



ABAC Adjudication Panel Determination No. 111/20

Product: Byron Bay Premium Lager
Company: Lion – Beer, Spirits & Wine Pty Ltd
Media: Television
Date of decision: 2 September 2020
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 a television advertisement by Lion – Beer, Spirits & Wine Pty Ltd (“the Company”) and arises from a complaint received 4 August 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 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 4 August 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.

The Marketing Communications

10. The television advertisement may be viewed at:
<https://www.youtube.com/watch?v=8yJdU9PYAH8>.
11. The advertisement opens with a view of the shopfront of a store and is accompanied by retro seventies style music. We see a man walking out of the store carrying a skateboard and a 6 pack of unopened Byron Bay Brewery lager. We then see the legs of a man (who is barefoot) step onto his skateboard holding the unopened six pack and skate off. The scene then briefly changes to the legs of a person surfing before returning to the legs of the man skating. We then see a full length shot of a woman surfing, and then two men carrying surfboard up the beach away from the water with bottles of Byron Bay Brewery lager on ice off the beach in the foreground.
12. In the next scene we see 6 people, fully clothed, all holding or sipping from a bottle of lager, including the man who was skating, with his skateboard next to him and a man next to a bicycle. There is a surfboard and guitar leaning against a wall and an esky with additional bottles of lager.
13. The final scene is a scene of the beach with a bottle of lager placed on a bench in the foreground off the beach with the superimposed text "Open Byron" and the Drinkwise logo.

The Complaint

14. The complainant objects to the marketing as the skateboard rider isn't wearing any safety equipment, including shoes, is carrying a glass six pack of beer which is unsafe and sends the wrong message to young skaters who love their sport and practice it safely without beer.

The ABAC Code

15. Part 3 of the ABAC Code provides that:
 - (d) A Marketing Communication must NOT 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

16. The Company responded to the complaint by letter dated 17 August 2020. 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 the ABAC Code and complaint 111/20 should be dismissed by the ABAC Panel.

- b) The Advertisement depicts a flow of typical daily activities that can occur in Byron Bay, which are done with the smoothness and ease that propels the town folk who live there. This “flow” of the Byron Bay lifestyle is shown in the free and easy way the people surf, the fluidity of their creativity, the spontaneity of their social lives, the bikes and skateboards cruising around town. It is present in the way they effortlessly move between worlds – entrepreneurs, artists, creators, surfers. The Advertisement promotes the spontaneity of the Byron lifestyle, and to go where the moment takes you.
- c) The Advertisement does not breach Part 3(a)(ii) of the Code by encouraging irresponsible behaviour related to the consumption of alcohol, namely by showing someone carrying an unopened six-pack of beer while skateboarding home from the store. There is no consumption of alcohol depicted or implied prior to or during the skating scene, which is depicted at a controlled, slow and relaxed pace on the footpath to reflect the slow pace of Byron Bay life.
- d) Lion also refutes any suggestion that the Advertisement breaches Part 3(d) of the Code by directly implying the consumption of alcohol before or during an activity that, for safety reasons, requires a high degree of alertness or physical co-ordination. When viewing the Advertisement as a whole, we contend that the reasonable person in Australia would not view the behaviours depicted to suggest or imply irresponsible or unsafe behaviour, taking into account the following:
- The consumption of the Byron Bay Premium Lager only takes place in the very final scene of the Advertisement, when the skateboarder has stopped skateboarding and has arrived to the beachside location to catch-up with friends. The alcohol consumption depicted is moderate; participants are not intoxicated and are not engaged in behaviour that could be seen as offensive of irresponsible;
 - Before the final scene where consumption of alcohol is depicted, the beer bottles featured in each frame of the Advertisement, whether in the hand of the skateboarder, or the basket of the bicyclist, are full and clearly unopened. There is no inference that any person has consumed the beer before or during any of these activities;
 - The group of people who have gathered to enjoy a Byron Bay Premium Lager have all converged after participating in various sporting endeavours – surfing, cycling, skating – and they are all fully clothed, seated and relaxed. The advertisement makes it clear that alcohol is being consumed responsibly at the end of the day of activities, when no further physical activity will take place. There is no suggestion that they are going to partake in these activities again after having consumed the product; and
 - Contrary to the suggestion that the position of the man’s skateboard next to him implies that he is going to go skating again, it simply shows that he has arrived at his final destination and retired his skateboard for the day. Separately, the reasonable consumer would also understand that

skateboards are easy to transport in-hand or under-arm while walking or getting an uber or taxi to another location.

- e) Lion contends that the Advertisement should only be considered for what it depicts, and not any hypothetical activity that the viewer might imagine happening thereafter its conclusion.
- f) 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

- 17. This determination concerns a television advertisement for Byron Bay Premium Lager. The ad shows various scenes set in Bryon Bay, but is based on a man who has purchased a six pack of the product and then proceeds to use a skateboard while holding the six pack. The complainant considers the ad to be highly irresponsible as it depicts skateboarding occurring in an unsafe manner.
- 18. It should be noted that the AANA Code of Ethics contains in section 2.6 a requirement that advertising (irrespective of the product or service being marketed) shall not depict material contrary to prevailing community standards on health and safety. This means that the complaint may be considered by the Ad Standards Community Panel applying the Code of Ethics, as well as this determination, which applies the ABAC.
- 19. In essence the key difference between the two Codes is that the ABAC focuses upon the responsible portrayal of the use of alcohol as a product. So, in this case, the complainant's principal concern is about a rider skateboarding while holding glass bottles and it is largely immaterial that the bottles contain alcohol as opposed to soft drink or any other beverage. This concern therefore is not related to the effects of the misuse of alcohol but to the safety issue of using a skateboard absent of wearing safety gear and while holding a glass bottle.
- 20. The relevant ABAC standard in relation to the safe use of alcohol goes to the potential of alcohol consumption impairing a drinker from performing a task safely. The standard provides that an alcohol marketing communication (which includes a television ad) must not show the consumption of alcohol before or during any activity that for safety reasons requires a high degree of alertness or physical co-ordination. In assessing if this standard has been breached, the Panel adopts the probable understanding of the marketing item by a reasonable person, taking the content of the marketing as a whole.
- 21. The ad does show activities which require a high degree of alertness and physical co-ordination to be performed safely, namely skateboarding and surfing. The issue then is whether the ad would be probably understood as showing or directly implying that alcohol is consumed before or during the performance of skateboarding or surfing.
- 22. The Company argues the ad is consistent with the ABAC standard. It is contended:

- no alcohol consumption is shown or implied prior or during the skateboard scene;
 - alcohol use is only shown in the final scene when it is clear the drinkers have stopped skateboarding and surfing;
 - alcohol use shown is moderate and no one appears affected by alcohol; and
 - a reasonable person would not think that any further use of the skateboard will occur after the scene where people are shown consuming alcohol.
23. The Panel does not believe the ad is in breach of the ABAC standard. The man leaving the shop with the six pack to ride the skateboard is not shown consuming alcohol and there is no implication he has been drinking prior to using the board. The six pack has not been opened and the ad establishes that the use of alcohol occurs when the group of friends gathers overlooking the beach. Equally, there is no suggestion that the surfer has been drinking prior to riding the surfboard. In the final scene, both the skateboard and the surfboard are shown with the group of friends, but the scene within the context of the ad does not imply that either surfing or skateboarding will occur again.
24. The complaint is dismissed.