



ABAC Adjudication Panel Determination No 187/24

Products: Cherry Amore and Chockers
Company: Bunsters
Media: Social Media - Instagram
Date of decision: 15 December 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 22 November 2024 about social media posts marketing Cherry Amore and Chockers (“the products”) by Bunsters (“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 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 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 is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 22 November 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 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 item.

The Marketing

10. The complaint relates to three different Instagram posts, descriptions of which are provided below.

Image 1 – Chockers

https://www.instagram.com/reel/DCQHPENtEuf/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWFIZA==

This post shows a bottle of Chockers in front of swirling chocolate, caramel and peanuts.

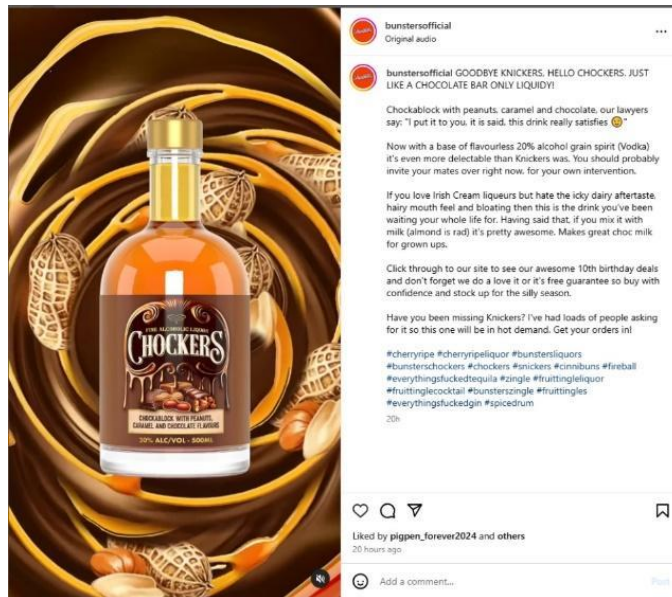


Image 2 – Cherry Amore

https://www.instagram.com/p/DCIElhk4xb/?utm_source=ig_web_copy_link&igsh=

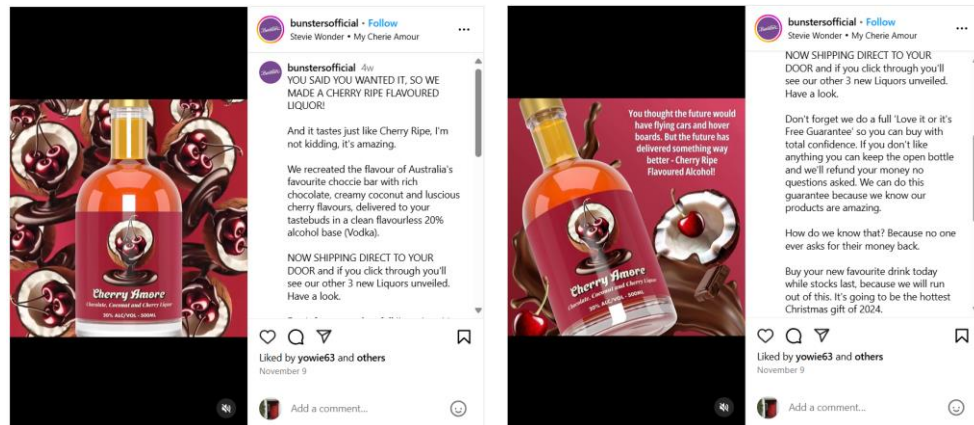
[MzRIODBiNWFIZA==](#)

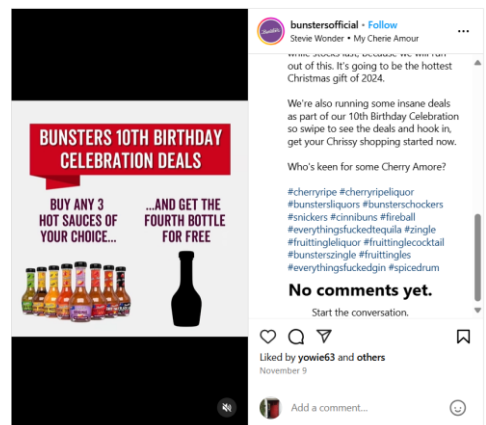
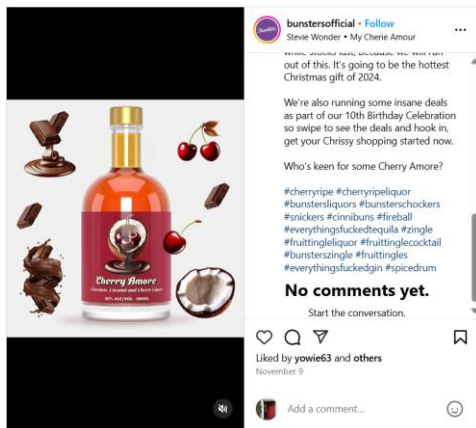
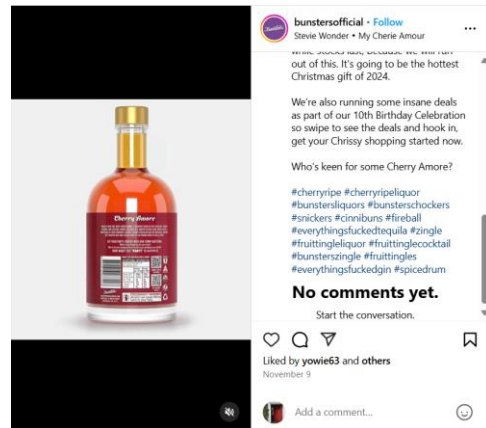
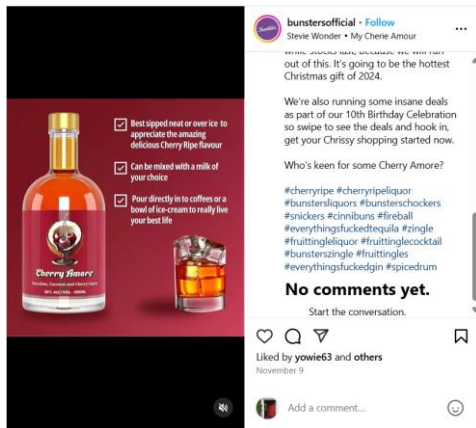


Image 3 – Cherry Amore

https://www.instagram.com/reel/DCIm8w3vsKb/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWFIZA==

This post is made up of eight different images. The first image shows coconuts containing cherries and with chocolate pouring out of them circling behind the product. All other images are static shots.





Complaint

11. The complainant objects to the marketing as follows:

- *Bunsters Official has had a similar breach through the ABAC Adjudication Panel Determination No 128/24 on the 30th September 2024.*

- *Similarly, this advertisement in image 1 shows a vodka flavoured spirit as 'Chockers' advertised as 'chockablock' with peanuts, caramel and chocolate'.*
- *The advertisement in Image 1 is associating the alcoholic beverage with chocolate which, the social media post can have a strong or evident appeal to minors.*
- *The caption in the post states "Goodbye knickers, hello chockers, just like a chocolate bar only liquid." can imply that it is replacing the product that had an upheld complaint about Determination No 128/24 that was found to be in breach of 3(b)(i) – strong evident appeal to minors.*
- *The references in the posts, caption and comments are associating a chocolate bar with an alcoholic beverage. This can have a strong or evident appeal to minors*
- *While chocolate has an appeal to all ages, it can have a particular appeal to minors.*
- *Similarly, the flavoured vodka 'Cherry Amore' as seen in Images 2 and 3, is being advertised as tasting like or being an equivalent to the popular confectionery chocolate 'Cherry Ripe'. Image 3 caption states "And it tastes just like Cherry Ripe, I'm not kidding, it's amazing. We recreated the flavour of Australia's favourite choccie bar with rich chocolate, creamy coconut and luscious cherry flavours, delivered to your taste buds in a clean flavourless 20% alcohol base (Vodka)."*
- *Cherry Ripe confectionery is a well-known and popular chocolate including to minors.*
- *While it is a popular chocolate amongst adults it is also well known and attractive to minors.*
- *The Cherry Ripe references in the posts, caption and comments throughout the posts clearly associate the alcoholic product with the popular confectionery.*

The ABAC Code

12. Part 3 (b) 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 9 December 2024. Its primary comments were:

- Thank you for inviting us to provide comments for the Panel's consideration in determining this complaint. Bunsters wishes to confirm our support and commitment to upholding the ABAC Responsible Alcohol Marketing Code (ABAC), as well as best-practice marketing standards.
- It should be noted by ABAC that Bunsters only sells products online via advertising targeted at people over the age of 35. Our core consumer is a mature adult Spirits consumer who enjoys adult treating. Our products are not sold in retail outlets. While a minor might be able to see one of our organic posts online, they would then have to undertake multiple actions, including fraud, that may prove challenging, before eventually receiving the products in the post weeks later.
- Pre-vetting advice was not requested for the marketing. ABAC pre-vetting clearance does not guarantee that product packaging (and an advertisement) still won't attract a complaint.

The Complaint

- The complainant has repeatedly suggested that the description of the taste of these products will appeal to minors. The ABAC scheme does not regulate physical beverages and is confined to the marketing of beverages. In the shared regulatory environment for alcohol products, the physical characteristics of products are directly regulated by government and not the ABAC Scheme. The complainant's repeated comments about the taste of the liquids being appealing to minors are not relevant to ABAC.

- The repeated mention of a prior upheld breach and the incorrect assumption that Bunsters has reused this advertisement should lead the Panel to assume this complaint was not properly researched and is intended to be vexatious and time wasting.

Cherry Amore

- For example, this image of a cup of Espresso coffee with a bottle of “Cherry Amore” sitting next to it:

https://www.instagram.com/p/DCIElhkJ4xb/?utm_source=ig_web_copy_link&igsh=MzRIODBiNWFIZA%3D%3D

- The notion that minors would be strongly attracted to this advertisement with images of:
 - Espresso Coffee
 - Espresso Coffee that tastes like cherry and coconut
 - A bottle that looks like a Cherry Brandy
- The assertion is both unreasonable and illogical, as it is self-evident that an image of Espresso coffee, a brown bitter pungent fluid, holds no appeal to minors whatsoever.
- This complaint is overtly vexatious.
- The Cherry Amore kaleidoscope advertisement has images of cherries sitting in a coconut with a pool of brown fluid flying around a bottle. Kaleidoscope advertisements are designed to be eye-catching so we paid particular attention not to include any elements with particular attractiveness for a minor beyond the general attractiveness they have for an adult. There is no confectionary brand identification or a picture of Cherry Ripe or a chocolate bar in the advertisement that would make the kaleidoscope confusing or strongly appealing to a minor as being related to the popular confectionery.
- Copy and hashtags that say “Cherry Ripe” and describe the flavours of the drink do not make the visual communication evidently and strongly appealing to minors. They merely explain what the drink tastes like, which is not governed by the ABAC scheme.
- It should be noted by the Panel that every alcoholic beverage has to use words (like Cherry or Chocolate either on the product or in the advertising copy) to describe the flavour of what’s inside the bottle, lest the consumer not know whether they want to purchase it or not. However, as I have

already established ABAC does not make determinations on the flavours of beverages and who that taste might appeal to.

Chockers

- The advertisement has images of peanuts in the shell flying around a bottle on a poo brown background with some orange swirls and lumps.
- No confectionary brand identification has been shown in our Chockers kaleidoscope advertisement which is what would create confusion and be strongly appealing to a minor over an adult. No confectionary names have been mentioned or used either.
- ABAC should note considerable care has been taken to remove confusion with confectionery and its associated branding in line with the complaint made about a previous advertisement that was assessed. We took on feedback, did the online ABAC course and carefully considered Part 3 (b)(i)(D) of the ABAC code and adjusted kaleidoscope advertisements accordingly.
- We now understand kaleidoscope style ads can catch the attention of minors (as they are designed to be eye catching for everyone) and therefore removed any elements that could be confused with confectionary branding from the eye-catching kaleidoscopes. Particular care was taken not to include anything evidently or strongly appealing to minors over adults, in these eye-catching ads.
- There is nothing about this visual advertisement that has particular attractiveness for a minor beyond the general attractiveness it has for an adult, nor is there any confectionary brand identification that would make it confusing and strongly appealing to a minor.
- We again note that even though the flavours of these products might 'read' as being appealing to a minor, this is not what the ABAC scheme covers. Notwithstanding this we have taken great care in the visual advertisements to make sure they don't have any visual link to confectionery that the products taste like, that would entice or confuse minors as you will see we went through the list in the next section.
- All other parts of the code not breached:
 - There has been no use of bright or contrasting colours.
 - No aspirational themes about "fitting into an older group" are included.
 - There is not a smooth transition from non-alc to alcoholic beverage as there is no Non-Alcoholic Beverage that tastes like a Cherry Ripe

on the market, nor have we made the product look like a Cherry Ripe so as to make a transition from one to the other. The transition from a non-alc chocolate beverage to an alcoholic chocolate beverage cannot be argued as chocolate beverages do not come in clear glass Spirit bottles with transparent liquids. Non-alcoholic chocolate beverages usually come in choc milk cartons, are refrigerated and are opaque milk drinks. This cannot be argued as a smooth transition.

- The communication does not create a relatable environment by use of images and surroundings commonly frequented by minors.
- There is no depiction of activities or products typically undertaken or used by minors.
- No language and methods of expression used more by minors than adults.
- No inclusion of popular personalities of evident appeal to minors.
- There is no style of humour relating to the stage of life of a minor and
- No music genre and artists featuring in youth culture have been used. In fact, the songs featured were originally released in 1969 and 1991, deliberately chosen to resonate with our core demographic of individuals over the age of 35. The assertion that a song released 33 years ago—written as a satirical commentary on American consumerism—could be representative of "youth culture" or appealing to minors solely because it contains the lyrics "chocolate cake" is both tenuous and absurd.
- These advertisements do not have elements that would strongly appeal to or confuse minors as the code outlines, with the inclusion of imagery of:
 - confectionary and soft drink brand identification
 - motifs
 - childish language
 - childish activities
 - interactive games
 - cartoon characters
 - bright colours and

- animations that are primarily used by minors.
- No other part of the code has been breached in these advertisements.

In conclusion

- This complaint primarily pertains to matters beyond the scope of the Alcohol Beverages Advertising Code, specifically subjective opinions regarding the taste of the beverages.
- Additionally, the assertion that an image of an Espresso coffee served in a clear glass would appeal to minors is both baseless and without merit, failing to meet the minimal threshold to be taken seriously by the Panel.
- Finally the assertion that an advertisement previously found to breach ABAC has been reused by Bunsters is factually incorrect. It outs this complainant as having no compunction wasting the ABAC Panel's time with vexatious complaints they have not researched.
- We believe we have shown the panel that Bunsters understands the ABAC code and how it applies to visual advertisements. Through your prior help we have ascertained that advertisements that are eye catching and appealing to minors, such as kaleidoscopes should have great care taken not to be visually appealing to minors through the use of confectionery and its associated branding, which we have not used.
- Bunsters advertisements are made to catch the attention of adults in our core demographic, the mature adult who enjoys making cocktails at home using inventive and delicious liqueurs that can only be purchased by adults, via a credit card from an age protected website.

The Panel's View

14. This determination arises from a complaint about the social media marketing (3 Instagram posts) of two liqueurs in the Bunsters alcohol product range namely 'Chockers' and 'Cherry Amore'. The complainant contends the marketing has strong or evident appeal to minors in breach of the standard in Part 3 (b)(i) of the Code.
15. The 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.
16. The Panel has considered the Part 3 (b) standard on many past occasions. While each marketing communication must always be assessed individually, some characteristics within marketing material which may make it strongly appealing to minors include:
- the use of bright, playful, and contrasting colours;
 - aspirational themes that appeal to minors wishing to feel older or fit into an older group;
 - the illusion of a smooth transition from non-alcoholic to alcoholic beverages;
 - creation of a relatable environment by use of images and surroundings commonly frequented by minors;
 - depiction of activities or products typically undertaken or used by minors;
 - language and methods of expression used more by minors than adults;
 - inclusion of popular personalities of evident appeal to minors at the time of the marketing (personalities popular to the youth of previous generations will generally not have strong current appeal to minors);
 - style of humour relating to the stage of life of a minor (as opposed to humour more probably appealing to adults); and
 - use of a music genre and artists featuring in youth culture.
17. 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.
18. The first post for Chockers shows an image of the product bottle against a kaleidoscope effect of swirling chocolate, caramel and peanuts. The accompanying text provides a product description and is headed 'GOODBYE KNICKERS, HELLO CHOCKERS. JUST LIKE A CHOCOLATE BAR ONLY LIQUIDY!'

19. The reference to 'Knickers' relates to the former name of the product that was changed to Chockers after the Panel's Determination 128/24. In that decision the Panel found a social media post for Knickers in breach of the Part 3 (b) standard in part because imagery of the well-known confectionery Snickers was used to directly associate the product with the confectionery brand. While the Panel made no finding on the branding and packaging of the product as such, the Company elected to alter the product's branding.
20. The second post shows an image of a bottle of Cherry Amore next to an espresso coffee. The accompanying text explains the product can be used with coffee to make a Cherry Ripe-sspresso and it tastes like a Cherry Ripe chocolate.
21. The third post is also for the Cherry Amore product and is a clip of various images of the product including two with depictions of chocolate, cherries and coconut. Other images are of the product bottle and other products from the Company including its sauce range. The accompanying text describes the taste of the product as being like a Cherry Ripe.
22. The Company argued that the posts are consistent with ABAC standard, with its key points including:
 - as the ABAC scheme does not regulate physical beverages, the complainant's comments about the taste of the products' appealing to minors are not relevant;
 - the posts don't show confectionary brand identification or a picture of a Cherry Ripe;
 - the Company is entitled to explain what its products' taste like; and
 - there is nothing in the posts that has particular attractiveness for a minor beyond the general attractiveness it has for an adult, nor is there any confectionary brand identification that would make it confusing and strongly appealing to a minor.
23. Assessment of the consistency of a marketing communication with a Code standard is from the probable understanding of the marketing item by a reasonable person. This means the life experiences, values and attitudes found commonly in the community is the benchmark.
24. When viewing a marketing communication such an Instagram post, the most influential element will generally be the images/pictures/video as opposed to the accompanying text. The text will help frame the visual dimension of the post, but often a post will be viewed for a few seconds rather than studied in fine detail. Hence imagery and larger font headings will be more impactful than more detailed written commentary about a product.

25. The Company is correct to note that the ABAC Scheme does not purport to regulate physical beverages and that the taste, colour, viscosity and other physical properties of product is not within remit of the Panel as such. This means a product with a taste contended to be appealing to minors will not be in breach of the Part 3 (b) standard if the marketing communication promoting the product does not have strong appeal to minors. Equally, marketing material with strong appeal to minors will not be saved by an argument that the product's taste will not appeal to minors.
26. The Panel does not believe the posts breach the Part 3 (b) standard. In reaching this conclusion the Panel noted:
- Post 1 shows a picture of the bottle of the product with its favour ingredients but the imagery does not display any branded confectionery items;
 - Post 2 shows a picture of the product and a glass of espresso coffee, and this imagery is not likely to have a strong appeal to minors;
 - Post 3 shows a range of images and while a couple of images would have some appeal to minors, others would not likely have any particular appeal to minors;
 - the text references to 'Cherry Ripe' absent any image of the well-known confectionery is not likely to evaluate the appeal of the Posts 2 and 3 to minors to a great extent;
 - at its highest the appeal of the Posts to minors would be incidental rather than strong and evident; and
 - taken as a whole, a reasonable person would probably understand that the Posts have no greater appeal to minors than they would to adults.
27. The complaint is dismissed.