



ABAC Adjudication Panel Determination No. 68/17

Product: Heineken
Company: Heineken Lion Australia
Media: TVC
Complainant: Ms Torcasio
Date of decision: 22 March 2017
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 television advertisement for Heineken by Heineken Lion Australia, the distributor of the product in Australia (“the Company”) and arises from a complaint received 2 March 2017.
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 2 March 2017.
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 [15328].

The Marketing Communication

10. The television advertisement opens with the camera looking down over a city on the coast at night and is accompanied by party music. We then see a group of people entering an event via a red carpet as numerous cameras flash. We see a man at a bar “the Man” as the bartender places two 375ml bottles of Heineken on the bar and says “Last two”. The Man picks up the two bottles and turns around bumping into a well dressed man speaking with a woman at the bar. The well dressed man turns to the Man who says “David Coulthard?”. Mr Coulthard looks down at the two beers and then back at the Man and says “The one and only” and then steering the Man away through the crowd says “First time at Formula One?” and the Man nods. Mr Coulthard continues “As you can see, its bigger than a race”. The screen then fades and we see the following series of fast moving scenes:
 - The Man in a helicopter operated by Mr Coulthard flying over the city at night as a voiceover says “It’s the crown jewel of motor sport”.
 - A close up of Formula One cars racing.
 - Mr Coulthard and the Man walking through stands in which well dressed people are viewing a race at night and cameras flashing as the voiceover continues “She’s elegant”.
 - A close up of a woman in the stands who the Man is shown admiring as the voiceover continues “and mysterious”.
 - A close up of Formula One cars racing as the voiceover continues “down force, slipstream and drive”.
 - Mr Coulthard and the Man walk through the middle of a press conference as Mr Coulthard whispers to the Man “everything here is a constant challenge” as Formula One CEO Bernie Ecclestone on a screen says “David, who the hell is that guy?” and the cameras all turn toward the Man.
 - A close up of Formula One cars racing as the voiceover continues “overtaking is an art”.
 - Mr Coulthard and the Man walking through the pit area as a pit change is in progress as the voiceover continues “through the pit lane, tick, tock, tick, tock” and then a tire is thrown away from the car past the Man.

- Formula One cars racing as the voiceover continues “you can’t be first till you beat the best”.
- Two people swimming underwater in motor racing helmets.
- Mr Coulthard holding a woman’s hand as he passes her when walking through the party with the Man and fireworks in the background as the voiceover continues “whatever you do never never lose focus” as a person dressed in a dinner suit falls into the water and the two swimmers in motor racing helmets swim over to the person in the water.
- Mr Coulthard and the Man walk through a party on a yacht.
- Mr Coulthard and the Man are back at the original party and Mr Coulthard is holding up the two 375ml bottles of Heineken in illustration of what he is about to say and says to the Man “In the end, when your down to the last two [a scene of two cars passing the chequered flag flashes up briefly] winning is about strategy, strategy”.
- In the next scene Mr Coulthard and the two bottles of Heineken have disappeared. The Man looks around puzzled.
- We then see an aerial shot of a city at night with the tagline “More than a race” superimposed on the screen.
- In the final scene we return to the Man at the party and see another man walk near him holding two bottles of Heineken. The Man turns to him and says “Hey, first time at Formula One?”. The second man says “Yeah” and we see the Heineken logo and tagline “open your world” against a green background and in the top right corner a “When you Drive Never Drink” logo. Then the Formula One logo appears alongside the Heineken logo.

The Complaint

11. The complainant is concerned that the advertisement relates car driving and alcohol in circumstances where there is a drink driving problem in Australia.

The ABAC Code

12. 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

13. The Company responded to the complaint by letter received 17 March 2017. The principal points made by the Company were:

- Heineken and F1 share a passion for creating enjoyable and memorable moments. We also have a shared belief about the importance of being in control and putting safety first. Heineken's partnership with F1 articulates a clear message to encourage consumers to 'Enjoy Heineken Responsibly', with the intent to leave them in no doubt we advocate that that if you drink then you should not drive. To reinforce this message, Heineken has appointed one of Formula 1's most iconic drivers, Sir Jackie Stewart, to be the face and ambassador of When you drive, Never drink campaign. Heineken is supporting this message with a new TVC, which will be on air in March. The brand message and logo for When you drive, Never drink also appears throughout all communications activity and is our only brand message on the track at this years' 2017 Formula 1® Rolex Australian Grand Prix, 23 – 26 March. As an international premium beer brand, we have a global commitment to encourage consumers to consider moderation of their alcohol consumption, an activity we take very seriously in all of our marketing activities.
- "The Tutorial" global TVC was created to guide the uninitiated through the exciting and often complex world of F1. In an established Heineken® style, this is done in a highly fantastical and light hearted fashion. From the quick transitions between scenes, and the highly improbable visual narrative, it is clear to the viewer that we are seeing F1 played out in an analogous and easy to understand way, for new and existing fans. At no point do we see our two main characters consuming alcohol, nor do we imply that consumption has occurred before we pick up the story, or that consumption will occur before driving or other potentially hazardous activities.
- Heineken take drink driving and community concerns around this issue very seriously. Heineken take a hard stance that when you drive, never drink. At no point does the advertisement offer any suggestion that either of the two main characters have previously consumed alcohol, or are about to drive or partake in hazardous activity. It is clear from the party atmosphere at the beginning and end of the TVC that our F1 fan is likely to be a spectator not a competitor, and there is no implication (from his dress or demeanour) that David Coulthard is about to, or considering to, drive or partake in hazardous activity. As stated above, it is clear to the viewer that the advertisement transforms into a dream-like or fantasy sequence, making it clear that events are not based in reality and that there is no danger to any of our participants.
- The two bottles happen to be in David Coulthard's hands and it is reasonable that he would use these as props in his explanation of racing strategy. His reference being made in the script here is that winning is all about strategy, displayed through two completely separate events where an analogy is drawn - two cars vying for a win being one and David Coulthard making off with the last two beers as the other. Again, there is no implication of anyone drinking and driving, or that consumption of alcohol could lead to a winning performance.

- The pit lane scene is clearly fantastical in nature and it is very unlikely that viewers would believe that this proximity to action would be possible in real life. The action is clearly light hearted and the way the narrative translates quickly to the underwater swimmers and back to the party underlines the fantasy nature of this plot point. We think it is unlikely that the average person would think the characters were in a position of actual danger, or that the pit lanewalk was realistic.
- As a responsible marketer, Heineken Lion has demonstrated a long-standing commitment to upholding both the letter and intent of the ABAC and AANA Codes. Heineken Lion maintains strict internal and external processes to ensure this compliance. As part of Heineken Lion's marketing approvals processes, the Heineken The Tutorial TVC was subject to:
 - Internal legal review from Heineken Global Corporation;
 - Review by Heineken 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), receiving approval prior to going to market.

The Panel's View

14. This determination concerns a one minute thirty second long clip accessed on YouTube for the alcohol product Heinekin. The advertisement promotes the product's association with Formula One motor racing.
15. The advertisement is centered on the driver David Coulthard introducing a man he meets at a gala event to the Formula One. It is an elaborate advertisement with multiple scenes drawing on aspects of Formula One filmed in a fantasy style.
16. Throughout the dialogue between Mr Coulthard and the man, the man holds two opened bottles of the product. The product is not seen as actually being consumed and at points in the narrative close ups of the bottles show them still to be filled.
17. The complainant believes the advertisement is irresponsible as it is pointed out that drink driving is a major social problem. It is contended that a motor sport such as Formula One and alcohol not be related.
18. For its part the Company states its commitment to road safety practices and that alcohol consumption should never occur with driving a motor vehicle. It is pointed out that the advertisement does not show actual alcohol consumption, that the two main characters are not engaging in any dangerous activity and the entire advertisement is fanciful and would not be interpreted as encouraging or endorsing drink driving.

19. There is some irony in an alcohol brand sponsoring or being associated with motor racing just as there is with fast food brands sponsoring physical activity such as sporting events. The requirements of the ABAC standards are not however based on addressing irony but on specific standards on what cannot be included within alcohol marketing.
20. Section (d) of the ABAC provides that an advertisement must not show (including by direct implication) the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination. Driving a car is such an activity.
21. The benchmark for assessing if a standard has been complied with is the probable understanding of the advertisement by a reasonable person. The reference to a 'reasonable person' means regard is to be had to the opinions, values and attitudes shared by a majority of the community.
22. The advertisement does not breach the section (d) standard for the following reasons:
 - the two main characters in the advertisement do not engage in 'any activity that for safety reasons requires a high degree of alertness or physical co-ordination',
 - rather these two characters are depicted in a story arc which shows Mr Coulthard explaining aspects of Formula One and this is illustrated through fantasy scenes,
 - there is no reasonable implication that the persons engaged in dangerous activity in the fantasy scenes have been consuming alcohol,
 - alcohol use is depicted at the event which two men are attending but this event is separate from the actual conduct of a motor race,
 - only moderate alcohol use is portrayed at the event,
 - taken as a whole, a reasonable person would not interpret the advertisement as encouraging unsafe practices such as drink driving.
23. Accordingly, the complaint is dismissed.