



ABAC Adjudication Panel Determination No. 107/17

Product: Heineken 3
Company: Heineken Lion
Media: Outdoor
Complainant: Confidential
Date of decision: 7 November 2017
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an outdoor advertisement for Heineken 3 by Heineken Lion (“the Company”) and arises from a complaint received 10 October 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 10 October 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 was 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 this marketing communication (15705).

The Marketing Communication

10. The complaint relates to an outdoor advertisement for Heineken 3 in a shelter at the Turramurra train station in New South Wales. It is a photographic image of a bottle of Heineken 3 against a white background with part of the Heineken logo outlined in green behind it. To the right of the bottle is the text “Heineken 3 Lower Calories Lower Carbs Great Taste Have it All”. On the bottom right hand side is the Heineken logo with the text “open your world”.



The Complaint

11. The complainant is concerned that:
 - a) Hundreds of school children walk past the sign every day, not to mention the commuters, families, elderly and youth who use the train service.
 - b) This is an irresponsible ad placed very carelessly.

- c) Binge drinking is a problem in Australia and shouldn't be encouraged, especially not branded for it's 'low calories' as if its healthy.

The ABAC Code

- 12. 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 or abuse of alcohol or consumption inconsistent with the Australian Alcohol Guidelines;
 - (c)(iv) suggest that the consumption of an Alcohol Beverage offers any therapeutic benefit or is a necessary aid to relaxation;

The Company's Response

- 13. The Company responded to the complaint by letter dated 17 October 2017. The principal points made by the Company were:
 - a) Lion does not consider that the advertisement breaches any section of the Alcohol Beverages Advertising Code (ABAC) or any other advertising code.
 - b) In relation to placement, I understand this does not fall within the ABAC yet so this would be N/A. In relation to the placement of the advertisement, its placement plays no part in encouraging excessive consumption. The facts on the advertisement are factually correct and comply with all advertising claims description in the ACCC guidelines and ABAC. By stating the facts, there is no call to action or encouragement or any health claims made. There is no suggestion that the product is better for you than any other product. The placement of the advertisement falls within the guidelines for OMA outdoor advertising.
 - c) There is no language or images to suggest that the product has a therapeutic benefit. The facts on the advertisement are factually correct and comply with all advertising claims description in the ACCC guidelines and ABAC. By stating the facts, there is no call to action or encouragement.
 - d) 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:
 - i. 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;

- ii. Review by Lion's internal marketing compliance team to ensure its adherence to all relevant advertising codes;
- iii. 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. If you require any further clarification or supporting materials, please do not hesitate to contact me on 02 8120 4881.

The Panel's View

14. The complainant raises two issues of concern in relation to the outdoor advertisement, namely;
 - The ad is placed irresponsibly where many people including school children can view it and the reference to healthy characteristics together with the high exposure could encourage binge drinking; and
 - That the product is portrayed as a healthy drink.
15. In response to the complaint, the advertiser argues that the advertisement states facts about the product with no call to action or encouragement to consume and also makes no claim that the product has any therapeutic benefit.
16. It should be noted that as at the time of the complaint, the ABAC did not extend to considerations of the placement of alcohol advertisements and was focussed upon the content of alcohol marketing communications. A new edition of the Code came into effect on 1 November 2017, which includes new placement rules. However as this complaint was made under the previous scheme, the new rules are not applicable.
17. Accordingly the fact that an alcohol advertisement might be viewed by under 18 year olds is not of itself a breach of an ABAC standard. The content of the advertisement does not contain features which could be said to be strongly or evidently appealing to minors.
18. The complainant contends that references to the product having 'healthy characteristics' could encourage binge drinking and suggest the product is itself healthy. The Company refutes both these contentions.
19. The Panel does not believe the advertisement would encourage excessive consumption. It is far too long a bow to think a reasonable person would alter their consumption pattern from responsible to excessive based upon the claim the product has lower calories or carbs.
20. Equally the Panel does not believe the advertisement is suggesting the product is 'healthy' or offers any therapeutic benefit. The reference to lower calories and carbs would likely be understood by a reasonable person to be a

comparison of the product against another type or brand of beer with higher calories and carbs. Making this comparison is not akin to saying the product is healthy.

21. Accordingly, the complaint is dismissed.