



ABAC Adjudication Panel Determination No 81/22

Product: Kim Crawford Sauvignon Blanc
Company: Constellation Brands New Zealand Limited
Media: Billboard – Bus Stop
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 10 October 2022 and concerns a bus stop billboard 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 10 October 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:
- *There is a middle-aged woman standing alone in her kitchen with a glass of wine in her hand. She looks blissfully content. 'Days are long, years fast, peace whilst the wifi is pumping, glorious.'*
 - *Considering 21 percent of middle-aged women are now drinking at "binge-drinking" levels' (Drug and Alcohol Review journal), I think it is opportunistic and deceitful, this business is purposely targeting these women.*
 - *Also, noted in the ABC article, "Women experience alcohol harms more quickly and at lower levels of consumption than men..." Women will often drink alone to spare the stigma or to hide their habit. At a time when the medical profession is trying to increase public awareness of this growing problem, and as many middle-aged women struggle for help services and support, we should not have advertising brazenly taking advantage of the group.*
 - <https://www.abc.net.au/news/2022-01-27/australian-risk-drinking-middle-aged-women-research-help/100783522>

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (c)(i) suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
 - (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 email on 19 October 2022. The principal comments made by the Company were:
- The marketing material does not breach the code. Specifically, Part 3 of the code has not been breached. It is not contributing to a significant change in mood or environment. The creative does not suggest that alcohol has caused the woman's mood and/or environment to become

more relaxed and peaceful. The creative is merely stating that in some cases the days are long and the years go past quickly via the use of the words “Days are long, years fast...”

- The image in the marketing material depicts a woman 44+. The woman is gazing out of the window, reflecting on the days/years. This image is not depicting a mood and/or environment that is more relaxed and peaceful due to alcohol.
- The text in the marketing material: “peace whilst the wifi is pumping, glorious” is depicting that when the wifi is working properly, it may give the opportunity for life to be reflected upon. The marketing material is not depicting a change in mood or environment, due to alcohol.
- The woman in the image is holding a glass of wine, she is not consuming it. The image does not show a change of mood or environment, the woman remains in the same position, this position is standing and reflecting on the day. This woman is 44+. Our target audience is 44+ women, who may occasionally consume alcohol. Kim Crawford is not encouraging women to consume alcohol, binge drinking, excessive drinking of any nature or drinking alone.
- Alcohol is not referenced in the text of the marketing material. Alcohol is present in the image via a glass of wine being held. The woman is not consuming the alcohol.
- This marketing material does not show a significant change in environment. This material does not show that the presence or consumption of alcohol is the cause of or contributor to any change in mood. The marketing material is not encouraging relaxation or that consuming alcohol can contribute to relaxation.
- The creative targets a wide audience, predominantly women +44 yo
- “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+.
- Pre vetting approval was given – approval number 3176.

The Panel's View

Introduction

14. The complainant is concerned that a bus shelter shed advertisement for Kim Crawford wine is 'opportunistic and deceitful' by targeting middle aged women. It is contended that middle aged women as a demographic are experiencing alcohol related harm at an increasing rate and a news article referencing a research study identifying this trend was attached to the complaint.
15. Before turning to the consistency of the ad with the applicable ABAC standards, it is useful to contextualise the complainant's concern within the public policy and regulatory regime applying to alcohol marketing. The starting point is the National Alcohol Strategy 2019-2028 which represents the public policy framework adopted by Australian governments to minimise harm from alcohol use.
16. The Strategy notes that at a whole of population level, alcohol consumption in Australia has declined over recent decades. Young people are on average having their first drink later in life and consumption in excess of the recommendations of the Australian Alcohol Guidelines to minimise the risk of long-term harm have also reduced. That said, the Strategy recognises that there are groups and communities which experience disproportionate harm from alcohol use. These groups include:
 - First Nations people;
 - People in remote areas;
 - People with co-occurring mental conditions;
 - Teenagers and young adults; and
 - Adults in their 40's, 50's and 60's.
17. The Strategy is careful to point out that these descriptors of groups and communities does not mean all persons in the groups described have problems with alcohol use. In fact, the vast majority of people do not have issues with alcohol use. Nuance needs to be recognised. For instance, there is a higher level of abstinence from alcohol use amongst First Nations people than there is for the population as a whole. In identifying 'at risk' groups, it is critical not to feed damaging and inaccurate stereotypes.
18. Given the Strategy identifies 'adults in their 40's, 50's and 60's' it is recognised that 'middle aged women' mentioned in the complaint are within an 'at risk'

group for higher incidence of alcohol related harm compared to the overall Australian population. To reduce the risk of this harm, the Strategy creates a framework of law enforcement, prevention, early intervention and health care approaches for action by the government.

19. At the highest level, four Priority Areas of Focus are proposed by the Strategy that collectively seek to reduce harm from alcohol misuse. These are:
 - Improving community safety and amenity;
 - Managing availability, price and promotion of alcohol beverages;
 - Supporting individuals to obtain help and systems to respond; and
 - Promoting healthier communities.

20. Alcohol marketing falls under the second Priority Area of Focus. Here the policy goal is to reduce opportunities for the availability, promotion and pricing of alcohol beverages to contribute to risky alcohol consumption. This goal is to be pursued via three objectives namely:
 - Strengthen controls on access and availability of alcohol;
 - Pricing and taxation reforms to reduce risky alcohol consumption; and
 - Minimised promotion of risky drinking behaviours and other inappropriate marketing.

21. Each objective has a number of actions directed towards either the Commonwealth government, the governments of the States and Territories or all levels of government. The third objective covers alcohol marketing and provides the actions to be:
 - Reduce alcohol advertising exposure to young people;
 - Prevent promotion of discounted/low price alcohol that is associated with risky drinking including bulk buys, two for one offers, shop-a-dockets;
 - Effective controls on alcohol promotion to protect at risk groups including youth and dependent drinkers; and
 - Extend the single national advertising code to cover placement and content across all media which provides consistent protection of exposure to minors regardless of programming.

22. There is no 'one to one' translation of the policy objectives and actions within the National Strategy to express regulatory provisions. In part this is because the Strategy is framed at a high level and the regulatory regime for alcohol is shared and somewhat fragmented between levels of government, different government agencies and some industry self-regulation initiatives.
23. The ABAC Scheme is part of this amalgam of regulation. It goes to the marketing of alcohol beverages which is a shared space between Liquor Licensing Authorities, ABAC and other industry codes such as the AANA Code of Ethics. The ABAC does contain specific provisions directed towards minors but not any of the other at-risk groups listed in the Strategy such as middle aged adults.
24. Rather the Code is based on more generally framed standards requiring alcohol marketing:
- Model the responsible and moderate use of alcohol;
 - Not suggest alcohol is a cause of or a contributor to success in life;
 - Not suggest alcohol creates a significant change in mood or environment;
 - Not suggest that alcohol consumption offers a health benefit or is a necessary aid to relaxation; and
 - Not show alcohol consumption before or during any dangerous activity such as driving a car.
25. Drawing this together in the context of the complaint;
- The National Strategy does recognise that 'middle-aged women' are part of a group that experience a higher incidence of alcohol related harm when compared to the overall population;
 - The public policy framework proposes a range of strategies to minimise the risk of long-term harm from alcohol use and this includes 'effective controls on alcohol promotion';
 - Alcohol promotion/marketing is regulated via a lattice of direct government requirements and industry codes of practice such as the ABAC;
 - The ABAC recognises and has specific provisions regarding minors as an 'at risk' group but not other groups such as middle age adults; and

- The ABAC standards go to the responsible portrayal of alcohol use and depictions of the effects of alcohol.

Consistency with the ABAC Standards

26. The underlying point made in the complaint is that it is highly irresponsible for the Company to have a marketing campaign that is targeted towards middle-aged women. As explained, in contrast to the position with minors, there is no express ABAC standard that seeks to ensure that alcohol marketing does not appeal to or even targets middle aged women. Rather, the regulatory provisions assume that alcohol is a lawful product for adults and it can be responsibly marketed to adults, middle aged or otherwise.
27. This means the assessment is whether the ad depicts alcohol and alcohol use in a responsible manner. To this end the applicable ABAC standards given the nature of the complaint and the ad itself are:
 - The ad must not suggest that alcohol use may create or contribute to a significant change in mood or environment - Part 3 (c)(i); and
 - The ad must not suggest that alcohol use offers a health benefit or is a necessary aid to relaxation - Part 3 (c)(iv).
28. The assessment 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 benchmark is the attitudes, values and life experiences shared commonly in the community. 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.
29. The ad shows a picture of a smiling woman, holding a glass of wine. Beneath the picture are the words “Days are long, years fast, peace whilst the wifi is pumping, glorious”. 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.
30. The Company argues the ad is consistent with the standards. It is submitted:
 - The creative does not suggest that alcohol has caused the woman’s mood and/or environment to become more relaxed and peaceful;
 - By stating that in some cases the days are long and the years go past quickly, the creative does not portray a previous stressful environment. It

is simply observing that although the days may seem long, the years go past very quickly; and

- the woman is gazing out of the window, reflecting on the days and years that have passed. This image is not depicting a mood and/or environment that is more relaxed and peaceful due to alcohol.

31. The Panel acknowledges the point being made by the complainant, and alcohol messaging must be careful not to suggest that alcohol is needed to relax or cope with a busy life. Nor can alcohol be positioned as transforming a mood from stressed to calm. The Panel believes however the most probable interpretation of the ad is that life is busy when looked at on a day-by-day basis, but at the same time passes quickly. When there are moments to reflect such as when the children are occupied using the internet/streaming service - then the product is a good choice to enjoy.

32. This means the Panel does not believe that the ABAC standards have been breached. In reaching this decision, the Panel noted:

- The mood does not alter but is constant. Neither the words nor images portray a previous environment that was changed by the introduction of alcohol. The woman does not appear affected by alcohol consumption.
- The text positions that peace is being enjoyed due to the wifi pumping, not because alcohol has been consumed. A reasonable person would most likely interpret 'pumping wifi' as enabling the woman to enjoy a quiet moment, by providing a distraction for her children.
- Only moderate consumption is portrayed with a single glass with no cues of excessive consumption such as an empty bottle shown

33. The complaint is dismissed.