



## ABAC Adjudication Panel Determination No. 34/15

**Product:** XXXX Gold  
**Company:** Lion  
**Media:** Television  
**Complainant:** Confidential  
**Date of decision:** 9 April 2015  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Louisa Jorm

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for XXXX Gold by Lion (“the Company”) and arises from a complaint received 24 February 2015.
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. Within this framework, some of the requirements go to the placement of alcohol marketing, while others go to the content of the marketing. The ABAC is a content code, which means the standards of good marketing practice within the Code apply irrespective of where the marketing occurs (e.g. in print, in digital formats, or by broadcast mediums). Equally, the fact that the marketing is placed in a particular medium or in a particular location will not of itself generally be a breach of the ABAC. In contrast, the placement codes applying to outdoor sites or free to air television don’t go to what is contained within alcohol marketing but the codes will be potentially breached if the marketing occurs at particular timeslots or is placed near a school.
  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 24 February 2015.
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 has been determined within this timeframe.

## **Pre-vetting Clearance**

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

## **The Marketing Communication**

10. The complaint refers to a television advertisement for XXXX Gold and is one of series of advertisements featuring the interaction of two groups of men on XXXX Island.
11. The advertisement opens with a group of four relaxed men in casual attire walking along a beach carrying cricket equipment, saying "Ready Boys?" and throwing a cricket ball to a group of four men in suit pants sitting in the shade. Three of the four suited men are straightening collars and ties while one man is shown shirtless attempting to apply sunscreen to his back. The shot focuses on the man applying sunscreen as the casual men watch him curiously. One of the casual group says, "Need a hand mate" to the shirtless man. The man looks at them and nods.
12. The next scene shows one of the casual men fitting a large bottle of sunscreen lotion to a spray gun and then the man who was applying sunscreen puts goggles on. The casual man sprays him with a thick layer of sunscreen as he turns slowly around as the rest of the men and a dog look on.
13. In the next scene we see a group of casual and suited men carrying cricket equipment and walking along the beach toward a building as one of the men says "Good game boys". Another says to the man who had sprayed the sunscreen and is standing outside the building holding a XXXX stubbie "Could be your best work yet Thommo".
14. In the final scene we see that Thommo is standing with the man covered in sunscreen and another man also holding stubbies of XXXX. The sunscreen has been applied to the texture of body paint, with only the part of the man's face which was behind the goggles being clear of the lotion. Thommo and the man covered in sunscreen clink stubbies and all three men take a sip from their stubby. The XXXX Gold logo with the tagline "Good as Gold XXXX.COM.AU" is superimposed on the screen.

## **The Complaint**

15. The complainant believes the advertisement is irresponsible, by suggesting:
  - a) the use of sunscreen which is important in reducing risk of skin cancer is unnecessary; and
  - b) consuming XXXX makes you tanned, buff and manly and makes using sunscreen unnecessary;
  - c) consuming XXXX helps you fit in socially;

d) consuming XXXX is a necessary aid to relaxation.

### **The ABAC Code**

16. 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)(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;

(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**

17. The Company responded to the complaint by letter dated 13 March 2015. The principal points made by the Company were:

a) The Advertisement that is the subject of this complaint is TV advert for XXXX. The advert shows 4 city slickers marooned on the island. The XXXX island residents come to greet the new arrivals. One of the city slickers is struggling to place sunscreen on his body and one of the XXXX island guys asks if he would like some help. He then takes a spray machine which is filled with sunscreen and covers the city slicker from head to toe in sunscreen to ensure his body is fully protected from the harsh island conditions. The end shot shows the guys standing on the beach and the city slicker is fully covered in sunscreen while the rest of the group finish of their day coming together to have a XXXX responsibly.

b) Lion does not consider that the Advertisement breaches any section of the ABAC Responsible Alcohol Marketing Code (ABAC Code) or any other official Australian advertising code. As noted in further detail below:

- Lion takes its advertising responsibilities extremely seriously and has a strong compliance track record in this regard;
- Lion has a number of strict internal and external processes against which any proposed advertisement is considered; and
- the Advertisement was approved through each of these processes prior to Lion's decision to broadcast it.

The Guidance Notes Section 3(c) for the ABAC Code outlines that alcohol marketing cannot show or encourage the following: *There can be no portrayal of the presence of alcohol as having any causal relationship with mood change, a celebration, success of any kind, a therapeutic benefit or being necessary to relax. There is no intention to prevent the depiction of alcohol as incidental to a friendly and lively social environment or celebration, but the presence or introduction of alcohol cannot be seen to transform an occasion or directly contribute to its success. Similarly there is no intention to restrict the depiction of alcohol being responsibly consumed by successful or attractive people, provided there is no suggestion that it has caused or contributed to their circumstance. It is also possible to depict the presence of alcohol in a romantic situation provided there is no suggestion it has caused or contributed to the achievement of sexual or other success. It should be noted that the presence of alcohol includes any elements of the product or brand (such as packaging or brand marks) intended to represent the product.*

- c) The XXXX GOLD TV commercial 'Sunscreen' is part of a 5 part campaign depicting a group of city slickers that find themselves stranded on XXXX Island with the XXXX Island residents. Over the course of the campaign, the city slickers, through the Island residents, begin to learn that there is more to life than material possessions or important job titles & begin to enjoy the beautiful Aussie Outdoors & activities on XXXX Island. The 'Sunscreen' execution is designed to tap into the human truth that there are some difficult to reach spots when it comes to applying sunscreen. One of the city slickers is battling this issue as he is accustomed to being in an office all day. One of our Island residents offers to help out with a sunscreen applicator & once applied, all are congratulated on a job well done. Following this, the group enjoys a beer together in the bar to celebrate the job well done & afternoon enjoyed together
- d) There is no suggestion in this advert that alcohol contributes to social success or a change of mood or that alcohol will make you more masculine. At no point in the advert are the newcomers to the island ridiculed or suggested to be less "masculine" or less "socially successful". On the island there is no social class division. The XXXX residents ask if the gentlemen struggling applying sunscreen needs a hand. He then moves on to helping him apply it in more efficient way. In no way does covering him in sunscreen indicate that if the newcomer drank XXXX he would be less masculine or socially successful. There is no mention of XXXX being an alternative to sunscreen or no suggestion of this either. The residents are seasoned on the island and are accustomed to applying sunscreen and in turn help the newcomers who are new to this climate, atmosphere and surroundings. If anything this TVC shows two different groups come together in remote place and one group helping

another. The reason why the residents help the newcomers as they too were new to the island once and understand the teething issues the newcomers are experiencing so they lend their knowledge and advice and try to help the newcomers settle in.

- e) Again, to highlight the guidance notes above, in no way does this TVC imply that alcohol is a necessity to relaxation. The TVC shows at the end of the clip, both groups coming together after a game of cricket, to enjoy a XXXX responsibly. Again if anything this promotes sociability within two different groups and as we can see, the two groups who began as strangers are now bonding and becoming friends. There is no mention of the term relax in this TVC. They guys sit on the front of the bar having a XXXX together as one group. They have finished their day and are coming together over a beer. Again to highlight in no way is this indicating that alcohol is a necessary aid for relaxation. They are standing at the front of the bar celebrating a job well done on the cricket and also ensuring one of the newcomers has been helped with sunscreen.
- f) At no point does TVC suggest that alcohol offers a therapeutic benefit or can be a substitute for sunscreen or that it is not “manly” to place on sunscreen. As you can see in the TVC, sunscreen is applied, an ample amount, to ensure that the newcomers are protected from the island sun. They are not used to the outdoor life and are not skilled at applying sunscreen. The residents help the marooned newcomers by providing sunscreen to them and ensuring they are overly protected from the hot island conditions. The gentlemen who is being sprayed with sunscreen is physically well built muscular man and in no way is he “skinny” or less “masculine” as suggested in the complaint.
- g) As a responsible advertiser, Lion has demonstrated a long-standing commitment to supporting and adhering to the ABAC Responsible Alcohol Marketing Code (ABAC) and Advertising Standards Bureau (ASB). In acknowledgment of Lion’s position of support for ABAC and ASB, Lion maintains strict internal and external processes. As well as upholding the standards outlined within these advertising codes, Lion maintains internal best practices which often exceed these requirements
- h) As part of Lion’s marketing approvals process, this Advertisement for XXXX was subject to:
- Review and advice from external creative agencies well-versed and experienced with ABAC and ASB requirements;
  - Independent legal review and advice from an external legal team specialising in FMCG marketing and advertising compliance and interpreting the relevant advertising codes and legislation;

- Review by Lion's internal marketing compliance team to ensure its adherence to Lion's internal best practice policies;
- Review and approval through the AAPs pre-vetting service at both concept and final stages to ensure its compliance with community standards and relevant advertising codes.

I can confirm that each of the above requirements was complied with in relation to the Advertisement, prior to its broadcast.

### **The Panel's View**

18. The advertisement is set on the so called XXXX Island in Queensland's Whitsundays Island group and sits within a series of advertisements from the Company broadcast over time featuring the exploits of a group of men staying on the island. The Panel previously considered one of these advertisements in determination 88/14.
19. On this occasion, a group of recent arrivals to the island are shown struggling with their new environment, including with the application of sunscreen. A group of the island's prior occupants are shown assisting them, including with a novel way to apply sunscreen.
20. The complainant believes the advertisement is irresponsible for a number of reasons. Firstly, it discourages and ridicules the use of sunscreen, which is important in reducing the risk of skin cancer. Secondly, it is contended that the advertisement suggests that the consumption of XXXX may create or contribute to a significant change in mood or environment or personal, social or sexual success by suggesting alcohol will make you masculine and fit in socially. Thirdly, it is argued that the advertisement suggests that consumption of XXXX is a necessary aid to relaxation and offers a therapeutic benefit, by implying that sunscreen is not necessary if a person is fit, tan and a user of an alcohol product.
21. By its nature, the ABAC is concerned about the manner in which alcohol as a product is portrayed. The first concern raises an issue of public health, namely the use of sunscreen. While the complaint raises a valid point, the ABAC does not contain any standard that goes to this issue, which is a little removed from the use of alcohol as a product. The concern could conceivably fall under section 2.6 AANA Code of Ethics, which provides that advertising "shall not depict material contrary to prevailing community standards on health and safety". This, however, is a question for the Advertising Standards Board and cannot form the basis of a breach of the ABAC.
22. Part 3 (c)(i) and (ii) of the Code does, however, go to the second aspect of the complaint. The provisions provide that alcohol marketing communications must not show the consumption or presence of an alcohol beverage as a cause or contributor to the achievement of success, nor can it be suggested that an alcohol beverage may create or contribute to a significant change in mood or environment. The complainant takes the advertisement as implying that consuming alcohol will make you masculine and help you fit in socially.

23. In response to the complaint, the Company does not accept that the advertisement depicts alcohol as contributing to any change in mood or social or other success.
24. In assessing the consistency of a marketing communication with an ABAC standard, the Panel is to have regard to the probable understanding of the marketing communication by a reasonable person taking its contents as a whole. The 'reasonable person' test is borrowed from the Australian common law system, and relates to the views, opinions, and beliefs commonly held in a majority of the Australian community. A person who holds a different view is not 'unreasonable', but their interpretation of the material may not be that shared by a majority of the community.
25. The critical element of the requirement in Part 3 (c) of the Code relates to the concept of causation. An alcohol product can be portrayed within an advertisement that shows a change of mood, provided that it is not suggested that it is the alcohol product that has been a cause or contributor of the change in mood. The Panel does not believe the provision has been breached and in reaching this conclusion has noted:
  - a) The presence and consumption of the product is not introduced until the end of the advertisement;
  - b) The relaxed mood of the casual men and the interaction with the suited men is established before the introduction of the product;
  - c) The introduction of the product is done in a manner which is consistent with the mood being maintained, and the prevailing mood is not altered when the product is seen.
26. The final concern raised by the complainant is a suggestion that XXXX is a necessary aid to relaxation or offers a therapeutic benefit, namely that sunscreen is not necessary if a person is fit tan and a user of an alcohol product. If accepted, this concern would be in breach of Part 3(c)(iv) of the Code.
27. The advertiser argues that the TVC shows both groups coming together after a game of cricket, to enjoy a XXXX responsibly. The men are shown standing at the front of the bar celebrating a job well done on the cricket and also ensuring one of the newcomers has been helped with sunscreen. Further there is no suggestion that alcohol offers a therapeutic benefit or can be a substitute for sunscreen or that it is not "manly" to place on sunscreen.
28. The Panel does not believe the advertisement breaches this ABAC standard. In reaching this conclusion, the Panel has noted:
  - a) There is no suggestion that the man's tan and generally healthy demeanour has been caused by alcohol use;
  - b) The implication that alcohol use can be seen as a substitute for the use of sunscreen is not an interpretation that a reasonable person would take from the advertisement;



- c) There is no implication that alcohol was the cause of the men's relaxed state, which is far more likely to be attributed to the island setting away from a working environment.

29. Accordingly, the complaint is dismissed.