



## **ABAC Adjudication Panel Determination No. 129/17 & 1/18**

**Product:** Kiss The Girls Wines  
**Company:** Cantina Wines/ALDI Stores  
**Media:** Packaging/Catalogue  
**Complainant:** Ms Lloyd & Ms Thompson  
**Date of decision:** 5 February 2018  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Debra Richards  
Professor Richard Mattick

### **Introduction**

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an ALDI Liquor catalogue promoting Kiss The Girls wines by ALDI Stores (“ALDI”) and product packaging by Cantina Wines (“Cantina”) and arises from two complaints received 22 December 2017 and 2 January 2018.
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 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”) – 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 – 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, 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 the other codes as well as meeting the standards contained in the ABAC..
4. For ease of public access, the Advertising Standards Bureau (ASB) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the ASB, 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 the ASB 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 ASB under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
6. The complaints raise concerns under the ABAC Code and accordingly are within the Panel’s jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 22 December 2017 and 2 January 2018.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint has been determined within this timeframe.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the marketing communications.

## The Marketing Communication

10. The packaging is a clear wine bottle with the name of the product in black around the white cap. The labels all feature a retro image of a woman in 1940s/50s era clothing and in mildly provocative poses. The labels include the product name and the woman's name, which is in the style of a signature accompanied with three 'kisses'. The complainants both refer to images of these labels being seen in an ALDI Liquor best buys catalogue current at 20-26 December 2017.



## The Complaint

11. The first complainant is concerned that the women being shown in compromising positions each with either breasts, bottom or legs to the fore with the invitation in the headline to "Kiss The Girls" is inappropriate in a climate where women are being objectified and molested.

12. The second complainant is concerned that the labels promote stereotypes such as 'women are sluts' and 'ask for it' and the labels are inviting males to 'Kiss the Girls' and the poses of the girls are provocative and virtually 'asking for sex' or 'sexual assault'.

### **The ABAC Code**

13. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of an Alcohol Beverage;
  - (c)(ii) show (visibly, audibly or by direct implication) the consumption or presence of an Alcohol Beverage as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;

### **The Company's Response**

14. ALDI responded to the first complaint by letter dated 4 January 2018. The principal points made by the Company were:
- ALDI takes responsible advertising of alcohol seriously. While we are not a signatory to the ABAC Responsible Alcohol Marketing Code (the Code), we consider that our advertising fully meets the standards set out in the Code.
  - The complaint concerns the publication by ALDI of advertising which displays the labels shown on three bottles of "Kiss the Girls". The manufacturer Cantina Wines is well placed to comment on label features and respond to the complaint. We are providing a copy of our response to Cantina Wines.
  - For the reasons below we consider that the ad does not raise any issue that falls within the jurisdiction of the ABAC and in any event does not breach s3(c)(ii) of the Code:
    - The ad features Kiss the Girls wines Prosecco and Moscato. The complaint is directed to the wine labels, which feature 1950's style "pin up girl" artwork, on pastel backgrounds, together with the brand name. The labels each feature a woman, quite covered up, in circa 1950s beach attire. The complainant asserts that the advertisement is "inappropriate". It appears that the nub of the complaint is that it objectifies women, and that it "invites men to kiss" girls.



- The complainant does not suggest the labels imply that consumption of “Kiss the Girls” will contribute to social or sexual success. Nor could such an implication be drawn. There is nothing in the advertisement that implies – directly or otherwise – that the consumption of Kiss the Girls wines may have this result. The advertisement appears to be an attempt to associate the advertised wine with retro past advertising images in a light hearted way. The complaint does not raise any issue of contribution of the wine to success by consumption, and therefore does not fall within the Code or attract ABAC’s jurisdiction. Nor does the advertisement invite men to ‘kiss the girls’ as the complainant suggests. Indeed the complainant acknowledged that the wine is marketed primarily to women.
- We respectfully request that the complaint is dismissed.

15. ALDI responded to the second complaint by email dated 11 January 2018. The principal points made by the Company were:

- These comments are intended to supplement our response dated 4 January 2018 to the complaint received in relation to the publication by ALDI of advertising which displays the labels shown on 3 bottles of “Kiss the Girls”. In our response, we addressed s 3(c)(ii) of the ABAC Responsible Alcohol Marketing Code (the Code). On 2 January 2017 we were asked to respond to a further complaint received by the ABAC, and to comment on whether we consider that the advertisement is in breach of s 3(a)(ii) of the Code. We repeat the comments provided on 4 January 2018 and add the following:
- The complaint to which we are responding asserts that the advertisement “promotes stereotypes” that “women are sluts” and “ask for it”. The complainant also asserts that the advertisement contains images which portray “girls” as “virtually asking for sex or sexual assault”.
- Section 3(a)(ii) of the Code prohibits advertising which “show[s] (visibly, or audibly or by direct implication) or encourage[s] irresponsible or offensive behaviour that is related to the consumption of an alcoholic beverage.”
- There is nothing in the advertisement that shows, or implies, irresponsible or offensive behaviour that is related to the consumption of an alcoholic beverage, nor is there anything in the advertisement that encourages such behaviour. As we have previously submitted, the wine labels that are shown in the advertisement appear to be intended to associate the advertised wines with retro past advertising images in a light hearted way. The images themselves - which are of women in 1950’s style attire - could not reasonably be described as “offensive”, and the words “kiss the girls” could not reasonably be understood as encouraging irresponsible or offensive

behaviour towards women. It would make little sense for a wine manufacturer to label a product that is primarily directed to women in a way that encouraged offensive behaviour towards their female customers, or suggested that their female customers were “sluts” who were “virtually asking for sexual assault”. Nor would an advertising message directed to a female target audience have any foreseeable impact of the type suggested on male consumers.

- We respectfully request that this complaint be dismissed

16. Cantina Wines initially advised it would respond to the complaints but despite being given more than the usual 10 business days, the Company has not provided any comments.

## **The Panel’s View**

### **Introduction**

17. Cantina Wines are the producers of the ‘Kiss the Girls’ range of wines. The branding of the range features depictions of women dressed in 1940s/50s style clothing and hairstyles. Each wine/label is named after a different woman and these women are posed on the label in a mildly provocative fashion.
18. The wines are stocked by the retailer ALDI. In December 2017, ALDI distributed a catalogue which in part featured pictures and price information about the Kiss the Girls wines. It was this catalogue which came to the attention of both complainants and triggered the concerns expressed.
19. The complaints raise concerns about the branding of the product (its name and labelling) and the advertising of the product in the catalogue. The concerns are that the product branding:
  - Objectifies women;
  - Promotes sexual stereotypes; and
  - Invites men to engage in sexual activity and encourages sexual assault.
20. In part, these concerns raise issues which fall within the domain of the AANA Code of Ethics and not the ABAC. The concerns falling under the Code of Ethics are those which go to the branding objectifying women and promoting damaging sexual stereotypes. Such concerns are not confined to the marketing of alcohol as a product but are more generic in nature. For instance, both complainants would probably be concerned if the same imagery was being placed on a carton of milk as they are with the labelling on the bottles of wine.

21. This means that the Advertising Standards Board will deal with the broader issues concerning the objectifying and stereotyping of women, whereas this determination will deal with the specific issues related to alcohol as a product. These issues relate to two ABAC standards, namely:
- Does the branding/advertising encourage irresponsible or offensive behaviour relating to alcohol consumption or the presence of alcohol; and
  - Does the branding/advertising show alcohol as a cause of or contributing to the achievement of social or sexual success.

### **Product name and packaging**

22. Kiss the Girls wines are produced by the company Cantina Wines. The Company was given the opportunity to respond to the complaints and initially indicated that they would do so. Ultimately however, the Company failed to provide any substantive response to the complaints despite being contacted on several occasions. The failure of Cantina to respond to the complaint is very disappointing and means that the Company is operating outside the norms of the alcohol industry which is willing to be subjected to a public complaints process concerning its marketing practices.
23. In contrast ALDI is also not a signatory to the ABAC scheme but it has fully cooperated with the Panel processes. Due to this cooperation by ALDI the Panel has been able to make its determination.
24. The essential argument advanced by the complainants is that the product name, combined with the way in which the women are depicted on the labels, legitimises anti-social if not a criminal behaviour towards women, such as unwanted sexual advances or sexual assault.
25. ALDI argues that the imagery on the labels associate the product with 'retro past advertising images in a light-hearted way'. ALDI refutes that the name Kiss the Girls would be taken as promoting irresponsible or offensive behaviour. In short, it is argued that the product branding is consistent with the ABAC standards.
26. In assessing if an ABAC standard has been breached, the Panel is to have regard to the probable understanding of the marketing item by a reasonable person taking the content of the item as a whole. The reference to a reasonable person is drawn from the Australian Common Law system and means that the opinions, attitudes and life experiences common in a majority of the community is to be the benchmark. A person who has a different interpretation is not 'unreasonable' but possibly their interpretation may not be shared by a majority of the community.

27. The Panel does not believe that the product name and labelling can fairly be said to be in breach of the ABAC standards. In reaching this conclusion, the Panel has noted:
- That the depictions of the women on the label are reminiscent of 1940 style pin up girls, in terms of clothing and general appearance;
  - While the poses adopted by the women are mildly provocative, by contemporary standards, the poses are not shocking nor particularly risqué;
  - Animations rather than actual pictures of women are used and this would lend to the interpretation that the women are caricatures, and do not represent actual behaviours;
  - The name 'Kiss the Girls' would not be reasonably taken as suggesting that it is appropriate to make unwanted sexual advances to a woman; and
  - Taken as a whole, the labels could not be taken to be promoting irresponsible or antisocial behaviour or be taken as implying that the use of the product will lead to the achievement of social or sexual success.
28. The catalogue shows pictures of the bottles of the product. It follows that the finding about the product name and label not being in breach of the Code applies to the advertising in the catalogue. There is no further context in which the pictures are used in the catalogue which suggest that the relevant Code provisions are breached.
29. In dismissing the complaint, the Panel urges Cantina Wines to reconsider its reluctance to engage in the ABAC scheme. The public rightly expect that alcohol companies will meet good practices of marketing. The failure of Cantina to cooperate in the public complaints process reflects poorly on the Company.