



## **ABAC Adjudication Panel Determination No. 120, 122 & 125/16**

**Product:** Hahn  
**Company:** Lion  
**Media:** Television  
**Complainants:** Mr Dauven, Mr True & a confidential complainant  
**Date of decision:** 21 November 2016  
**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 Hahn by Lion (“the Company”) and arises from complaints received 26 and 27 October 2016 and 15 November 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 complaints raise concerns under the ABAC Code and accordingly are within the Panel's jurisdiction.

### **The Complaint Timeline**

7. The complaints were received on 26 and 27 October 2016 and 15 November 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 obtained for the marketing communication (15110).

## The Marketing Communication

10. The television advertisement opens with a with a bored looking man sitting on a couch in a backyard. We then see a helium balloon in the air and the man looking up at the balloon. The balloon is printed with the words "The Sky's the Limit". A slow rendition of Queen's "Don't Stop me Know" begins playing.
11. We then see a different man sitting on a couch in a living room apparently watching a sports event on television as we hear the television commentator say "If you're at home on the couch, you should be here". The man sits up straighter on hearing the commentator.
12. We then see three different bored looking people sitting on couches in the corner of an almost empty nightclub with a neon sign above a small stage, which reads "Find your Voice", while two people on the stage singing into a microphone with another man watching."
13. There is a return to the first scene and we see the first man looking thoughtful as a flap flies off the arm of the couch to reveal a flashing red button. The man looks up into the sky and presses his fist into the button as the music speeds up and the man is flung high into the sky.
14. There is a return to the second scene and we see a flap fly off the arm of the couch to reveal a flashing red button. The man looks at the button and presses it decisively and the man is then flung up out of the couch.
15. There is a return to the third scene and we see a flashing red button lift up in the ottoman in front of the three people on the couches. They look at one another and simultaneously press the button and are flung up and out of their couches.
16. We then see the first man flying through the sky and into a light aeroplane and out the other side with an old lady in a tandem sky dive with both smiling.
17. We then see the second man flying through the air and into an empty seat in a sporting stadium and a woman in the neighboring seat passes the man a cup of Hahn beer and the man takes a sip.
18. We then see the three people from the third scene flying through the air at night into a rooftop party. Each of them join a band playing at the venue. The camera then moves to a bucket of Hahn beers on ice as a hand reaches in and takes out a bottle. We then see three different party goers dancing with one of them holding a bottle of Hahn while a woman is shown sipping from a bottle of Hahn. The shot moves to a man shown drinking from a bottle of Hahn.

19. Lastly we see the tandem skydivers as the parachute is released which has Hahn Superdry branding. The Drinkwise logo appears in the top right hand corner and the tagline “Never Settle” is superimposed on the scene.

### **The Complaint**

20. The first complainant is concerned that the advertisement shows people drinking beer and then jumping out of an aeroplane when it is not safe for people to drink alcohol and then go skydiving.
21. The second complainant is concerned that the ad shows three bored people drinking beer and then flying through the air onto a stage to play music and this depicts a change in mood, which is both misleading and a breach of the Code.
22. The third complainant is concerned that the advertisement directly implies that the consumption of Hahn Superdry changed the consumer’s situation, mood and environment when it shows three consumers being transported from a “let-down” party to a popular party, with the aid of Hahn Superdry.

### **The ABAC Code**

23. 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;
  - (d) show (visibly, audibly or by direct implication) the consumption of an Alcohol Beverage before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination, such as the control of a motor vehicle, boat or machinery or swimming.

### **The Company’s Response**

24. The Company responded to the complaint by letter dated 3 November 2016. The principal points made by the Company were:
  - The TVC of Hahn Never Settle shows three different scenarios where people are on auto pilot in life or stuck in a comfort zone. In each scenario we see the people press a red button that launches them out of their comfort zone and allows them to experience new things in their life. Right at the end of the TVC, the three people land in their new situations and they are enjoying the moment while consuming or holding a Hahn Super Dry.
  - Lion does not consider that the advertisements breach any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code.
  - There is no indication in the Hahn Never Settle TVC that the product created or contributed to a significant change in mood or environment.

The scenes show three different people in normal mundane settings. They appear bored with their environment. We then see a red button appear and when it is pressed the people are launched into the sky. The red button is symbolic of someone making the decisions to get out of their comfort zone and experience new things in life – whether that's attending a sporting game with friends, skydiving or singing in a band with friends. Critically, the change of mood occurs when the people press the red button and make the decision (on their own accord) to get off auto pilot. There is no product in these scenes and there is no consumption of Hahn or any indication that Hahn encouraged anyone to press the button. We only see the product 44 seconds into the 1 minute advert when the people arrive at their final scene. As such Hahn is positioned as an accompaniment to those moments, not the cause of them.

- The advert does not breach Part 3(d) of the Code. As mentioned previously, the product is only shown 44 seconds into a 1 minute TVC. There is no sign or indication that Hahn was consumed prior to the people sitting on the couch, in their back yard or in the karaoke bar. The people in the scenes are sitting in a mundane environment and there is no visual of any product and no indication that alcohol has been consumed. The product is only shown after all of the people have made the decision to do something different and landed in the new environment.
- As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and intent of the ABAC and AANA Codes. Lion maintains strict internal and external processes to ensure this compliance.
- As part of Lion's marketing approvals processes, this commercial for Hahn Super Dry was subject to:
  - Internal legal review and advice from an external legal firm 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 all relevant advertising codes;
  - Review and approval through ABAC's external and independent pre-vetting service (AAPS) at both concept and final stages, receiving approval before going to market.

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

25. This determination concerns a one minute long television commercial for Hahn's Superdry. The advertisement features three separate story arcs which

are based upon a transformative journey of the depicted characters from a boring environment and disengaged mood to an exciting environment and highly engaged mood. The issue raised by the complaints is the role which the advertisement suggests alcohol plays in this significant change in mood and environment.

26. The advertisement has attracted three complaints two of which raise section (c) of the Code and one complaint which raises section (d). The section (d) issue will be dealt with first, followed by an examination of the advertisement in relation to the section (c) standard.
27. The section (d) issue arises in relation to the story line which follows a journey of a man who is shown sitting on a couch in his backyard and is transported into the air to a light aircraft. Once in the aircraft, he is seen jumping in a tandem skydive with an elderly lady. The ostensible cause of this fantastic journey is the appearance of a red button in the couch, which, when activated, commences the trip to the aeroplane.
28. The first complainant contends that the advertisement shows the consumption of alcohol, followed by the skydiving. It is argued that it is not safe to drink alcohol and then go skydiving.
29. Section (d) of the ABAC provides that an advertisement must not show the consumption of an alcoholic beverage before or during any activity that for safety reasons requires a high degree of alertness or physical coordination. There is no doubt that skydiving is an activity which requires a high degree of alertness and physical coordination.
30. The Company contends that the product is introduced into the advertisement 'after all of the people have made the decision to do something different'. The Company argues that as the product is not shown as being consumed prior to or during the skydiving activity, then the section (d) standard has not been breached.
31. The Panel believes that the advertisement does not breach the section (d) standard. Consumption of alcohol is not depicted in the skydiving storyline and the product is not introduced into the other two story lines until after the skydiving has commenced. Equally the entire scenario is clearly a fantasy and would not be taken as advocating that it is acceptable to drink alcohol before or during such a dangerous activity.
32. Turning to the second issue, each of the three storylines are based upon a significant change in mood and environment. The characters move from a mundane setting in which the prevailing mood is boredom to exciting settings in which the characters' mood is highly engaged and stimulated. The question to be assessed by the Panel is whether alcohol played a role in this significant change in mood and environment.
33. Section (c) of the Code provides that an advertisement must not suggest that the consumption or presence of an alcoholic beverage may create or contribute to a significant change in mood or environment. In assessing if an ABAC standard has been complied with, the Panel is to have regard to the probable

understanding of the advertisement by a reasonable person taking the content of the ad as a whole.

34. The key concept in this standard is that of causation. This means that an advertisement can associate alcohol with appealing and exciting environments and with people portrayed in a highly engaged and happy mood, provided it is not suggested that an alcohol product caused or contributed to the significant change in either mood or environment.
35. The second and third complainants have interpreted the ad as suggesting that alcohol was a cause of the significant change depicted. The Company argues that the mood and environment was not altered by alcohol, but by the participants' decision to move out of their comfort zone and experience new things in their lives. It is contended that alcohol was introduced at a later point once the new environment had already been established.
36. The Panel believes that it can be accepted that the 'change in life' decision symbolised by pushing the red button is the principal cause of the change in environment. It is the taking of the action of pushing the button, which is depicted as the trigger of the dramatic movement from the characters' current environment to a new environment. The section (c) standard, however, is broadly framed. Alcohol need not be depicted as the sole cause of the significant change but also it must not be suggested as a contributing factor to the altered mood or environment.
37. On balance, the Panel does not believe the skydiving or party going storylines breach the section (c) standard. In the case of the sky diving scenario, alcohol is not depicted as part of the journey and the exhilarated new mood can be solely attributed to the skydiving adventure itself. In the party going storyline, alcohol is seen and consumed in the new environment. However, the mood of the characters is established to be caused by them playing in the band at the party. In this scenario, there is a clear separation between the new mood established and the subsequent introduction of the product, which is consumed by different people at the party and not the band.
38. The Panel believes however that the sporting event storyline does breach the section (c) standard. In reaching this conclusion, the Panel has noted:
  - The sporting event narrative follows a journey of a man from watching a game at home alone to attending the game with friends at a sports' stadium.
  - The storyline depicts a significant change in environment and an equally significant shift in the man's mood i.e. bored to highly engaged.
  - The cause of the change in environment is established to be the decision taken by the man to attend the game as symbolised by pushing the red button.
  - The change in the mood of the man can reasonably be taken to have been principally caused by the decision to attend the game in person.

However, a contributor to the man's change in mood is the presence and consumption of the product.

- The product is introduced to the man simultaneously upon him arriving at the stadium and this contrasts with the other two story lines where the altered mood is first established and thereafter (in the partygoer scenario) the product is introduced.
- In the sporting event scenario, there is no separation between the creation of the enhanced mood and the use of the product and it is a reasonable interpretation of the ad that a contributing factor to the change in the man's mood was his use of the product.

39. Accordingly, the second and third complaints are upheld. The first complaint is dismissed.