



ABAC Adjudication Panel Determination No. 39/19

Product: Hahn Ultra Crisp
Company: Lion
Media: Outdoor & Television
Date of decision: 21 June 2019
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Debra Richards
Professor Richard Mattick

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns outdoor and television advertisements for Hahn Ultra Crisp by Lion (“the Company”) and arises from a complaint received 7 June 2019.
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.
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 other codes as well as meeting the standards contained in the ABAC.
 4. 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.
 5. 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.
 6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

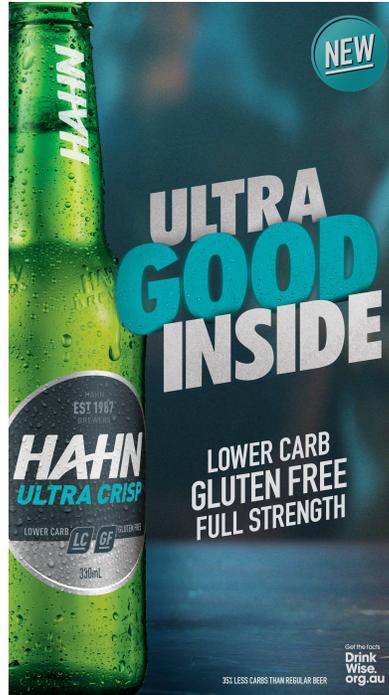
7. The complaint was received on 7 June 2019.
8. The Panel endeavour to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in 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 these marketing communications.

The Marketing Communications

10. The complaint relates to outdoor and television advertisements for Hahn Ultra. The outdoor advertisement is included following.



11. The television advertisement opens with a person in a hoodie walking along a street at night holding a 6-pack of 375 and the following sequence of scenes follow:
- The person removes their hood and we see a boxing glove in place of their head and the caption '5:30am Monday Boxing' appears on the bottom left side of the screen;
 - The person removes the boxing glove and reveals a soccer ball as the caption changes to '6pm Wednesday Football Training';
 - The soccer ball bounces away from the person as they continue walking;
 - We see the person with a television with a 1980s aerobics video playing in place of their head as the caption changes to '7am Thursday Cardio';
 - The person turns and walks toward and onto a bus, sits down and removes the television and reveals a bicycle wheel as the caption changes to '4:30pm Thursday Ride';
 - The person gets off the bus and we see a hand holding a weight in place of their head as the caption changes to '10am Friday Gym';
 - The person enters a crowded room as the caption changes to '9pm Friday' and the person walks over to a sink filled with ice and 4 beer stubbies;
 - The person places his 6 pack of Hahn Ultra Crisp on the ice as the words 'Aahhh' are added to the caption;

- The camera pans out and with his head restored we see the character is male and talking with another man as each open a stubby of the product and take a sip from the bottle;
- The camera focuses on a stubby bottle of the product with the text 'Lower Carb' and 'Gluten Free' either side of the bottle with the crowd in the background as the voiceover says "New Hahn Ultra Crisp Ultra Good Inside" and the text 'Ultra Good Inside' next to the bottle in prominent text and in small text on the lower right side '35% less carbs than regular beer', the Drinkwise logo and the Hahn logo.



The Complaint

12. The complainant objects to the marketing as it promotes Hahn Ultra Crisp beer as 'ultra good inside' as:
 - Just because it is gluten free and lower carb does not make it a healthier product and these features are being used to position it as a healthy option;
 - Alcohol is a class 1 carcinogen with both IARC and WCRF concluding that there is no safe level of drinking when looking at cancer risk and therefore there should not even be a suggestion that a full strength beer is 'good'; and
 - Positioning an alcohol product in a 'health and wellbeing category' is not ethical and is a sneaky marketing tactic to convince the general public to continue drinking alcohol in a declining market.

The ABAC Code

13. 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

14. The Company responded to the complaint by letter dated 17 June 2019. The principal points made by the Company were:
- a) We reiterate our commitment to the ABAC Scheme and take our obligations to responsibly promote our products very seriously. However, for the reasons set out below, and with respect to the complainant, we submit that there has been no breach by Lion – Beer, Spirits & Wine Pty Ltd (“**Lion**”) of Part 3(c)(iv) of the ABAC Code and complaint 39/19 should be dismissed by the ABAC Panel.
 - b) The TV advertisement in question depicts our hero character commuting to an event and shows him transition through a variety of different heads, including a soccer ball, a television, boxing glove, and a dumbbell. These heads are a demonstration of the ‘good’ that exists inside the hero character. It is not that he is necessarily ‘good’ at these pursuits, but they are his interests. They represent what he likes to do. The hero character has an edge to him. He has his own values and interests, and the advertisement celebrates the individuality he represents.
 - c) He encapsulates an active lifestyle throughout the advertisement, and he regains his normal human head at the very end, prior to taking a sip of Hahn Ultra Crisp. The sequencing of the advertisement makes it clear to the audience that the consumption of Hahn Ultra Crisp is not the cause for the return to the subject’s normal head, as this transformation takes place prior to any consumption. The subject of the advertisement is indeed “Ultra Good Inside” all along – regardless of the presence or consumption of Hahn Ultra Crisp.
 - d) The out of home advertisement that is the subject of this complaint depicts an image of a Hahn Ultra Crisp bottle with the tagline “Ultra Good Inside”, followed by “lower carb, gluten free, full strength” to describe the internal qualities of the product.
 - e) The outdoor and television advertisements referred to by the complainant culminate in the tagline “Ultra Good Inside”. In conjunction with the claims regarding carbs and gluten and positioned next to a bottle of Hahn Ultra Crisp, it is clear that this tagline refers to the internal qualities of the beer itself. Importantly, the tagline “Ultra Good Inside” also relates to the product taste. It was designed to overcome the common misconception that gluten-free products have an inferior taste to standard products.
 - f) Lion does not make any assertion, representation or claim that consumption of Hahn Ultra Crisp beer results in a therapeutic benefit in breach of Section 3(c)(iv) of the ABAC Code. In particular:
 - i. At no point in either advertisement does this tagline appear next to a human subject, and there is never a suggestion that the beer will make a consumer *feel* good inside as a result of the consumption or presence of Hahn Ultra Crisp.

- ii. No express or implied health claims are made and there is no language or imagery that suggests Hahn Ultra Crisp is beneficial to a consumer's health or wellbeing.
 - iii. The advertisement does not state or infer that the consumption of the product will make the consumer good at any of the sports depicted. The soccer ball, boxing glove, and dumbbell all appear as the subject's head prior to any consumption.
 - iv. The tagline "Ultra Good Inside" refers solely to the product being good in and of itself.
- g) When viewing the advertisement as a whole, we contend that it is unlikely that a reasonable person would take the messaging "Ultra Good Inside" to represent a health claim or therapeutic benefit.
- h) As a responsible marketer, Lion takes the placement of its advertisements very seriously and 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.

The Panel's View

15. The Company is currently rolling out a marketing campaign for its product, Hahn Ultra Crisp, including television advertising and placement of ads using outdoor sites such as bus shelter sheds. The complainant believes the advertising to be inappropriate and unethical as it is positioning the product in a health and well-being category when alcohol can never be so described and there is no 'safe' level of alcohol consumption.
16. Underlying the complaint is essentially an argument that alcohol is a product that cannot be consumed safely, at least in terms of a cancer risk, and that it should not be open to market a product which references attributes such as 'lower carbs' or 'gluten free' as a false impression is caused. In a number of respects this argument goes beyond the remit given to the Panel.
17. Alcohol as a product and its marketing is a shared regulatory space. The actual safety of foodstuffs to be consumed is regulated by a government agency- Food Standards Australia New Zealand. The ABAC Scheme does not go to concerns that alcohol 'is a cancer risk' and should not be available for use. Rather, the Scheme assumes alcohol will be sold and consumed. The Scheme does assume, however, that alcohol is not just another product and additional rules should apply to it beyond those applying to all products.
18. The ABAC applies to alcohol marketing and is in addition to rules applying to marketing more generally. It imposes obligations on alcohol producers, distributors and retailers to market alcohol beverages in a responsible manner by not breaching specified standards. One standard is that an alcohol marketing communication cannot suggest that the consumption of alcohol offers any therapeutic benefit.

19. The complainant interprets the advertising to be saying the product is 'a healthy option'. The Company argues the ads make no claim of a health benefit but rather factually go to a comparison of the carb and gluten contents of the product vis a vis other beer. It also claims the tag line 'ultra good inside' goes to the taste of the product and seeks to overcome a misconception that gluten free products have an inferior taste compared to standard products.
20. In assessing if a Code standard has been breached the Panel is to adopt the standpoint of the probable understanding of the marketing communication by a reasonable person. The concept of the 'reasonable person' is drawn from the legal system and means that the life experiences, values and opinions held within a majority of the community is the benchmark.
21. The television ad, through special effects, depicts a man who has an active lifestyle and who plays various sports and goes to the gym. This man goes to a bar and after he 'returns to normal' chooses the Hahn product. The implication is that the product is a good choice for someone who has an active and quite physical lifestyle. It is a reasonable implication that the man is very health conscious.
22. The key issue is whether the ad is suggesting that the consumption of the product is offering a positive health benefit to the man i.e. will the use of the product make the man 'healthy' and active. Or does the ad simply suggest the product is suitable for a person who is active without claiming the product provides a therapeutic benefit.
23. The Panel does not believe that the ads breach the ABAC standard. The ads don't assert a positive health benefit will be obtained from the product's consumption. Rather, the ads assert the product's contents have no gluten and lower carb than other products. The ad does not go on to say the consumption of the product will provide a health benefit.
24. The complaint is dismissed.