



ABAC Adjudication Panel Determination No 78/22

Product: Kim Crawford Sauvignon Blanc
Company: Constellation Brands New Zealand Limited
Media: Print Media (Sydney Morning Herald)
Date of decision: 28 October 2022
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 26 September 2022 and concerns print marketing for Kim Crawford Sauvignon Blanc (“the Product”) by Constellation Brands New Zealand Limited (“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 26 September 2022.
8. The Panel endeavours 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 completed in this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features an independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for the marketing communication (Approval Number 3176).

The Marketing Communication

10. The complaint relates to the following advertisement:



The Complaint

11. The complainant objects to the marketing as follows:
- *The techniques used in the advertisement are redolent of those often used in tobacco advertising because they show 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 in breach of subparagraph 3(c)(ii) of the Code.*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (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

13. The Company responded to the complaint by email on 19 October 2022. The principal comments made by the Company were:
- Alcohol is not present in the copy or image of this marketing material. Alcohol is not being consumed.
 - The image is of a woman, a woman within our target audience (+44 yo). The marketing material via its text, articulates activities in their career or personal life that some women undertake. The image and text does not imply that the woman has achieved personal, business, social, sporting or other success after consuming alcohol, or encourage the woman to consume alcohol in any way.
 - The marketing material does not encourage or show that alcohol can assist a consumer to successfully balance or juggle different tasks related to their personal life or career.
 - Kim Crawford is celebrating women of 44+ and what they may have achieved in life.
 - This marketing material does not show that alcohol has caused or assisted with the achievements or success of a woman. "To the Unstoppable" is supporting and celebrating women in their

achievements in life. The creative is devised to celebrate our target audience, who are women aged 44+.

- The creative is subjective, it was created with women 44+ in mind and has received positive feedback accordingly.
- Pre vetting approval was given – approval number 3176.

The Panel's View

14. This determination relates to an ad seen in the Sydney Morning Herald's Good Weekend supplement. The ad shows a picture of a smiling woman, with the Kim Crawford logo shown in the upper left corner of the image. Beneath the picture are the words 'Boardroom to ballet studio, client presentation to classroom PTA. If there was a degree in multitasking, she'd have the PHD'. Following, in different cursive style font, are the words 'To the Unstoppable', as well as the brand name 'KIM CRAWFORD', which is in block letters. A picture of a full, unopened bottle of the product is positioned alongside the text.
15. The complainant contends that the ad adopts a technique used in tobacco advertising by positioning alcohol as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success. The Company argues the ad is consistent with the Code and does not suggest alcohol is a cause of success or is needed to balance different tasks in life.
16. The ABAC standard in Part 3 (c)(ii) provides that an alcohol beverage marketing communication (which includes print advertising) must not show alcohol as a cause of or contributing to the achievement of personal, business or other success.
17. The key concept in the standard is causation. Alcohol cannot be shown as causing success. It is not improper to place alcohol with an attractive or ostensibly successful person, provided it is not suggested that alcohol played a role in the person gaining success.
18. The assessment of the consistency of a marketing communication with an ABAC standard is from the probable understanding of the marketing item by a reasonable person taking its content as a whole. This means the life experiences, values and opinions commonly shared in the community is the benchmark. If a marketing communication 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 that the ABAC standard has been breached. The ad associates the product with the woman and outlines that the woman is a skilled multi-tasker. The ad however does not show the woman consuming alcohol, nor does it suggest her success comes from the use of alcohol. The words 'To the Unstoppable' are akin to making a toast and suggest alcohol is marking an achievement, not the cause of an achievement.
20. The complaint is dismissed.