



ABAC Adjudication Panel Determination No. 72/18

Product: Iron Jack
Company: Lion
Media: Television
Complainant: Ms Gillard
Date of decision: 30 July 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Jeanne Strachan
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns an advertisement for Iron Jack by Lion (“the Company”) and arises from a complaint received on 26 June 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.
3. 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 the other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards (AS) provides a common entry point for alcohol marketing complaints. Upon a complaint being received by AS, 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 AS 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.
 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 26 June 2018.
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.
9. The quasi-regulatory system for alcohol beverage marketing features independent examination of the content of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was obtained for this marketing communication (16182).

The Marketing Communication

10. 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”.

11. 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

12. The complainant is concerned that the advertisement portrays the product as refreshing and that it quenches your thirst when alcohol dehydrates the body. Also that this is irresponsible as consumers may think to drink it instead of water which can have negative effects on health.

The ABAC Code

13. 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 an Alcohol Beverage.
 - (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

14. The Company responded to the complaint by letter dated 6 July 2018. The principal points made by the Company were:
 - a) The advertisement referred to features four men fishing on a boat on calm waters in the middle of the day and there is no consumption of alcohol taking place. Following this scene, it cuts to an end shot with one of the fisherman taking a sip of Iron Jack while sitting at a campsite as the sun is setting.
 - b) Lion is committed to upholding the Code and in their view the advertisement doesn’t breach Part 3(a)(ii) or (c)(iv) of the Code:
 - i. The advertisement shows a group of friends on a day out fishing on a boat, focusing upon the fishing activities and catch of the well-known sports fishing identity Ben Jones, also known as “GT Buster”. Consumption of alcohol is not shown until the last scene, where GT Buster is seen taking a sip from a bottle of Iron Jack on the beach at sunset. There is no reference to alcohol or images of anyone consuming alcohol during the boating scene. The final scene where alcohol is consumed is very clearly distinguished from the prior boating scenes. There is no language or imagery in the last scene encouraging irresponsible consumption of alcohol or irresponsible or

offensive behaviour.

- ii. The introduction of alcohol into the final scene does not alter GT Buster's mood, encourage irresponsible or offensive behaviour. The consumption of alcohol in the ad is minimal and it would not be unusual for a group of friends to responsibly drink a beer after a day out fishing.
- iii. The tagline use din the ad is not "famous for thirst-crushing refreshment" but is "known for thirst-crushing refreshment". This tagline, viewed in the context of the advertisement does not represent that Iron Jack beer will aid in the hydration of the body.
- iv. A reasonable consumer who views the advertisement would not take away the message that they should drink beer rather than water to hydrate themselves.
- v. Lion and the advertisement does not seek to make any assertion, representation or claim that consumption of an alcohol product would result in a therapeutic benefit. No health claims are made and there is no language or imagery that suggests alcohol has any therapeutic benefit.
- vi. The advertisement does not suggest that Iron Jack is beneficial to a consumer's health, nor does it suggest that the presence of alcohol has a causal relationship with a therapeutic benefit.
- vii. A therapeutic benefit relates to the treatment of an ailment or disease. Lion queries whether hydration is appropriately to be considered a therapeutic benefit, but in any case the ad refers to "thirst-crushing" and "refreshment" and does not make any reference to hydration.
- viii. It is unlikely that a reasonable person would take the messaging "known for thirst-crushing refreshment" as representing that the Iron Jack product is known to replenish one's fluid in the body in a manner comparable to non-alcoholic beverages such as water or as a treatment for dehydration.
- ix. Thirst is a term used broadly in a variety of contexts. A thirst may also be defined a s strong desire for something, not necessarily a liquid. For example, one may experience a thirst for knowledge or power.
- x. In the advertisement the Iron Jack product is positioned as a mid strength beer (or alcohol refreshment) that friends may choose to consume after a day out fishing. As noted above the final scene shows GT Buster having a sip of an Iron Jack product.

- xi. Viewing the advertisement as a whole, a reasonable person would not take away the message that they should drink beer rather than water to hydrate themselves.

The Panel's View

15. This determination concerns a television commercial for Iron Jack beer. The ad shows a group of men fishing and concludes with a shot of one of the men at twilight drinking the product accompanied by the strapline "Iron Jack known for thirst crushing refreshment". It is the interpretation of this strapline which is at the heart of the issue raised in the complaint.
16. The complainant believes the message conveyed by the strapline is irresponsible as consumers may mistakenly believe that drinking alcohol can hydrate the body whereas the actual effect of alcohol is to contribute to dehydration. In response the company argues that the ad would not be understood as making any claim about the health benefit of alcohol use.
17. For its part the ABAC provides that an alcohol marketing communication must not suggest that the consumption of alcohol offers any therapeutic benefit. So in essence the Panel is asked to decide whether the strapline within the context of the advertisement would be understood as saying that the consumption of the product will assist your health or wellbeing.
18. In assessing if an ABAC standard has been breached the Panel is to adopt the standpoint of the so called 'reasonable person' and how this person would understand the marketing item. The reasonable person test comes from the common law system and requires that the benchmark be a typical person in the general community holding opinions, values and having had life experiences which would be shared by a majority of the public.
19. The Panel fully recognises the point raised by the complainant. Alcohol as a product does not hydrate the body like water and a claim that alcohol is hydrating is false. The question is whether a reasonable person would interpret the ads reference to thirst crushing as meaning body hydrating.
20. The Company makes a number of points, namely:
 - a) a therapeutic benefit within the meaning of the ABAC standard does not include hydration as such;
 - b) the ad does not mention hydration; and
 - c) the term thirst should be taken as akin to desire and it is pointed out that the word is used in a variety of contexts such as a thirst for knowledge.
21. In previous decisions on Part 3(c)(iv) the Panel has noted that therapeutic benefit is to be understood as going to the impact of a product and whether it is claimed a benefit will result to physical or mental wellbeing. For instance, in Determination 44/18, an advertisement which stated that a cocktail could avoid a hangover and expressly would "keep you hydrated all night" was held to be inconsistent with the Part 3(c)(iv) standard.

22. In this case the strapline states that the product is “thirst crushing” and is a “refreshment”. On balance the Panel does not believe the ad is in breach of the ABAC standard. In reaching this conclusion the Panel has noted:
- a) taken as a whole the ad creates a scenario where the product is portrayed as a good choice or a beer following a day of fishing;
 - b) no positive assertion is made that the product will offer a therapeutic health benefit; and
 - c) a reasonable person would likely take the reference to thirst crushing and refreshment as going to the taste and flavour of the product rather than implying that the product has a hydrating benefit.
23. Accordingly, the complaint is dismissed.