



ABAC Adjudication Panel Determination No. 67/19

Product: Heineken 0.0
Company: Lion – Beer Spirits & Wine Pty Ltd
Media: Outdoor
Date of decision: 15 October 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 an outdoor advertisement for Heineken 0.0 by Lion – Beer Spirits & Wine Pty Ltd (“the Company”) and arises from a complaint received 13 September 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 13 September 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 this marketing communication.

The Marketing Communication

10. The complaint relates to the following outdoor advertisement on a bus stop on Canning Highway, Melville WA outside the A H Bracks Leisure Centre.



oOh! Commute | Street Furniture, WA



The Complaint

11. The complainant objects to the marketing as:
- the Heineken 0.0 product is clearly a brand extension of the Heineken beer brand;
 - the branding of the alcohol free beer is very similar to the branding of the standard beer, so it is almost impossible to tell from looking at the ad that it is promoting a 0% product and therefore the ABAC Code should apply to advertising for Heineken 0.0; and
 - the ad is very concerning as it is promoting that people can drink Heineken beer before driving breaching Part 3(d) of the ABAC Code and muddying all the anti-drink driving education we have had.

The ABAC Code

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

13. The Company responded to the complaint by letter dated 27 September 2019. The principal points made by this company were:

- We reiterate our commitment to the ABAC Scheme and take our obligations to responsibly promote our products very seriously. 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(d) of the ABAC Code and complaint 67/19 should be dismissed by the ABAC Panel.
- Heineken 0.0 is an alcohol-free beer that is not an ‘Alcohol Beverage’ as defined in the ABAC Code as it has less than 0.5% alcohol by volume. Notwithstanding this, the product is an extension of the Heineken masterbrand and therefore Lion accepts that the marketing of Heineken 0.0 must meet the ABAC standards pursuant to Part 2(a) of the ABAC Code.
- Part 3(d) of the ABAC Code prohibits a marketing communication from showing (whether visually or by direct implication) the consumption of alcohol before or during any activity that, for safety reasons, requires a high degree of alertness or physical co-ordination. The driving of a motor vehicle is unquestionably an activity that, for safety reasons, requires a high degree of alertness and physical coordination. However, for the reasons set out below, we contend that a reasonable consumer would not take the Advertisement as encouraging them to drink alcohol before driving in breach of Part 3(d).
- The Advertisement in question features an image of a Heineken 0.0 bottle, accompanied by the taglines “DESIGNATED DRIVER?” and “#NOWYOU CAN” adjacent to the product shot. The Advertisement clearly communicates the product is “NEW” to the Heineken portfolio and “ALCOHOL FREE”. There are multiple references to “0.0” within the Advertisement to also signal the product has zero alcohol, with “0.0” appearing prominently on the front of the bottle label shown, the “NEW Heineken 0.0” claim and the Heineken 0.0 logo. The Heineken 0.0 product packaging logo branded in a distinct blue colour to differentiate the product from other alcoholic beers in the Heineken portfolio, which are branded in green (Heineken 5) and white (Heineken 3).
- The Advertisement is part of the Heineken 0.0 *Now You Can* campaign that positions Heineken 0.0 as a non-alcoholic choice for all traditionally “non-beer” moments. There has been phenomenal growth in the Low and No Alcohol beer category, and the *Now You Can* campaign communicates some of the different drinking occasions where Heineken 0.0 can be enjoyed.
- The “designated driver?” message in the Advertisement is a universal way to educate consumers that Heineken 0.0 is a suitable and safe beverage choice for designated drivers due to the fact that it is alcohol free. The Advertisement informs consumers that an option is now available should they wish to have a beverage during a traditional beer occasion, and then safely get behind the wheel to drive a car. The #NOWYOU CAN hashtag

also makes it clear to the reasonable consumer that this product is a safe option for a designated driver, as historically there have not been suitable beer options available in the marketplace.

- The low and zero alcohol beer category is growing rapidly both domestically and in the global marketplace, and there has been significant media coverage following this trend (particularly in Australia). It follows that consumers in Australia have increased awareness of the zero-alcohol options that are now available from their favourite beer brands, and these products enable them to enjoy a beer in circumstances where they previously couldn't (or chose not to) drink alcohol.
- Contrary to the complainant's suggestion that this Advertisement "muddies the waters" or creates confusion in regard to the importance of not drinking and driving, the advertisement in fact relies heavily on the audience's pre-existing understanding that it is both unsafe and against road safety laws in Australia for designated drivers to consume alcohol before or whilst driving. In circumstances where a consumer is confused about how a Heineken product is an appropriate beverage for a designated driver, the Advertisement provides multiple cues to inform them the product advertised is a new, alcohol free alternative. A reasonable consumer would understand that an alcohol-free beer can in fact be consumed safely by a designated driver, and therefore not interpret the Advertisement as promoting the use of alcohol in unsafe circumstances.
- 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.

The Panel's View

14. Heineken is an international beer brand which originated in the Netherlands in 1873 and now is available in over 190 countries. The Heineken website claims that 25 million Heineken products are served each day. In Australia Heineken is produced by Lion under license.
15. In October 2017 the Company released a new product on the Australian market branded as Heineken 0.0, which is a zero alcohol beer. In common with other Heineken products, the 0.0 beer is available in the distinctive green bottle and has other packaging features such as the five point red star found on alcoholic Heineken beers. The label adopts a blue livery which contrasts it with the full strength beer which has a green livery and mid strength which uses white.
16. As part of the marketing campaign for the zero alcohol product, the Company has placed an advertisement on a bus shelter shed located on the Canning Highway in Western Australia. The ad features a picture of the product with a strapline

'Designated Driver?' and #Nowyoucan. It is this advertisement which has attracted the complaint.

17. The complainant contends the product is a brand extension of the Heineken alcohol products and 'is almost impossible' to distinguish from its alcoholic beers. It is argued the ad 'muddies the waters' around anti drink driving campaigns and would breach Part 3 (d) of the ABAC.
18. Part 3 (d) provides that an alcohol marketing communication must not show (including by direct implication) the consumption of an alcohol beverage before or during any activity that, for safety reasons, requires high degree of alertness or physical coordination, such as the control of a motor vehicle. Accordingly, the complainant takes the advertisement as directly implying that consumption can occur before or during the driving of a motor vehicle.
19. The Company points out that the product does not contain any alcohol and hence is not captured within the definition of Alcohol Beverage, which means a beverage containing at least 0.5% alcohol by volume. The Company accepts, however, the product does fall within the concept of a 'brand extension' and hence is within the remit of the ABAC. It argues that the ad is consistent with the Part 3 (d) standard contending:
 - the advertisement clearly communicates that the product is new to the Heineken range and is alcohol free, including the 0.0 reference on the label and the message on the bottom left of the ad and the bottom right 0.0 logo;
 - the bottle label is blue and is hence distinguished from alcoholic beers in the range (green and white labels);
 - the 'Now You Can' campaign positions the product as non-alcoholic; and
 - the 'Designated Driver?' on the ad educates consumers that the product can be consumed whereas an alcoholic beer could not be and relies on the public understanding drink driving is unacceptable and that this product is alcohol free.
20. The Panel has previously noted in other determinations that the 'brand extension' coverage of the ABAC standards sits awkwardly when applied to non-alcoholic beverages which are branded within a range of established alcohol products. The Heineken 0.0 product, like other non-alcoholic beers, can be consumed in circumstances where it would be inappropriate to consume alcohol. The requirement for marketers is to convey the message that the product is non-alcoholic, and hence can be properly used when alcohol cannot, in a manner that would not be taken by a reasonable person as suggesting alcohol might be used in the circumstances.

21. In assessing the compliance with an ABAC standard the benchmark is the probable understanding of the marketing communication by a reasonable person to whom the material is likely to be communicated and taking its content as a whole. For an ad on a bus shelter shed, the viewers of the advertisement are likely to be:
- Primarily, persons in motor vehicles driving past the ad; and
 - pedestrian traffic, including those waiting for or alighting from a bus.
22. A typical motorist or car passenger passing by an outdoor advertisement (billboard or bus shelter shed) will get a quick impression from the ad. It cannot be expected that a reasonable person in a passing car will take in the information by studying the ad in fine detail. To this extent, and as noted in Determination 12/08, a marketing communication which might be consistent with the Code when the full message is absorbed via print in a magazine, might not be consistent if conveyed via an outdoor installation when it is not reasonable to believe the full message will be absorbed.
23. The Panel does not believe the outdoor advertisement is consistent with the Part 3 (d) standard. In reaching this conclusion the Panel noted:
- the prominent messaging from the ad, when likely absorbed from a passing vehicle, is the picture of the product together with the phrase 'Designated Driver?';
 - the much smaller messages at the bottom of the ad are not likely to be absorbed unless the ad is viewed more closely, and this cannot be reasonably expected of the primary audience of the ad, being drivers and passengers in moving vehicles;
 - the picture of the product would likely be taken to be part of the well-known alcohol range of beers from Heineken and the 'New' on the top corner indicates something is new about the product but it can't be assumed this means it is a non-alcoholic product as opposed to some other new feature;
 - it cannot be reasonably assumed that most people are so familiar with the Heineken range as to distinguish alcoholic from non-alcoholic beers by the colour of the label and the 0.0 reference on the label is not likely of itself to alter the belief the product is a 'normal' alcohol beer;
 - the message 'Designated Driver' is a direct implication of the consumption of the product by a driver of a motor vehicle;

- the ad has to be assessed on its own content and it cannot be assumed that a reasonable person is aware of the wider 'now you can' campaign being run by the Company; and
- the overall impression created by the ad is positioning a Heineken product, which would be assumed to be a type of alcoholic beer, with the consumption of the product by a driver of a motor vehicle.

24. Accordingly, the complaint is upheld.