



ABAC Adjudication Panel Determination No. 35/16

Product: Hahn Ultra
Company: Lion
Media: Digital
Complainant: Confidential
Date of decision: 3 March 2016
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a digital advertisement for Hahn Ultra and arises from a complaint received 10 February 2016.
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.

The Complaint Timeline

7. The complaint was received on 10 February 2016.
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 not obtained for this marketing communication.

The Marketing Communication

10. The advertisement is a post by Hahn on the Hahn Facebook page.
11. The post features a photograph of two men and women standing at a bar, holding up a bottle of Hahn Ultra and smiling as a barman is serving the fourth bottle.
12. On the top left side of the photograph is the text “The 0.2 Advantage” and “Tastes Like Saturday Night on a School Night”. The ‘Get the Facts’ Drinkwise logo appears on the bottom right corner of the image. The post by Hahn that accompanies the image is “Introducing Hahn Ultra. Full flavoured beer with just 0.2 standard drinks. Available this week at all good bottle shops including Dan Murphy’s, BWS and First Choice Liquor – with Ryan Sigley.”

The Complaint

13. The complainant is concerned that the reference to “school night” in the ad suggests the product is for school aged children or adolescents.

The ABAC Code

14. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (b)(i) have Strong or Evident Appeal to Minors;
15. Definition in Part 5 of the ABAC provide:

Strong or Evident Appeal to Minors means:

 - (i) likely to appeal strongly to Minors;
 - (ii) specifically targeted at Minors;
 - (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
 - (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
 - (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A 'Minor' means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

The Company's Response

16. The Company responded to the complaint by letter received 17 February 2016. The principal points made by the Company were:

- The advertisement that is the subject of this complaint is a digital Facebook post for Hahn Ultra. This post states Tastes like Saturday night on a school night. The term school night is a term widely used by adults to describe a night during the week from Monday to Thursday. For example "I best not stay up too late on a school night, I have to work tomorrow".
- Hahn Ultra is an ultra-low alcohol beer – with only 0.9% alcohol, equating to 0.2 standard drinks a bottle, it is a great option for people who want to moderate their alcohol consumption but still have the great taste of a beer.
- The post shows 4 adults (two men and two women) in a licensed venue being attended to by bar staff. Each adult has one Hahn Ultra in their hand and are saying cheers to each other. There are no minors in the image, no imagery that would appeal to minors and it was posted in an age-gated environment where minors cannot access the content.
- Lion does not consider that the Advertisement breaches any section of the ABAC Responsible Alcohol Marketing Code (ABAC Code) or any other advertising code. As noted in further detail below:
 - Lion takes its advertising responsibilities extremely seriously and has a strong compliance track record;
 - Lion has a number of strict internal and external processes against which any proposed advertisement is considered; and
 - the Advertisement was approved through Lion's internal processes.
- This advertisement was not approved by AAPS as Digital is an optional pre-vetting platform but was pre-vetted internally by Lion. On Facebook advertisers are able to target marketing communications effectively, as anyone under 18 is not able to find or view alcohol brand pages or posts. Minors or people under the legal drinking age would not be able to view this post even if reposted by an adult they are friends with.
- The advertisement is not targeted to minors as the advertisement was specifically targeted to people only 18 years and over. The Hahn Facebook page is an age gated platform, in accordance with the ABAC Best Practice Digital Guidelines.

- The advertisement is not likely to strongly appeal to minors as the people in the post are all adults over 25 years of age and nothing in the digital post is appealing to minors in any way shape or form. The term School Night is, as mentioned, an everyday term used by adults to describe a night during the week from Monday to Thursday. Examples of this being used would be “I can’t stay up to late tonight it’s a school night and I have work tomorrow”. There is no imagery in the post that would appeal to a minor.
- The advertisement does not have a particular attractiveness for a minor beyond the general attractiveness it has for an adult. The post has no appeal or general attractiveness to any minors and was not visible to any minors on the social media platform.
- The advertisement does not create an impression that the product is suitable for minors. Hahn Ultra is clearly marketed as a beer. It looks like a beer, includes the word ‘alcohol’ on its label and references the alcohol strength and equivalent standard drinks. Hahn Ultra is only sold in licensed venues like all beer. The post was also age restricted which is in accordance with ABAC’s Best Practice Digital Guidelines and the people in the post are all over 25 years of age. There is no suggestion that minors can or should consume this product at any time.

The Panel’s View

17. The complaint relates to an advertisement on the Company’s Facebook page. The post advertises Hahn Ultra’s low-alcohol beer. In the background, a scene is set with people in a bar saying cheers to each other, overlaid with the words “The 0.2 Advantage” and, in larger lettering, “Tastes like Saturday Night on a School Night”.
18. The complainant is concerned that the reference to “school night” could suggest that the product is advertised for school aged children or adolescents.
19. In response, the Company argues that the site is age gated and not accessible to under 18 year olds. In any event, the ABAC is a content as opposed to a placement code of practice, and this means an advertisement will not be in breach of a standard simply because it might be viewed by a person under 18 years old, nor will an age gate save an advertisement if its content does strongly appeal to minors.
20. In assessing whether a relevant Code standard has been breached, the Panel is to examine the probable understanding of the marketing communication by a reasonable person, taking its content as a whole. The reference to a “reasonable person” is drawn from the Australian Common Law System and means that the benchmark is the opinions, attitudes and values which are common in a majority of the community.
21. Part 5 of the ABAC Code contains a list of instances where the Code Standard may be breached for having a strong or evident appeal to minors. The examples provided are not exhaustive, but include the use of imagery, designs, motifs or characters that are likely to appeal strongly to minors, or have a

particular attractiveness for a minor beyond the general attractiveness to an adult.

22. The Panel does not believe the advertisement is in breach of the Standard. In reaching this conclusion, the Panel has noted:

- The advertisement creates an adult scene within a bar or hotel.
- The term “school night” is used colloquially as the equivalent of “work night” or “week night”.
- “School night” is often used by parents with school age children to contrast a night based at home with the kids as opposed to say a weekend evening with more freedom of movement and potential activities.
- Taken as a whole, the advertisement cannot be said to have a strong or evident appeal to minors.

23. Accordingly the complaint is dismissed.