



## ABAC Adjudication Panel Determination No. 99/20

**Product:** Heineken 0.0  
**Company:** Lion – Beer, Spirits & Wine Pty Ltd  
**Media:** Television  
**Date of decision:** 3 August 2020  
**Panelists:** Professor The Hon Michael Lavarch (Chief Adjudicator)  
Ms Jeanne Strachan  
Professor Richard Mattick

### Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns a television advertisement for Heineken 0.0 by Lion – Beer, Spirits & Wine Pty Ltd (“the Company”) and arises from a complaint received 15 July 2020.
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 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 15 July 2020.
8. The Panel endeavours 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 (17217).

## Marketing Communication

10. The television advertisement opens on a beach side scene at dusk and we see a man sitting in a convertible car holding and sipping from a 375ml bottle of beer. He looks in his side mirror and we see a policeman walking toward the car. The policeman stands next to the car and starts writing a traffic infringement notice as the man continues to sip from his beer.
11. The man then smiles and points to the label of his beer and we see that it is Heineken 0.0 and the text “Heineken 0.0 Great Taste Alcohol Free” is superimposed on the screen. The Policeman points to a no standing sign and hands the ticket to the crestfallen man in the car who raises his bottle to the policeman as he walks away.
12. We then see a woman running toward the car with her surfboard as the text “Now You Can. Designated Driver” is superimposed on the screen.
13. This scene is replaced with the Heineken logo and a bottle of Heineken 0.0 is placed down onto the screen and as it is turned so we see the label 0.0 the screen changes to white and the text “Heineken 0.0 Great Taste Alcohol Free 69 Calories” and in smaller print below the bottle “\*contains less than 0.04% ALC/VOL” is superimposed on the screen.



## The Complaint

14. The complainant is concerned that the advertisement promotes the product as alcohol free when it is not actually alcohol free, which could be dangerous as an alcoholic could consume it without knowing it has an alcohol content and get hooked again on alcohol and also children may drink the product believing it is not alcoholic.

## The ABAC Code

15. 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;
  - (b)(i) have Strong or Evident Appeal to Minors;

16. Part 2(a) provides:

The Code applies to all Marketing Communications in Australia generated by or within the reasonable control of a Marketer, except as set out in Section 2(b). This includes, but is not limited to:

....

- Alcohol brand extensions to non-alcohol beverage products

17. Definition in Part 6 of the ABAC provides:

**Alcohol Beverage** means a beverage containing at least 0.5% alcohol by volume.

**Strong or Evident Appeal to Minors** means:

- (i) likely to appeal strongly to Minors;
- (ii) specifically targeted at Minors;
- (iii) having a particular attractiveness for a Minor beyond the general attractiveness it has for an Adult;
- (iv) using imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to Minors or that create confusion with confectionary or soft drinks; or
- (v) using brand identification, including logos, on clothing, toys or other merchandise for use primarily by Minors.

A **Minor** means a person who is under 18 years of age and therefore not legally permitted to purchase an alcohol beverage in Australia.

## The Company's Response

18. The Company responded to the complaint by letter dated 27 July 2020. The principal points made by the Company were:
- Thank you for raising this complaint with us and the opportunity to respond to the issues raised by the complainant. 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(a)(ii) or Part 3(b)(i) of the ABAC Code and complaint 99/20 should be dismissed by the ABAC Panel.

- Heineken 0.0 is an alcohol-free malt-based beverage that is not an ‘Alcohol Beverage’ as defined in the ABAC as it does not contain at least 0.5% alcohol by volume. In addition to Heineken 0.0 not meeting the ABAC Code definition of “Alcohol Beverage”, for completeness we also note that the product is not classified as an “alcoholic beverage” for the purposes of Standard 2.7.1 of the Australia & New Zealand Food Standards Code. 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, including ensuring that all advertising materials do not encourage irresponsible behaviour related to the consumption of alcohol or have strong or evident appeal to minors. For this reason, we confirm that the Advertisement referred to in the complaint received Alcohol Advertising Pre-Vetting Service Approval for its content.
- The Advertisement is part of the Heineken 0.0 *Now You Can* campaign that positions Heineken 0.0 as an alcohol-free 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 #NOWYOUCAN 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 alcohol-free 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 alcohol-free options that are now available from their favourite beer brands, and these products enable them to enjoy a beer in circumstances where they have previously couldn’t (or choose not to) drink alcohol.
- For those consumers that choose to abstain from products containing low or trace amounts of alcohol, the Advertisement contains the disclaimer “*Contains less than 0.04% ALC/VOL*” for full transparency. For the Panel’s background, the trace amounts of alcohol that may be found in Heineken 0.0 equate to no more than the alcoholic content of a standard orange juice.
- Similarly, we disagree that the content of the Advertisement has a strong or evident appeal to minors in breach of Part 3(b)(i) of the Code. The reasonable consumer would not perceive the content of the Advertisement

appeals to children or minors simply because product being advertised does not contain any alcohol. An upheld complaint based on a breach of Part 3(b)(i) would be akin to upholding a complaint about an Advertisement for orange juice, or any non-alcoholic product that can contain trace amounts of alcohol through the natural fermentation of sugars, including Kombucha.

- 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**

19. Heineken 0.0 is one in a range of beverages produced by well-known alcohol manufacturers which are marketed as alcohol free. The complainant has taken issue with the 'alcohol free' claim and believes the designation is misleading as in fact the product does contain some alcohol. The detrimental consequences of this is argued to be that a person with alcohol dependency might mistakenly consume the product and 'get hooked again' and 'children may drink the product believing it is not alcoholic'.
20. The complainant's concern comes to the Panel via a complaint about a specific TV ad for Heineken 0.0. This ad seeks to emphasise the alcohol-free nature of the beverage by a humorous play on the prohibition on drink driving. It is the potential appeal of the advertisement to under 18 year olds raised by the complaint which falls within the scope of the ABAC, but given the more general concerns raised by the complainant it is useful to set out some background information.
21. The classification of a beverage as 'alcoholic' and hence the beverage being subject to specific regulatory obligations rests with government. Food Standards Australia New Zealand (FSANZ) is the statutory authority responsible to set the standards to achieve the safety of food and drink available in Australia. Enforcement of the standards rests largely with State and Territory governments. A beverage is required to be labelled as alcoholic if it contains not less than 0.5% alcohol by volume. This is the same benchmark adopted by the ABAC.
22. Heineken 0.0 contains less than 0.04% alcohol by volume which the Company explains is no more than the alcoholic content of a standard orange juice. This level of alcohol content means the beverage does not fall within the ambit of the products whose marketing is subject to the ABAC standards. The reason that the ABAC has any application to the advertisement is because the Code captures 'alcohol brand extensions to non-alcohol beverage products'. Clearly Heineken is one of the world's better known alcohol brands and placing a non-alcoholic product into Heineken livery is captured by the notion of a 'brand extension'.
23. As the Panel has noted in previous decisions concerning marketing communications for non-alcoholic beverages, the Code standards which are designed for alcohol products are somewhat strained when applied to a non-alcoholic beverage. For instance, and while not the reason for the current complaint, it would not be permitted under the ABAC to have an ad for a 'normal' alcoholic beer which showed a person drinking a beer in control of a motor vehicle. Yet this is the

very premise of the current ad and a common-sense outcome is that the ad does not breach the ABAC standard on prohibiting marketing encouraging drink driving.

24. This means, in applying the ABAC standards to 'brand extensions to non-alcohol beverage products' the Panel is obliged to interpret the Code standards in a manner which makes sense when examining a no alcohol beer product marketing communication and this is a little different when applying the same standard to a marketing communication for an alcoholic beer. The benchmark remains how a reasonable person would probably understand the marketing material in light of the spirit and intent of the ABAC scheme.
25. So, in the current case the complainant has questioned whether the ad would have strong appeal to minors. The ABAC standard provides an alcohol marketing communication must not have strong or evident appeal to minors (under 18 year olds). This might be breached if the marketing item:
  - is specifically targeted at minors
  - has a particular attractiveness for a minor beyond the general attractiveness it has for an adult
  - uses imagery, designs, motifs, animations or cartoon characters that are likely to appeal strongly to minors or that create confusion with confectionery or soft drinks
26. The basis of the complainant's concern is that a minor might drink the product not realising it contains alcohol. As noted earlier, the product contains less than 0.04% alcohol and this trace amount is well below alcohol levels government agencies regulating food and drink believe is required for a product to be considered and labelled as alcoholic. Further, the ABAC is directed at the marketing of alcohol products and brands and doesn't regulate physical beverages. In other words, the ABAC looks at the design of the labelling of a can or bottle in which alcohol is contained and doesn't look at the characteristics of the beverage inside a can or bottle.
27. The Panel does not believe that the ad is in breach of the Part 3(b) standard. The ad shows adults in an adult situation. It is humorous and this humour would have appeal across age groups, but it cannot be said the ad has a particular attractiveness to minors beyond the appeal it has for adults.
28. The complaint is dismissed.