



## ABAC Adjudication Panel Determination No. 121/18

**Product:** Iron Jack  
**Company:** Lion  
**Media:** Television  
**Date of decision:** 26 October 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 8 October 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 8 October 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 (16636).

### **The Marketing Communication**

10. The advertisement opens with a man lifting a heavy rock onto the back of his utility vehicle. He then looks over at a dog digging a hole in a garden and whistles at the dog.

11. We then see the man removing his hat and loading up the back of his utility and as he is tying down his load we see the same dog pulling on the rope and part of his load falling to the ground. The man whistles and glares at the dog.
12. The scene changes to the man walk across a road with the dog in a dry country location toward a pub that appears to be surrounded by farmland. Outside the pub he tells the dog to “stay” and walks into the bar. The barman is pouring a glass of beer from an Iron Jack beer tap and he points to the glass and asks the man “Iron Jack?”. The man looks at the beer being poured and says “Water First”. We see two men and a woman at the bar all holding a glass of beer with the Iron Jack logo and the woman smiles at the man.
13. We then see the man outside with the dog pouring water from a jug into a dog bowl as he says “Here you go mate”. We see the dog drinking from the bowl and the man smiling and patting the dog.
14. The scene changes to the man sitting outside and drinking from a glass of beer with the Iron Jack logo with other patrons. The voiceover says “Iron Jack Thirst Crushing Refreshment” as a bottle with the Iron Jack logo and the text “Thirst Crushing Refreshment Australian Lager” is superimposed on the scene. The camera then focuses on the dog chewing on a thong.

### **The Complaint**

15. The complainant is concerned that the advertisement states ‘quench your thirst’ with Iron Jack when alcohol is a scientifically proven dehydrator.

### **The ABAC Code**

16. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:
  - (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**

17. The Company responded to the complaint by letter dated 19 October 2018. The principal points made by the Company were:
  - a) The Advertisement features a man finishing a day of work in outback Australia, in the company of his loyal companion – his dog. He walks into a pub, and the dog waits at the door. The man approaches the bar as the publican is pouring a schooner of mid-strength Iron Jack, and the publican asks him if he would like one. The man responds by saying, “water first”. He takes the water to his dog, gives it to him, and makes sure he’s happy by giving him a pat as he drinks the water from a dog bowl. This scene cuts immediately to the man, enjoying a schooner of mid-strength Iron Jack responsibly with a group of friends.
  - b) Lion does not consider that the Advertisement breaches provisions 3(a)(ii) or

3(c)(iv) of the ABAC Responsible Alcohol Marketing Code (**Code**) or any other provision of the Code. As a responsible marketer, Lion has demonstrated a long-standing commitment to upholding both the letter and intent of the Code. Lion maintains strict internal and external processes to ensure this compliance and obtained AAPS approval for the advertisement.

- c) Lion is also committed to upholding Part 3(c)(iv) of the Code which states alcohol marketing must not suggest that the consumption of an alcohol beverage offers any therapeutic benefit. Lion does not make any assertion, representation or claim that consumption of Iron Jack beer results in a therapeutic benefit. In our view, the Advertisement does not breach this section of the Code.
  - i. At no point does the Advertisement suggest that alcohol or, more specifically, the Iron Jack product has any therapeutic benefit. No health claims are made and there is no language or imagery that suggests alcohol has any therapeutic benefit or is beneficial to a consumer's health.
  - ii. 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 Advertisement refers to "thirst-crushing" and "refreshment". It does not make any reference to hydration.
  - iii. The statement "thirst-crushing refreshment" does not suggest that consumption of the Iron Jack product would result in a therapeutic benefit. Further, it is unlikely that a reasonable person would take the messaging "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 of dehydration.
  - iv. Thirst is a term used broadly in a variety of contexts. A thirst may also be defined as a strong desire for something, not necessarily a liquid. For example, one may experience a thirst for knowledge or power.
  - v. In the Advertisement, the Iron Jack product is positioned as a beer (or alcohol refreshment) that friends may choose to consume after a hard day of work. As noted above, the final scene of the Advertisement shows the man having a sip of an Iron Jack product with a group of mates.
  - vi. When the Advertisement is viewed as a whole, a reasonable consumer would not take away the message that they should drink beer rather than water to hydrate themselves.
- d) Lion notes that a similar complaint regarding the tagline "known for thirst-

crushing refreshment” was dismissed in ABAC Adjudication Panel Determination No. 72/18: <http://www.abac.org.au/wp-content/uploads/2018/07/72-18-Determination-Iron-Jack-30-7-18.pdf>

- e) Lion contends that the overall impression of the Advertisement must be given due regard. The Advertisement tells a story about a man and his dog, and aims to depict the man as a responsible and decent pet owner for putting his dog first, which in this case, involves ordering some water for the dog before ordering a mid-strength Iron Jack beer for himself. The sequence of the Advertisement makes it clear that the water is for the dog, not the hero character (the man). In the community, there is an underlying assumption that alcohol is a lawful product, which is able to be consumed responsibly by adults. We dispute that the act of ordering and providing water to the dog before the hero character orders himself a beer conveys to a reasonable consumer that the product is being irresponsibly consumed or highlights any therapeutic benefit.
- f) In addition, the tagline, “thirst-crushing refreshment” is only seen at the conclusion of the Advertisement, immediately after the man has taken a sip from his schooner of mid-strength Iron Jack. The tagline in question has been used in a number of Iron Jack advertisements, and is unrelated to the man ordering water for his dog.
- g) We regret the fact that the complainant found this advertisement unacceptable. However, for the reasons stated above, we do not believe the advertisement breaches the ABAC Code nor do we feel that the complainant’s interpretation of the Advertisement is representative of the overall impression conveyed to reasonable consumers within the community. Therefore, we respectfully request that the complaint be dismissed.
- h) Lion continues to take its responsibilities as an advertiser, and compliance with the Code, very seriously.

### **The Panel’s View**

- 18. This is the second occasion that the Panel has considered a complaint about a television advertisement for the product concerning whether the ad is suggesting that the product offers any therapeutic benefit contrary to the requirement in Part 3 (c)(iv) of the ABAC. The previous determination 72/18 dealt with a different ad and of course each ad needs to be individually considered on its own consistency with the Code requirements.
- 19. The argument advanced by the complainant is essentially based on the use of the strapline 'Iron Jack Thirst Crushing Refreshment'. It is argued that it is scientifically proven that alcohol will cause dehydration while the ad suggests the product will hydrate a drinker. In response the Company contends that the ad would not be taken as interpreted by the complainant and no claim is made that the product will

cause hydration or provide a benefit in the treatment of an illness. It is argued that 'thirst' has a number of uses such as a thirst for knowledge.

20. The test for assessing an ad's consistency with a Code standard is how a reasonable person would understand the ad taking its content as a whole. This means the common life experiences and values held in a majority of the community is to be the benchmark.
21. While acknowledging the point raised in the complaint, the Panel does not believe the ad breaches the Code standard. In reaching this view the Panel has noted:
  - no positive assertion that the product will provide a benefit to health or well-being is made about the impact of the product;
  - the reference to thirst crushing is used with the term 'refreshment' and would likely be taken to be going to the taste of the product;
  - the ad does not use the expression that the product will 'quench' a thirst as contended by the complainant; and
  - taken as a whole a reasonable person would not understand the ad is making claims about the health benefits of the product.
22. Accordingly the complaint is dismissed.