



ABAC Adjudication Panel Determination No. 81/20

Product: Wine
Company: BWS
Media: Digital (Facebook and Website)
Date of decision: 2 July 2020
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns the content of a Facebook and website advertisement by BWS (“the Company”) and arises from a complaint received on 12 June 2020.
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 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 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 complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 12 June 2020.
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 was determined within this timeframe.

Pre-vetting

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of proposed alcohol beverage marketing

communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the advertisement.

The Marketing Communication

10. The complaint relates to two marketing communications:
 - Facebook post of 9 June 2020 – Caption “BWS is with Celeste Barber – Good Wine Chat - Episode 5 – When ‘It’s only Tuesday’ means choose-day for Celeste. She’s picked the perfect pairing, wine and couch. Full Episode link Here https://bit.ly/BWS_GoodWineChatEp5” with a 15 second video described following:
 - The video opens with Ms Barber wearing orange pyjamas and walking through a door and smiling as she picks up a BWS bag;
 - We then see Ms Barber sitting on a couch as she says to the camera “Sometimes, you just need to steal the cheese from your kid’s lunchbox and pair it back with a bloody good drop from BWS. (as text “Full Episode Link In Our Bio” appears on the screen).
 - We then see Ms Barber groaning with her head in her hands and then in the next scene she is holding a glass of white wine as she says “Sometimes just a few little .. chew of the cheese.. Boom Si Booms” then thumbs up, heart and love heart eyes emojis appear on the screen.
 - The final screen is a page that states “BWS presents Good Wine Chat with Celeste Barber How convenient”.
 - Full episode of the video included in the Facebook post described following. Next to the video is a picture of a bottle of the Noble Fellows Pinot Gris with the caption “Because Tuesday. It’s choose-day and Celeste is going to choose something that will pair perfectly with a bit of cheese and a whole lot of couch time. This week’s featured drink is Noble Fellows Pinot Gris.”
 - The video opens with Ms Barber wearing orange pyjamas and walking through a door and smiling as she picks up a BWS bag holds it up and clutches it to her chest as she takes it inside;
 - The text “BWS presents Good Wine Chat with Celeste Barber How convenient” on the door as Ms Barber closes it.
 - We then see Ms Barber sitting on a couch with the BWS bag next to her. She is smiling as she says “Hello and welcome to another episode of Good Wine Chat with me! I’m sorry I haven’t got more dressed up for you guys but to be completely honest with you I’m absolutely bugged...and it’s only Tuesday.”
 - We then see Ms Barber groaning with her head in her hands and then she says “If your as busy AF like I am, which I’m sure you are trying to balance your life with your kids’ life and wrap your

head around very tricky year 3 homework sometimes, you just need to steal the cheese from your kid's lunchbox and pair it back with a bloody good drop from BWS. Luckily, I am very good at choosing wine and I am here to help you. If you're stinging for a glass of wine to go with your stolen cheese, I highly recommend, this guy, Noble Fellows Pinot Gris."

- Ms Barber removes the wine from her bag opens it and pours herself a glass as she continues "This stuff is yummy. Yum. Cheese and Pinot Gris. Ha it rhymes as well as it pairs. Who would have think it Mrs Trunkett and the wunketts, to falunk it. I'm sorry, I'm really tired. Sometimes just a few little .. chew of the cheese.. Boom Si Booms" then thumbs up, heart and love heart eyes emojis appear on the screen as she sips from her wine.
- Ms Barber continues "Its really good. Now you guys know me, probably don't, probably think is that Beyonce sitting there in an orange jumper, its not its me. But those of you who do know me, know I'm no wineka, I am a wine lover though and a massive wanker, and I'll tell you what, this Pinot Gris is top notch, it's a little bit zesty, a little bit rich and a whole lot of yum, which is just how I like my husbands, not plural just one husband, always and forever, whatever. This guy is a wine for anytime, day time, night time, wine time, dinner time, my time [the caption 'all day every day' flashes briefly on the screen]. If you like a crisp white wine, and your over the good old Savvy Bs I highly recommend you go and grab yourself one of these. They're great, but you can't have mine, 'cos its mine, do not touch my wine. OK, on a serious note, I would like to propose a toast, because this is the series finale, of me and my good wine chat, so please enjoy, and thank you very much for taking part in watching me talk nonsense and drink wine, Cheers. Don't touch my wine.
- The final screen is a page that states "Noble Fellows" followed by a second page that states "BWS presents Good Wine Chat with Celeste Barber How convenient".

The Complaint

11. The complainant argues that the Company is using Celeste Barber, a public figure who has a very large number of followers on social media, to market alcohol during the COVID-19 pandemic. Specifically, it is contended that the advertisement:
 - suggests wine will help you relax and deal with the stress of the COVID-19 pandemic; and
 - encourages excessive consumption of alcohol by the caption 'all day every day' and Ms Barber's statement 'This guy is a wine for any time'.

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation

The Company's Response

13. The Company responded to the complaint by letter dated 26 June 2020. The principal points made were:
- a) This response addresses advertising, marketing and retail activities under the control of Endeavour Drinks, which includes BWS. 'Endeavour Drinks' aim is to be Australia's most responsible retailer of alcoholic beverages. In 2013, we formalised our status as a signatory to the Alcohol Beverages Advertising Code (ABAC) Scheme. Prior to becoming a signatory, Endeavour Drinks demonstrated a long-standing commitment to supporting and adhering to ABAC and Advertising Standards Bureau principles. Endeavour Drinks maintains strict internal and external processes in addition to those required by the ABAC Scheme, which are relevant in this context. As part of our community charter, 'Our Community, Our Commitment', Endeavour Drinks has in place a range of industry-leading initiatives to ensure that minors are not served alcohol and to encourage responsible drinking practices. These include:
 - ID25 (ask for ID from anyone who looks under 25);
 - Don't Buy It For Them (stopping secondary supply to minors);
 - our Intoxication Policy (refusal of service to anyone who may be intoxicated); and
 - Staff training that exceeds legal requirements, including "Don't Guess, Just Ask", team talkers, regular refresher and reminder courses.
 - b) In marketing alcoholic products, Endeavour Drinks is fully aware of the Code's requirement not to show, directly imply or encourage excessive consumption of alcohol or suggest that the consumption of alcohol is a necessary aid to relaxation. It is our view that the Ad breaches neither Part 3(a)(i) nor Part 3(c)(iv) of the Code.
 - c) Ms Barber is a well-known Australian comedian and her personality is well known to be cheeky, sarcastic, self-deprecating and larrikin, usually in jest and with obvious hyperbole and humour. Whilst the Ad does deliver certain messages about the featured wine, Ms Barber delivers

those messages with a lot of hyperbole and humour which is what she is known for, and generally expected of her, by the Australian public - we think the reasonable person, viewing the Ad as a whole, would also see this as such and would not understand the Ad as promoting or encouraging the excessive consumption of alcohol.

- d) The Ad features a particular white wine, Nobel Fellows Pinot Gris, which Ms Barber clearly indicates as being a personal choice of hers. Ms Barber also discusses other descriptors of the featured wine, such as its taste and sensory characteristics, how that taste and those sensory characteristics pair with food and also, based on its taste/sensory characteristics, the adaptable nature of the wine in terms of the occasions or times of day that it is suited for. It is the last of these descriptors that the complainant has raised concern with. Suitability by occasion, which extends beyond food pairing to factors such as time of day and weather, is a well-known descriptor or characteristic of wine, and is commonly used by consumers when deciding which wine to purchase. Some wines are more suited to warm weather, some to cooler weather, some to daytime, some to later in the day, and importantly, some wines are more adaptable such that they are suitable for more than one particular occasion.
- e) Ms Barber's statement "This guy is a wine for anytime, day time, night time, wine time, dinner time, my time" is a statement about the adaptable characteristics of the featured wine that, in Ms Barber's opinion, make it suitable for more than one particular occasion. Ms Barber also makes the point that the wine is a good choice. Ms Barber clearly adds her humour and hyperbole to the statement but we believe the reasonable person, viewing the Ad as a whole, would understand the statement to be a statement about the adaptability of the wine - not about drinking at all hours of the day. The caption 'all day every day' - which is on the video for about a second - is on at the same time Ms Barber is explaining the adaptability of the wine and it only supports the same point. The caption is not about drinking all day or drinking everyday, and given the very limited prominence and visibility of the caption, in the context of the Ad as a whole, we do not believe it would encourage excessive alcohol consumption.
- f) It is important to note that Ms Barber pours only one glass of wine throughout the Ad, the pour is not excessive (1 standard drink, maybe 1.5 at most) and the wine is consumed responsibly (only 2 small sips are seen to be taken throughout the Ad). This, together with the fact that the majority of the Ad is focussed on the characteristics of the wine (as described above), as a whole, would be viewed by the reasonable person as not showing or encouraging excessive alcohol consumption. Ms Barber does appear to be drinking alcohol on her own and during the daytime but we do not believe this, in itself, is a breach of the Code, and is certainly not when viewed with other elements of the Ad, as a whole.
- g) Finally, we acknowledge, as the Panel has in the past, that use of humour is not an antidote if the ad, fairly considered as a whole, is inconsistent with the ABAC standards but we also believe it is appropriate to consider

how a reasonable person would interpret the marketing communication and that assessment must be based upon the “values, opinions and life experiences found commonly in a majority of the community”.¹ On this basis, we believe that, taken as a whole, from the perspective of a reasonable person (the majority of the community), the Ad would not be interpreted as showing, implying or encouraging excessive alcohol consumption.

- h) Ms Barber does reference being “buggered” and “busy” but not stressed and in any case, we believe this is done in jest and exaggeration, for comedic effect only (consistent with the opening section of the video), which is reflected in the fact that Ms Barber, quite contrastingly, becomes more serious when she actually starts to talk about wine. Viewing the Ad as a whole, we do not believe the reasonable person would interpret the Ad as suggesting that alcohol is a necessary aid for relaxation.
- i) For the reasons outlined above, we believe that the complaint should be dismissed on the basis that the Ad is not in breach of the Code.

The Panel’s View

- 14. Celeste Barber is a trained actor who has gained a major following since 2015 as a comedian. Her parodies of celebrities and social influencers and particularly the media's portrayal of women, have built Ms Barber a large following on social media platforms such as Instagram where she has 7.2 million followers. This popularity and public regard was put to good effect when a social media based fundraising campaign by Ms Barber in the wake of the 2019/20 Australian bushfires raised in excess of 50 million dollars.
- 15. In May 2020 the Company launched a series of five videos featuring Ms Barber entitled 'Good Wine Chats' which have been placed on the Company Website and Facebook Page. Each video depicts Ms Barber in a household setting talking about a different wine available from the Company being suitable for various occasions. The videos are named respectively Bubbles, Date Night, Call me Celeste Barbie, Roast with the Most and Because Tuesday. The complaint concerns the content of the final video in the series, 'Because Tuesday' which was released on 2 June 2020.
- 16. The complainant has viewed the video through the lens of the COVID-19 pandemic and associated government restrictions and believes that messages in the marketing offend two ABAC standards, namely the encouragement of excessive alcohol consumption and that alcohol is an aid to relaxation and dealing with life's stresses. According to the complainant particular weight should be given to the caption 'All day every day' superimposed on the screen at one point in the video and Ms Barber saying, 'This guy is a wine for any time'.
- 17. The Company contends the video is consistent with ABAC standards. It is argued that the video is light-hearted and comedic as is Ms Barber's style, but excessive consumption is neither shown or encouraged and a fair interpretation of the ad does not suggest alcohol is being offered as a coping mechanism for stress or as an aid to relaxation.

18. Consistency with an ABAC standard is to be assessed from the probable understanding of the marketing communication by a reasonable person taking the content of the marketing item as a whole. This means that, if the marketing could be interpreted in several ways, it is the most probable interpretation which is to be preferred over a possible but less likely understanding of the marketing message.
19. The Panel does not believe the marketing is in breach of the ABAC standards. In reaching this conclusion the Panel noted:
 - there is no ABAC restriction on alcohol marketing featuring well known or popular individuals such as Ms Barber;
 - the theme of the video is about pairing the promoted product (Noble Fellows Pinot Gris) with cheese;
 - the video creates a scenario of a weary Ms Barber dealing with children and homework as the backdrop to 'steal the cheese from your kids lunchbox' to pair the wine with the cheese;
 - taken in context the message is about the suitability of the character of the wine to be consumed with cheese and would not be most likely understood as suggesting alcohol is a necessary aid to relaxation or is a coping mechanism for stress;
 - alcohol consumption depicted is moderate and Ms Barber does not appear to be affected by alcohol; and
 - the visual and verbal references to the wine being suitable for use 'all day every day' within the context of the video as a whole would be understood as referring to the character of the wine and not as an encouragement to excessive consumption.
20. The complaint is dismissed.