



ABAC Adjudication Panel Determination No 177/24

Products: Kimbolton Wines
Company: Kimbolton Vineyards Pty Ltd
Media: Internet
Date of decision: 4 December 2024
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 31 October 2024 about internet marketing of a Kids’ Flight (“the product”) by Kimbolton Vineyards Pty Ltd (“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 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, and 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 31 October 2024.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint and this determination was made within the target timeframe.

Pre-vetting Advice

- A component of the ABAC Scheme is an advice service by which an alcohol marketer can obtain an independent opinion of a proposed alcohol marketing communication against the ABAC standards before public release. Pre-vetting advice is separate from the complaint process and does not bind the Panel but represents best practice on behalf of alcohol marketers. Pre-vetting advice was not obtained for the marketing.

The Marketing

- The complaint relates to internet marketing of a Kids' Flight:



Kids' Flight

Our kids' flights offer a unique opportunity for parents and children to engage with each other in a traditionally adult setting.

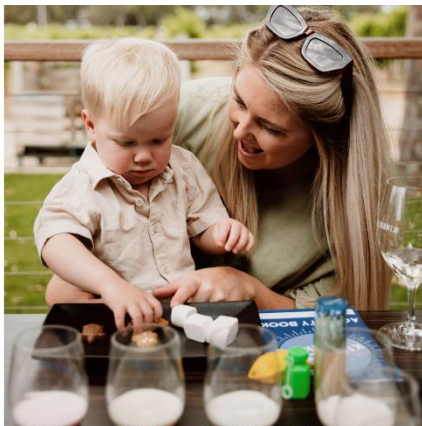
The flight includes three Bickfords cordials matched with a tasting of cheese, kabana, and a Barossa Valley Chocolate Tommy Turtle.

During the cooler months we offer a sweet variation of the flight which includes three delicious flavoured milks, fluffy marshmallows, Perryman's Gingerbread babies, and a Barossa Valley Chocolate Tommy Turtle.

To keep the little ones entertained, each flight comes with a packet of Kimbolton coloring pencils, an engaging activity booklet, and some bubbles.

[Book Now](#)

Kids Tasting Flight - Sweet Treat



Start Booking Now

Enter Number of Participants *

Child \$18.00

Choose a Date *

November 2024

M	T	W	T	F	S	S
			1	2	3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

Choose a Time *

11:00 AM - Available

Price(AUD) **\$18.00**

[BOOK NOW](#)

Please note: After your purchase is confirmed we will email you a confirmation.

35°17'50.9"S...
[View larger map](#)

Complaint

11. The complainant objects to the marketing as follows:
 - *Advertising Kids' Flights to appeal to minors at their venue. This establishes the culture of tasting flights.*
 - *The ad and the experience are inappropriate as it makes the winery appealing to minors.*

The ABAC Code

12. Part 3 (b)(i) of the Code provides that an alcohol marketing communication must NOT:
 - (i) have strong or evident appeal to minors, in particular;
 - (A) specifically target minors;
 - (B) have a particular attractiveness for a minor beyond the general attractiveness it has for an adult;
 - (C) use imagery, designs, motifs, language, activities, interactive games, animations or cartoon characters that are likely to appeal strongly to minors;
 - (D) create confusion with confectionery, soft drinks or other similar products, such that the marketing communication is likely to appeal strongly to minors; or
 - (E) use brand identification, including logos, on clothing, toys or other merchandise for use primarily by minors.

The Company Response

13. The Company responded to the complaint by letter emailed on 13 November 2024. Its primary comments were:
 - Thank you for raising this Complaint and for providing the opportunity for us to respond to the concerns of the complainant. Kimbolton Wines takes its obligations to responsibly promote its products seriously.
 - The Complaint relates to an entry on the Kimbolton Wines website relating to a 'Kids' tasting flight'.

Threshold Issue

- In relation to the Complaint, Kimbolton Wines is of the view that there is a threshold question as to whether the ABAC Code applies to Kimbolton Wines.
- The ABAC Scheme is an 'opt-in' scheme. In this regard, we note that Kimbolton Wines is not a member of the Brewers Association of Australia, Spirits & Cocktails Australia or Australian Grape & Wine; or otherwise a direct code signatory to the ABAC Scheme.
- Accordingly, we respectfully submit that the ABAC Scheme, and therefore the ABAC Code, does not apply to Kimbolton Wines.
- It follows that, in our view, the ABAC Panel is not empowered under the ABAC Code to determine if the Website Entry may have breached the ABAC Code (which in any event, and as discussed below, is denied by Kimbolton Wines).
- That said, it is understood that it has been the practice of the ABAC Panel to make a determination on public complaints concerning alcohol marketing even if the marketing is from a non-signatory to the ABAC Scheme.
- In the event that the APAC Panel proceeds to an adjudication notwithstanding this objection, the balance of this letter details Kimbolton Wines' response to the questions raised in your said letter.
- The Website Entry was not submitted for review through the Alcohol Advertising Pre-Vetting Service.

Is the website entry promoting Kids Tasting Flights an alcohol marketing communication?

- Pursuant to Part 8 of the ABAC Code, 'Alcohol Marketing Communication' is defined as: "*a marketing communication for Alcohol, in any media, generated by, for, or within the reasonable control of an Alcohol producer, distributor or retailer, that has a discernible and direct link to Australia, apart from the exceptions listed in Part 2(b).*"
- Further, pursuant to Part 8 of the ABAC Code, 'Alcohol' is defined as: "*a beverage or related consumable product (ice block, vapour etc) containing more than 0.5% alcohol by volume.*"
- Relevantly, the Website Entry states:

"The flight includes three Bickfords cordials matched with a tasting of cheese, kabana,

and a Barossa Valley Chocolate Tommy Turtle.

During the cooler months, we offer a sweet variation of the flight which includes three delicious, flavoured milks, fluffy marshmallows, Perryman's Gingerbread babies, and a Barossa Valley Chocolate Tommy Turtle.

To keep the little ones entertained, each flight comes with a packet of Kimbolton colouring pencils, an engaging activity booklet, and some bubbles."

- As is evident from the above text, the 'Kids' Flight' comprises three Bickfords cordials, or alternatively three flavoured milks. All of the cordials and flavoured milk offered as part of the 'Kids' Flight' are non-alcoholic.
- The primary element of the definition of a 'Alcohol Marketing Communication' under the ABAC Code is the existence of a marketing communication *"for Alcohol"*. With respect to the Complaint, the subject communication is clearly not *"for Alcohol"*.
- For completeness, Kimbolton Wines also notes that:
 - cordials and flavoured milk are beverages commonly understood as non-alcoholic;
 - the image that accompanies the Website Entry text depicts 6 glasses of flavoured milk;
 - the Website Entry does not reference, show or depict, by text or image, any Alcohol (as defined in the ABAC Code); and
 - the scope of the Complaint covers the website entry promoting 'Kids Tasting Flights'. The ABAC Panel can therefore only assess the Complaint, and determine whether the Website Entry is a 'Alcohol Marketing Communication', within this confine. Consequently, it is not open to the ABAC Panel to take into account surrounding circumstances or matters that are secondary to the subject matter of the Complaint.
- In the circumstances, Kimbolton Wines respectfully submits that the Website Entry does not constitute a 'Alcohol Marketing Communication' under the ABAC Code.

- A contrary interpretation and determination by the ABAC Panel would be a most perverse outcome of the highest order.

Strong or Evident Appeal to Minors

- Part 3(b)(i) of the ABAC Code is predicated on there being a 'Alcohol Marketing Communication'.
- For the reasons stated previously, Kimbolton Wines is firmly of the view that the Website Entry does not constitute a 'Alcohol Marketing Communication' under the ABAC Code.
- In the circumstances, Kimbolton Wines respectfully submits that the ABAC Code, including Part 3(b)(i) of the ABAC Code, has no application to the Website Entry.

Concluding Observations

- For the reasons outlined in this response, Kimbolton Wines submits that the Website Entry does not constitute a 'Alcohol Marketing Communication' under the ABAC Code, and the Complaint should therefore be dismissed by the ABAC Panel.
- Notwithstanding this, Kimbolton Wines does not seek to diminish the concerns of the complainant and would like to reiterate that it is committed to the highest standards of responsible marketing practices across product, consumer marketing and communications, and takes its responsibility to uphold community standards when it comes to the content and placement of advertising seriously.

The Panel's View

Introduction

14. Kimbolton Wines operates a vineyard and cellar door at Langhorne Creek, approximately 65 kilometres southwest of Adelaide. The Winery welcomes visitors and its cellar door offers several different wine-tasting experiences, including the pairing of wines with different styles of cheese described as 'flights'.
15. The Company maintains a website providing information about the cellar door and the tasting flights. The venue is family-friendly and two of the flights included on the website are aimed at children and include non-alcoholic items, such as cordial, flavoured milk, confectionary items, cheese, kabana and an activity pack.

16. It is this component of the website that has attracted the complaint. The complainant argues the children-focused flights are irresponsible as they make the Winery appealing to minors and establish a culture of using alcohol. This concern potentially raises Part 3 (b)(i) of the Code which requires that an alcohol marketing communication must not have strong or evident appeal to minors.
17. The Company believes the complaint should be dismissed on two grounds. Firstly, the Company's marketing is not within the jurisdiction of the ABAC Scheme and secondly, the website entry does not constitute an 'alcohol marketing communication' under the ABAC Code.

Does the ABAC Scheme apply to the Company's marketing?

18. The Company points out that it is not a member of one of the alcohol peak bodies that sponsor the ABAC Scheme nor is it a direct signatory to the Scheme. This means the Company has given no prior commitment to market consistently with the standards of good practice contained in the Code nor to accept and act on the findings of the Panel.
19. The ABAC Scheme commenced operations in 1998 and since then the Panel has made more than 1,000 determinations on the consistency of alcohol marketing communications with ABAC standards stemming from public complaints. Many hundreds of the determinations have related to marketing from alcohol companies like Kimbolton Wines that are not ABAC members or signatories. Almost universally these companies have both fully cooperated with the complaint's process and abided with Panel determinations even when that has required the removal of marketing material.
20. Why has this been the experience when an alcohol company is under no direct legal obligation to participate in the ABAC Scheme? The answer is first and foremost the acceptance by alcohol industry participants that alcohol is not simply another product. It is the recognition that the misuse of alcohol is the cause of considerable individual and community harm and that there is a duty inherent in being in the alcohol business as a producer, distributor or retailer to operate consistently with high standards of responsibility. This includes the marketing of alcohol products.
21. Secondly, the ABAC Code reflects community expectations and basic commonsense about the standards alcohol marketing must meet. The standards go to the moderate portrayal of alcohol use, marketing not suggesting that it is okay to drink then drive a motor car or engage in some other dangerous activity and not suggest alcohol use is needed to succeed in life or should be used to overcome problems. Critically, alcohol is a product to be used responsibly by adults and marketing should not be directed towards or strongly appeal to minors.

22. Finally, the ABAC Scheme does not stand alone. It is part of a regulatory system applying to alcohol marketing that includes the Liquor Licensing Authorities of the States and Territories that work with ABAC to provide a matrix of regulatory obligations on liquor license holders. For instance, the Company is regulated under the Liquor Licensing Act 1997(SA). The obligations in the Act are amplified by a General Code of Practice. The Code of Practice sets out risk factors for the promotion and advertising of alcohol that thematically align with the ABAC standards.
23. Further, the relationship between the ABAC Scheme and Liquor and Gaming in South Australia is supported by a MOU. Under the MOU, any alcohol company holding a liquor license in South Australia can be referred to the government regulator by ABAC if the alcohol company does not act on a Panel determination.
24. Drawing this together, the Panel has always taken its mandate to include accepting, considering and making determinations on public complaints about alcohol marketing irrespective if the marketer is an ABAC member or direct signatory. It is a matter for each alcohol company whether they choose to engage in the complaints process and accept a Panel determination. In the rare instance of a company electing not to engage in the ABAC process, the complaint will be referred to the relevant Liquor Licensing body for enforcement action under State/Territory law.

Is the Kid's Flight website entry an alcohol marketing communication and have the ABAC requirements been breached?

25. The second contention from the Company is that the website entry about the Kid's Flight is not an alcohol marketing communication and hence is outside the scope of the ABAC standards. It is argued the entry does not reference alcohol but non-alcoholic beverages and accordingly can't be considered marketing for alcohol.
26. The Company's website serves several purposes including:
 - being an online platform for the purchase and shipping of wines in the Company's range;
 - providing information about the Company, its history and its community good work with the Monarto Safari Park on programs for endangered animals;
 - promoting the facilities and activities of the Winery including the cellar door and tasting options.
27. Taken as a whole, the website is a marketing platform for the Company and its products, but does this mean each entry on the website is to be regarded as an alcohol marketing communication? Recently the Panel in Determination 146/24

considered entries for non-alcohol products on the website of the alcohol retailer Dan Murphy's. The Panel noted inter alia:

- Part 7 of the Code requires that a marketing communication is to be understood by taking its content as a whole i.e. the website as a whole; and
- descriptions about the use of alcohol on the website need to be consistent with Code standards even if contained in an entry for a non-alcohol product.

28. The Dan Murphy's case involved a clear reference to alcohol as a product in a description of a non-alcoholic product. In the current case, there is no reference to alcohol in the Kids' Flight entry, with the complainant's contention being that the children's version of the adult wine tasting establishes a culture of alcohol use and makes the Winery appealing to children.

29. The Panel believes a website entry describing a menu option is capable of being captured as under the ABAC concept of a marketing communication, but the entry on the Company's website is either not an alcohol marketing communication as no reference is made to alcohol or if it was captured, it does not breach the Part 3 (b) Code standard.

30. In reaching this conclusion the Panel noted;

- minors are permitted under South Australian law to attend licensed premises with licensees required to ensure minors are not supplied alcohol or permitted to enter out-of-bounds areas (see Part 2 Section 8 of the General Code of Practice under the Liquor Licensing Act);
- the Company can lawfully promote itself as a venue suitable for families with children to visit;
- the underlying concern of the complaint is more directly about the offering of the Kids' Flight option than the mention of the menu option on the website and this suggests the more appropriate regulator for the concern is South Australia Liquor and Gaming rather than the ABAC Scheme;
- the Kids' Flight entry does not refer to alcohol nor is it suggestive that minors will be served alcohol or should consume alcohol;
- the website entry would be probably understood as directed towards adults and positioning the Winery as being a family-friendly venue to visit; and
- a reasonable person would not likely understand the entry as encouraging underage drinking nor would the website as a whole be regarded as strongly appealing to minors.

31. The complaint is dismissed.