



## ABAC Adjudication Panel Determination No. 134/16

**Product:** XXXX Gold  
**Company:** Lion  
**Media:** Outdoor  
**Complainant:** Sarah Yeates  
**Date of decision:** 20 December 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 an outdoor advertisement for XXXX Gold by Lion (“the Company”) and arises from a complaint received 13 December 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 and accordingly is within the Panel's jurisdiction.

### **The Complaint Timeline**

7. The complaint was received on 13 December 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 (15230).

## **The Marketing Communication**

10. The outdoor advertisement features a group of 5 people on a motor boat. The boat appears to be stationary and the water conditions are calm. It is a sunny clear day.
11. In the foreground are a man and woman sitting down in the boat laughing and holding a cold open can of XXXX Gold with an unseen person in the group also holding a can.
12. Behind this group there is a man and woman standing and looking toward the group and laughing.
13. In the background with his back toward the camera is a man sitting at the wheel of the boat with a bottle of water next to him.
14. Above the image is the tagline "Make Sure You Take In The Gold This Australia Day".

## **The Complaint**

15. The complainant is concerned that the passengers on the boat are drinking alcohol and not wearing lifejackets. In particular, as it undermines safety messages by NSW maritime safety advising that the boating environment reduces coordination, judgment, vision, balance and reaction time due to the waves, motion, vibration, engine noise, weather, wind and spray and can multiply the effects of alcohol. In addition, boat passengers are just as likely as operators to be involved in incidents such as capsizing the vessel or falling overboard as a result of drinking alcohol.

## **The ABAC Code**

16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (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**

17. The Company responded to the complaint by letter dated 15 December 2016. The principal points made by the Company were:

- The advertisement that is the subject of this complaint is an outdoor poster for XXXX Gold. The campaign is “Take in the Gold” and the poster shows five passengers and a driver on a boat that is parked in safe sailing conditions, on a sunny day with clear visibility. Three of the people on the boat have a XXXX Gold in their hand while the other two people are socially engaged. This poster is one of three that highlights the tag line for the brand, Take in the Gold. The other two outdoor posters show families and friends in outdoor social settings such as camping and a BBQ setting. The campaign is all about taking in the golden, engaging and sociable moments with friends and family in the great Australian outdoors.
- Lion does not consider that the advertisements breach any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code. Lion takes water safety very seriously as well as community concerns around water safety. We understand that life jackets are a key safety feature in recreational boating and must be carried on board at all times, however; it is not a prevailing community standard for them to be worn in the circumstances featured in the advertisement subject to the complaint. During production of this advertisement, Lion worked closely with its legal counsel and external legal advisors, Baker & McKenzie, to ensure it complied with the maritime safety regulations for each Australian State and Territory and the Australian Association of National Advertisers Code of Ethics (Code). As this is a national campaign, and despite the laws governing the wearing of life jackets not being harmonised, we ensured that the advertisement complied with the regulations in each jurisdiction. Lion also worked closely with an ABAC/AAPS pre- vetter throughout the process. Maritime safety regulations across Australia require a life jacket to be carried in the appropriate size and type for each person on board the vessel. There is no legal requirement to wear a life jacket in circumstances where a recreational boat is stationary and in safe calm waters, as depicted in the ad. In Lions opinion, prevailing community standards in respect of the requirement to wear lifejackets reflect the maritime safety laws in each jurisdiction. That is, the Australian community would reasonably require a life jacket to be carried for each adult on board but would not expect an adult to wear it when the motor is not on and the water conditions are calm. When we think of community standards, we must think of the thousands of boats that leave our shores every day similar to the one depicted in this advertisement and, while life jackets are stored on board those boats, in a safe calm social setting, life jackets to be worn are not mandatory and are only required to be on the vessel and used in dangerous conditions or in the case of an emergency.

- The advertisement shows the passengers of the boat engaging in a fun, sociable and safe environment. To show that the boat is still, the driver of the boat is visibly calm, at ease and sitting back in his seat with his hands removed from the wheel, drinking a bottle of water, while gazing out over the water while his passengers socialize and take in the golden moments with friends and family on board. The water is still and calm and there is no indication of any motion on the boat. No one is in danger and there is no sign of distress. No one is swimming or is intending to go swimming; No one consuming alcohol is operating heavy machinery, as the boat has a designated driver.
- The complainant states that the presence of “waves, motion, vibration, engine noise, weather, wind and spray that can multiply the effects of alcohol”. We note that none of these conditions listed are evident in the advertisement and are therefore immaterial to determining whether the advertisement breaches Section 2.6 of the Code.
- We also disagree that the advertisement undermines safety messaging such as “Go easy on the drink”. There is nothing in this advertisement that alludes to irresponsible consumption of alcohol. The number of cans of mid-strength XXXX Gold depicted in the advertisement is limited to three (less than 1 standard drink per person), and a bottle of water is very clearly placed next to the steering wheel for the driver of the boat who is not drinking. No one on the boat is or looks drunk or acting in a dangerous or irresponsible way.
- 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 XXXX Gold 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

18. In the Australian Federal System, responsibility for Coastal Marine Safety rests with State and Territory governments. Safety requirements vary somewhat between jurisdictions, but in general terms marine safety requirements go to the circumstances which passengers on smaller boats are obliged to wear life jackets. This determination concerns an outdoor advertisement from the Company that raises the interplay between good practice in alcohol advertising and general regulatory requirements around marine safety and the use of life jackets.
19. The advertisement shows five people on a boat. While the size of the boat is not entirely clear it is evidently an open motor cruiser. The boat is pictured near the coast and is apparently anchored. It is a sunny clear day with calm water conditions. Two of the passengers are shown consuming alcohol. The boat's driver is not drinking and a bottle of water positioned adjacent to the driver indicates he is not consuming alcohol.
20. The complainant is concerned that the advertisement depicts boating practices, which are contrary to prevailing marine safety requirements concerning the use of life jackets. Further, it is argued that alcohol use poses a significant risk to boat passengers and not simply the person who has control of the boat.
21. The relevant ABAC standard provides that alcohol marketing must not show the consumption of alcohol 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 boat.
22. The Company contends the ABAC standard has been satisfied. It claims that the scene depicted is consistent with safe boating conditions, features an operator of the boat who is established as not consuming alcohol and prevailing safety regulations do not require the wearing of life jackets in such conditions.
23. A brief review of the maritime regulations of NSW and Victoria suggest that while life jackets are required to be worn at all times by children on boats under a particular size and by adults in particular circumstances on boats under a particular size e.g. at night, crossing a sandbar, rough conditions, it would not appear that in the conditions depicted in the advertisement that life jackets would be mandatory.
24. The Panel does not believe the advertisement would be taken by a reasonable person as being in breach of the ABAC standard. In reaching this conclusion the Panel has noted:
  - The person in control of the boat is not drinking alcohol and the positioning of a bottle of water next to the operator reinforces that he is not consuming alcohol during the activity;
  - The portrayal of consumption by passengers on the boat is moderate;

- The prevailing weather conditions are calm and suggests life jackets need not be worn; and
- Taken as while the advertisement is not showing behaviors that are inconsistent with moderate alcohol use by passengers on a boat being operated in a safe manner.

25. Accordingly, the complaint is dismissed.