



ABAC Adjudication Panel Determination No. 53/18

Product: Iron Jack
Company: Lion
Media: Television
Complainant: Confidential
Date of decision: 21 May 2018
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 Iron Jack beer by Lion (“the Company”) and arises from a complaint received 17 April 2018.
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.
2. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
 3. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 4. The complaint is independently assessed by the Chief Adjudicator and Ad Standards 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 Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 5. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

3. The complaint was received on 17 April 2018.
4. 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 completed in this timeframe.

Pre-vetting Clearance

5. 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 (15982).

The Marketing Communication

6. The complaint relates to a television advertisement for Iron Jack beer on Channels 9 & 7 during the Commonwealth games.
7. The advertisement depicts four men in a small fishing boat, in a variety of standing and sitting positions while casting their lines or catching fish. Part way through the ad music starts and a voiceover says "He's known for putting his reputation on the line" As we see one of the men catching a fish and then high-fiving one of the other men in the boat and one of the men says "We ain't going hungry tonight boys".
8. The scene then changes to a man who appears to be sitting on the shore at sunset taking a long sip from a 375ml bottle of Iron Jack beer as the voiceover says "Iron Jack, known for thirst-crushing refreshment" while a bottle of Iron Jack is superimposed on the left side of the scene along with the message "Iron Jack Crisp Australian Lager Known for Thirst-crushing Refreshment".

The Complaint

9. The complainant is concerned that none of the men in a boat fishing are wearing life jackets as prescribed by law followed by drinking beer. The whole package promotes a sense of reckless behaviour and ignoring legal obligations.

The ABAC Code

10. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
 - (a)(ii) show (visibly, audibly or by direct implication) or encourage irresponsible or offensive behaviour that is related to the consumption or presence of alcohol;
 - (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

11. The Company responded to the complaint by letter dated 2 May 2018. The principal points made by the Company are:
 - a) The advertisement in question features four men fishing on a boat in calm waters. There is no presence or consumption of alcohol in this scene. The following scene cuts to an end shot with one of the fisherman taking a sip of Iron Jack while sitting at a campsite.

- b) The advertisement does not breach Part 3(d) of the Code which states that a marketing communication must not show the consumption of an alcohol beverage before or during any activity that requires a high degree of alertness or physical co-ordination. The final scene where a man takes a sip of beer is very clearly distinguished from the prior boating scene, as the fishermen were out under the sun in the middle of the day and no drinking was shown. The final shot shows one of the fisherman sitting at a campsite after the fishing trip is complete and it is clearly a later time of the day, as the sun is setting.
- c) The advertisement is also consistent with all relevant Maritime laws in Australia (which include when life jackets should be worn) where the commercial has aired.
- d) The advertisement also does not breach Part 3 (a)(ii) of the Code which states that a marketing communication must not show or encourage the irresponsible (reckless) or offensive behaviour related to the consumption or presence of alcohol.
- e) As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. Lion maintains strict internal and external processes to help ensure this compliance. As part of Lion's marketing approvals processes, the advertisements for Iron Jack were 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; and
 - 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

- 12. This determination concerns a TVC which features four men fishing in a dinghy. The Complainant contends that the advertisement is irresponsible as it displays unsafe behaviours in the use of the boat which is compounded by showing the consumption of alcohol. Taken as a whole, it is argued that the ad promotes a sense of reckless behaviour and a disregard of legal obligations particularly the requirement to wear life jackets.
- 13. The ABAC provides that alcohol marketing must not breach standards of good marketing practice. Section 3(a)(ii) states that an advertisement must not show or encourage irresponsible behaviour that is related to alcohol use. Section 3(d) requires that an advertisement not show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical coordination.

14. The use of a boat is an activity that does need to be conducted in a careful manner conscious of safety requirements. If an alcohol advertisement encouraged alcohol use before or during the use of a boat by a person in control of the vessel, or generally irresponsible alcohol related behaviour, then such an advertisement would be in breach of the ABAC provisions. The issue is whether the current advertisement can fairly be said to breach these standards.
15. The first point raised by the Complainant is the failure of the men fishing from the boat to wear life jackets. The requirement to wear life jackets is regulated by state laws and varies somewhat from state to state. It is, however, not a universal obligation to wear a life jacket while aboard a boat at all times. Rather, the obligation turns on variable factors such as whether the boating is occurring during the day or at night and the prevailing weather conditions.
16. The advertisement shows the men fishing adjacent to mangroves on a calm clear day. While it would be preferable that the men be depicted wearing life jackets at all times, it would not be a breach of state regulations to use a boat in these conditions without a life jacket. The Company has advised the advertisement was only broadcast in jurisdictions where the use of life jackets in the conditions shown in the advertisement was not mandated.
17. The second argument related to a sense of reckless behaviour contributed by the use of alcohol. The Panel does not believe that the advertisement breaches the section 3(d) standard given:
 - The scene showing alcohol use is clearly placed at the conclusion of the day after the fishing had been completed, and
 - There is no suggestion that the men had consumed alcohol before or during their use of the boat.
18. Accordingly the complaint is dismissed.