



ABAC Adjudication Panel Determination No. 111/18

Product: Heineken 3
Company: Lion
Media: Television
Date of decision: 17 October 2018
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns television marketing for Heineken 3 by Lion (“the Company”) and arises from a complaint received 12 September 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 Code”) – 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 and Policies – which place 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 the 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 12 September 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 the content of this marketing communication (16068).

The Marketing Communication

6. The complaint relates to a television advertisement for Heineken 3. The advertisement opens with an outdoor Heineken branded bar at which we see a

bartender polishing glasses and a dark skinned man and a white skinned woman sitting at the bar as reggae music plays in the background.

7. The barman is looking into the distance when he sees something and pulls out a set of binoculars to have a closer look. We then see a sweaty man carrying an ice bucket with 5 bottles labelled Stout Beer.
8. The barman looks distressed and opens a bottle of Heineken 3, and slides it down the bar, we then cut to the bottle sliding along a park bench and down onto a skateboard, cut back to a group of men in a park playing football and cut back to the bottle travelling past a woman sitting on a park bench with an umbrella and past some ducks.
9. The screen then cuts to the man shown earlier carrying the bucket with stout beer putting down the bucket among a group of men that include the two that were earlier shown playing football and we see the bottle of Heineken 3 slide in front of the ice bucket of stout as a voiceover and superimposed text says "Lower calories, lower carbs and an award winning taste". We then see one of the men in the group reaching for and drinking from the Heineken 3 product.
10. The screen then cuts to the barman smiling and putting a bottle of Heineken 3 on the bar and we then see the superimposed text next to the bottle "Heineken 3 Lower Calories Lower Carbs Great Taste Have it All Heineken 3 has an average 38% less calories and 44% less carbs than Heineken 5%" as a voiceover says "Have it all with Heineken 3". The screen then cuts to the previous group of racially diverse men now including women talking and laughing and all drinking a bottle of Heineken 3 except one dark skinned man who is holding a football and laughing and a white skinned woman.

The Complaint

11. The complainant objects to the marketing as:
 - The ad shows a white man looking down on or laughing at a black man in several scenes.
 - The ad is clearly comparing a light coloured beer to a dark coloured beer and in doing so it clearly attempts to attribute value to white skin over black skin.
 - The positioning statement "Have it all" relates to a white male getting the white girl with the subplot that he got her because he is better than the black man, just as the lighter coloured beer is supposedly better than the stout.

The ABAC Code

12. 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)(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

The Company's Response

13. The Company responded to the complaint by letter dated 27 September 2018. The principal points made by the Company were:
 - a) The advertisement referred to in The Complaint is one of a series of television advertisements for Heineken 3. At a high level, the campaign centres on the functional benefits of Heineken 3 relative to other higher calorie and carbohydrate alcohol drinks. Each version shows a different social occasion whereby Heineken 3 is provided as an alternative option to the drink previously chosen. In this particular TV spot, a group of friends who have just finished a game of football are offered Heineken 3 by the bartender as an alternative to the generic stout beer about to be consumed. The opening scene for each advertisement in the series depicts a black man and a white woman sitting at a bar, both laughing and talking whilst drinking Heineken 3. Lion contends that The Complaint should be considered through the lens of this particular scene.
 - b) In Lion's view, this piece of marketing communication does not breach Part 3 (a)(ii) of the Code by showing or encouraging irresponsible or offensive behaviour that is related to the consumption or presence of alcohol. We strongly dispute the assertion in the complaint that the man drinking a Heineken 3 with a female is laughing at the dark-skinned man next to him who has neither. This particular scene features a large group of gender and racially-diverse friends, sharing a convivial moment over a Heineken 3 at the conclusion of their sporting activity. The whole group is depicted laughing and enjoying the occasion, which undermines the assertion made in the Complaint that there is racial undertone to the white man's laughter. In fact, the black man described in the Complaint as the one being laughed at, is laughing himself. There is no irresponsible consumption of Heineken 3 depicted in the advertisement, nor is the behaviour of the group of people shown enjoying the occasion likely to offend the reasonable consumer.
 - c) Similarly, Lion is of the view that the marketing communication does not breach Part 3 (c)(ii) of the Code by showing or directly implying the consumption or presence of the product as a cause or contributor to the achievement of social success. The tagline for Heineken 3: "Lower calories, lower carbs, great taste. Have it all" is clearly designed to act as a comparison between heavier beers, such as the generic stout which features in the advertisement, and Heineken 3, which is a lower calorie, lower carb beer. The tagline 'Have it all', is clearly qualified by the reference to Heineken 3 being a lower calorie, lower carb beer. This tagline implies Heineken 3 enables consumers to enjoy a lower calorie, lower carb beer, without a compromised taste.

- d) As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and spirit of the ABAC and AANA Codes. As part of Lion's marketing approvals processes, the advertisements for Heineken 3 were 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; and
 - 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.

The Panel's View

14. This determination concerns a television commercial which depicts a contrived journey of a bottle of the product from an outdoor bar to a group of men playing a game of touch football. The ad features a male and female sitting at the bar with a barman and a group of footballers. It is the racial makeup of the couple and the group of men which is at the centre of the complaint.
15. The complainant interpreted the ad as using a form of offensive racial stereotyping in which the product, a light coloured beer, is shown as superior to a dark coloured stout beer. It is argued that this is drawn from the way in which the characters interact juxtaposed with the white males and white females choosing the Heineken beer over the stout beer.
16. The ABAC is not principally concerned with advertising meeting community standards in relation to racial discrimination. Marketing does need to meet community expectations in terms of not denigrating a person on the basis of race but these standards are contained in the AANA Code of Ethics which is adjudicated by Ad Standards and not the ABAC Panel. Rather the ABAC is focused on the portrayal of alcohol as a product.
17. Part 3(a)(ii) of the ABAC provides that alcohol ads must not encourage offensive behaviour that is related to alcohol use. Hence if the ad could be fairly interpreted as suggesting that the choice of the product over a dark stout beer is symbolic of the superiority of white people over other races then this standard would be breached.
18. In assessing if an ABAC standard has been breached the Panel is to adopt the probable understanding of the ad by a reasonable person. The concept of the reasonable person is borrowed from the common law system and means that the life experience, values and opinions held by a majority of the community is the benchmark. A person holding a different interpretation is not 'unreasonable' but possibly their take on the ad would not be shared by a majority of the community.

19. The Panel does not believe the ad breaches the ABAC standard. The ad cannot be fairly interpreted as contended by the complainant. The scenes in the ad do not in the Panel's opinion show the black football player being mocked or laughed at by others in the ad, including the women shown. Rather it appears that the football players are friends and there is no reasonable suggestion that the black player is inferior or treated in a different fashion than the other players.
20. The Panel also does not believe that the ad is suggesting that the product contributes to the achievement of social success. The couple in the opening scene are clearly already together and the product does not contribute to this position. The complainant states that the phrase "Have it all" in the commercial relates to the white male getting the white girl at the end of the advertisement. The Panel does not believe that the white male is shown as 'getting the white girl' rather a group of friends are shown gathering to socialise after a touch rugby match.
21. Accordingly the complaint is dismissed.