

Jayne Taylor
Chief Executive Officer
The ABAC Scheme Limited

By email: jtaylor@abac.org.au

Consideration of regulatory action under section 100 of the Liquor Act 2007 – Undesirable liquor products – soft drink branding

Dear Ms Taylor,

I refer to my letter dated 19 January 2024 that detailed recent Liquor & Gaming NSW (L&GNSW) considerations of undesirable liquor products and our recent further communications. As discussed, following the determination that Hard Solo was undesirable due to its appeal to minors, L&GNSW is considering further formal regulatory action under the *Liquor Act 2007* (NSW) (the Act) to prohibit a class of liquor products in NSW that leverages well-known soft drink branding.

NSW legislation

Under section 100 of the Act, action can be taken to either declare a specified liquor product or class of liquor products to be undesirable in the Liquor Regulation 2018 (NSW). In either circumstance, the decision maker must be satisfied that:

- (a) the name of the liquor product, or its design or packaging, is indecent or offensive, or
- (b) the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product, or
- (c) the name of the liquor product, or its design or packaging, is likely to be attractive to minors, or**
- (d) the liquor product is likely, for any reason, to be confused with soft drinks or confectionery, or**
- (e) the liquor product is, for any other reason, likely to have a special appeal to minors, or**
- (f) it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.

(relevant sub-sections highlighted)

Any liquor product or class of liquor products determined to be an undesirable liquor product must not be sold or supplied by a licensee in NSW.

Reasons for possible regulatory action

During the course of L&GNSW's consideration of the Hard Solo liquor product, submissions were sought from several drug and alcohol research bodies. A common thread among them was the high popularity of soft drinks among young people and the particular vulnerability of minors to alcohol-related injuries and diseases.

L&GNSW has formed the view that liquor products which leverage established or iconic soft drink brands inherently hold appeal to minors and believes this risk warrants consideration of regulatory action under section 100 of the Act. The speed with which Hard Solo gained popularity within the market and among young people highlights the risks associated with dealing with this type of product in a reactive manner and the need for more definitive guidance to industry around what is or is not acceptable.

In light of the above, and noting the existence of further soft drink brand extension alcoholic products in other markets, L&GNSW is minded to recommend to its Minister that a regulation be made declaring a class of products as undesirable, along the following or similar lines:

Any liquor product the lead branding elements of which are that of an established or iconic soft drink brand (or words to this effect).

It is acknowledged that a spectrum of risk exists in relation to liquor products that may be captured by the above wording. For example, a 'hard' version of an iconic soft drink that tastes similar to its 'soft' counterpart may have a higher risk profile to a liquor product that leverages soft drink branding but leads with alcohol branding and does not have a similar taste profile to the leveraged soft drink. As such, L&GNSW is open to exploring alternative wording options.

Invitation to provide information or comment

Prior to a liquor product or class of liquor products being declared as undesirable, it is a requirement that relevant liquor industry representatives are consulted. L&GNSW is seeking submissions in relation to the above proposed regulatory action, including how the class of products should be defined.

As discussed at our recent meeting on 23 January 2024, we would be grateful if the Alcohol Beverage Advertising Code scheme (ABAC) was able to share this invitation for submissions/comment with its relevant members, or alternatively provide a list of suggested contacts to which we can write directly.

Noting ABAC's expertise in this space and its own recent consideration of the Hard Solo product, I also invite it to provide any guidance, information or comment in relation to the above proposed regulatory action.

It would be appreciated if any information ABAC and/or its members wish to provide can be sent to the Regulatory Interventions Team via: safe.premises@liquorandgaming.nsw.gov.au by **6 March 2024**. If more time is required to provide a submission, please let us know.

Further information

Should you wish to discuss the information in this letter do not hesitate to contact Ryan Williams, A/Manager Regulatory Interventions on ryan.williams@liquorandgaming.nsw.gov.au or (02) 9995 0414.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Lin', written in a cursive style.

Jane Lin

Executive Director, Regulatory Operations & Enforcement
Department of Enterprise, Investment & Trade