



ABAC Adjudication Panel Determination No. 103-4/17

Product: Hahn
Company: Lion
Media: Television
Complainants: Ms Taylor & a confidential complainant
Date of decision: 7 November 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 Hahn by Lion (“the Company”) and arises from complaints received 26 September 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 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 September 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 (15110).

The Marketing Communication

10. The television advertisement opens with three 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. A slow rendition of Queen's "Don't Stop Me Now" is playing.
11. We then 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 as the Queen song speeds up.
12. We then see the three people 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 each holding a bottle of Hahn while two are shown drinking from their bottle of Hahn.
13. Lastly we see the band playing and then an aerial view of the rooftop party with the Hahn logo lit up on a billboard behind the party and then the Hahn Superdry logo superimposed on the scene. The Drinkwise logo appears in the bottom right hand corner and the tagline "Never Settle" is superimposed on the scene below the Hahn Superdry logo.

The Complaint

14. The first complainant refers to an advertisement showing beer and happy young people drinking enthusiastically and quickly while a song with the lyrics "Don't stop me now. Never want to stop at all." plays in the background. The concern is that the lyrics are in total defiance of responsible drinking. The complainant refers to teenagers who have become unconscious because they do not stop drinking when intoxicated. An additional concern is that young people and children watching replays of a sports event online without adult supervision cannot avoid seeing the ad which plays each time the replay is shown (Adelaide Crows preliminary final victory replay on Fox Sports).
15. The second complainant is concerned that the ad by its music and lyrics projects the message that there is a change in mood and a change in social interaction based on the product. The words "Don't stop me now because I'm having a good time. I don't want to stop at all." Together with people drinking beer and dancing present the image that drinking beer will give you a good time with members of the same and opposite sex whilst in a socially acceptable environment that depicts others dancing and enjoying music and beer.

The ABAC Code

16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
- (a)(i) show (visibly, audibly or by direct implication) or encourage the excessive or rapid consumption of an Alcohol Beverage, misuse of abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (b)(i) have Strong or Evident Appeal to Minors;
 - (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;

17. Part 5 of the ABAC Code Definitions 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.

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

18. The Company responded to the complaint by letter dated 17 October 2017. 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.
- The advert does not show alcohol consumption until the very last frame this was carefully sequenced both internally and with the pre Vetter to ensure that Hahn never contributes to any mood change. *Don't Stop Me Now* does not link to alcohol, the song links to the Hahn campaign of not settling and stopping still in life, not with alcohol, and getting up and doing more with life, trying something new. The red button indicates that these people are willing not to settle anymore and the push the red button voluntarily to see what more they can do. No alcohol plays a part.
- This advertisement has no content in it that relates or appeals to minors. It is a mature setting. Also. I understand placement in the ABAC code is not in place yet so the question around placement is N/A.
- The actions these people take in the TVC are not done or encouraged while consuming alcohol or after consuming alcohol. No alcohol is consumed or seen until the very last frame. All of the actions are taken voluntarily as these people have decided to “Never Settle” and they want more from life. There are no elements of success through consumption, there are no dangerous activities and there is no alcohol changing the mood of the TVC. The mood changes dramatically without any sign, branding or consumption of alcohol. Again this TVC was carefully sequenced to show only alcohol right at the end of each TVC and again, the point of the advert is that people are not settling for doing the same thing with their life and doing something different and new.
- 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

Introduction

19. In Determination 120, 122 and 125/16 the Panel considered a 60 second television advertisement for Hahn Super Dry. The current complaints relate to a 30 second advertisement which is a cut down version of the earlier and longer advertisement. Because this advertisement is different from the one considered previously and the arguments advanced by the complaints to some extent go to matters not considered in the earlier Determination, the Panel is making this fresh decision.
20. The 60 second version of the advertisement featured three separate scenarios which depicted a transformative journey of the characters in the advertisement from boring environments and a disengaged mood to exciting environments and a highly engaged mood. On that occasion the Panel found that one of the three scenarios was in breach of section (c) of the Code. This version of the advertisement does not feature the scenario which was previously found inconsistent with the Code.
21. The two complaints between them raise the following concerns which will be addressed in turn:
 - The advertisement will be seen multiple times by young people and children by being viewed when a replay of an AFL final's game is accessed (ABAC Section b);
 - The advertisement and particularly the lyrics of the song 'Don't Stop Me Now' encourage excessive alcohol consumption (ABAC Section (a)); and
 - The advertisement and song lyrics imply the product results in a change in mood and the achievement of social success (ABAC Section (c)).
22. In assessing if an alcohol marketing communication is consistent with a Code standard, the Panel is to have regard to the probable understanding of the communication by a reasonable person. This means that the opinions, outlook and values common in a majority of the community is to be the benchmark.

Appeal to under 18 year olds

23. The concern expressed in one complaint is that the advertisement will be potentially seen repeatedly by young people and children. There is no ABAC standard imposing restrictions on the number of times an advertisement might be broadcast or accessed on a digital platform and hence the specific point raised in the complaint is not a breach of the Code. More generally the Panel

believes the advertisement is adult in nature, does not feature actors who appear to be younger than their late 20's or older nor does it have other elements which could be fairly said to be strongly or evidently appealing to minors. The Queen song 'Don't Stop Me Now' was released in 1978 and would not be regarded as being targeted at under the 18 year old demographic.

Excessive Consumption

24. Both complainants refer to the lyrics of the song 'Don't Stop Me Now', with the first complainant contending that the lyrics could be taken as suggesting that alcohol be consumed up to the point of intoxication. The Company argues the choice of song related to the theme of 'Never Settle' and is not linked to alcohol consumption.
25. The advertisement must be taken as a whole with the song and its lyrics understood within the context of the story arc of the scenario shown in the advertisement. The Panel does not believe the advertisement is promoting excessive alcohol consumption and in this regard it is noted:
 - The song is introduced early on in the scenario prior to any alcohol consumption;
 - The song is linked to the choice of the 3 characters to push the red button and transform their experience and not to alcohol consumption levels; and
 - Actual alcohol consumption shown is moderate.

Change in mood and achievement of success

26. The second complainant contends that the advertisement depicts alcohol use as the basis for a change in mood and social interaction. Section (c) of the Code provides that an alcohol advertisement must not suggest that the consumption or presence of an alcohol beverage may create or contribute to a significant change in mood or be a cause to the achievement of success.
27. There is no doubt that the advertisement does show a significant change in mood and environment as the three principle characters move from the boring and lifeless nightclub scene to the lively and highly active rooftop party. The question is the role alcohol played if any in this transformation.
28. In Determination 120,122 and 125/16 the Panel held that the earlier 60 second version of the advertisement did breach this section of the Code. The previous advertisement featured three scenarios and the Panel's findings were based on the portrayal of a scenario involving a man moving from his home to a football stadium which is not referred in this version of the advertisement at all.
29. The key concept in section (c) is that of causation. It is permitted to associate alcohol with attractive and successful people and enjoyable occasions. It is not permitted to suggest that alcohol use was the cause of the success or the change in mood.

30. In this advertisement, it is established that the fanciful journey experienced by the three characters is caused by pushing the red button. The button is taken as reflecting the life choice of not accepting the boring experience.
31. Taken as a whole, including the music and lyrics, the Panel does not believe the advertisement breaches the standard. Alcohol is introduced after the new mood is established. It is not the cause of the new mood or the social interaction which occurs at the party.
32. Accordingly, the complaints are dismissed.