offend the standard because a reasonable person would understand the marketing as claiming the alcohol product is good for you. Hence very great care needs to be taken in crafting marketing material of this type. Examples of claims that have offended this standard in previous Panel determinations include:
- perfect for those who love to indulge without any guilt
  - sipping guilt free
  - a fresh little number that's easy on tomorrow
  - Imagine a beverage that's brewed like a beer but was lighter, bouncier, much more refreshing, and had none of its downsides
  - and added electrolytes – a cleaner way to party.
29. The third category involves the comparison of the product with other products. It is permitted to factually compare products. For instance, to state that product A has less calories than the usual product in its class. Or that product A's production method has aged for 10 years when the usual aging period for a product of this type is 5 years.
30. Inconsistency with the Part 3 (c)(iv) standard can arise when the marketing moves beyond the factual comparison and suggests a product will provide a health benefit compared to the other products. Examples of claims that have offended this standard are when a product is described as:
- healthier
  - better for you

- better health
  - Australia's healthiest ... premix.
31. It must be stressed that context is critical in assessing how a claim or statement in a marketing communication would be probably understood by a reasonable person. The examples given above were all found to be in breach of the standard in the context of their use in the individual marketing communication.

### **The Company's marketing**

32. The complainant has identified two marketing sources, namely the Company's Instagram account and its website, that are argued to breach the Part 3 (c)(iv) standard.
33. In response to the complaint, the Company contends that:
- all statements that suggest that Riser has no negative impact such as 'so you can enjoy the moment without compromising your well-being' and 'without dreading the morning after' have been removed, as have any phrases that may indicate the product completely protects consumers from damage caused by alcohol;
  - the term 'health benefit' denotes a positive effect on health that may be associated with a product. We have selected the term 'better' to ensure it does not imply that our beverage provides any health benefits;
  - the characterisation of a product as 'better' due to being low calorie, no sugar and no carbohydrates and to its capacity to cause 'less damage' emphasises the mitigation of negative effects rather than the provision of a positive health benefit;
  - while no alcoholic beverage can be deemed healthy, our product serves as a comparatively 'less detrimental' option;
  - our beverage is the 'less unhealthy choice' without implying any health-promoting attributes;
  - we exercise diligent care to ensure that our marketing does not imply that our beverage offers any health or nutritional benefits; and
  - the inclusion of specific ingredients serves to illustrate that our beverage is a less damaging option compared to other alcoholic alternatives. We do not claim these ingredients confer nutritional benefits or eliminate the adverse effects of alcohol consumption.
34. The Company's range comes in three different flavours of mango, berry and lime, and is infused with turmeric, spirulina and acai berries. It is argued that

the inclusion of these ingredients lessens the detrimental impact of alcohol consumption and links to several research papers were supplied in support of this claim.

35. Sometimes both complainants and alcohol companies submit research papers to the Panel in support of arguments about the impacts and consequences of alcohol use. The Panel is not a research body and it is not its role to weigh up the standing of research submissions. Its role is to apply the standards to the marketing communication complained about.
36. The Company is endeavouring to thread the eye of a needle in its brand posture that its product due to its ingredients is 'less bad' than other products. It goes beyond a factual statement as to the product's content and a comparison to the content of other products, to ascribe to its product a comparable health advantage. A reasonable person would likely understand instances of the marketing suggesting the product is offering a health benefit by avoiding negative consequences.
37. The Panel finds the following claims breach the Part 3 (c)(iv) standard:
  - '...an alcoholic drink that is 'better' for us than all of the others'
  - 'Riser is the better choice for healthy, active lifestyles'
  - '...ingredients like turmeric, spirulina, and acai berries to help minimise alcohol's effects on your body'
  - '...turmeric extract...could be a natural and healthy option to mitigate the adverse effects of drinking alcohol.'
  - 'Numerous studies have shown that turmeric or curcumin can help regulate these enzyme levels, suggesting a protective effect on the liver, especially after alcohol intake.'
  - 'Alcohol consumption can damage brain cells, but research suggests that anthocyanins found in acai berries could help. These potent antioxidants may protect your cells and brain function'
  - 'Oxidative stress is widely recognised as a significant factor in alcohol-induced brain damage, and anthocyanins have shown promise in combating some of these effects'
  - 'Spirulina's C-phycoyanin could help shield your liver from alcohol damage'
  - 'C-phycoyanin could potentially mitigate the harmful effects of alcohol on the liver, offering a protective effect against organ damage.'

- ‘...without compromising our well-being the following day’
- ‘...we also value waking up the following morning feeling refreshed and ready to make the most of the day’
- ‘Turmeric, high in curcumin, supports liver repair and reduces oxidative stress’
- ‘Spirulina, rich in phycocyanin, provides hepatorenal and neuroprotective benefits, improving the oxidative balance in the brain, liver, and kidneys’
- ‘Acai berries, packed with anthocyanins, act as potent antioxidants, potentially safeguarding cells, brain function, and memory.’
- ‘Turmeric, spirulina, and acai berries can help mitigate some of these effects. Turmeric, rich in curcumin, aids in repairing liver damage and reducing oxidative stress, addressing the toxic byproducts and inflammation caused by alcohol’
- ‘Spirulina, high in phycocyanin, offers hepatorenal and neuroprotective benefits, helping to balance oxidative stress in the brain, liver, and kidneys, thus supporting overall detoxification’
- ‘Acai berries, loaded with anthocyanins, serve as powerful antioxidants that protect cells, brain function, and memory, potentially counteracting some of alcohol's harmful effects’
- ‘By incorporating these ingredients, the negative impacts of alcohol consumption can be reduced, leading to a 'less bad' hangover experience’
- ‘So you can enjoy the moment without compromising your well-being the next day. Riser is the better choice for healthy, active lifestyles’
- ‘Riser was created to be a 'less impactful' alcoholic drink based on scientific research, combining delicious flavours with ingredients like turmeric, spirulina, and acai berries to help minimise alcohol's effects on your body’
- ‘Our seltzers, with their unique ingredients, can help reduce hangover symptoms more effectively than other types of alcohol’
- ‘...live in the moment without dreading the morning after’
- ‘The ultimate hard seltzer, enhanced with superfoods, that is the better choice for active, healthy lifestyles’
- ‘The next day I’m not looking to feel sluggish and it has multiple components that help that’

38. The Company is encouraged to seek advice from the ABAC pre vetting service in re-crafting its website and other advertising material to achieve consistency with the ABAC standards.
39. The complaint is upheld.