



ABAC Adjudication Panel Determination No 115/23

Product: Lucid Dream Rosé
Company: Watkins
Media: Digital – Instagram
Date of decision: 21 August 2023
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 17 July 2023 in relation to social media marketing for Lucid Dream Rosé (“the Product”) by Watkin (“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 17 July 2023.
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.

The Marketing

10. The complaint relates to marketing via Instagram.



Complaint

11. The complainant objects to the marketing as follows:
 - *Watkins canned wine/RTD is promoting a 'Lucid dream Rosé' on social media.*
 - *When I saw this, I thought it must contain an illegal drug or such an alcohol content that it would alter your state of mind.*

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.

The Company Response

13. The Company responded to the complaint by email on 21 July 2023. Its primary comments were:

- Thank you for the opportunity to respond to the Complaint.
- Watkins takes its responsibilities in relation to responsible marketing and packaging of alcohol seriously and we acknowledge the significant work of the ABAC Responsible Alcohol Marketing Code and Complaints Management System (ABAC) in regulating the marketing practices within the Australian alcohol beverages industry.
- Before responding to the specific questions raised in your letter, I would like to make some initial comments. Firstly, Watkins is a small family owned and operated business which has been in existence for 2 years. Watkins has engaged an external agency to assist it with marketing efforts, including social media communications and management.
- Secondly, Watkins has taken the Complaint seriously. Upon receiving the Complaint, the Instagram post in question has been removed and I have had discussions with our marketing agency regarding the language used for the advertising of alcohol products.
- Thirdly, as part of taking its responsibilities seriously, I note that our Instagram page has two warnings forbidding the sale of alcohol to minors under the age of 18.

Alcohol Advertising Pre-vetting Service Approval

- The alcohol marketing communication for the Instagram caption referred to in the Complaint did not receive Alcohol Advertising Pre-vetting Service Approval.

Responsible depiction of the effects of alcohol

- Part 3(c)(i) of the Code provides that a Marketing Communication must not: “suggest that the consumption or presence of an Alcoholic Beverage may create or contribute to a significant change in mood or environment”.
- At the outset, I note that the intention was not to, nor would it ever be to, suggest that the consumption or presence of an Alcoholic Beverage may create or contribute to a significant change in

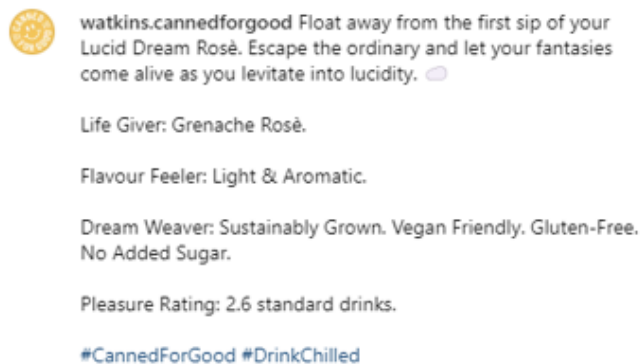
mood or environment. Nor would it be to promote excessive or irresponsible alcohol consumption.

- Rather, the intention of the words in the marketing communication was to represent the “Light & Aromatic” flavours and the characteristics of the wine, using the metaphor of an imaginative and dreamlike experience.
- Further, a ‘lucid dream’ is a type of dream in which the dreamer becomes aware they are dreaming while dreaming, and the act of ‘lucid dreaming’ is when the dreamer can maintain control over the dream characters, narrative, or environment. The reference to “lucid dreaming” was intended to be a descriptive way to capture that the flavours were akin to an imaginative and dreamlike experience, but that the experience was nonetheless one in which the drinker was in control.
- In addition to the above, I make the following observations about the relevant Instagram post and the context in which the words in question were used, which I think are relevant:
 - the marketing communication indicates that the wine is vegan, gluten free, sustainably grown and contains no added sugar
 - the marketing communication indicates that the alcoholic beverage is made from Grenache Rose wine grapes
 - the marketing communication indicates that the beverage contains 2.6 standard drinks.
- In all of these circumstances, I consider it is reasonable to say that, in context, a reasonable person and the general public would understand from the marketing communication that the alcoholic beverage was typical wine, made naturally from grapes, with a standard alcohol content for wine; and not that the alcoholic beverage may create or contribute to a significant change in mood or environment. Ultimately, I think the words in question need to be read in the context of the marketing communication as a whole.
- Notwithstanding, we do not want any of our marketing communications to be a cause for any concern or to be potentially misinterpreted, which is why we have removed the relevant marketing communication.
- As noted already, I assure the ABAC Adjudication Panel that Watkins takes these matters seriously and will continue to make

every effort to comply with the Code. Watkins will fully cooperate with the Panel. To this end, Watkins will of course accept the Panel's decision on the Complaint.

The Panel's View

14. Watkins is a family-owned operation, with vineyards in the Adelaide Hills and Langhorne Creek wine regions of South Australia, and a winery in Chandlers Hill just south of Adelaide. It sells its wines both in traditional bottles and also in 250ml cans. It is an Instagram post marketing one of its canned products, Lucid Dream Rosé, that has drawn the complaint giving rise to this determination.
15. The main part of the Instagram post contains the Company and Product name, that it is 'Canned for Good', is 'Vegan and Gluten Free' and is 'Sustainably Grown'. The post is accompanied by the following text:



16. The complainant's interpretation of the marketing is that the Product must "*contain an illegal drug or such an alcohol content that it would alter your state of mind*".
17. These complainant's concerns raise Part 3 (c)(i) of the Code which requires that an alcohol marketing communication must not suggest that the consumption or presence of an Alcohol Beverage may create or contribute to a significant change in mood or environment.
18. In response to the complaint, the Company argued that:
 - the intention of the words in the marketing communication was to represent the "Light & Aromatic" flavours and the characteristics of the wine, using the metaphor of an imaginative and dreamlike experience;
 - the reference to "lucid dreaming" was intended to be a descriptive way to capture that the flavours were akin to an imaginative and dreamlike experience;

- the marketing communication indicates that:
 - the wine is vegan, gluten free, sustainably grown and contains no added sugar;
 - the alcoholic beverage is made from Grenache Rose wine grapes;
 - the marketing communication indicates that the beverage contains 2.6 standard drinks;
 - a reasonable person would understand from the marketing communication that the alcoholic beverage was typical wine, made naturally from grapes, with a standard alcohol content for wine; and not that the alcoholic beverage may create or contribute to a significant change in mood or environment; and
 - the words in question need to be read in the context of the marketing communication as a whole.
19. In assessing if a Code standard has been breached, the Panel adopts the standpoint of the probable understanding of the marketing item by a reasonable person. This means the attitudes, values and life experiences shared by most members of the community is the benchmark. If a marketing communication can be interpreted in several ways, the most probable understanding is to be preferred over a possible but less likely interpretation.
20. The Panel does not believe that the post nor the product's name of Lucid Dream raises an implication of illicit drug use or that the product's alcoholic content is mind altering. A lucid dream is recognised to be a state of dreaming where the dreamer is aware that they are dreaming and as a result can consciously direct the dream to some extent. From a brief internet review of the subject, there appears to be no required correlation between having a lucid dream and consuming alcohol or ingesting drugs.
21. That said, the text accompanying the post directly links the consumption of the product to 'floating away' 'escaping the ordinary' and having fantasies 'come alive as you levitate into lucidity'. Given this description, a reasonable person would probably understand that the marketing communication as a whole is suggesting that the consumption of the product may create or contribute to a significant change in mood.
22. While the complainant's argument regarding implications of drug use is not accepted, the Panel finds the post in breach of the Part 3 (c)(i) standard.